



OFFICE OF THE
TAX OMBUD
Ensuring fairness

TAX OMBUD ANNUAL REPORT

ITO SECTION 19 OF THE TAX ADMINISTRATION ACT 28 OF 2011
AND THE PUBLIC FINANCE MANAGEMENT ACT (ACT 1 OF 1999)

2016/17



TABLE OF CONTENTS

HIGHLIGHTS OF 2016/17

ii

PART A: GENERAL INFORMATION

1

1. GENERAL INFORMATION	1
2. ABBREVIATIONS/ACRONYMS	2
3. MESSAGE BY THE MINISTER OF FINANCE	4
4. FOREWORD BY THE TAX OMBUD	6
5. CHIEF EXECUTIVE OFFICER'S OVERVIEW	10
6. STATEMENT OF RESPONSIBILITY AND CONFIRMATION OF THE ACCURACY OF THE ANNUAL REPORT	14
7. STRATEGIC OVERVIEW	15
8. LEGISLATIVE AND OTHER MANDATES	16
9. ORGANISATIONAL STRUCTURE	17

PART B: PERFORMANCE INFORMATION

19

1. SITUATIONAL ANALYSIS	19
2. PERFORMANCE INFORMATION BY PROGRAMME/OBJECTIVES	52
3. STRATEGIES TO ADDRESS AREAS OF UNDER PERFORMANCE	72

PART C: CORPORATE GOVERNANCE

73

PART D: HUMAN RESOURCE MANAGEMENT

77

PART E: FINANCIAL INFORMATION

83

ANNEXURE 1:

87

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

HIGHLIGHTS OF 2016/17

In its fourth financial year since inception, the Office of the Tax Ombud continued to pursue excellence in addressing taxpayers' complaints against SARS and contributing towards improving the country's tax administration system. The Office's achievements during the period under review include:



LEGISLATIVE AMENDMENTS

Proposed changes to the Tax Administration Act were promulgated, and included changing the term of office of the Tax Ombud from three to five years, giving the OTO powers (with approval from the Finance Minister) to initiate investigations into any systemic and emerging issues, giving the Tax Ombud powers to appoint the staff of the Office without consulting the SARS Commissioner as previously stipulated, and having its budget determined by the Finance Minister instead of the revenue collector.



REVIEW IN TERMS OF SECTION 16(1) (b) ACT 28 OF 2011

As a result of persistent and increasing numbers of complaints by taxpayers that SARS was unduly delaying the payment of their verified refunds, the Tax Ombud sought and obtained approval from the Minister to conduct a review of the issue as a systemic and emerging one. The review culminated in a report titled Annexure 1 on page 87.



INCREASE IN CONTACTS

The Office recorded a significant increase in contacts from taxpayers and tax representatives;



ENGAGING KEY STAKEHOLDERS

Engagements and collaborations were organised and co-hosted with different stakeholders, in addition to co-hosting webinar presentations with Recognised Controlling Bodies. The purpose of these engagements was to raise awareness about the OTO's services and to discuss important matters in the tax sphere. The Office further facilitated engagements with numerous media owners and journalists, resulting in free publicity valued at R84 086 471.55. The coverage included print articles, radio features, television features and online articles. The OTO made significant improvements, creating awareness through the use of social media platforms, with Twitter followers exceeding 2 000-mark of followers.



GROWING IN STATURE

The OTO and its leadership enjoyed much respect and influence in the tax sphere, with both the Tax Ombud and CEO speaking at various international events and the senior leadership being invited to present and be part of panel discussions at various events hosted by stakeholders.

PART A:

General Information

1. INTRODUCTION

The Tax Ombud's 2016/17 Annual Report complies with the Public Finance Management Act (PFMA), giving effect to the legislative framework for the regulation of finances in national and provincial government. The Accounting Authority presents the Annual Report in line with Section 19 of the Tax Administration Act (TAA), Section 55 of the PFMA and Section 6.2 of the protocol governing the relationship between the Minister of Finance and the Tax Ombud.

2. ANNUAL REPORTING PERIOD

The reporting cycle of the Office of the Tax Ombud (OTO) is annual, ending 31 March, as prescribed by the National Treasury (NT). Quarterly reports are compiled and submitted to the NT as per the provisions of the PFMA and Treasury Regulations. This report records the organisational and financial performance for the period 1 April 2016 to 31 March 2017.

3. SCOPE OF THE REPORT

The report incorporates financial and performance information based on the approved 2016/17 Annual Performance Plan (APP), which was tabled before Parliament in March 2016. The Annual Report provides performance information and governance reports, and incorporates financial information relating to the OTO.

Registered name	Office of the Tax Ombud
Registered office address	Menlyn Corner, 2nd Floor, 87 Frikkie de Beer Street Menlyn, Pretoria
Postal address	PO Box 12314, Hatfield, 0028
Telephone number	(+27) 12 341 9105
Call centre	0800 662 837
Facsimile	(+27) 12 452 5013
Email addresses	Office@taxombud.gov.za Complaints@taxombud.gov.za
Website	www.taxombud.gov.za
External auditors	N/A
Bankers	N/A
Company Secretary	N/A

2. ABBREVIATIONS/ ACRONYMS

ACAS	Anti-Corruption and Security Division
ADR	Alternative Dispute Resolution
AGSA	Auditor-General of South Africa
AICPA	American Institute of Certified Public Accountants
APP	Annual Performance Plan
BASA	Banking Association of South Africa
CA ANZ	Chartered Accountants Australia and New Zealand
CAI	Chartered Accountants Ireland
CEO	Chief Executive Officer
CAPEX	Capital expenditure
CMS	Complaints management system
CMO	Complaints Management Office
CPA CANADA	Chartered Professional Accountants Canada
CTC	Cost to Company
COSATU	Congress of South African Trade Unions
EE	Employment equity
FISA	Fiduciary Institute of Southern Africa
GAA	Global Accounting Alliance
GTAC	Government Technical Advisory Centre
HKICPA	Hong Kong Institute of Certified Public Accountants
IAC	Institute of Accounting Commerce
ICAEW	Institute of Chartered Accountants in England and Wales
ICAS	Institute of Chartered Accountants of Scotland
IDW	Istitut der Wirtschaftsprfer in Deutschland e.V
IFA	International Fiscal Association of South Africa
JICPA	Japanese Institute of Certified Public Accountants
KZN	KwaZulu-Natal
MTSF	Medium Term Strategic Framework



NDP	National Development Plan
NEDLAC	National Economic Development and Labour Council
NSBC	National Small Business Chambers
NOA	Notice of appeal
NOO	Notice of objection
NT	National Treasury
OPEX	Operating expenses
OTO	Office of the Tax Ombud
PAYE	Pay as You Earn
PFMA	Public Finance Management Act 1 of 1999 (PFMA)
PEOU	Public Entity Oversight Unit
PRISA	Public Relations Institute of Southern Africa
RCB	Recognised Controlling Bodies
RPB	Recognised Professional Bodies
SAIPA	South African Institute of Professional Accountants
SAIT	South African Institute of Tax Practitioners
SARS	South African Revenue Service
SM	Service Manager
SOPS	Standard Operating Procedures
TAA	Tax Administration Act
TPA	Third party appointment
TO	Tax Ombud
UK	United Kingdom
USA	United States of America
VAT	Value Added Tax
WIP	Work in progress
YTD	Year to date

3. MESSAGE BY THE MINISTER OF FINANCE



HONOURABLE MALUSI GIGABA – MINISTER OF FINANCE

I am honoured to present the 2016/17 Annual Report of the Office of the Tax Ombud, which is an important government institution. The Office of the Tax Ombud is central to the social contract between government and citizens, by ensuring that citizens are treated fairly with respect to tax collection.

During the reporting period, the Office of the Tax Ombud continued to fulfil its important role of affording thousands of our people an opportunity to be fairly heard on occasions where they have complaints against the South African Revenue Service (SARS). This will strengthen the confidence of taxpayers in our country's tax system.

This report is being tabled at a time when we are hard at work assuring our people and the international community that as a country we remain committed in our quest to achieve inclusive growth to the benefit to all our people. We encourage all citizens and residents to continue meeting their tax obligations with pride, and where there are disputes with SARS, to use all the avenues provided to resolve such. The Office of the Tax Ombud is one such important avenue created by legislation to efficiently deal with complaints by taxpayers. There is therefore no need for taxpayers to neglect their obligations.

I am thus far satisfied with the level of cooperation and the working relationship that exists between the Office of the Tax Ombud and SARS. It is important for these two organisations to work together, although independently of each other, in speedily resolving the complaints that taxpayers lodge.

“We encourage all citizens and residents to continue meeting their tax obligations with pride, and where there are disputes with SARS, to use all the avenues provided to resolve such.”

Our economy continues to grow at a very slow pace, which in turn has direct implications for the capacity of the State to generate much-needed revenue. It is at times like these that we need to emphasise the need for tax compliance so that all revenue due can be collected and used to serve the needs of all people. I am pleased to note that the Office of the Tax Ombud is doing its share in educating the public about the tax system, as well as by facilitating resolution of disputes between SARS and taxpayers, which will also help SARS to improve the way it renders its services to the community.

I am grateful for the work that has been done by my predecessors, both former Ministers Pravin Gordhan and Nhlanhla Nene during the early establishment phase of the Office of the Tax Ombud. I also wish to commend the Tax Ombud Judge Bernard Ngoepe and his team for the good work that has been done in the 2016/17 financial year.

**MKN GIGABA, MP
MINISTER OF FINANCE**

4. FOREWORD BY THE TAX OMBUD



JUDGE BERNARD MAKGABO NGOEPE, TAX OMBUD

It is a privilege to be presenting my fourth Annual Report, covering the period 1 April 2016 to 31 March 2017.

The staff of the Office of the Tax Ombud (OTO) started the 2016/17 financial year full of vigour, keen to continue where we had left off, to surpass the achievements of the previous year and to address some of the issues central to our ability to fulfil our mandate and provide a service that does justice to all taxpayers. These issues revolved around the independence and powers of the Office.

Since the establishment of this office in October 2013, I have consistently called for greater independence from the South African Revenue Service (SARS) through amendments to some sections of the Tax Administration Act. The amendments would not only enable us to be more effective in resolving taxpayers' complaints against SARS but also contribute towards improving the country's tax administration system. The benefits of an efficient and fair tax administration system that taxpayers trust are immense; so are the consequences of a system they distrust.

Our calls for more powers answered

I am happy to state that our concerted efforts to amend certain sections of the Tax Administration Act governing this Office have been fruitful, at least to a certain point. We made numerous proposals, some of which were accepted and promulgated, and we are optimistic that more of the amendments that we requested will become law in the future. That would further strengthen the independence of the Office and enable us to do more to address systemic and emerging issues in tax administration.

Positive legislative developments

The amendments to the Tax Administration Act came into effect in January 2017, bringing about major changes in the way the Office functions.

“The benefits of an efficient and fair tax administration system that taxpayers trust are immense; so are the consequences of a system they distrust.”

For instance, the term of office of the Tax Ombud, recruitment of employees and determination of our budget have all been amended in the Act, as per our proposals. In simple terms, this means we no longer have to consult the SARS Commissioner when recruiting personnel for the Office, and the budget for the Office will be decided by the Minister of Finance, to whom I report directly, instead of being at the discretion of SARS. Although neither the current nor previous Commissioners have ever interfered with our recruitment practices, it is nonetheless a step in the right direction that such an important activity is no longer in the hands of the head of an institution whose functioning we are mandated to scrutinise. Similarly, having our budget determined by Treasury signals our independence from SARS and sends the right message to the taxpayers of South Africa.

The amendments have also paved the way for the Tax Ombud to conduct reviews of any alleged systemic and emerging matters related to our mandate. For the past three years, stakeholders have been complaining about the Tax Ombud's lack of power to investigate systemic and emerging matters without complaints being lodged. The amendments have now empowered us to conduct such investigations, with prior approval from the Minister of Finance. Ideally, we would have liked to be able to initiate investigations without the Minister's prior approval; this is another matter we plan to address by proposing further amendments to the Tax Administration Act. In the meantime, the recent changes to our mandate, allowing us to investigate such matters, have already been put to the test.

Delays with tax refunds

One of the major issues we had to deal with in this financial year was delays in tax refund payments by SARS. For the past three years, the Office has consistently been flagging this problem as an emerging systemic issue. In 2016/17, there was a further escalation in complaints by taxpayers and industry bodies about SARS allegedly withholding tax refunds. It was even alleged that SARS was doing this in order to boost revenue collection to meet its targets. In response to the many complaints received, I wrote a letter to the Minister of Finance, in line with the requirements of section 16(1)(b) of the Tax Administration Act, requesting approval to investigate. The Minister granted approval.

The investigation, which has not been a small task, commenced towards the end of March 2017, and was concluded in August 2017. A final report has just been signed and given to the Minister and the Commissioner of SARS. A copy is included in this report as Annexure 1. The report is included herein as it covers substantial areas of the period under review.

Growth and growing demands for our services

While the Office has not experienced growth in personnel and budget compared to the 2015/16 financial year, demand for our services has increased. This shows that more and more taxpayers are confident of our ability to help resolve their tax complaints against SARS. As more stakeholders and the general public become aware of our existence and the much-needed services we provide, there is bound to be an increase in the number of complaints we receive. Ideally, we would like to have a footprint throughout South Africa, but due to the economic challenges facing the country, we are compelled to make do with what Treasury has given us. We are optimistic of growth in the future as this would boost our capacity to efficiently and expeditiously resolve taxpayers' complaints.

Impact of current financial climate

The subdued economy, together with the widening wealth gap and lack of job opportunities, will inevitably bring new challenges for all - taxpayers, SARS and the Office of the Tax Ombud.

Taxpayers will try their best to hold onto the money they have, some even using unscrupulous means to do so. SARS is already under pressure to collect revenue and to meet certain targets. These competing needs might lead to heavy-handedness towards taxpayers from the side of the revenue collector as SARS tries its best to collect what it perceives to be due. This might leave the Office in a precarious position. As I have said many times before, we are neither for SARS nor for the taxpayer; our responsibility is to provide an impartial and fair service, maintaining a balance between SARS's powers and duties on the one hand, and taxpayers' rights and obligations on the other.

Tax collection and tax usage

It is also important to warn that a properly functioning tax administration system is not the silver bullet that will solve the economic challenges facing the country or help boost tax collection and compliance. A growing number of taxpayers, and the general public to a large extent, are becoming increasingly vocal about the way revenue is being used, or even abused, by those entrusted with its management. We all know that taxpayers need to be motivated to pay tax. Whether they do so or not depends on several factors, including the trustworthiness of tax agencies and representatives of the tax administration system, government corruption, procedural justice or the lack thereof; also important is the perceived value gained through the use of public funds. I believe that most people accept that they should pay tax, but challenges may arise regarding the extent to which they are prepared to pay what is actually due. It has been argued, and I think correctly, that one of the sources of a positive disposition on the part of taxpayers is the force of good ethics. It is therefore vital that government be seen as being prudent and ethical in the spending of taxes collected.

“A growing number of taxpayers, and the general public to a large extent, are becoming increasingly vocal about the way revenue is being used, or even abused, by those entrusted with its management.”

Amid all these challenges, it is important for taxpayers to know that there is a third party – an impartial and independent institution – to which they can take their complaints against the tax authority. We will continue to pursue excellence by inculcating a culture that embraces competence and passion in all aspects of our responsibilities. We will also continue to espouse our values of Accountability, Independence, Efficiency, Fairness and Confidentiality in everything we do.

Service Charter and Bill of Rights

We have in the past repeatedly called on SARS to finalise both a Service Charter and a Taxpayer Bill of Rights. This has to date not happened with either. These two documents will be of great benefit to taxpayers, and thus strengthen public confidence in the tax system. The Taxpayer Bill of Rights stipulates the taxpayer’s rights, and corresponding obligations. The Service Charter sets out the quality and level of service to which SARS commits itself in its service to the taxpayer.

In his address to the delegates at the Tax Indaba held in September 2016, the Commissioner undertook to have the Service Charter ready and implemented by the end of the financial year (31 March 2017). Regrettably, this has still not happened. We do hope that, after such a long period of stagnation, the finalisation and implementation of the two instruments will now be a top priority; this is long overdue.

Forging ahead

We have finalised and tabled the 2017-2022 Strategic Plan (SP) and the 2017/18 Annual Performance Plan of the Office of the Tax Ombud. These documents will ensure that we continue carrying out our

legislative mandate and improve all aspects of our organisation. To this end, we have set ourselves ambitious targets for the new financial year and are optimistic of achieving them. At the same time, we take cognisance of the political, social and economic environment in which we operate. All these have the potential to affect what we may do and achieve as an institution. Delays in finalising the Service Level Agreements (SLA) between the OTO and SARS could compound this, especially if the current backlogs in finalising taxpayer complaints continue.

Conclusion

In conclusion, I would like to extend gratitude to our Chief Executive Officer, Advocate Hanyana Eric Mkhawane, Management and everyone at the OTO. I also thank the Commissioner of SARS, its personnel and management for their cooperation in helping resolve many taxpayer complaints. To our stakeholders, including taxpayers and members of Recognised Professional Bodies (RPBs), thank you for your support and constructive feedback.

A special note of thanks goes to the Ministry of Finance and the National Treasury for their support and guidance in respect of our proposals for the amendment of certain sections of the TAA, as well as in the overall functioning of the OTO.

We are ready and looking forward to nurturing and strengthening the partnerships we have formed over the past three years with all stakeholders, as we continue to deliver on our mandate.



Judge Bernard Makgabo Ngoepe
TAX OMBUD

5. CHIEF EXECUTIVE OFFICER'S OVERVIEW



ADVOCATE ERIC HANYANA MKHAWANE

In a defining year for the Office of the Tax Ombud, a number of obstacles that we had been grappling with since the organisation's inception were removed in 2016/17, and specifically on 19 January 2017.

That was the date on which the Tax Administration Laws Amendment Act no 16 was promulgated. On that memorable day, at the stroke of a pen, the amendments remedied some of the most glaring obstacles constraining the Tax Ombud's ability to serve as an independent recourse mechanism for taxpayers in South Africa.

Where previously the law required the Tax Ombud to consult the Commissioner of SARS before making staff appointments, we gained the right to finalise these appointments ourselves. Similarly, where SARS previously budgeted for and paid our expenditure, the Minister of Finance became responsible for allocating financial resources to the Office. These two changes are a significant boost to our operational independence (although certain structural impediments remain). Those were not the only positive ramifications of the amendments, however. For the first time, the Office now has the authority to hold SARS to account when it chooses not to implement our recommendations. Specifically, when SARS does not accept a recommendation from the Tax Ombud, it must now explain the reasons for this decision, in writing, within 30 days of receiving a recommendation.

Another crucial change that the amended legislation has brought about is the Office's newly gained ability to proactively investigate - with the approval of the Minister of Finance - systemic and emerging issues that could potentially affect many taxpayers. Previously, our role was purely reactive, confined to identifying issues from actual complaints received from taxpayers, but not going beyond. The broader mandate the Office now has to investigate systemic and emerging issues augurs well for our ability to help strengthen public confidence in the tax administration system.

“Word is spreading among taxpayers about the role of the Office of the Tax Ombud in resolving taxpayer complaints with SARS.”

Last, and most certainly not least, the amended Tax Administration Act extended the Tax Ombud's term of office from a mere three years to five, ensuring that whoever is the Ombud has sufficient time to implement his or her vision for the organisation. At this point, the Ombud is Judge Bernard Ngoepe, and the management team and staff of the Office are delighted that his term has been extended for a further period of three years. This extension occurred in September 2016, before the amendments were promulgated.

For the most part, the impact of the amendments to the Tax Administration Act will only really be felt from the 2017/18 financial year. For almost all of 2016/17, the Office operated under its previous mandate, including its staffing and funding arrangements.

Dealing with the increasing number of complaints

Word is spreading among taxpayers about the role of the Office of the Tax Ombud in resolving taxpayer complaints with SARS. This is evident from the increasing number of complaints the Office is receiving, rising from 2 133 in 2015/16 to 3 454 complaints in 2016/17. At the same time, the growth of 62% in complaints volumes is stretching the Office's capacity to the limit. As at 31 March 2017, we had the same number of employees dealing specifically with complaints as we had in the previous year when the workload was less than what it is now.

The main reason for the staffing constraints experienced was the inadequate funding available. The budget that was allocated to the Office of the Tax Ombud for 2016/17 made it impossible

to recruit more staff to deal with the influx of complaints, and we had to make do with existing resources while ensuring that service quality was maintained.

On the subject of resources, it is useful to consider the experience of Tax Ombuds internationally, especially in Canada, the United States, United Kingdom and Australia. Briefly, their experience indicates a direct relationship between the resources they require as Ombuds and the effectiveness of the revenue authorities in their countries. When the revenue authority is highly effective, the Tax Ombud requires fewer resources, but where the revenue authority is less effective, the Tax Ombud needs more resources.

There is no reason why South Africa should not experience a similar trend, particularly considering the role of our Tax Ombud: this is not to paint SARS in a poor light but to highlight areas on which it needs to concentrate so as to improve its performance.

A case in point is SARS's track record in paying refunds, which became the subject of the Tax Ombud's first proactive investigation into systemic and emerging issues, as discussed in Judge Bernard Ngoepe's message in this report.

Another example is the challenge SARS appears to be experiencing in timeously finalising complaints that we refer to it. In our previous annual report, the Office raised concerns about the low number of complaints SARS was finalising within the targeted 15-day turnaround time. The same has been experienced in the current reporting period. The new legislative amendments, specifically

section 20(2), could improve the finalisation rate of recommendations made to SARS.

Sound stakeholder relationships

It is extremely important for the Office of the Tax Ombud to build sound relationships with stakeholders, including taxpayers, professional bodies, university tax departments, the media and other Ombuds, in South Africa and abroad. It is through these relationships that we are able to spread the message about the Office's existence and its services, keep our finger on the pulse of tax industry developments and sentiments, and ensure we are attuned to stakeholder perceptions about our services and pressing matters we should address.

During 2016/17, we again conducted a wide-ranging stakeholder engagement programme, comprising existing tools and channels, as well as some innovations. One such innovation was the mall activation campaign launched in November 2016 to engage taxpayers and the general public at the Mall of the North in Polokwane. In the same month, we also ran a billboard campaign on the N1 highway between Centurion and Johannesburg, used by an estimated 14 000 motorists a day.

We continued to use tried-and-tested stakeholder engagement channels, including face-to-face and webinar presentations, exhibitions and the print and broadcasting media. Our social media presence expanded significantly and the Office ended the year with over 2 000 Twitter followers.

Collectively, all these touch points are slowly but surely increasing public awareness about the Office and, in the process, contributing to the ever-

increasing volume of complaints coming in. This in turn necessitates close attention to the highest standards of service delivery in the Office itself.

Pursuing excellence, good governance and operational efficiency

In pursuit of excellence, the Office undertook several key initiatives in 2016/17. An important one was requesting the assistance of the Government Technical Advisory Centre (GTAC) in developing a cost-effective independent organisational model for the Office. The first step of this project would be to conduct a feasibility study: – situational analysis, institutional optional analysis, service delivery model and recommendations on a preferred option. Thereafter, a business case would be developed, with a costing and human resource model on the preferred option. In another key initiative, in June 2016 the Office resumed implementation of the Electronic Service Manager Complaints Management System.

Appreciation

In dealing with an escalating volume of taxpayer complaints, our complaints resolution team strove valiantly to meet the high expectations placed on them, supported equally diligently by the rest of the team. Still, there were times when the Office's staff could not cope with the load, and had to go above and beyond the call of duty to meet the demand for service by working overtime including on weekends and public holidays. On behalf of the management team, I thank every member of staff who went the extra mile to ensure the Office delivered on its mandate.

I would also like to express my sincere appreciation to the management team, whose creative, innovative and positive outlook enabled the organisation to cover a vast amount of ground at minimal cost. To Judge Ngoepe, the Tax Ombud, I thank you for your leadership and guidance. Appreciation is also due to the Commissioner of SARS and his team, as well as to the outgoing and incoming Minister of Finance.

Furthermore, I express gratitude to the Ombuds of other jurisdictions who have so generously shared their knowledge with us, namely Nina Olson, National Taxpayer Advocate in the United States, Ali Noroozi, Inspector General of Taxation in Australia, and Sherra Profit, Ombudsman in Canada.

Finally, I would like to thank the media who have helped raise awareness about the Office, the professional bodies that collaborated with us, and the taxpayers and tax practitioners who trusted us to deal fairly and impartially with their complaints. Thank you for the part you have played in helping to ensure a fair and equitable tax administration system for all South Africans.



Advocate Hanyana Eric Mkhawane
CHIEF EXECUTIVE OFFICER

6. STATEMENT OF RESPONSIBILITY AND CONFIRMATION OF THE ACCURACY OF THE ANNUAL REPORT

To the best of my knowledge and belief, I confirm the following:

The Annual Report is complete, accurate and free from any omissions.

The Annual Report has been prepared in accordance with the annual reporting guidelines as issued by National Treasury. The Tax Ombud is responsible for the preparation of the performance information and for the judgements made in respect of this information.

The Tax Ombud is responsible for establishing and implementing a system of internal controls designed to provide reasonable assurance as to the integrity and reliability of the performance information, the human resources information and the annual financial information. In our opinion, the Annual Report fairly reflects the operations, performance information, human resources information and the financial affairs of the Office of the Tax Ombud for the financial year ended 31 March 2017.

Yours faithfully



ADV HE MKHAWANE
Chief Executive Officer



JUDGE B M NGOEPE
TAX OMBUD

7. STRATEGIC OVERVIEW

The Office functions within a dynamic socio-economic and legal environment, necessitating a clear understanding of trends and developments influencing the tax and financial services domain. Excellent service delivery lies at the heart of our endeavours, as expressed and entrenched in our vision, mission and values.

7.1. Vision

The vision of the Office of the Tax Ombud is to strengthen taxpayers' confidence in tax administration.

7.2. Mission

The Office of the Tax Ombud is committed to being an efficient, independent, impartial and fair redress channel for taxpayers.

7.3. Values



ACCOUNTABILITY

Taxpayers are entitled to a rational and fair reason for decisions and actions taken.



INDEPENDENCE

In dealing with taxpayers' complaints, the Tax Ombud operates independently of SARS.



EFFICIENCY

The Office of the Tax Ombud ensures that all taxpayers' complaints are resolved promptly and efficiently.



FAIRNESS

The Tax Ombud acts in fairness at all times.



CONFIDENTIALITY

The Office of the Tax Ombud holds all communications with taxpayers in strict confidence unless authorised by the taxpayer.

8. LEGISLATIVE AND OTHER MANDATES

The OTO complies with the legislative mandates of the Constitution of the Republic of South Africa and the Tax Administration Act.

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 108 OF 1996:

In terms of Section 195 of the Constitution of the Republic Act, 108 of 1996, public administration must be governed by the democratic values and principles enshrined in the Constitution, including a high standard of professional ethics; efficient, economic and effective use of resources; provision of impartial, fair and equitable service; transparency and accountability. As an agent of public administration, the South African Revenue Service (SARS), in its dealing with taxpayers and the OTO, is bound by this Constitutional Mandate. The Office of the Tax Ombud is equally bound by the Constitutional Mandate.

TAX ADMINISTRATION ACT, 28 OF 2011:

The mandate of the Tax Ombud is to -

- a) Review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS; and
- b) Review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, any systemic and emerging issues related to a service matter or the application of the provisions of this Act or procedural or administrative provisions of a tax Act.

9. ORGANISATIONAL STRUCTURE

The Office of the Tax Ombud is led by the Tax Ombud who is supported by the Chief Executive Officer. The Office consists of four business units

as per the approved structure. These business units are Communications and Outreach, Legal Services, Operations and Office Enablement.



Tax Ombud
Judge B M Ngoepe



Chief Executive Officer
Adv. H E Mkhawane



Senior Manager:
Communications & Outreach
Pearl Seopela




Senior Manager:
Legal Services
Gert van Heerden



Senior Manager:
Operations
Talitha Muade



Senior Manager:
Office Enablement
Mmamelao Malakalaka



**“We strive to ensure that
taxpayers receive the
professional service and
fair treatment that they are
entitled to from SARS.”**



PART B:

PERFORMANCE INFORMATION

1. SITUATIONAL ANALYSIS

1.1. SERVICE DELIVERY ENVIRONMENT

Given the increase in public awareness of the OTO, tightening fiscal conditions and the utilisation and visibility of the Office, the complaints volumes have increased over the past year. As a young organisation, the history of complaint volumes is limited and potentially unrepresentative of the new reality in which we are now operating. Accordingly, a major operational risk is a significant increase in complaints volumes, resulting in longer turnaround times and a decline in confidence and trust among complainants.

The OTO has many challenges that need to be overcome and opportunities that can be seized in order to fulfil its vision of building trust and confidence in the tax administration system.

Governance and reporting

Politically and economically, the increasing levels of transparency and corporate governance that the public and taxpayers expect, must be addressed through continued high levels of corporate governance. Governance arrangements must take cognisance of the likelihood that tightening fiscal conditions will increase the demand for the OTO's services, and that the OTO must nevertheless maintain the highest levels of efficiency.

Legislative environment

Since its establishment, the OTO has had challenges with its governing legislation, which has restricted its structural independence and imposed limitations in its operational activities. As a result, the Office proposed a number of amendments to the Tax Administration Act (TAA). The TAA has since been amended through the insertion of sections that will assist the Office to be more efficient and effective. The TAA amendments were promulgated and became operational on 19 January 2017. From a legislative perspective, the amendments to the legislation will enable the OTO to gradually become structurally independent from SARS. This would be an opportunity to improve taxpayers' perceptions of its independence and in turn build trust and confidence in the tax administration system.

National Development Plan

The OTO continued to contribute towards the achievement of the goals set in the National Development Plan (NDP) vision 2030. In doing so, the Office has upheld the values contained in the Constitution and sought to contribute to the building of an efficient and effective development-oriented public service. This is in line with outcome 12 of the Medium-Term Strategic Framework and the NDP 2030's focus on establishing a capable developmental state.

1.2. ORGANISATIONAL ENVIRONMENT

Governance

The Office of the Tax Ombud continues to be committed to achieving the highest level of good corporate governance and subscribes to the principles of Responsibility, Accountability, Transparency and Fairness, as recommended by the King III Report. The OTO has continuously complied with all relevant prescripts that seek to promote good governance in the public sector, such as the Public Finance Management Act and Treasury Regulations. This is in addition to adhering to all protocol requirements as per the signed protocol governing the relationship between the Tax Ombud and the Minister of Finance, by among others, submitting bi-monthly and quarterly reports as stipulated.

In the year under review, the term of office of the Tax Ombud ended in September 2016; however, it was extended for a further three years. This was followed (about four months later) by amendments to Section 14 of the TAA, in terms of which the Minister of Finance may now appoint a Tax Ombud for a period of five years.

Human resources

As at the end of the financial year, there were 29 employees at the Office. Important in this regard was the amendment to Section 15 (1) of the TAA. It allows the Tax Ombud to appoint his staff in terms of the SARS Act without prior consultation with the SARS Commissioner. SARS consultation was obligatory before the Act was amended.

Financial resources

Since the establishment of the OTO in October 2013, the budget has been paid out of the SARS budget, but that changed in January 2017 when amendments to the TAA stipulated that all

expenditure connected to the OTO be paid in accordance with the budget approved by the Minister of Finance. This is appropriate as the Office reports to and is accountable to the Minister. This change will not only enable the OTO to decide how best to utilise resources allocated, but will boost its goal of being independent from SARS and being perceived as such by taxpayers and the general public instead of being seen as an extension of the revenue collector.

Communications and outreach

Concerted efforts facilitated unprecedented media coverage of OTO events and this, combined with the publicity around important developments, enhanced the image and public perceptions of the Office. The organisation also earned greater respect among professional bodies and tax professionals, and its leadership was invited to deliver keynote addresses at high-profile events in South Africa and abroad. Numerous communications and outreach activities geared at promoting awareness about the organisation were also fruitful as more taxpayers and other stakeholders became aware of the Office and its services, and utilised these. This was evident from the considerable increase in the number of taxpayers approaching the OTO for assistance, as well as the influx of calls to the OTO's call centre whenever there were engagements with stakeholders and the media. It is important to note that the engagements were of high quality, as confirmed in the feedback received from stakeholders. There was an increase in the percentage of complaints rejected as compared to the previous financial year. Complaints are rejected if they are prematurely lodged or fall outside the OTO mandate.

Taxpayer complaints process

Taxpayer complaints lodged with the OTO must relate to a service matter, procedural or administrative matter arising from the application of the provisions of a tax Act by SARS. A complaint is accepted if it falls within the mandate of the OTO in terms of section 16 of the Tax Administration Act. The proviso, however, is that the taxpayer first needs to exhaust SARS's internal complaints mechanisms. If these mechanisms have not been exhausted, the Tax Ombud may determine if there are compelling circumstances, based on section 18(5), to review the complaint.

The complaints resolution process includes acknowledging each taxpayer complaint; determining if it falls within the OTO mandate; investigating the complaint and then reviewing it making a recommendation to SARS on how to resolve the matter; providing the taxpayer with regular feedback on the progress of the complaint until it is finalised, and compiling a finalisation report once the complaint has been resolved.

Contacts received

People who contacted the OTO were, among others, making enquiries in an effort to understand the OTO mandate and formulate their complaints accordingly. These queries included requests for complaint forms and complaints guides, as well

Complainants can submit their complaints through email, fax or post, or by hand to our office. All complainants are required to complete a complaints form which is designed to collect as much relevant information as possible about the complaint. Contacts are categorised into enquiries (queries), complaints falling within the mandate of the Office (accepted), complaints falling outside the mandate of the Office (rejected), complaints received but not yet validated or captured, and those that are terminated before a review is carried out or completed.

Complaints register

The complaints intake grew from 2 133 in 2015/16 to 3 454 in 2016/17 (62% growth). However, the number of staff dealing with complaints has not increased at all. This places considerable pressure on the complaints resolution process and underlines the importance of increasing the Office's capacity.

as the email, postal and physical addresses of the Office. The total number of contacts received was 15 658, comprising all queries and complaints. The table below depicts the types and number of contacts received during 2016/17.

Table 1: Types of contacts received

CONTACTS RECEIVED	2016/17
Complaints	3 454
Queries	12 204
TOTAL	15 658

At the end of the reporting period, 462 complaints had not yet been validated. Complaints not validated

included those captured but not yet evaluated and those received but not yet captured.

Modes of contact

During the reporting period, the OTO received 15 658 contacts compared to 5 904 received in the 2015/16 year (165% growth). These contacts were mainly received through telephone calls

(8 680) and email (6 345). Other channels people used were walk-in visits (494), the postal service (80) and fax (59). Table 2 below provides details of these contacts.

Table 2: Modes of contact

● Contact Type



Categories of users who contacted the OTO

Most of users who contacted the OTO in the 2016/17 financial year were individual taxpayers, who accounted for 77.01% of users (12 077 contacts).

Tax representatives accounted for 22.09% of users (3 581 contacts). See the table below for details.

Table 3: Categories of users

CATEGORIES OF USERS CONTACTING THE OTO	2016/17	%
Individual taxpayers	12 077	77.13%
Taxpayer representatives	3 581	22.87%
TOTAL	15 658	100%

The table below gives a total breakdown of complaints received.

Table 4: Complaints received in 2016/17

TOTAL BREAKDOWN OF COMPLAINTS	2016/17
Complaints not falling within the mandate/rejected	1 722
Complaints falling within the mandate/accepted	1 270
Complaints not yet validated	462
TOTAL	3 454

Categories of cases reviewed by the OTO

The majority of the complaints reviewed by the OTO related to dispute resolution (39.5%), followed by refunds (24.9%), and debt (8.32%). Other types

of complaints collectively accounted for 27.03%. The table below depicts these categories.

Table 5: Categories of cases reviewed by the OTO (accepted, terminated and rejected)

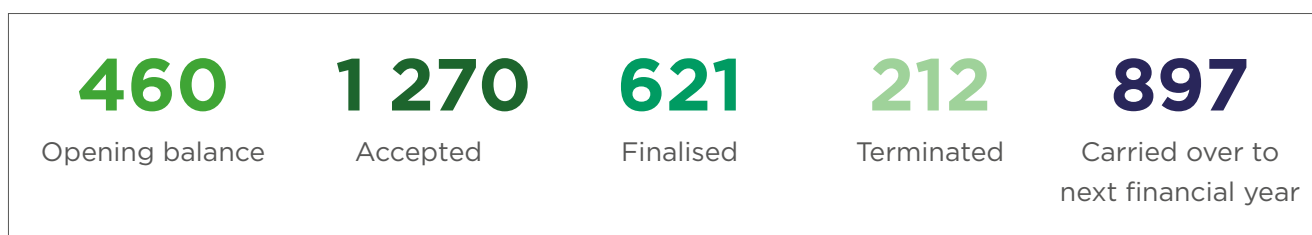
CATEGORY (ACCEPTED AND REJECTED)	NO OF COMPLAINTS REVIEWED	% COMPLAINTS REVIEWED
Dispute resolution	1 182	39.51%
Refunds	745	24.90%
Debt	249	8.32%
Assessments (IT, VAT, PAYE)	212	7.09%
General enquiry (on the tax status)	175	5.85%
Account maintenance	124	4.14%
Interest and penalties	101	3.38%
Audit	61	2.04%
Fraud	55	1.84%
Tax directives	33	1.10%
System	28	0.94%
Verification	15	0.50%
Customs	9	0.30
Transfer duty	3	0.10%
TOTAL	2992	100%

Accepted complaints

These were complaints that fell within the mandate of the OTO. In the reporting period, 460 unresolved cases were brought forward from the 2015/16 reporting period and, over and above this, 1 270 complaints were accepted in 2016/17. A total

of 621 complaints were finalised, 86% of which were finalised in favour of the complainants, 212 terminated and 897 carried forward to the new financial period as unresolved. The diagram below gives an analysis of accepted cases.

Analysis of accepted complaints



Terminated complaints

These are complaints that are accepted but then terminated before a review is carried out or completed. The reasons could be that a complaint was resolved by SARS before the OTO reviewed it, or a taxpayer was not cooperating with SARS or the OTO in submitting requested documents, or a complaint was not lodged in good faith. Terminated complaints made up 7% of the total complaints received.

Rejected complaints

Complaints are rejected when they do not fall within the mandate of the OTO or when taxpayers have not exhausted the SARS complaints resolution mechanism and do not have compelling circumstances for not doing so.




1.3. REPORT IN TERMS OF SECTION 19 OF THE TAX ADMINISTRATION ACT

In terms of section 19(1)(b), the Tax Ombud is required to submit an annual report to the Minister within five months of the end of SARS's financial year. The report must contain, in terms of section 19(2), a summary of at least 10 of the most serious issues encountered by taxpayers and identified systemic and emerging issues. It must also contain the inventory made of such

issues and recommendations, including the administrative action appropriate to resolve the problems encountered by taxpayers. Part 1 contains a summary of the most serious issues and identified systemic and emerging issues. See also report in terms of section 16(1)(b) attached hereto as Annexure 1. Part 2 contains a summary of formal recommendations made to SARS.

PART 1: SUMMARY OF ISSUES

	ISSUE	SUMMARY	CATEGORY (SERIOUS/ SYSTEMIC/ EMERGING)	ACTION TAKEN BY THE OTO	ACTION TAKEN BY SARS	PERIOD IN THE OTO'S INVENTORY	RESULT
1.	Delay in payment of refunds.	SARS places stoppers on refunds for various reasons and fails to remove them once the verification has been done or the requirements have been met. This causes delays in paying out outstanding refunds without any communication or notice to the taxpayer.	Serious/ systemic	Recommendation made for SARS to ensure that, after audits have been finalised, all risks identified must be cleared and the refund stoppers simultaneously lifted; the refund SLA is to be adhered to at all times. SARS is to communicate to affected taxpayers the reasons for withholding refunds.	SARS has implemented stringent refund rules to mitigate its risk due to fraud previously experienced. SARS refund rules are consistently revised to cater for taxpayer behaviour and trends. There are ongoing enhancements to SARS's refund systems which allow for the immediate processing of a refund and will improve turnaround times. This will include ensuring payments are not stopped repeatedly with no result. SARS further indicated that empirical evidence has indicated that almost 90% of all refunds are paid within 60 days of submission. Also see Annexure 1.	40 months	Ongoing



	ISSUE	SUMMARY	CATEGORY (SERIOUS/ SYSTEMIC/ EMERGING)	ACTION TAKEN BY THE OTO	ACTION TAKEN BY SARS	PERIOD IN THE OTO'S INVENTORY	RESULT
2.	Incorrect allocation of payments by SARS.	Payments made by taxpayers or collected through third party appointments by SARS were incorrectly allocated, resulting in a debt on SARS's systems. On many occasions SARS instituted collection steps to recover this incorrect debt.	Serious	Recommendations made for SARS to ensure that payments made to SARS, or collected by SARS through third party appointments, are allocated correctly and timeously.	Correct allocations were done and letters of apology were sent to taxpayers; however SARS has indicated that in future it will do correct allocations and taxpayers need to use the correct payment reference number in order to avoid misallocations.	12 months	Ongoing
3.	Taxpayers affected by employers' non-compliance with legislation relating to IRP5 certificates.	When employers fail to reconcile their employees' IRP5 certificates with SARS, the employees are often held responsible for the non-compliance of the employer. SARS is not consistent in dealing with these taxpayers; in some instances SARS ignores the total PAYE credits while in other cases they request the taxpayers to follow the dispute resolution process.	Serious/ systemic	Recommendation made for SARS to enforce the legislation to ensure that employers reconcile their PAYE and hold them accountable for non-compliance. The development of a standard operating procedure is advised to assist SARS employees to be consistent in dealing with this issue, where taxpayers (employees) would not have IRP5 certificates, due to employers not being compliant.	SARS maintains that the responsibility for issuing correct IRP5 certificates remains with the employer, as does the submission of the PAYE reconciliation. Where an employee has not received an IRP5, there is an alternative process at SARS to assist in this regard. SARS did however note that it is considering certain options to enforce the Schedule 4 obligations of employers.	20 months	Ongoing

	ISSUE	SUMMARY	CATEGORY (SERIOUS/ SYSTEMIC/ EMERGING)	ACTION TAKEN BY THE OTO	ACTION TAKEN BY SARS	PERIOD IN THE OTO'S INVENTORY	RESULT
4.	Inconsistency by SARS in giving taxpayers 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 expiry of the initial turnaround time.	Serious/ systemic	Recommendation made for SARS to ensure that auditors adhere to similar turnaround times and for these turnaround times to be published on the SARS website for taxpayers to be aware of them.	Turnaround times for the completion of audits cannot be pre-determined as these depend on the nature of the case. SARS said it is not possible for contact centre agents to provide possible turnaround times for audits being conducted.	12 months -	Ongoing
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 it.	Serious/ systemic	Recommendation made for SARS to investigate and assist taxpayers who have proven to be victims of identity fraud.	No action taken by SARS	12 months	Ongoing
6.	Non-adherence by SARS to dispute resolution turnaround times.	From complaints lodged with the Office, SARS does not adhere to the dispute resolution rules as contained in chapter 9 of TAA and under the Rules for Dispute Resolution as promulgated under section 103 thereof. This includes dealing with incorrect invalidation of objections and delays in finalising objections and appeals.	Serious/ systemic	Recommendation made for SARS to strictly adhere to the Dispute Resolution Rules at all times and provide taxpayers with reasons in cases of non-adherence. The outcome of each objection and appeal must be implemented correctly and timeously.	SARS is in the process of automating its objection and appeal processes for the different tax types. By March 2016 it was limited to companies and individuals. They intend to provide this for all tax types.	12 months	Ongoing

	ISSUE	SUMMARY	CATEGORY (SERIOUS/ SYSTEMIC/ EMERGING)	ACTION TAKEN BY THE OTO	ACTION TAKEN BY SARS	PERIOD IN THE OTO'S INVENTORY	RESULT
7.	SARS's failure to take information at its disposal into account.	In some of the complaints lodged with the OTO, SARS requests information during audit/verification/objection procedures and takes decisions without taking the information submitted by the taxpayer into account.	Serious/ systemic	Recommendation made for SARS to ensure that assessments are corrected in accordance with the supporting documents submitted.	In reported cases where supporting documents were already submitted, SARS finalised the complaints and notified the taxpayer accordingly.	12 months	Ongoing
8.	SARS taking collection steps when legally barred from doing so.	According to complaints lodged with the OTO, 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 to do so in section 164(6).	Serious/ systemic	Recommendation made for SARS to ensure adherence to the legislative provisions relating to requests for suspension of payment.	SARS indicated that suspension of payment requests has been dealt with manually. SARS is in the process of rolling out suspension requests on eFiling. This is limited to income tax but will in future include all tax types to ensure they are attended to on SARS's systems.	12 months	Ongoing
9.	Refunds paid into the 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 accounts	Systemic	Recommendation made for SARS to pay the refunds into the correct bank account.	SARS responded by setting out certain criteria under which it will refund taxpayers when money has been paid into the wrong accounts.	12 months	Ongoing

	ISSUE	SUMMARY	CATEGORY (SERIOUS/ SYSTEMIC/ EMERGING)	ACTION TAKEN BY THE OTO	ACTION TAKEN BY SARS	PERIOD IN THE OTO'S INVENTORY	RESULT
10.	eFiling profile hijacking	Taxpayers' eFiling profiles were hijacked by fraudsters. These fraudsters then changed the taxpayer's banking details to their own and filed fraudulent returns and created refunds; where identified as such by SARS, the latter creates unintended tax debts for taxpayers.	Systemic	SARS to conclude the investigation and assist the taxpayers who have been victims.	SARS indicated that its systems and processes have since been enhanced to the effect that changes to a taxpayer's ID number and/or bank details can only be effected at a branch office and can no longer be done on a taxpayer's income tax return on eFiling.	33 months	Ongoing
11.	SARS escalations and complaint management procedures confuse taxpayers. SARS staff fail to inform taxpayers of the correct procedure to lodge complaints.	From the complaints that were lodged with the OTO, taxpayers had followed up numerous times with SARS and were not advised of the escalation process if their queries were not resolved. SARS therefore fails to advise taxpayers of the correct procedures to follow when they want to lodge complaints.	Systemic	Recommendation made for SARS to educate taxpayers on the correct procedure to lodge complaints. Criteria were established for the OTO to accept complaints under these circumstances where the internal SARS complaints mechanism was not exhausted under section 18 (5) of the TAA.	SARS undertook to provide taxpayer education.	36 months	Ongoing
12.	Dispute resolution eFiling/system issues	From the complaints lodged with the OTO, a taxpayer is not allowed to amend the amounts or source codes reflecting as amounts in dispute due to an eFiling system error.	Systemic	Recommendation made for SARS to assist taxpayers with the amendment of the objection's source codes and/or amounts on the system as advised by SARS.	No action taken by SARS	6 months	Ongoing

	ISSUE	SUMMARY	CATEGORY (SERIOUS/SYSTEMIC/EMERGING)	ACTION TAKEN BY THE OTO	ACTION TAKEN BY SARS	PERIOD IN THE OTO'S INVENTORY	RESULT
13.	ACAS (Anti-Corruption and Security Division) and non-communication - ACAS investigation - no updates/communication provided to a taxpayer.	When SARS recalls a refund from the taxpayer's bank account for further investigation, no reasons are provided to the taxpayer on why the refund was recalled and when the investigation will be finalised.	Systemic	Recommendations made for SARS to communicate to taxpayers the reasons for the investigation and the duration of the investigation.	Awaiting response from SARS	12 months	Ongoing
14.	Contradictory information contained in SARS's standardised Dispute Resolution letters.	Standardised Notice of Invalid Objection/Appeal letters contain two contradictory steps in the Dispute Resolution procedure or two completely different procedures in the same correspondence.	Systemic	SARS to ensure that correct letters are issued to taxpayers.	SARS will introduce system changes which will be released in May 2017. The proposed changes will address the issue of "contradictory information" in the notices of invalidity.	6 months	Ongoing
15.	Inability on the part of SARS to confirm correspondence was sent.	Where taxpayers allege that they did not receive correspondence from SARS, SARS simply responds by providing them with a copy of the letter but failing to provide proof that the correspondence was indeed sent to them on the specified date.	Systemic	SARS to ensure that it keeps records of all correspondence sent to taxpayers and also ensures that the correspondence was received by the recipient.	SARS will make sure that the letters that are sent outside the Service Manager system are sent via email and are also attached to a created case. This will enable SARS to be in a position to prove that correspondence was indeed sent.	6 months	Ongoing
16.	Incorrect correspondence relating to the condonation of late filing of objections	In many instances, SARS makes decisions not to grant condonation; however, when communicating its decision to the taxpayer, it responds as if the taxpayer did not furnish reasons for the late filing. Thus, it deems the objection invalid.	Systemic	Recommendations made for SARS to ensure that the Alternative Dispute Resolution rules are applied consistently.	SARS will introduce system changes that will be released in May 2017. The system release will introduce a request for reasons for late filing of disputes and objection against a decision not to condone a late filing of an objection as a separate process.	6 months	Ongoing

	ISSUE	SUMMARY	CATEGORY (SERIOUS/ SYSTEMIC/ EMERGING)	ACTION TAKEN BY THE OTO	ACTION TAKEN BY SARS	PERIOD IN THE OTO'S INVENTORY	RESULT
17.	Raising assessments to offset tax credits, without a valid reason.	In one instance, the taxpayer had a refund which resulted from over payment of provisional tax. SARS refused to refund the overpayment and requested the taxpayer to provide the calculations and reasons why he overpaid the provisional tax. The taxpayer passed on some time in 2015 and, as he used to file his own returns, no one knew how he calculated the provisional tax. Also see Annexure 1.	Systemic	Recommendations were made to SARS to ensure that refunds due to taxpayers are released without delay.	Awaiting SARS's response	3 months	Ongoing
18.	Information prescribed for inclusion in the final demand to the tax debtor in terms of section 179 (5) of the Tax Administration Act, 28 of 2011.	Final demand letters issued by SARS do not comply with the legislative requirements as the letters do not contain the prescribed information. This means that letters issued by SARS are defective and may be set aside if challenged.	Systemic	Recommendations made for SARS to draft the final demand letters in such a way that they contain the prescribed information in terms of the respective legislation.	SARS acknowledged that there are certain deficiencies in the letters. They assured the OTO that the letters will be reviewed and rectified.	3 months	Ongoing
19.	Delay in eFiling profile transfer between tax practitioners due to system error.	The eFiling system has delays in transferring the taxpayer's profile from one tax practitioner to another or even to the taxpayer.	Systemic	Recommendation made to SARS to fix eFiling profile transfer.	SARS was waiting for the system developer to fix the eFiling system	3 months	Ongoing

PART 2: FORMAL RECOMMENDATIONS

The OTO made five formal recommendations to SARS, excluding those that were sent to SARS on a case-by-case basis to assist the revenue collector in resolving the identified issues. A variety of factors were considered when deciding which systemic and emerging issues to make formal recommendations on.

Methodology of the most serious systemic and emerging issues

The Tax Ombud considers a number of factors in identifying and evaluating the issues encountered by taxpayers, and issues formal recommendations based on various factors such as:

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

The examples used in this report illustrate issues raised in cases handled by the Office of the Tax Ombud, but the identifying details have been removed to preserve the confidentiality of complainants' information in line with chapter 3 and section 21 of the TAA.

1.1 Definition of the issue

Under certain circumstances, SARS places “special stoppers” on taxpayer accounts in order to stop refunds being paid out to taxpayers. This is done to prevent payment of refunds that are not due; however, there is a long delay in payment of these refunds even in instances where a taxpayer may have complied with SARS's requirements. In most complaints received by the OTO, the taxpayers are informed by SARS in no uncertain terms that there is no turnaround time for the removal of the “special stoppers” and the taxpayers just have to be patient.

1. SPECIAL STOPPERS DELAYING THE PAYMENT OF REFUNDS

1.2 Analysis of the issue

1.2.1 Overview

On 1 September 2016, SARS issued a general letter to tax practitioners indicating that due to the prevalence of fraud where taxpayer profiles are used and bank details changed nefariously, SARS had stopped payment of refunds that match certain criteria. What the criteria entailed, SARS unfortunately did not explain, but it is apparent from the complaints this Office received that it affected all the tax types.

1.2.2 Applicable legislative provisions

SARS may in terms of chapter 5 of the TAA withhold a refund until inspection, verification or audit of the refund has been finalised. Furthermore, SARS may select a person for verification, inspection or audit on the basis of any consideration relevant for the proper administration of a tax Act.

1.2.3 Inference made from complaints received

The issue was the time it took SARS to remove the “special stopper” and to pay the refund after a taxpayer has complied with all its requirements, as will be illustrated by a small sample of cases this Office received.

The following example depicts a sample of some of the complaints received by this Office. The examples used relate to income tax. It is clear that there is an unreasonable or unexplained delay from the date when the taxpayer complied with SARS's requirements to the date when the "special stopper" is removed and the refund is actually paid out.

1.2.4 Negative impact on taxpayers

The negative impact on taxpayers is the non-payment of the refunds which have been confirmed as legitimate and the non-payment of interest on the delayed payment of the refund, once the refund is subsequently paid.

1.2.5 Negative impact on SARS

SARS has received negative publicity in the

media in this regard. Tax practitioners and the public at large are sceptical about the media statement that SARS released and there are many rumours circulating about refunds being withheld intentionally for different reasons, especially after the Tax Ombud was given approval to investigate the alleged delayed payment of refunds.

The fact that SARS informs taxpayers that there is no turnaround time for lifting "special stoppers" also created the impression that there was no urgency on the part of SARS to resolve these issues.

Reputational risks aside, the delays result in productive time being lost by SARS employees while attending to the numerous follow-up queries on these refunds.

CASE INFORMATION

Case A: Audit finalised on 25/07/2016; no adjustment made. The taxpayer followed up several times and was eventually informed on 02/08/2016 to go to a SARS branch with specified documents. Following that, he was informed of different turnaround times for the stopper to be removed and had to visit the branch several more times because all the information was not submitted and SARS failed to inform him of this while he was at the branch. The taxpayer eventually lodged all the supporting documents on 19/08/2016 and on 25/08/2016 a SARS official requested that the special stopper be lifted. The taxpayer lodged a complaint with the Complaints Management Office on 30/08/2016 but the CMO could not resolve the matter. The refund was only released on 18/10/2016.

Case B: Operations Audit finalised on 04/08/2016; no adjustments made. Personal details confirmed and a SARS official gave instruction for the removal of the special stopper on 26/08/2016. The refund was only paid on 12/10/2016.

Case C: Operations Audit finalised on 22/07/2016; no adjustment made. Personal details confirmed on 25/07/2016 and a SARS official gave the instruction for the removal of the special stopper on 25/08/2016. The refund was only released on 01/12/2016.

Case D: This matter dates back to 2013. A SARS official had already given an instruction for the special stopper to be removed on 29/08/2013 for the 2013 tax year. The refund was only paid out on 15/10/2016.

1.3 RECOMMENDATIONS

The Tax Ombud made the following recommendations:

- SARS should clarify whether or not the current fraud prevention process creates an unnecessary administrative burden for taxpayers and SARS;
- SARS should urgently establish why it takes in excess of two months to lift a “special stopper” where all the SARS requirements have been met;
- SARS should also consider whether, based on the matters already finalised, the additional administrative burden placed on SARS and taxpayers cannot be alleviated;
- Taking into account the large number of taxpayers affected by this procedure, SARS should urgently ensure that the delay in paying out refunds where there is no legal basis for SARS to withhold it, is reduced to a minimum;
- SARS should commit itself to specified deadlines within which the refunds must be released; these deadlines should be made available to the public; and
- SARS should consider automatically paying interest (especially on income tax where SARS is not obliged to pay interest) whenever the delay is as a result of SARS’s failure to timeously lift the “special stopper”.

1.4 CONCLUSION

SARS responded on 24 April 2017, addressing all the points raised as follows:

Why it is necessary to confirm banking details:

Where there are disparities, SARS had to identify possible fraud and mitigate such by requesting taxpayers to physically present themselves at the nearest branch for authentication, as it is the wish of SARS to balance fraud risk and the burden of tax compliance.

SARS to confirm banking details when doing audit verification:

It was clarified that an audit verification is the verification of material used that supports an assessment declaration. The authenticity of the rightful taxpayer and the related bank account is mostly a second step for refund release. Therefore, the two processes are not necessarily linked to each other as different documents are required and there is segregation of duties as the two functions are performed by two separate divisions.

Why it takes SARS in excess of two months to finalise refunds release:

It was acknowledged that it took time for some cases to be resolved. As a result, SARS has implemented a process of assigning profiles to branch staff to immediately attend to the lifting of stoppers to ensure a faster turnaround time.

Administrative burden:

SARS is striving to alleviate the administrative burden for taxpayers and SARS through the implementation of upfront authentication.

Delay in releasing refunds to be reduced:

The elimination of delays in paying refunds has been addressed by refining the risk rule.

Specific deadlines be addressed regarding stoppers and paying interest on delayed refunds:

SARS acknowledged that fraud-related stoppers were a new phenomenon which it had to address. The lessons learned have resulted in improvements in the form of faster finalisation of refunds due. As part of the Service Charter review, SARS will

commit to defined processes turnaround times. Furthermore, there is an existing process on how to address interest on delayed refunds: each case is dealt with on its own merits and the outcome is communicated to the taxpayer.

2. CONTRADICTIONARY INFORMATION CONTAINED IN SARS'S STANDARDISED DISPUTE RESOLUTION LETTERS

2.1 Definition of the issue

SARS's modernisation strategy included implementing standardised letters for most of its procedural functions. This includes the dispute resolution procedure. While it is understandable that standardised letters function to reduce the risk of incorrect information being given to taxpayers, this can only be accomplished if those letters cater for all possibilities within the procedure. Should this not be the case, standardised letters may increase reputational risk to SARS and have unintended consequences such as frustrating, confusing and in some instances prejudicing taxpayers. The use of standardised notice of invalid objection/appeal letters results in SARS incorrectly informing taxpayers, in the same correspondence, to proceed with two different steps in the dispute resolution procedure or two completely different procedures.

2.2 Analysis of the issue

2.2.1 Overview

The TAA was introduced to achieve a balance between the powers and duties of SARS on the one hand and taxpayer rights and obligations on the other, and to simplify tax administration. It is thus key for SARS to ensure that any correspondence with taxpayers is clear, unambiguous and correct, placing the taxpayers in a position where they are able to establish their best recourse based on the content of the relevant correspondence. Where the standardised letters relate to specific procedures, they can only be effective if those letters cater for all the steps within that procedure. Should that not be the case, the letters will in all likelihood be illogical and/or confusing.

2.2.2 Inference made from complaints received

The SARS standard Notice of Invalid Objection and Notice of Invalid Appeal letters do not cater for all circumstances under which SARS may invalidate these steps in the process. Accordingly, SARS uses

the same correspondence to inform taxpayers of different steps or procedures to follow. The letters in question have been standardised to the effect that the SARS official can compose the reason for invalidation, but the subsequent paragraph in the letter is standard.

COMPOSITION OF THE STANDARDISED LETTERS

The two examples below illustrate the composition of the standardised letters:

A new Notice of objection (NOO) may be submitted within 20 business days of the date of this letter. You may obtain a NOO form through the following channels:

- At your nearest SARS branch
- Electronically via eFiling.

A new Notice of appeal (NOA) may be submitted within 20 business days of the date of this letter. You may obtain a NOA form through the following channels:

- At your nearest SARS branch
- Electronically via eFiling.

SCENARIOS IN RELATION TO COMPLAINTS RECEIVED BY THE OFFICE

Four different scenarios are provided from complaints received by this Office. These scenarios are analysed briefly to illustrate the issue.

SCENARIO 1

The taxpayer submits the same objection after SARS made a decision which was communicated to the taxpayer.

Where SARS disallowed an objection (partially or in full) and the taxpayer does not agree with the decision, the correct procedure in terms of the dispute resolution rules is to lodge an appeal within 30 days of delivery of the notice of disallowance. It goes without saying that where a taxpayer lodges the same objection after this decision has been delivered to the taxpayer, SARS would be correct to invalidate the second objection. In

practice though, the Notice of Invalid Objection letter that is then issued by SARS to the taxpayer states the following:

“The NOO has been submitted with the same grounds of objection as a previous NOO which was allowed. Please complete a Notice of Appeal. A new NOO may be submitted within 20 business days of the date of this letter. You may obtain a

NOO form through the following channels:

- At your nearest SARS branch
- Electronically via eFiling."

In this case, therefore, the taxpayer is informed by SARS to both lodge an appeal and a new objection, which are consecutive steps in the same

procedure. It must also be noted that this letter does not specify what the prescribed form for a notice of appeal is called. A person who does not know the dispute resolution procedure will probably assume that the NOO form which SARS refers to is the Notice of Appeal.

SCENARIO 2

Where an objection/appeal is not possible and the taxpayer should follow another procedure.

Due to the complexity of the South African tax system, taxpayers are not always aware when they should use which procedures. Where a taxpayer lodges an objection/appeal on an issue that does not fall within the dispute resolution procedure, SARS would be correct to invalidate it. In practice, however, the letter issued by SARS to the taxpayer will state as follows:

"2007 appeal previously made invalid. See the attached letter addressed to the taxpayer dated 27 October 2014. Taxpayer to approach a SARS branch to apply for section 98 as this cannot be

done by notice of appeal. Appeal remains invalid and rejected. A new NOA may be submitted within 20 business days of the date of this letter. You may obtain a NOA form through the following channels:

- At your nearest SARS branch
- Electronically via eFiling."

In this case, SARS informs the taxpayer that a notice of appeal cannot be used under these circumstances, while in the very next paragraph the taxpayer is requested to submit a new notice of appeal.

SCENARIO 3

Where an appeal is lodged prematurely

It goes without saying that a taxpayer cannot lodge an appeal before SARS has notified the taxpayer of its decision on the objection. Where a taxpayer does lodge an appeal prematurely, SARS would correctly invalidate it. In practice, however, the letter issued by SARS to the taxpayer will state the following:

"You have lodged an NOO and an NOA simultaneously. Please await the outcome of the NOO. If it is disallowed, you may lodge a new NOA.

A new NOA may be submitted within 20 business days of the date of this letter. You may obtain a NOA form through the following channels:

- At your nearest SARS branch
- Electronically via eFiling."

In this case, SARS informs the taxpayer that an appeal can only be lodged after the objection is disallowed, yet in the next paragraph the taxpayer is advised to lodge a new appeal.

SCENARIO 4

Where prescription applies

An assessment becomes final and a taxpayer forfeits all rights to dispute an assessment if an objection thereto is not lodged within three years after the date of the assessment. Where objections are lodged after this period, SARS would be correct to invalidate it as legislation does not afford it any discretion to extend the period or attend to the objection under these circumstances. In practice, however, the letter issued by SARS to the taxpayer will state the following:

“Prescribed tax year cannot revise this case.

A new NOO may be submitted within 20 business days of the date of this letter. You may obtain a

NOO form through the following channels:

- At your nearest SARS branch
- Electronically via eFiling.”

In this case, SARS informs the taxpayer that prescription applies and in the next paragraph informs the taxpayer to lodge another objection.

It is clear from the examples in these scenarios that the specific standard paragraphs make letters issued by SARS under these circumstances ambiguous and confusing. While these may be unintended consequences from the modernisation of SARS’s systems, it has a negative impact on both taxpayers and SARS.

2.2.3 Negative impact on taxpayers

The administrative error causes procedurally incorrect information to be given to taxpayers. Should the taxpayer follow the incorrect step as advised by SARS, the dispute will remain unresolved and frustration will grow because SARS will simply inform the taxpayer that the step taken is invalid.

Furthermore, and more importantly, the dispute resolution procedure is based on certain prescribed timeframes. If the taxpayer follows the incorrect step, as advised by SARS, the taxpayer may have run out of time when the correct step is eventually taken. This may have dire consequences for the taxpayer especially in instances where SARS does not have discretion to extend the prescribed timeframes.

2.2.4 Negative impact on SARS

This administrative error creates a reputational risk for SARS. Because SARS is advising taxpayers to follow conflicting steps or procedures, it may seem as if SARS either does not know its own procedures, or is deliberately trying to confuse and frustrate taxpayers.

Furthermore, this administrative error results in lost productive time for SARS officials, who have to peruse objections and appeals and issue letters that would not have been necessary if the correspondence had been clear and correct in the first instance.

2.3. RECOMMENDATIONS

The Tax Ombud made the following recommendations

- The standardised Notice of Invalid Objection and Appeal letters should be updated to allow for all the different scenarios under which SARS may invalidate these steps.
- The standardised Notice of Invalid Objection and Appeal letters should be opened for the relevant SARS officials to compose correspondence that would properly convey the correct message to taxpayers.
- Where SARS refers taxpayers to specific steps or procedures, that the information provided be correct so as not to prejudice taxpayers and risk damage to its own reputation.
- In any matter where a decision made by SARS is communicated to taxpayers, the taxpayer should be allowed to discuss the decision with a SARS official who was part of the decision-making process. The reasoning behind the decision can then be properly explained to the taxpayer, who will then be placed in a position to decide if he/she agrees or not.

2.4. CONCLUSION

SARS responded to the formal recommendations on 17 March 2017, stating that system changes will be introduced in May 2017. The proposed changes will address the issue of "contradictory information" which is contained in the Notices of Invalidity.

their manual capturing some additional wording to provide clarity. Further, changes to the Standard Operating Procedures have been made to allow for additional wording in the letters; this will seek to address the issue raised.

In the interim, before the release in May 2017, business areas have been requested to include in

3. INCORRECT CORRESPONDENCE RELATING TO CONDONATION OF LATE FILING OF OBJECTIONS

3.1 Definition of the problem

Where an objection is filed late, a taxpayer must either provide reasonable or exceptional reasons for the late filing, depending on how much time has lapsed. This will allow SARS to make a decision on whether or not to condone the late filing. Where the taxpayer does not provide reasons for late filing, SARS will then invalidate it. The taxpayer will then be allowed to file an amended objection within 20 days. Where the taxpayer does provide reasons, however, SARS must apply its mind to

those reasons to determine if condonation of the late filing may be granted. If SARS does not condone the late filing, a taxpayer can object to the decision not to extend the period. This is a new objection to the decision made by SARS not to condone and is completely separate from the initial objection to the assessment. In practice, though, it seems as though SARS is confusing these two separate procedures. In many instances, SARS makes a decision not to grant condonation;

however, when communicating its decision to taxpayers, it conveys its decision as if the taxpayer did not furnish reasons for the late filing and thus the objection is deemed invalid and the taxpayer is notified to submit an amended objection, which is incorrect. Furthermore, in many cases, the actions by SARS catch taxpayers in a continuous loop of submission of objections that could have been avoided if the initial communication had been done properly.

3.2 Analysis of the issue

3.2.1 Overview

A taxpayer has the right to object to a SARS decision to refuse a request to extend the period in which to lodge an objection. Section 104 (3) of the TAA requires that the taxpayer who has the right to object to an assessment or decision must do so in the manner and terms and within the time period prescribed in the Rules. Under the Rules, a taxpayer must lodge an objection within 30 business days of the date of the assessment or decision with which they are aggrieved. It is thus clear that where a taxpayer wishes to challenge an assessment or a decision made by SARS, it is imperative this is done within the prescribed timeframe.

If SARS, after having considered the reasons for the delay, refuses to grant the extension applied for and the taxpayer is aggrieved with that decision, the taxpayer can object to that decision and if necessary note an appeal if SARS disallows his/her objection.

From the above it is thus clear that, where SARS does not condone the late filing of the objection, that decision is subject to objection and appeal. It should be reiterated again that this would be a new objection to the decision not to condone and completely separate from the objection to the assessment.

3.2.2 Inference made from complaints received

In many cases, reasons for the late filing have been advanced and it is clear from the notes made on the Service Manager system that the reasons were considered and a decision was made not to condone the late filing. This was because the senior SARS official did not deem the reasons furnished as either reasonable or exceptional. Instead of informing the taxpayer that the condonation was declined, SARS states that the taxpayer did not provide reasons and that the taxpayer has to submit a new objection within 20 days. This is clearly the incorrect information which leads SARS to inform the taxpayer of the incorrect step to take the matter forward.

In other cases, the notices that are issued to the taxpayers correctly note that the reasons were considered, but that condonation was declined. In these cases, however, SARS directs the taxpayer to follow an incorrect step; thus the taxpayer must file a new objection within 20 days.

The result of the incorrect actions or correspondence by SARS is that taxpayers submit numerous amended objections and the same outcome is communicated to them by SARS.

By way of example, the table below uses a complaint received by this Office. The example makes it patently clear that SARS in many instances does not follow the correct procedures when dealing with requests for condonation.

TAXPAYER'S REASON FOR LATE FILING
<p>"We are asking for condonation as the client was unaware of any final demand that was made against her name for the previous Tax Practitioner did not inform her or give the supporting documents as required from SARS. We cannot at this stage confirm why the practitioner did not respond but our aim is to rectify the situation immediately with the assistance of SARS."</p>
SARS'S ACTION
<p>(a). First objection:</p> <p>SARS did not take the reasons for late filing into account and indicated that exceptional circumstances were not provided by the taxpayer, even though the taxpayer did advance reasons for the late filing. SARS also looked at the format of the objection and indicated that there are issues relating to the grounds, source codes and amounts. The objection was then invalidated.</p> <p>(b). Second objection:</p> <p>The objection was filed within 20 business days of the first invalid notice. The reasons for late filing are now considered and found not to be exceptional. SARS notes on the system that it is the taxpayer's responsibility to follow up regardless of the fact that a tax practitioner is appointed.</p>
<p>(c). Third objection:</p> <p>The objection is filed on time. The reasons for late filing of the second objection are reconsidered and SARS decides to condone the late filing thereof. The second objection is therefore reinstated for SARS to make a decision on the merits. SARS then invalidates the objection on the basis that waiver of interest should not form part of the objection.</p>
<p>(d). Fourth objection:</p> <p>The objection is filed on time. SARS simply states in its notes "exceptional reasons not supplied" and invalidates the objection.</p>
CORRESPONDENCE ISSUED
<p>First objection:</p> <ul style="list-style-type: none"> • "Exceptional circumstances not provided as required for this condonation to be granted and therefore the dispute will not be processed. • Specify in detail the grounds upon which the objection is made; include the part/ amount of the disputed assessments and which grounds of assessment are disputed. Correct dispute amount(s) next to the codes. In addition please note that disputed amount and the requested amount cannot be the same amount." <p>A new NOO may be submitted within 20 business days of the date of this letter.</p> <p>Second objection:</p> <p>"Objection has not been lodged within prescribed timeframes and the condonation reason provided is not considered exceptional and therefore request for condonation has been declined.</p> <p>A new NOO may be submitted within 20 business days of the date of this letter."</p>

CORRESPONDENCE ISSUED

Third objection:

"A request for waiver of interest and the dispute item cannot be on the same DISP1. Kindly therefore resubmit another DISP1, excluding your request to waive interest. Such objection must be submitted within 20 business days from date hereof giving reasons for the delay in lodging the objection in terms of Section 104(5) of the Tax Administration Act. The request for waiver must be submitted either via e-mail to contact.south@sars.gov.za or a letter to your nearest SARS branch office.

A new NOO may be submitted within 20 business days of the date of this letter."

Fourth objection:

"Exceptional circumstances not provided as required for this condonation to be granted and therefore the dispute will not be processed.

A new NOO may be provided as required for this condonation to be granted and therefore the dispute will not be processed."

3.2.3 Negative impact on taxpayers

Where SARS deals incorrectly with an application for condonation, taxpayers are impacted negatively for various reasons:

- It results in the wrong step or procedure being used, which wastes time and is costly.
- In some instances, taxpayers are incorrectly pushed out of the dispute resolution procedure and left with no option but to litigate.
- The assessment might end up prescribing and thus be deemed final and conclusive as a decision regarding that objection has not been made.
- It is confusing.
- It causes frustration.

3.2.4 Negative impact on SARS

- The primary risk that one may allude to is a taxpayer approaching the Courts, which may lead to unnecessary litigation and further to a cost order against SARS which is highly likely under these circumstances.
- These matters drag on for long periods on

procedural issues instead of dealing with the merits of the matter and disposing of it timeously in accordance with the dispute resolution rules.

- This situation results in loss of productive time as it creates duplicate work for SARS officials, who have to deal with the same matter over and over again, thus causing them frustration. It is also clear that the matters do not go back to the same person who attended to the case in the first instance so the next SARS official will also have to spend time familiarising him/herself with the matter and there is the risk of a wrong decision being made because this is not done. It might also appear that there is a backlog of objections, while it may just be duplicate work as the objections were not correctly dealt with.
- There is also a reputational risk for SARS as it may seem that the SARS personnel do not know how to interpret legislation, thus causing taxpayers to lose confidence in SARS's decisions.

3.3. RECOMMENDATIONS

The Tax Ombud made the following recommendations:

- That the Rules be applied consistently;
- That the relevant SARS officials be properly informed and trained to ensure the correct application of the Rules to objections where condonation is involved;
- That the relevant SARS officials be properly informed and trained to ensure the correct outcome is communicated to taxpayers and advise them of the correct process to follow. In other words, if a decision is made not to extend the period for lodging an objection, SARS must inform the taxpayer that the grounds are not considered reasonable/exceptional and that this decision is subject to objection and appeal. It must be clear to the taxpayer that he/she may object to the decision not to condone the late filing of the objection, to avoid him/her lodging another objection against the assessment which will be invalidated by SARS; and
- That the relevant SARS officials take decisions previously made by their counterparts into account when dealing with subsequent matters.

3.4. CONCLUSION

SARS responded to the formal recommendations on 17 March 2017, stating that it would introduce system changes that will be released in May 2017. The system release will introduce a request for reasons for late filing of disputes and objection against a decision not to condone a late filing of an objection as a separate process.

Furthermore, SARS has reviewed the documents relating to the release and a few changes have been made to provide more straightforward clarity to taxpayers. Further, SARS has advised of a possible eFiling notification to assist taxpayers in completing these processes more accurately to avoid reworks.

4. THE INABILITY OF SARS TO CONFIRM THAT CORRESPONDENCE WAS SENT

4.1 Definition of the issue

Where a taxpayer disputes receiving a document, SARS provides him/her with a copy of the letter which was allegedly sent. SARS does not provide any confirmation that the correspondence was in fact sent and the taxpayer is expected to accept that SARS sent the correspondence on the date that reflects on the document.

the consequences of their non-compliance with prescribed procedures, SARS does not have adequate mechanisms in place to keep record of correspondence it sends to taxpayers. This is especially true for correspondence that is drafted outside the Service Manager system and sent to taxpayers via the South African Post Office.

4.2 Analysis of the issue

4.2.1 Overview

In many instances, taxpayers deny receiving correspondence from SARS. While taxpayers and representatives may use this excuse to escape

The above excludes situations where notices and correspondence are placed on the taxpayer's eFiling profile and can be accessed at any given time by the taxpayer or representative.

SARS has thus far not been able to provide this Office with any form of confirmation that the correspondence in question had in fact been sent. The taxpayer and this Office are simply expected to accept that SARS sent the correspondence on the date that appears on the document. In support of this practice, SARS cites the provisions of the TAA that determine when documents are deemed to have been delivered. What SARS fails to take into account, however, is that these provisions can only be invoked if the correspondence was actually sent. In the absence of any control measures, it

would be easy for SARS officials to back-date correspondence that was not sent when it was supposed to be. Furthermore, it would also be possible for correspondence to be sent to taxpayers much later than the date shown on the document.

4.2.2 Inference made from complaints received

The most relevant complaint received by this Office to illustrate this point is not complex, but up until the end of the 2016/17 financial year, SARS has been unable to resolve it since a recommendation was sent on 15 February 2016.

EXAMPLE OF THE ISSUE

For ease of reference the timeline of the events is set out as follows:

05/02/2014

The taxpayer's representative submitted an ADR1 form to SARS, objecting to the assessment raised for the 2013 tax year.

21/02/2014

SARS issued a letter to the taxpayer requesting further information on the objection. There is no record on Service Manager about what method SARS used to send the correspondence.

03/03/2014

The taxpayer's representative submitted a response to SARS's request.

04/04/2014

SARS issued a reduced assessment which, according to Service Manager, was available on the taxpayer's eFiling profile.

26/02/2015

SARS issued a letter to the taxpayer requesting reasons why the 2011, 2012 and 2014 assessments should not be revised in the same way as the 2013

one. This was sent and reflects on the taxpayer's eFiling profile.

27/02/2015

The taxpayer's representative requested reasons why the 2013 assessment was reduced and indicated that they never received notification in this regard.

03/03/2015

SARS sent an email to the taxpayer's representative containing a copy of a Notice of Partial Allowance of the ADR1 for the 2013 tax year dated 04/04/2014.

17/04/2015

The taxpayer's representative filed an ADR2.

02/06/2015

The ADR2 was filed again because SARS indicated that it was not on their system.

10/06/2015

SARS issued a letter to the taxpayer's representative stating that the appeal was invalid because it was filed more than 45 days late.

15/02/2016

After complaining to this Office, the matter was referred to SARS for resolution.

07/04/2016

SARS issued a close-out report indicating that the matter was referred to the Regional Appeals Committee to consider condoning the late filing of the appeal and the previous decision was upheld. It goes on to state that:

What is extremely important in this case is that the taxpayer is effectively barred from lodging an appeal. SARS is not able to confirm that the Notice of Partial Allowance was actually sent, but relies merely on a copy of the letter while assuming there is no possibility that the letter in question might not have been sent on the date reflected on it or even at all.

4.2.3 Negative impact on taxpayers

Where taxpayers do not receive correspondence from SARS, they may be prejudiced because they may not react to the information contained therein. Not being informed could lead to taxpayers being

“In terms of section 251 read with section 253 of the TA Act, the taxpayer is deemed to have received the disallowance letter as he had received all other correspondence relating to the objection”.

18/04/2016

This Office informed SARS that the close-out report is not acceptable as SARS has failed to confirm that the Notice of Partial Allowance was sent to the taxpayer.

effectively refused access to remedies that would have been at their disposal.

4.2.4 Negative impact on SARS

Where SARS is not able to confirm that correspondence was in fact sent to taxpayers, it may be challenged in Court. SARS will have a very difficult time convincing the presiding officer that a copy of a letter is proof that it was sent to a taxpayer on the date reflecting on it. It should be added that in this particular case, the original letter was found in the taxpayer’s file and had not been sent to the taxpayer.

4.3 RECOMMENDATIONS

The Tax Ombud made the following recommendations:

- SARS should ensure that it keeps record of all communication sent to taxpayers. These records should contain the method of transmission, date of transmission and confirmation that it was in fact sent.
- SARS should consider putting a policy in place to ensure the proper application of section 253 (2) and (3) of the TAA.

4.4 CONCLUSION

SARS responded to the formal recommendation on 17 March 2017 acknowledging that manual letters done outside Service Manager have some challenges with the audit trail process. As a result, they are exploring all possibilities to ensure that

letters are sent to taxpayers via email and are also attached to a created case. This will enable SARS to be in a position to always prove that the correspondence was sent.

5. INFORMATION PRESCRIBED FOR INCLUSION IN THE FINAL DEMAND TO THE TAX DEBTOR ITO SECTION 179(5) OF THE TAX ADMINISTRATION ACT, 28 OF 2011

5.1 Definition of the issue

The Tax Administration Act prescribes that SARS must issue a final demand before appointing a third party owing money to or holding money on behalf of an indebted taxpayer, to pay those funds over to SARS directly to satisfy the tax debt. The section also specifically prescribes what information should be included in the final demand.

The sampled standard form of the final demand letters being issued by SARS does not comply with the legislative requirements as the letters do not contain the prescribed information. Due to this non-compliance, all final demands issued with the intention of Third Party Appointments (TPA) were defective and could be set aside if challenged.

5.2 Analysis of the issue

5.2.1 Overview

In the past, SARS was able to do third party appointments without the requirement of prior notice to taxpayers. However, amendments made to section 179 which became effective on 8 January 2016, have changed the situation. Firstly, SARS is now obliged to issue a final demand for payment to the tax debtor, which must be delivered at least 10 days before the issuing of the notice to a third party. Secondly, the final demand MUST contain at least the following information:

All the recovery steps SARS may take if the debt is not paid:

- The recovery steps taken by SARS include applying for a preservation order; applying for a civil judgement which would allow SARS to take the normal collection steps under civil court procedure such as execution of

movable and immoveable property; instituting sequestration, liquidation and winding-up proceedings; collecting the tax debt from third parties; and repatriating assets located outside South Africa.

All debt relief mechanisms available to the tax debtor in the TAA:

- These would include requests for suspension of payment pending objection and appeal; requests for instalment payment agreements; and offers of compromise.

Invitation to the tax debtor to apply for a reduction of the amount to be paid over by the third party:

- The tax debtor must be informed that they can apply to SARS, within five business days after receiving the final demand, for a reduction of the amount to be paid based on the basic living expenses if the tax debtor is a natural person, or based on serious financial hardship if it is not a natural person. Considering that the third party may inter alia pay over to SARS a tax debtor's pension, salary and wages, this requirement is crucial.

5.2.2 Inference made from complaints received

This issue was identified as systemic after receipt of a complaint wherein the taxpayer representative had requested SARS to withdraw a TPA issued on one of his client's accounts due to the fact that the final demand received did not comply with the above requirements. The request was refused and a complaint to SARS's Complaint Management Office (CMO) remained unresolved.

Various final demands issued by SARS on other complaints received were sourced and it would seem that SARS staff was using standard templates. All of the samples drawn were issued after 8 January 2016 when the above amendments were already in operation. The final demand templates seem to differ for different tax types; however, the contents were in essence similar, and the prescribed information was not included. Unfortunately, the OTO was not able to source final demands for VAT from the complaints received. It has also been established that the same templates were used in different SARS regions.

It was clear from the sampled final demands and the discussion above that SARS's final demands do not comply with the legislative requirements.

To sum up:

- In the samples, SARS informs the tax debtor of only two possible recovery steps at its disposal, instead of informing the tax debtor

of all recovery steps it may take.

- The demand was completely silent on the debt relief mechanisms available to the taxpayer;
- The right stipulated in section 179(5) to apply for a reduction of the amount to be paid was not contained in the final demand at all.

5.2.3 Negative impact on taxpayers

Failure to inform taxpayers as prescribed by law may cause prejudice to them; also, the purpose behind the amendments is defeated.

5.2.4 Negative impact on SARS

Due to the fact that the final demands do not comply with the legislative requirements, they are defective in law. This means that all third party appointments done by SARS since 8 January 2016 could be challenged and set aside, resulting in court orders for refunds. The potential risk to SARS was therefore massive.

5.3. RECOMMENDATION

The Tax Ombud made the following recommendation: It is recommended that letters of final demand preceding the issuing of notice of appointment of

a third party be drafted in such a way as to contain all the prescribed information required.

5.4 CONCLUSION

SARS acknowledged that there are certain deficiencies in the letters of demand; furthermore,

active measures are being taken to review the letters issued to taxpayers.

1.4 KEY POLICY DEVELOPMENTS AND LEGISLATIVE CHANGES

The Tax Administration Act amendments have been promulgated (as indicated below) and became operational on 19 January 2017. The original legislation is indicated in italics below the amended portion.

POWER OF THE MINISTER TO APPOINT THE TAX OMBUD

- s14(1) The Minister must appoint a person as a Tax Ombud –
- (a) For a term of five years, which term may be renewed
For a term of three years, which term may be renewed

OFFICE OF THE TAX OMBUD

- s15(1) The Office Tax of the Ombud must appoint the staff of the Office of the Tax Ombud who must be employed in terms of the SARS Act.
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.

- s15(4) The expenditure connected with the functions of the Office of the Tax Ombud is paid in accordance with a budget approved by the Minister for the Office.
The expenditure connected with the functions of the Office of the Tax Ombud is paid out of the funds of SARS.

MANDATE OF THE TAX OMBUD

- s16(1) The mandate of the Tax Ombud is to –
- (a) Review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS; and
 - (b) Review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, any systemic and emerging issues related to a service matter or the application of the provisions of this Act or procedural or administrative provisions of a tax Act.
(Subsection (b) is the new section.)

RESOLUTION AND RECOMMENDATIONS

- s20(2) The Tax Ombud's recommendations are not binding on a taxpayer or SARS, but if not accepted by a taxpayer or SARS, reasons for such decision must be provided to the Tax Ombud within 30 days of notification of the recommendations and may be included by the Tax Ombud in a report to the Minister or the Commissioner under section 19.

The Tax Ombud's recommendations are not binding on taxpayers or SARS.

1.5 STRATEGIC OUTCOME- ORIENTED GOALS

The OTO has four strategic outcome-oriented goals which will assist the organisation to continue carrying out its legislative mandate and continuously improve all aspect of its operations. These strategic

objectives, listed below and set out in the MTSF, also provide direction on which matters (such as legislative and operational) need urgent attention to ensure continuity and growth of the organisation.

The OTO's strategic outcome-oriented goals for the period are shown below:

Strategic outcome-oriented goal 1	Work with SARS to ensure that taxpayers' complaints are fairly resolved.
GOAL STATEMENT	Taxpayers' individual complaints will be resolved in a manner that ensures that justice is done in an effective and fair manner. This will be achieved through applying relevant legislation, complaints management systems, procedures and standard operating models.
PROGRESS MADE TOWARDS THE ACHIEVEMENT OF GOALS	During the reporting period, the operations staff were developed to improve their key competencies for handling complaints effectively. Quality management processes were enhanced to improve quality of the work, and the improved electronic Service Manager complaints management system was reintroduced.
Strategic outcome-oriented goal 2	Work with SARS to enhance the Tax Ombud's recommendations and responses.
GOAL STATEMENT	The Office of the Tax Ombud is responsible for identifying systemic and serious issues as a result of investigations, and reporting these to SARS. On the basis of related recommendations, SARS is expected to respond by making changes to its systems where necessary and providing feedback to the Tax Ombud.

PROGRESS MADE TOWARDS THE ACHIEVEMENT OF GOALS	The OTO has managed to effect changes through proposing amendments to the Tax Administration Act. These were promulgated in January 2017 and, among others, give the Tax Ombud powers (with approval from the Finance Minister) to investigate any systemic and emerging issues. The OTO has already launched investigations into delays in tax refund payments by SARS. The amendments also stipulate that although the Tax Ombud's recommendations are not binding on a taxpayer or SARS, if not accepted by a taxpayer or SARS, reasons for such decision must be provided to the Tax Ombud within 30 days of notification of the recommendations and may be included by the Tax Ombud in a report to the Minister or the Commissioner under section 19.
Strategic outcome-oriented goal 3	Increase accessibility of Office of the Tax Ombud to taxpayers.
GOAL STATEMENT	The Office of the Tax Ombud is accessible and is able to engage taxpayers through different modes of contact. This includes access via the contact centre, website, fax, email, post, one-on-one engagement and the use of diverse languages to enhance understanding on the part of taxpayers. In due course, the Office of the Tax Ombud will expand its physical presence to other areas.
PROGRESS MADE TOWARDS THE ACHIEVEMENT OF GOALS	Intensive engagements with numerous media owners and journalists resulted in free publicity valued at more than R84 086 471.55 and millions of taxpayers and members of the general public reached and engaged about the OTO's mandate and services offered. These engagements were in the form of radio, television, print and online. Content (including the Complaints Guide and information leaflets) were translated into the country's 11 official languages, ensuring that many more people had access to important information in a language they can understand, instead of being inaccessible to those who do not understand English.
Strategic outcome-oriented goal 4	Promote stakeholder engagement and public awareness.
GOAL STATEMENT	Implement stakeholder collaboration and educational public awareness campaigns to empower stakeholders and taxpayers about the Office and services offered by the Tax Ombud.
PROGRESS MADE TOWARDS THE ACHIEVEMENT OF GOALS	The OTO conducted 33 stakeholder engagements and collaborations with different bodies, in addition to six Webinar presentations which reached thousands of tax practitioners. Community outreach and mall activation were other platforms utilised to promote stakeholder engagement and public awareness.

2. PERFORMANCE INFORMATION BY PROGRAMME/OBJECTIVES

2.1. PROGRAMME 1: OFFICE OF THE CEO

Purpose

The Office of the CEO provides overall strategic leadership and support within the organisation. This includes providing direction on the development and implementation of organisational strategies, performance and corporate governance. It is supported by the following programmes: Operations,

Communications and Outreach, Legal Services and Office Enablement. These programmes are responsible for ensuring that the organisation is effectively managed in order to deliver on its mandate.

The table below depicts the strategic objectives of the Office of the CEO.

STRATEGIC OBJECTIVE 1.1	PERFORMANCE MANAGEMENT SYSTEM
Output (objective) statement:	Provide the overall strategic management for the Office of the Tax Ombud and ensure that the performance management and reporting system supports management decision-making that enables the Tax Ombud to comply with internal and external accountability reporting in line with legislative requirements.
STRATEGIC OBJECTIVE 1.2	OPTIMISE THE SIZE OF THE ORGANISATION TO ACCOMMODATE DEMAND FOR SERVICES
Output (objective) statement:	The Office of the Tax Ombud is newly established and is experiencing increasing demand for its services, which is likely to continue for the foreseeable future. The size of the organisation needs to be optimised to manage this demand.
STRATEGIC OBJECTIVE 1.3	GOVERNANCE AND COMPLIANCE
Output objective) statement:	Develop and maintain governance and compliance frameworks and policies.



Risk management

Strategic and divisional risk registers were developed during the first quarter of the financial year. All identified risks were recorded in the registers and will be monitored by business unit managers. Risk management policy and strategy will be finalised once the overall governance framework of the organisation has been developed and approved.

Governance

Governance structures were implemented for improvement of relevant governance and compliance framework policies as required (refer to details under Section C: Corporate governance page 73 to 76).

As part of its governance responsibilities, the Office carried out the following duties:

- Introduced governance committees to oversee all overall strategic and operational activities;
- Developed and implemented compliance checklists to ensure that the Office is fully compliant with all relevant legislation;
- Submitted relevant quarterly and bimonthly reports to Treasury as per the protocol; and
- Produced a Strategic Plan and Annual Performance Plan which were tabled in Parliament.

Way forward

Institutional independence (operational and structural) is required for the OTO to be seen as truly independent, and to support the building of trust and confidence in the Office and, in turn, in the tax administration system.

In striving to achieve structural independence, the Office is engaging with the Government Technical

Advisory Centre (GTAC) to assist in developing a business case for a cost-effective organisational model. This should be informed by situational analysis and strategic plans. It should also entail identifying and assessing service delivery options and governance issues, and recommendations on the most appropriate service delivery option.

PROGRAMME 1: OFFICE OF THE CEO						
INDICATOR	PERFORMANCE INDICATORS	ACTUAL ACHIEVEMENT 2015/16	PLANNED TARGET 2016/17	ACTUAL ACHIEVEMENT 2016/17	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT FOR 2016/17	COMMENT ON DEVIATIONS
STRATEGIC OBJECTIVE 1.1: PERFORMANCE MANAGEMENT SYSTEM						
1.1.1	Develop and submit reports, Annual Performance and Strategic Plans.	Achieved - 1.	1 Strategic Plan and 1 Annual Performance Plan.	Achieved.	None	None
1.1.2	In-year reporting as per protocols.	4 bi-monthly reports 4 quarterly reports.	6 bi-monthly reports. 4 quarterly reports.	Achieved.	None	None
STRATEGIC OBJECTIVE 1.2: OPTIMISE THE SIZE OF THE ORGANISATION TO ACCOMMODATE DEMAND FOR SERVICES						
1.2.1:	Conduct research and develop a concept document and business case on staffing growth and footprint expansion.	Not planned.	Conduct research and develop a concept document and business case on staffing growth and footprint expansion.	Partially achieved.	Budgetary constraints.	There are budgetary constraints but the Office will continue to discuss possible solutions with GTAC and National Treasury.
GOVERNANCE AND COMPLIANCE						
1.3.1	Develop and maintain governance and compliance frameworks and policies.	Not planned.	Approved.	Partially achieved.	Risk registers were prepared. Governance frameworks are still outstanding.	There are budgetary constraints but the Office will continue to discuss possible solutions with GTAC and National Treasury.

2.2. Programme 2: Operations

Purpose

The purpose of the Operations unit is to review and address complaints raised by taxpayers against SARS, and to make recommendations on how to address the complaints. This is the Office's core business and the Operations unit is the first point of contact for taxpayers. The programme consists of the following sub-programmes:

- **CALL CENTRE MANAGEMENT AND INTAKE**
- Among others, manages all incoming calls and provides advice to taxpayers on how to lodge complaints with the Office and the processes to be followed, and also manages all correspondence with complainants (via the post, fax and email) and face-to-face visits from taxpayers.
- **COMPLAINTS RESOLUTION** – Reviews and addresses all complaints by making recommendations to SARS in line with the mandate of the Office of the Tax Ombud.
- **CONTINUOUS IMPROVEMENT** – Develops and maintains standard operating procedures, case management processes, performance standards, norms and knowledge management. In addition, it ensures the productivity and efficiency of the unit.
- **MONITORING AND ANALYSIS** – Provides technical tax advice and evaluates and analyses the quality of recommendations made and the responsiveness of SARS. It monitors compliance with policies and procedures for complaints management.

The table below depicts the strategic objective of Operations.

STRATEGIC OBJECTIVE 2.1	COMPLETED INVESTIGATIONS OF COMPLAINTS
Output (objective) statement	Taxpayers complete a complaints form which has been designed to collect as much relevant information as possible about their complaints, and these are investigated by the Office of the Tax Ombud. Feedback is given monthly to the complainants and recommendations are sent to SARS for attention.

PROGRAMME 2: OPERATIONS					
INDICATOR	PERFORMANCE INDICATORS	PLANNED TARGET 2016/17	ACTUAL ACHIEVEMENT 2016/17	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT FOR 2016/17	COMMENT ON DEVIATIONS
STRATEGIC OBJECTIVE 2.1: COMPLETED INVESTIGATIONS OF COMPLAINTS					
2.1.1	Percentage of validations of complaints completed within five working days of validation of complaint.	75%	69% 2 054/ 2 992	-6%	This is due to the high volumes of complaints received and no staff growth.
2.1.2	Percentage of recommendations sent to SARS within three working days of validation of complaint.	75%	71% (751/1 058)	-4%	This is due to the high volumes of complaints received, with only two approvers on the system.

Way forward

The growth of 62% in complaints volumes is stretching the Office's capacity to the limit. As at 31 March 2017, we had the same number of employees dealing specifically with complaints as we had in the previous year when the workload was less than what it is now.

The main reason for the staffing constraints experienced was the inadequate funding available. The budget that was allocated to the Office of the Tax Ombud for 2016/17 made it impossible to recruit more staff to deal with the influx of complaints, and we had to make do with existing resources while ensuring that service quality was maintained.

2.3. Programme 3: Communications and Outreach

1. PURPOSE

The purpose of the Communications and Outreach unit is to promote stakeholder engagement and raise public awareness to ensure the efficiency and accessibility of the Office of the Tax Ombud.

The unit is an important part of the Office as it not only manages and shapes the image and reputation of the OTO but also promotes and markets it through various communications and marketing platforms and tools. In the year under

review, much emphasis was placed on creating awareness and building relations with stakeholders.

The Communications and Outreach team is a member of the Public Relations Institute of Southern Africa (PRISA) and has benefited immensely from PRISA's innovative communication training workshops. Membership enables the team to keep up with and implement the latest public relations tools shared through PRISA.

The table below depicts the strategic objective of the Communications and Outreach unit.

STRATEGIC OBJECTIVE 3.1	COMMUNICATIONS AND OUTREACH
Output (objective) statement	Communicate about and increase public awareness of the Office of the Tax Ombud's services, and promote its functions and utilisation. In addition, communicate with employees about the Office's activities and strategic intent.

PROGRAMME 3: COMMUNICATIONS AND OUTREACH

INDICATOR	PERFORMANCE INDICATORS	ACTUAL ACHIEVEMENT 2015/16	PLANNED TARGET 2016/17	ACTUAL ACHIEVEMENT 2016/17	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT FOR 2016/17	COMMENT ON DEVIATIONS
STRATEGIC OBJECTIVE 3.1: COMMUNICATIONS AND OUTREACH						
3.1.1	Number of outreach, communication and education activities.	Achieved - 70.	16 activities.	Achieved - 139.	123	Promulgation of the Tax Administration Laws Amendment Act, 2016 and the granting of approval for the OTO to investigate complaints about delays in tax refund payments by SARS generated significant media attention and coverage.
3.1.2	Number of engagements and collaborations with key stakeholders.	Achieved - 53.	16 engagements and collaborations.	Achieved - 33.	17	The OTO took full advantage of stakeholder engagement opportunities and utilised these to further engage the stakeholders.

2. PUBLIC RELATIONS

Extensive engagement with various media houses and journalists, through meet-and-greet sessions and issuing of media statements, resulted in the OTO receiving free publicity valued at more than R84 086 471.55 in media space on print, broadcast and digital platforms.

Much of the media coverage resulted from leadership interviews about the Tax Ombud's 2015/16 Annual Report, 2016 Tax season campaign, the release of

the draft Tax Administration Laws Amendment Bill and subsequent promulgation, as well as complaints over delays in the payment of tax refunds by SARS. The Office also received favourable coverage during its first-ever community outreach in Polokwane. A matter that generated significant coverage across all the main media platforms was Judge Ngoepe's successful request to the Minister of Finance for approval to investigate alleged undue delays in the payment of refunds by SARS.

The tables below list the details of the platforms where the OTO received substantial coverage in 2016/17.



2.1 Print

The OTO received extensive coverage in the following print publications:

Pretoria News	Mamelodi Rekord	Daily News	Ilembe Eyethu
Tax Talk	The Star	Mail & Guardian	Herald
Die Burger	Business Report	The Witness	Business Day
Saturday Citizen	Personal Finance	Polokwane Review	The Citizen
City Press	Cover Newsletter	Drum Magazine	Mercury
Beeld	Cape Times		



2.2 Television

The OTO received considerable coverage on the following television stations and programmes:

eNCA Money line show	CNBC Africa Open Exchange show	SABC 1 Yilungelo Lakho	SABC 2 news
ANN7 news	News channel 404	SABC 1 news	SABC 3 news



2.3 Radio

Radio was another platform that gave the OTO positive coverage during the period under review, as indicated below:

Capricorn FM	Radio 2000	SAFM	Radio Sonder Grense
Mams FM	Metro FM	Power FM	Radio 702
East Coast Radio	Ligwalagwala FM	Phalaphala FM,	Thobela FM
Radio Turf	Cape Talk FM	Ukhozi FM	Classic FM



2.4 Online

The OTO managed to make inroads on various online platforms and was featured regularly on the following online media:

Moneyweb	IOL	CFO Magazine	Mail & Guardian
FA News	Biz-community	lafrica.com	De Rebus
City Press	Cape Talk	Netwerk24	Norton Rose Fulbright
EWN	Algoa FM online,	The Citizen online	SABC online
ENCA online	Engineering News	Biz-news,	Just Money
Fin 24	Bloomberg	Business Live	

3. EDUCATIONAL BROADCAST CAMPAIGNS

The Office continued to invest in educational campaigns, both through traditional platforms on radio and through storyline integration on television. This was aimed at reaching stakeholders and the general public who might not be exposed to other communications and outreach campaigns previously utilised by the OTO.

3.1 Television and storyline integration

The unit also utilised television to encourage dialogue about the Office, as well as other important issues in the tax sphere, through storyline integration on a popular soap opera, as well as educational discussions on a talk show.

Below are some of the educational advertising campaigns carried out by the unit in the period under review:

- **ISIDINGO ON SABC 3** – The OTO made its debut appearance on the popular soap opera in November 2016 with three episodes broadcast on 10, 17 and 24 November 2016 from 19h00 to 19h30. The episodes revolved around introducing the OTO to viewers, informing them about the process of lodging a complaint and

the types of complaints the OTO deals with, as well as showing that the OTO has already helped resolve taxpayers' complaints against SARS. The organisation was featured again on 21 February 2017, as well as on 22 and 27 March 2017, and the episodes showcased a happy taxpayer whose complaint against SARS was resolved by the OTO.

- **REAL TALK WITH ANELE ON SABC 3** – The OTO was featured on the popular women's magazine show on 24 November 2016 from 16h00 to 17h00. The show provided the OTO with a platform to interact with industry experts and be positioned as an influential player in the tax sphere, led by experts whose opinions on numerous tax matters are sought and respected. The impact and popularity of the episode featuring the OTO was evident from the increase in contacts received after the episode was aired, as well as from feedback that the Office received on its Twitter account. On 14 February and 27 March 2017, the OTO was featured again on the popular show, generating more awareness about the organisation and positioning it as an important voice in the tax sphere.

3.2 Radio campaigns

Radio campaigns about OTO's services were flighted in the form of live reads on the following stations:

- East Coast Radio
- Cape Talk FM
- Radio 702
- Ukhozi FM

3.3 Out-of-home campaigns

Out-of-home campaigns (billboards), were utilised to create awareness about the Office of the Tax Ombud's services and mandate. These adverts were erected on the N1 highway between Danie Joubert and Rigel Avenue in Pretoria, at the Olifantsfontein off-ramp in Midrand, just after the John Vorster off-ramp from Johannesburg; as well as on the R21 South after Irene Mall and the Olifantsfontein off-ramp on the R21 North. Thousands of motorists daily were exposed to these billboards.



The OTO billboard on the busy N1 exposed to more than 14 000 motorists daily.

4. STAKEHOLDER ENGAGEMENTS AND COLLABORATIONS

At the beginning of the 2016/17 financial year, the Office made a commitment to increase its stakeholder engagements and collaborations, and thus build new mutually beneficial partnerships with stakeholders, and nurture existing ones. The efforts paid off as the OTO held 33 engagements and collaborations with existing and new stakeholders,

more than double the targeted number. These served as platforms to educate taxpayers, members of professional bodies, tax practitioners and the general public about the OTO and its services, as well as to position the OTO as an important and influential voice in the tax sphere.



OTO employee engaging stakeholders at numerous events including the Rand Easter Show and the Tax Indaba.

4.1 International engagements

The OTO engaged with international stakeholders (professional bodies) about their organisations and in this way learned of best international practices in the tax recourse sphere:

- Global Accounting Alliance (GAA) – On 8 November 2016, the OTO hosted representatives of 10 leading international accountancy bodies, namely the American Institute of CPAs (AICPA), Chartered Accountants Ireland (CAI), Chartered Professional Accountants Canada (CPA Canada), Hong Kong Institute of Certified

Public Accountants (HKICPA), Chartered Accountants Australia and New Zealand (CA ANZ), Institute of Chartered Accountants in England and Wales (ICAEW), Institute of Chartered Accountants of Scotland (ICAS), Istitut der Wirtschaftsprfer in Deutschland e.V (IDW), the Japanese Institute of Certified Public Accountants (JICPA) and the South African Institute of Chartered Accountants (SAIPA). Among the issues discussed were the mandate and limitations of the Tax Ombud, as well as the role of the Global Accounting Alliance.



OTO leadership with Global Accounting Alliance representatives after an engagement at the Office of the Tax Ombud.

- The 2nd international conference on Taxpayer Rights - OTO CEO Advocate Mkhawane shared the stage with global leaders in the tax sphere at this international conference, held at the Institute for Austrian and International Tax Law at WU (Vienna University of Economics) in Vienna, Austria, on 13 and 14 March 2017. He was part of an international panel consisting of inspectors general, advocates and Ombuds,

who participated in a series of Fire Side Chats discussing “Challenges of Scrutineering Entities”. The conference is an important event in the global tax arena and brings together the best minds on the subject to share ideas and come up with new ways of dealing with tax challenges and improving tax administration systems in the different countries.



OTO CEO Advocate Eric Mkhawane (fourth from left) with an international panel consisting of inspectors general, advocates and Ombuds, at the Vienna University of Economics and Business, Austria. Also pictured (from left) are Diana Bernal Ladrón de Guevara (Mexico), Nina E. Olson (USA), Sherra Profit (Canada), Anders Bengtsson (Sweden) and Ali Naroozi (Australia).

4.2 Community outreach and activations

The OTO hosted its first community roadshow in Alexandra Township in Johannesburg on 26 October 2016 where it engaged the community about what the OTO is, services it provides and the overall role it plays in the country’s tax administration system.

The Office also held its first-ever mall activation at the Mall of the North in Polokwane from 17 to 20 November. The activation was in partnership with Capricorn FM radio station, which assisted in creating awareness about the event and mobilised taxpayers and the general public to visit the OTO exhibition stand. The event resulted in five radio interviews with the OTO leadership being aired on Capricorn FM.



The communities of Alexandra in Gauteng and Polokwane in Limpopo had engagements with the Office of the Tax Ombud when services were brought to their doorsteps during community engagements to educate the general public and taxpayers about the Office and services offered.

4.3 Presentations and collaborations

The following presentations were made to stakeholders and their respective affiliates:

- KPMG Johannesburg and Cape Town
- B-Squared Financial
- Congress of South African Trade Unions (COSATU) executive committee
- Leaders Angle Talk at Stellenbosch University
- Banking Association of South Africa (BASA) in Sandton
- International Fiscal Association of South Africa (IFA) and Deloitte in Johannesburg and Cape Town
- National Economic Development and Labour Council (NEDLAC) in Rosebank
- Fiduciary Institute of Southern Africa (FISA) in Durban, Bloemfontein and Port Elizabeth
- Institute of Accounting and Commerce (IAC) at the Cape Town Convention Centre in Cape Town
- Legal professionals hosted by Pro Bono in Sandton
- Finance Indaba in Sandton
- Global Accounting Alliance and SAICA members
- SAIPA's North West district in Potchefstroom

- The 46th IAFEI World Congress in Cape Town
- Webinar presentations were held in collaboration with the South African Institute of Tax Practitioners (SAIT) and the South African Institute of Professional Accountants (SAIPA)

4.4 Exhibitions

The Office had a presence at the following exhibitions:

- Rand Easter Show in Johannesburg
- Institute of Accounting and Commerce (IAC) conference in Cape Town
- University of Pretoria's annual networking event in Pretoria
- The 6th FISA Annual Conference at the Sandton Convention Centre
- Tax Indaba in Midrand
- Finance Indaba in Sandton
- The 46th IAFEI World Congress in Cape Town
- National Small Business Chambers (NSBC) My Business Expo in Midrand

5. SOCIAL MEDIA

The unit continued to utilise social media platforms to engage stakeholders, resulting in growth in the number of followers.

6. WEBSITE

The OTO website continued to be the main source of information for stakeholders and was regularly

updated to ensure that information remained fresh, relevant and informative.

7. INTERNAL COMMUNICATIONS AND EMPLOYEE ENGAGEMENT

In the 12 months under review, the unit strengthened its internal communications and engagement activities aimed at boosting staff morale, building team spirit and cultivating an environment that fosters excellence. Some of the events are listed below.

7.1 Internal events

- Strategic Workshop
- June 16 Soweto Uprising commemoration
- Women's Month celebration
- Heritage Month celebration
- Valentine's Day celebration

7.2 OTO publications

The OTO used the internal newsletter, Perspective, and external newsletter, Fair Play, to engage stakeholders by featuring articles on important tax-related issues and events.

Way forward

The unit is committed to using its limited resources (personnel and financial) to strengthen public

awareness and further position the OTO as a trusted, reliable and independent institution that makes a difference in the lives of taxpayers and contributes towards improving the country's tax administration system. The new financial year will see more community outreach programmes, as well as editorial in the form of letters to editors and opinion pieces being generated, with the goal of influencing the agenda on tax matters. Research will also be introduced in the new financial year to gauge brand awareness and stakeholder perception.

A growing number of taxpayers are becoming aware of the OTO and services provided but there are still many more who are not aware of the impartial and free services offered. Concerted efforts will be made and resources utilised to ensure that more taxpayers and the general public know about the Office and how to utilise its services when they require assistance.

2.4. Programme 4: Legal Services

Purpose

The purpose of the Legal Services unit is to provide an enterprise-wide legal service to all areas of the business, inclusive of legal guidance on cases. This includes managing the legal obligations of the Office of the Tax Ombud and any corporate legal issues, developing and maintaining legal services systems, norms and standards for the Office, and facilitating the negotiation and drafting of contracts, memoranda of understanding and service level agreements.

Legal matters and initiatives

Legal Services had three matters carried over from the previous financial year. A total of 454 legal referrals were received during 2016/17, representing a 13% increase from the previous financial year. Of the 457 legal referrals in hand, 451 were finalised, bringing the total number of matters pending at the end of the financial year to six. Of the 451 finalised referrals, 444 were finalised within 14 business days, meeting the standard turnaround time and resulting in 98% of Legal Services' matters being finalised within target.

Approximately 71% of inflow originates from matters related to taxpayer complaints submitted by the Operations unit, and the balance comes from other business units. Similarly, much of the unit's time is spent playing an advisory role in the internal committee that discusses all taxpayer complaints. Based on its performance for the annual period, Legal Services exceeded the target of 80% set in the strategic objectives of the OTO.

Legal Services initiated investigations into several systemic issues that negatively impact on taxpayers during the last financial year. This initiative resulted in five formal documents being provided to SARS, setting out different underlying causes of taxpayer complaints and making recommendations to resolve them. The OTO received positive responses from SARS on four of the five formal documents which, when implemented by SARS, should resolve the issues that were raised.

The table below depicts the strategic objective of Legal Services.

STRATEGIC OBJECTIVE 4.1	LEGAL SERVICES
Output (objective) statement	Perform corporate and general legal support and administration.

PROGRAMME 4: LEGAL SERVICES						
INDICATOR	PERFORMANCE INDICATORS	ACTUAL ACHIEVEMENT 2015/16	PLANNED TARGET 2016/17	ACTUAL ACHIEVEMENT 2016/17	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT FOR 2016/17	COMMENT ON DEVIATIONS
STRATEGIC OBJECTIVE 4.1: LEGAL SERVICES						
4.1.1	The percentage of matters referred to Legal Services where corporate and general legal assistance is rendered within the standard turnaround time.	80% of cases where legal service is rendered are rendered within the standard turnaround times	80%	Achieved -98%	18	The unit attempts to finalise all referrals on the same day as they are received. Thus far the unit has been successful in doing so with the exception of highly complex matters and issues where the decision-making powers fall outside its authority.

WAY FORWARD

Plans are in the pipeline to effect further legislative amendments in order to give certainty on the legal status and operation of the OTO, as well as to

improve its independence from SARS and increase its powers in addressing complaints by taxpayers.

2.5 Programme 5: Office Enablement

Purpose

The purpose of the Office Enablement unit is to provide general support services such as Human Resource Management, Finance Management, Facilities and Administration Management, and Occupational Health and Safety.

The table below depicts the strategic objectives of Office Enablement.

STRATEGIC OBJECTIVE 5.1	ENHANCE HUMAN CAPABILITY IN TERMS OF DELIVERING PROFESSIONAL AND EFFECTIVE ADMINISTRATION.
Output (objective) statement	Map the key skills and competencies needed within the organisation to ensure optimal performance, assess the skills gaps and prepare a comprehensive human resources development strategy to ensure a capable, committed and ethical workforce for current and future needs.
STRATEGIC OBJECTIVE 5.2	CREATE A CONDUCIVE EMPLOYMENT ENVIRONMENT TO FACILITATE EMPLOYEE EXCELLENCE.
Output (objective) statement	Deliver training and skills development programmes that will cultivate the desired skills and competencies, by managing the performance of employees and making provision for personal development plans.
STRATEGIC OBJECTIVE 5.3	IMPLEMENT SOUND FINANCIAL MANAGEMENT AND CONTROLS.
Output (objective) statement	Ensure prudent, accountable financial management across the organisation by implementing effective controls, processes and procedures for budgeting, spending and reporting.

STRATEGIC OBJECTIVE 5.4	EFFECTIVELY MANAGE BUILDINGS, MAINTENANCE, EQUIPMENT, TOOLS AND PHYSICAL CAPITAL ASSETS THAT ASSIST THE OTO IN DELIVERING PROFESSIONAL AND EFFECTIVE ADMINISTRATION.
Output (objective) statement	Manage the maintenance and repair of buildings, equipment, tools and physical capital assets.
STRATEGIC OBJECTIVE 5.5	RAISE HEALTH AND SAFETY AWARENESS BY CONDUCTING HEALTH RISK ASSESSMENTS AS PER THE OCCUPATIONAL HEALTH AND SAFETY ACT.
Output (objective) statement	Manage, prevent and control measures for the elimination of hazardous exposure and for protecting workers' health.

Human Resources

The total headcount of the OTO as at 31 March 2017 was 29 employees. The three-year workforce plan was finalised and approved during this period, which culminated in the approval of the three-year organisational structure. This will be funded based on the MTEF budget.

The employee cost remains one of the main cost drivers of the total budget. It is important that the Office provides a high-quality service and further has competent, efficient and knowledgeable employees, and therefore a portion of the budget every year is allocated to training and development. The target of 32 training sessions was exceeded as 158 training programmes were attended by employees. This achievement was made possible through a partnership between the OTO and the SARS Institute of Learning to prioritise OTO training. The Office undertook to formulate a human

resources capability plan to support the human resources strategy of the Office. The aim was to start off with an employee satisfaction survey and then use the results to compile a human resources strategy to address the needs of the Office. This could not be achieved due to budgetary constraints.

Financial Management

In terms of section 15(4) of the Tax Administration Act (which has now been amended), the expenditure connected with the functions of the Office of the Tax Ombud was previously paid out of the funds of SARS. The current allocated budget was a challenge for the Office to achieve all its strategic objectives. The 2016/17 budget allocated by SARS was R30.9 million, of which the Office utilised 96%. The target variance of 15% was regarded as an acceptable threshold but the Office managed a 4% budget variance.

Facilities and Administration Management

Facilities and Administration Management ensures that there are no administrative disruptions to the operations of the Office. To safeguard and ensure there are internal controls, the unit continuously develops and updates standard operating procedures for the Office. To this end, Facilities and Administration Management introduced the Messenger Services procedures, Access Control procedures and Boardroom on-line booking procedures.

The asset verification process involving all employees was finalised in December 2016. Inventory sheets for all OTO assets (including IT, boardrooms, vacant spaces and common areas) were completed.

This was followed by an audit exercise conducted by the Auditor-General of South Africa (AGSA) in January 2017, the first asset verification performed at the OTO, which yielded positive outcomes. The exercise involved testing for existence (traced and

located), true reflection of the asset value, and the working condition of assets.

Occupational Health and Safety

Quarterly inspection reports were submitted at the quarterly meetings. The Health and Safety Committee representatives have undergone the necessary training, except for two members who will be trained in the next financial year. A planned evacuation drill took place on 28 April 2016. A drill report was done and corrective steps were submitted to Facilities and Administration Management for implementation.

Quarterly Occupational Health and Safety Committee meetings took place on the following dates:

- Monday, 13 June 2016;
- Tuesday, 13 September 2016;
- Tuesday, 13 December 2016;
- Tuesday, 14 February 2017.

PROGRAMME 5: OFFICE ENABLEMENT						
INDICATOR	PERFORMANCE INDICATORS	ACTUAL ACHIEVEMENT 2015/16	PLANNED TARGET 2016/17	ACTUAL ACHIEVEMENT 2016/17	DEVIATION FROM PLANNED TARGET TO ACTUAL ACHIEVEMENT FOR 2016/17	COMMENT ON DEVIATIONS
STRATEGIC OBJECTIVE 5.1: ENHANCE HUMAN CAPABILITY IN TERMS OF DELIVERING PROFESSIONAL AND EFFECTIVE ADMINISTRATION						
5.1.1	Organisational development.	Not planned.	Approved HR capability plan and draft organisational structure.	Partially achieved.	HR capability plan was not developed.	Organisational structure developed and approved. Due to budgetary constraints, the HR capability plan was not finalised.

5.1.2	Training and development.	Not planned.	Number of training programmes according to development plans - 32.	Achieved 158 training programmes.	126	Partnership between the OTO and SARS Institute of Learning to prioritise OTO training.
-------	---------------------------	--------------	--	-----------------------------------	-----	--

STRATEGIC OBJECTIVE 5.2: IMPLEMENT SOUND FINANCIAL MANAGEMENT AND CONTROLS

5.2.1	Budget control and monitoring.	Not planned.	Percentage of budget variance -15%.	Achieved - 4%.	11%.	The Office managed to spend 96% of its budget.
-------	--------------------------------	--------------	-------------------------------------	----------------	------	--

STRATEGIC OBJECTIVE 5.3: EFFECTIVELY MANAGE BUILDINGS, MAINTENANCE, EQUIPMENT, TOOLS AND PHYSICAL CAPITAL ASSETS THAT ASSIST THE OTO IN DELIVERING PROFESSIONAL AND EFFECTIVE ADMINISTRATION

5.3.1	To manage the maintenance and repair of buildings, equipment, tools and physical capital assets.	Not planned.	SLA and SOPS with SARS to ensure adherence to turnaround times.	Achieved.	None	None
-------	--	--------------	---	-----------	------	------

STRATEGIC OBJECTIVE 5.4: TO RAISE HEALTH AND SAFETY AWARENESS BY CONDUCTING HEALTH RISK ASSESSMENTS AS PER THE OCCUPATIONAL HEALTH AND SAFETY ACT

5.4.1	Manage, prevent and control measures for the elimination of hazardous exposures and for protecting workers' health.	Not planned.	Annual health risk assessment and awareness reports.	Achieved - 4.	None	None
-------	---	--------------	--	---------------	------	------

Way forward

National Treasury has increased the budget but this will only take effect from 2018/19, allowing the Office to gradually implement its growth.

3. STRATEGIES TO ADDRESS AREAS OF UNDER PERFORMANCE

The section below addresses areas of under performance and corrective action.

KPI NO	INDICATOR	CORRECTIVE ACTION
1.2.1	Approved staffing growth plan and associated budget.	Budget to be made available in the 2018/19 financial year to continue with the project.
1.3.1	Develop and maintain a governance and compliance framework and policies.	Budget to be made available in the 2018/19 financial year to continue with the project.
2.1.2	Percentage of recommendations sent to SARS within three working days upon validation of complaint.	A request has been put to increase capacity to meet the service demands.
5.1.1	Organisational development.	Budget to be made available in the 2018/19 financial year to continue with the project.

PART C:

CORPORATE GOVERNANCE

1.1. Introduction

Corporate governance embodies processes and systems by which public entities are directed, controlled and held to account. In addition to legislative requirements based on the Tax Administration Act 28 of 2011 (founding legislation), corporate governance with regard to the OTO is applied through the precepts of the Public Finance Management Act (PFMA) and run in tandem with the principles contained in the King Report on Corporate Governance, as well as the protocol governing the relationship between the Minister of Finance and the Tax Ombud. The OTO continues to comply with this protocol, and has submitted all required reports and strategic documents such as Annual Performance Plans and Strategic Plans.

1.2. Portfolio committees

The Office of the Tax Ombud appeared before the Portfolio Committee and made submissions motivating for legislative amendments to the provisions of the TAA. The proposals were accepted and resulted in amendments mentioned under

Key policy developments and legislative changes (page 49).

1.3. Executive Authority

The Minister of Finance is the Executive Authority of the OTO. The Minister and the Tax Ombud have agreed on the protocol governing their working relationship. Six bi-monthly reports and four quarterly reports were submitted to the Executive Authority in line with the protocol and Treasury Regulations. The reports are meant to keep the Executive Authority informed about developments at the OTO, and to help the Minister monitor the performance of the organisation against its annual performance plans.

1.4. Accounting authority

The Tax Ombud is the Accounting Authority in terms of section 49 of the PFMA, and is responsible for all duties and responsibilities described in section 50 and 51 of the PFMA.

The role and responsibilities of the Tax Ombud include:

- Absolute responsibility for organisational performance in line with the OTO's mandate;
- Ensuring full and effective control over the organisation;
- Ensuring compliance with applicable laws, regulations and government policy;
- Ensuring the preparation of reports and financial statements;
- Formulating, monitoring and reviewing the corporate strategy, major plans of action, budgets and plans;
- Ensuring an adequate and effective risk management framework; and
- Developing a clear definition of materiality.

The Tax Ombud is appointed and reports to the Minister of Finance. The Tax Ombud and the Minister of Finance have agreed on the protocol governing their relationship. The roles and functions of the Tax Ombud are defined in the protocol. All reports and plans that are required by the Minister and Parliament were submitted to National Treasury within the prescribed time. To execute his duties, the Tax Ombud is assisted by the Chief Executive Officer and Senior Management Committee.

1.5. Risk management

The Office of the Tax Ombud made a decision to consider risk management as an important tool of governance, which will help in ensuring the continued sustainability of the OTO and the achievement of its strategic objectives. During the 2016/17 financial year, the OTO started establishing risk governance infrastructure comprising frameworks, policies and procedures. During the period, the OTO appointed an Operational Specialist responsible for risk management and corporate governance. Strategic and divisional risk registers were developed during the first quarter of the financial year. All identified risks were recorded in the registers and will be monitored by divisional managers with the assistance of the governance and risk internal resource. All the OTO business units have completed their risk registers.

Risk management policy and strategy will be finalised once the overall governance framework of the organisation has been developed and approved.

1.6. Internal control

The Office of the Tax Ombud has put a number of internal control measures in place to strengthen governance, and to ensure that the quality of its work is of the desired standard.

Governing body

The body has been formally established and its terms of reference formally adopted. This is the highest decision-making body and comprises the Accounting Authority and the Accounting Officer. Senior Managers become participants by invitation to the governing body meetings. Decisions on all matters relating to the daily management of the organisation are taken by the Senior Management Committee.

Editorial Committee

The Office of the Tax Ombud has established an Editorial Committee whose role is to oversee proper editorial planning, and ensure that appropriate, relevant and high-quality content is developed in relation to employee, stakeholder and taxpayer communication. The purpose of the Editorial Committee is to provide a formalised structure

for internal and external communication with OTO employees, stakeholders and taxpayers.

The committee is mandated to manage the editorial direction, among others, of the OTO's internal and external newsletters and statutory reports (annual, quarterly and bi-monthly reports), and to provide guidelines for any content to be published in stakeholder publications.

1.7. Internal audit and audit committee

Internal audit and an audit committee are yet to be established. The governance status of the OTO with regard to internal audit and an audit committee is yet to be formally clarified.

1.8. Compliance with laws and regulations

The OTO reports on its compliance with relevant laws and regulations. A governance calendar which records all the compliance requirements is developed annually to assist the organisation in keeping track of dates for submitting all statutory and other reports. Compliance checklists are used regularly to monitor the compliance status and to provide reports on the OTO's level of compliance with relevant laws and regulations.

1.9. Code of conduct

The staff of the Office of the Tax Ombud is employed in terms of the SARS Act as per section 15 of the Tax Administration Act. As such the OTO has adopted the SARS code of conduct regulating employment matters.

1.10 Health, safety and environmental issues

The Office of the Tax Ombud is committed to fulfilling the requirements stipulated in the Occupational

Health and Safety Act. The Health and Safety Committee functioned well during the year under review, and held meetings as follows (as per Governance Calendar schedule):

- Monday, 13 June 2016
- Tuesday, 13 September 2016
- Tuesday, 13 December 2016
- Tuesday, 14 February 2017

All Health and Safety Committee members have undergone the necessary training, except for two members whose training was postponed to 2017/18.

Quarterly health and safety inspection lists and checklists were submitted for the periods in August, October and November 2016.

A planned evacuation drill (arranged by the landlord), took place on 28 April 2016. A drill report was submitted, highlighting observations and/or corrective steps.

An emergency fire evacuation occurred on 24 August 2016, which was caused by a fire in the air-handling unit in the kitchen roof. The landlord has since ordered a new air-conditioning unit. Proper assessment and fault-finding investigations were conducted, and all electrical faults identified were corrected.

1.11 Social responsibility

Although the OTO is a relatively young and small organisation, it has from its inception participated in social responsibility activities. During the 2016/17 financial year, the organisation participated in the following activities:

- Cell C Take a Girl Child to Work Day Campaign: On 31 May 2016, the OTO hosted 15 female matric learners from J Kekana High School,

Stanza Bopape High School, FH Odendaal High School, Gerrit Maritz High School, Silverton High School and Hoërskool FH Odendaal. The annual event, supported by the South African government, seeks to deepen the thinking of young girls about their roles in society, enhance their self-esteem, inspire and motivate them to reach their full potential and, through exposure to diverse careers and positive role models, assist them to prepare for the world of work.

- Nelson Mandela International Day: On Friday 22 July, representatives of the OTO visited J Kekana High School in Mamelodi and donated

books and other educational material worth over R2 000. This was in addition to sanitary pads, clothes and grocery packs donated by the team to needy children from the Mamelodi West High School. The OTO's leadership also gave a presentation to matric learners on various career choices relevant to their respective subject choices. In addition, OTO employees converted a disused and dilapidated J Kekana High School library into a visually enticing and user-friendly centre of knowledge for learners.



The OTO hosted social responsibility initiatives with the Cell C Take a Girl Child to Work Day and Nelson Mandela International Day campaigns which targeted and benefited learners from previously disadvantaged communities.

PART D:

HUMAN RESOURCE MANAGEMENT

1.1. Overview

The total headcount of the OTO as at 31 March 2017 was 29 employees appointed, with one vacancy for a Finance Manager. The staff complement of the Office has slightly increased compared to the previous financial year. The size of the organisation needs to be optimised in order to manage increasing demand for services. The headcount of OTO indicates that management represents 27.59% of the staff complement, which includes 17.9% senior managers and 7.1% middle managers. Specialists represent 55.17% of the staff complement while support staff represents 10.34%.

In terms of pursuing the Employment Equity (EE) gender target for Grade 6 and higher on

management level, four appointments, all of them black. In terms of black female appointments on grade 6 and higher, 25% of appointees were black females. Although the Office of the Tax Ombud lost three employees on grade 6 and above, four others were appointed. However, two black female employees resigned and only one black female was appointed.

1.2. Human resources oversight statistics

The personnel expenditure remains the main cost driver, and represents 80% of the total expenditure for the 2016/17 financial year.

Table 1: Personnel cost by programme/activity/objective

PROGRAMME /ACTIVITY/ OBJECTIVE	TOTAL EXPENDITURE FOR OTO (R'000)	PERSON-NEL EXPENDITURE (R'000)	PERSONNEL EXPENDITURE AS A % OF TOTAL EXPENDITURE	NO OF EMPLOYEES	AVERAGE PERSONNEL COST PER EMPLOYEE (R'000)
Office of the Tax Ombud	29 445	23 581	80%	29	813

The Office ensures that budget and other resources are set aside every year for appropriate training and development. It is important that the

Office provides a high-quality service and has competent and efficient up-to-date employees.

For the year under review, employees of the OTO spent about 319 man days attending 158 different training interventions (table 2). This is all internal training done through the SARS Institute of Learning, hence there is no direct cost to it. The main contributor as indicated in table 2 is the

Operations unit, whose staff spent 262 man days attending training.

Currently, OTO has six employees who are studying through the internal Bursary Programme. An amount of R172 131.00 has been set aside for this, 90% of which is towards postgraduate qualifications.

Table 2: Training information

PROGRAMME/ACTIVITY/OBJECTIVE	NUMBER OF TRAINING EVENTS	NUMBER OF TRAINING MAN DAYS
Office of the CEO	12	45
Office Enablement	5	7
Legal Services	1	1
Operations	136	262
Communications and Outreach	4	4
Grand total	158	319

Table 3: Employment and vacancies per programme

PROGRAMME/ACTIVITY/OBJECTIVE	2015/16 NO OF EMPLOYEES	2016/17 APPROVED POSTS	2016/17 NO OF EMPLOYEES	2016/17 VACANCIES	% OF VACANCIES
Office of the CEO	5	0	3	0	0.00%
Operations	16	3	17	0	0.00%
Office Enablement	2	1	4	1	3.45%
Communications and Outreach	3	0	3	0	0.00%
Legal Services	2	0	2	0	0.00%

Tables 3 and 4 indicate that the staff complement of the OTO increased slightly; there was one more employee than in the previous year. The Office

appointed four new employees during the financial year, but three existing employees resigned.

Table 4: Employment and vacancies per salary bands

SALARY BAND	2015/16 NO OF EMPLOYEES	2016/17 APPROVED POSTS	2016/17 NO OF EMPLOYEES	2016/17 VACANCIES	% OF VACANCIES
Top Management	2	0	2	0	0.00%
Senior Management	4	0	4	0	0.00%
Professional qualified	18	4	19	3	10.34%
Skilled	4	0	4	0	0.00%
Semi-skilled	0	0	0	0	0.00%
Unskilled	0	0	0	0	0.00%

Table 5: Employment changes

SALARY BAND	EMPLOYMENT AT BEGINNING OF PERIOD	APPOINTMENTS	TERMINATIONS	EMPLOYMENT AT END OF THE PERIOD
Top Management	2	0	0	2
Senior Management	4	0	0	4
Professional qualified	18	4	3	19
Skilled	4	0	0	4
Semi-skilled	0	0	0	0
Unskilled	0	0	0	0

Table 6: Reasons for staff leaving

REASONS	NUMBER	% OF TOTAL NO OF STAFF LEAVING
Death	0	0.00%
Resignation	3	10.34%
Retirement	0	0.00%
Ill-health	0	0.00%
Expiry of contract	0	0.00%
Other (transfer)	0	0.00%

Table 6 indicates that during the period under review, three employees resigned from the employ of the OTO.

Table 7: Employee relations: misconduct and disciplinary actions

NATURE OF DISCIPLINARY ACTION	NUMBER
Verbal warning	0
Written warning	0
Final written warning	0
Dismissal	0

Table 8: Employment equity targets and status - Male

LEVELS	MALES							
	AFRICAN		COLOURED		INDIANS		WHITES	
	CURRENT	TARGET	CURRENT	TARGET	CURRENT	TARGET	CURRENT	TARGET
Top management	2	0	0	0	0	0	0	0
Senior management	0	0	0	0	0	0	1	0
Professionally qualified	11	1	0	0	0	0	0	0
Skilled	1	0	0	0	0	0	0	0
Semi-skilled	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0
Total	14	1	0	0	0	0	1	0

Tables 8 and 9 illustrate that the OTO Employment Equity representation was stable; however, the inclusion of other race representation will be monitored closely. The OTO black representation is 86.21%, whilst male representation is 51.72% and female representation is 48.28%. Females at senior


management and professionally qualified levels stand at 45.83%. Efforts will be made to attract candidates from other races in order for the OTO to achieve its Employment Equity targets. This plan will be in line with the geographical footprint expansion.

Table 9: Employment equity targets and status - Female

LEVELS	FEMALES							
	AFRICAN		COLOURED		INDIANS		WHITES	
	CURRENT	TARGET	CURRENT	TARGET	CURRENT	TARGET	CURRENT	TARGET
Top management	0	0	0	0	0	0	0	0
Senior management	3	0	0	0	0	0	0	0
Professionally qualified	7	0	0	0	0	0	1	0
Skilled	2	2	0	0	0	0	1	0
Semi-skilled	0	0	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0
Total	12	2	0	0	0	0	2	0

In the absence of a work skills plan, the Office currently has 0% of people with disabilities. With the new organisational structure, in future all efforts

will be directed towards recruiting and appointing someone with a disability.



**“Having our budget
determined by Treasury
signals our independence
from SARS and sends
the right message to the
taxpayers of South Africa.”**



PART E:

FINANCIAL INFORMATION

1.1. FINANCIAL INFORMATION

1.1.1. EXPENDITURE RELATING TO THE OFFICE OF THE TAX OMBUD

The purpose of the financial report is to provide an overview of the financial expenditure in the OTO for the 2016/2017 financial year. The information that is outlined in the tables and graphs shows our expenditure for the year per cost element. Comparisons have also been made to show the expenditure growth patterns between the 2015/16 and 2016/17 financial years, as well as actual versus budgeted expenditure.

Previously, the TAA provided that the expenditure connected with the functions of the Tax Ombud be paid out of the funds of SARS. The 2016/17 allocated budget was inadequate for the Office to achieve all its strategic objectives. The approved 2016/2017 Annual Performance Plan 2016/17 presented a budget of R36 million linked to strategic objectives. The budget that was subsequently allocated by SARS was R29 million, meaning the Office had a shortfall of R6 million. The shortfall meant that the Office would be unable to meet all its strategic objectives and had to reprioritise; this anomaly created a mismatch between budget allocation

and strategic objectives set. To ensure there is no discrepancy between the Office's strategic objectives and budget allocation, section 15(4) of the TAA has been amended. The expenditure connected with the functions of the Office of the Tax Ombud will be paid in accordance with a budget approved by the Minister for the Office. This change will assist as the approval of both the Annual Performance Plan and Strategic Plan, as well as the budget, rest with the Minister.

Table 1 indicates expenditure per cost element and total expenditure for the year. The total revised budget for the year 2016/17 from SARS was R30.9 million. The total expenditure including commitments amounted to R29.7 million, resulting in a surplus of R1.2 million. The spending is at 96% of the annual allocated budget (table 2). Due to the budget shortfall, the Office had embarked on a cost reprioritisation exercise and had identified mandatory and essential services required by the Office. As a result, it took precautions to prevent overspending. This accounts for the decrease in actual expenditure in comparison to the previous year, 2015/16.

Table 1: Expenditure per cost element and total expenditure

COST ELEMENT	2016/17				2015/16			
	YTD ACTUAL (R'000)	BUDGETED (R'000)	VARIANCE (R'000)	% VARIANCE	YTD ACTUAL (R'000)	BUDGETED (R'000)	VARIANCE (R'000)	% VARIANCE
Personnel Expenditure	23 166	23 181	15	0%	18 672	23 782	5 110	21%
Other Staff Costs	532	454	-79	-17%	245	309	64	21%
Administrative Expenditure	991	1 086	94	9%	1 169	1 728	559	32%
Inventory and Printing	400	649	249	38%	657	421	-236	-56%
Professional and Special Services	4 143	4 560	417	9%	5 569	4 530	-1 039	-23%
Land and Buildings	254	532	278	52%	715	255	-460	-180%
Capital expenditure	269	495	226	46%	3 942	559	-3 383	-605%
Total Operating and Capital Expenditure	29 755	30 956	1 201	4%	30 969	31 584	615	2%

COMMENTARY PER COST ELEMENT

1. Personnel Expenditure

Personnel expenditure consists of total cost to company including performance rewards, overtime and other benefits such as leave gratuities. The personnel expenditure budget remained the same at R23 million in 2015/16 compared to 2016/17. The expenditure in 2016/17 increased by 24% compared to the previous financial year.

2. Other Staff Costs

The other staff costs consist of items such as study aid/bursaries, training and related costs and recruitment-related costs. This expenditure

increased by 117% from the previous year. Every year a portion is allocated towards training and development to ensure that the Office continues to provide a high-quality service and further has competent and efficient employees.

3. Administrative Expenditure

The administrative expenditure consists of travel and accommodation, data and telephone costs, and equipment and vehicle maintenance. The administrative expenditure decreased by 15% from the 2015/16 financial year.

4. Inventory and Printing

Inventory and printing consists of printing expenses, stationery and inventory expenses. This expenditure decreased by 39% from 2015/16.

5. Professional and Special Services

This cost element consists of information technology costs, advertising production and media space purchases. This expenditure decreased by 26% from the previous year, 2015/16.

6. Land and Buildings

This cost element consists of building rates and taxes, levies and administrative fees, building

maintenance and venues and facilities hire. The expenditure decreased by 65% from the previous year, 2015/16.

7. Capital Expenditure

The capital expenditure decreased by 93% from the previous year, 2015/16, when the Office moved to new premises. This cost includes furniture and equipment bought for the new office.

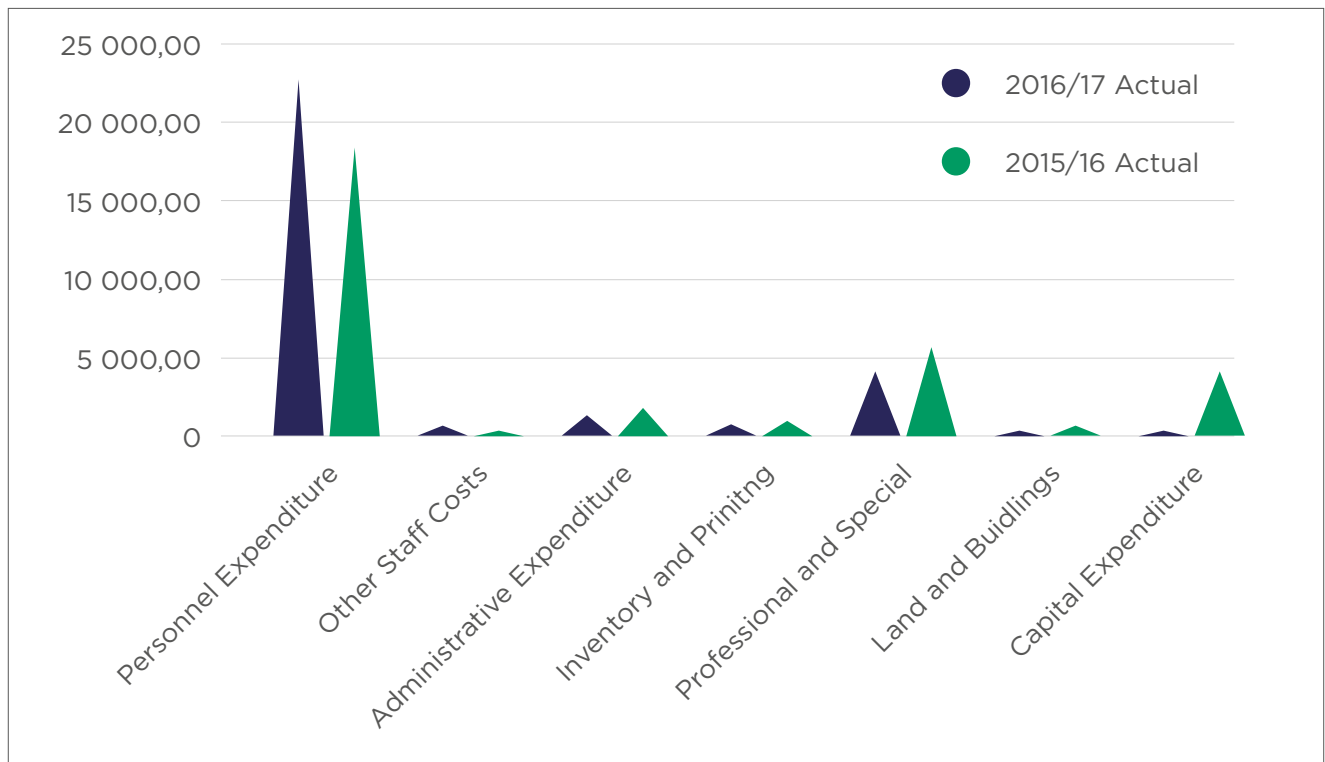
TABLE 2: PERCENTAGE UTILISATION OF THE ALLOCATED BUDGET

FINANCIAL YEAR	ACTUAL (R'000)	BUDGET (R'000)	UTILISATION OF THE ALLOCATED BUDGET
2015/16	30 969	31 584	98%
2016/17	29 755	30 956	96%

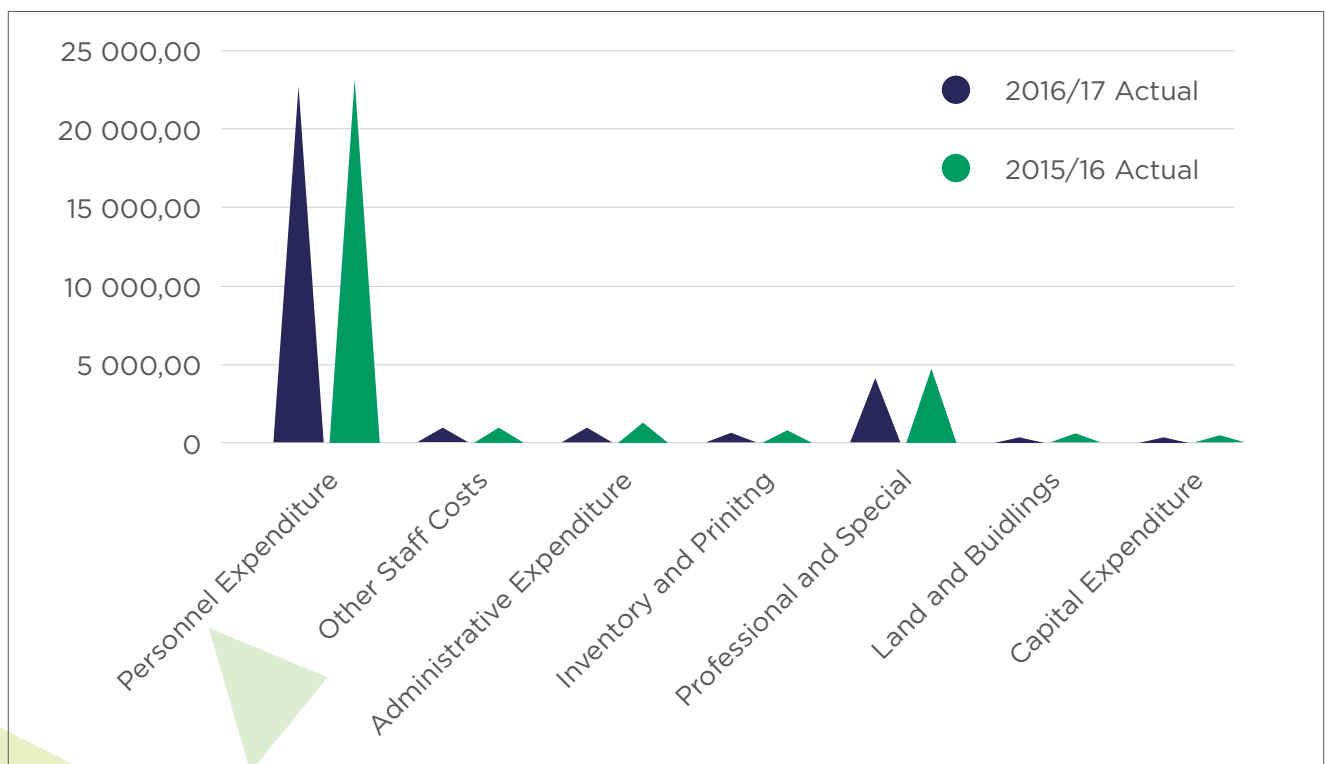
Graph 1 details the comparison of expenditure per cost elements for the 2015/16 and in 2016/17 financial years. The costs were kept at a minimum due to budget constraints, hence the decrease in administrative costs, inventory and printing, professional and special services.

Graph 2 indicates the budgeted expenditure to actual expenditure comparison. This indicates that the Office closely monitored its expenditure due to the budget shortfall, hence 96% of the budget was utilised.

Graph 1: Comparison of expenditure in 2015/16 and in 2016/17



Graph 2: 2016/17 Actual to budget comparison





ANNEXURE 1

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

TABLE OF CONTENTS

SECTION I

INTRODUCTION	89
THE OFFICE OF THE TAX OMBUD AND ITS MANDATE	89
THE REQUEST MADE	89
REASONS BEHIND THE REQUEST TO THE MINISTER:	89
Complaints from taxpayers	89
Historical problem	90
METHODOLOGY	91

SECTION II

EXECUTIVE SUMMARY	92
-------------------	----

SECTION III

INTRODUCTORY GENERAL REMARKS BY SARS AND THE OTO'S COMMENTS THEREON	96
---	----

SECTION IV

(i) OBSTACLES ALLEGEDLY PLACED BY SARS WHICH RESULT IN DELAYED PAYMENT OF REFUNDS, (ii) SARS'S RESPONSE AND (iii) OTO'S COMMENTS AND/OR RECOMMENDATIONS	98
---	----

SECTION V

CONSIDERED DATA	117
INFORMATION REQUESTED BY THE OTO FROM SARS	117
ANALYSIS OF THE INFORMATION RECEIVED	117

SECTION VI

FINAL REMARKS AND CONCLUSION	132
------------------------------	-----

SECTION I:

INTRODUCTION

1. THE OFFICE OF THE TAX OMBUD AND ITS MANDATE

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

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

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

2. THE REQUEST MADE

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

3. REASONS BEHIND THE REQUEST TO THE MINISTER:

3.1 Complaints from taxpayers

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

3.2 Historical problem

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

3.2.1 Annual Reports to Parliament

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

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

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

“17.1.2 Delayed payment of refunds due to taxpayers was the second largest category of complaints received by the OTO for the period. This is mostly due to verification audits, failure to update banking details and some system issues wherein SARS failed to lift stoppers or release bank accounts after the verifications were done. In 79% of the complaints finalised the refunds were released to the taxpayers, 5% of the refunds were reversed and 15% involved issues that required other avenues to be followed to resolve the complaints; for example taxpayer education and dispute resolution procedures had to be followed.

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

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

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

3.2.1.3 Annual Report: 1 April 2015 – 31 March 2016: This report will show that in the above period we received 317 of such complaints. Again, they were the second largest group of complaints. The delay in paying refunds tops the inventory of *“10 of the most serious issues encountered by taxpayers as well as identified systemic and emerging issues”*, as per section 19(2) of the TAA; see attached hereto a photocopy of page 35 of the report, as Annexure 4 which also shows SARS’s response.

3.2.2 Periodical reports to the Commissioner of SARS

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

4. METHODOLOGY

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

- 4.1 The professional or industry bodies: briefed them about the envisaged review and its scope. They were invited to make inputs within a certain time frame. Inputs were later received and considered.
- 4.2 SARS: Meetings were held with officials of SARS, at which some information was asked for, received and considered. Some documents were also asked for and provided, which were also duly considered and analysed.
- 4.3 Given the much publicised complaints about SARS’s alleged delay in paying out refunds, the public were informed, through the media, about the envisaged review. Some political parties also raised the issue through Parliamentary questions. Several taxpayers aired their views about the issue. Meetings were held with, and inputs received, from the following bodies in particular:
 - 4.3.1 South African Institute of Tax Practitioners (SAIT)
 - 4.3.2 Law Society of South Africa (LSSA)
 - 4.3.3 South African Institute of Chartered Accountants (SAICA)
 - 4.3.4 South African Institute of Professional Accountants (SAIPA)
 - 4.3.5 Institute of Accounting and Commerce (IAC)
 - 4.3.6 Banking Association of South Africa (BASA).
- 4.4 A Provisional Report was given to SARS for response. A detailed response by the Commissioner was received, dated 24 July 2017. Apart from introductory general remarks, the response dealt with each paragraph of our Provisional Report. We intend to transpose, verbatim, each such response vis-à-vis each one of our relevant paragraph to avoid paraphrasing or editing SARS’s responses.
- 4.5 After receipt of SARS’s response, our office had yet another and final meeting with SARS officials.
- 4.6 We also presented some of the issues raised by SARS to some of the stakeholders for their final response.
- 4.7 We point out that, this our Final Report does not contain any new complaints or issues not contained in the Provisional Report and thus not responded to by SARS. However, where necessary, there may be some comments on issues raised in SARS’s response to the Provisional Report.
- 4.8 Some complaints came too late to be dealt with in this Report.

SECTION II

EXECUTIVE SUMMARY

1. Introduction

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

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

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

3. Methodology:

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

4. Essence of the complaint by taxpayers:

The complaint by taxpayers was that SARS employed certain mechanisms to unduly delay, or even avoid, paying out refunds due to them. They argued that, in this respect, the tax collection system was being implemented unfairly by SARS. This resulted in financial hardships to them and, in some instances, the near collapse of their businesses; in others, loss of jobs ensued.

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

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

This issue was raised by the South African Institute of Chartered Accountants as one of the ways in which the payment of refunds was delayed. The complaint is that when the taxpayer goes to a SARS office to give them documentation asked for by SARS for loading, the office fails to connect the query with the uploaded documents. See pages 98-99 for a detailed discussion, SARS's response and the OTO's comment.

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

5.2 The unwarranted placing of Special Stoppers.

There is a complaint that "Special Stoppers" are placed on taxpayers' accounts in order to stop refunds from being paid out. In most of these cases taxpayers are required to verify bank details in person at a SARS branch. Whilst the OTO understands this is done to prevent payment of refunds that are not due, or fraud, there is, however, too long a delay in paying these refunds despite a taxpayer's banking details having been verified, or a taxpayer having complied with SARS's requirements. Complaints of this

nature are justified. At the same time, the point made by SARS that fraud is a problem, is important and should not be lost sight of. See pages 99-101 for detailed discussion, SARS's response and OTO's comments.

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

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

The placing of a stopper every time a new return for the next period is filed. The system blocks already verified refunds the moment a subsequent return is submitted by the taxpayer. Therefore, even where specific returns are not identified for audit/verification, the mere submission of the next return results in the payment of the refund being stopped. This may have a knock-on effect especially in the case of VAT where the periods for declaration are close to each other. See pages 101-102 for detailed discussion, SARS's response which includes proposed remedies, and the OTO's comment.

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

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

There has been a complaint by the professional bodies that the lifting of "special stoppers" takes unduly long. We have ourselves in the past also raised the matter with SARS. See pages 102-104 for a detailed discussion, illustrative cases, SARS's response which includes its concern about fraud and the OTO's comment.

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

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

SARS refuses to release refunds that have been verified for a specific tax period until such time as all audits/verifications that may be pending on other tax periods have been finalised. This is against section 190 of the TAA. See pages 104-106 for detailed discussion, illustrative cases, SARS's response and the OTO's comment.

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

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

Returns that have never been shown as outstanding on Tax Clearance Certificates or Statements of Account suddenly reflect as outstanding and then used as reason for not paying refunds. This is done notwithstanding the fact that previous refunds were released. The complaint was submitted to us by industry bodies without mentioning a specific case. SARS's view is that for that reason, the complaint should be dropped. We disagree because the absence of an illustrative case does not necessarily mean that instances of the nature complained about did not occur. See pages 106-107 for detailed discussion, SARS's response and the OTO's comments.

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

- 5.7 SARS raises assessments and pass journals to clear unallocated credits.
SARS raises assessments to absorb credits on taxpayers' accounts where for example overpayments are made. In doing so, SARS creates fictitious tax liabilities, instead of taking a decision on a refund. Failure to take such a decision is subject to objection and appeal, but SARS avoids this, it seems, by raising an assessment, a step which takes the dispute resolution procedure in another direction, away from paying the refund. See pages 107-111 for detailed discussion, illustrative cases, and SARS's response which includes that "*SARS has discontinued the practice in instances where it is inappropriate, and the OTO's comment.*"
Recommendation: We feel strongly that the practice should cease altogether.
- 5.8 Requesting further information during audit.
The complaint is that SARS auditors keep audits pending while repeatedly requesting information from taxpayers. Apart from delaying the refund, the incidental consequence is that if successive requests for further information are sent out each within 21 days of the other, interest will not start accruing on the refund. See pages 111-112 for detailed discussion, illustrative case, SARS's response and the OTO's comment.
Recommendation: Where an auditor failed to ask for all documents at once, and the refund is consequently delayed, SARS should pay interest on the delayed refund.
- 5.9 Assessments successfully disputed, but refund is still not paid out.
Where assessments are successfully disputed and the initial refund is reinstated, taxpayers experience a delay in the revision of the assessments and the payment of the refund. The problem here is that there is no turn-around time. See pages 112-114 for detailed discussion, illustrative cases, SARS's response and the OTO's comment.

OTO's Comment: The undertaking by SARS to take steps to address the situation is welcome and supported.
- 5.10 Obstacles regarding diesel refunds delays.
VAT and Diesel refunds are declared on the same return which gives a nett amount payable by or refundable to the taxpayer. At SARS however they are reflected on two different systems and manual set offs need to be done to obtain the same nett result as reflected on the return. Where there is a delay in this, set off refunds are delayed. Furthermore where the diesel portion is being verified/audited the VAT portion shows as a liability and SARS takes collection steps even though the taxpayer complied with the nett result shown on the return. See page 114 for detailed discussion and SARS's response, including that significant risks were identified in the industry, resulting in it having to perform more audits to mitigate the risks but that steps are taken to address the problem.

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

5.11 The raising of assessments prematurely

Taxpayers are afforded 21 days to submit supporting documents but assessments are raised prior to the lapse of this deadline. It was noted by this office that sometimes taxpayers submit only some of the documents requested and then SARS raises the assessment. Taxpayers then complain that they still wanted to submit the rest of the documents later. See page 115 for detailed discussion, SARS's response and the OTO's comment thereon.

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

Section 164(6) stipulates that SARS may not institute any collection steps from the date of submission of a request for suspension of payment, until 10 days after a decision to not grant the request has been communicated to the taxpayer. Despite this provision, SARS's systems do not cater for instances where a taxpayer has requested the suspension of payment pending the finalisation of an objection or appeal. The system automatically sets already confirmed refunds off against those debts even if SARS has not responded to, or granted, such a request. See pages 115-116 for detailed discussion, illustrative cases, SARS's response and the OTO's comment.

6. Considered data

We list on page 117 the data that was considered in compiling this Report.

7. Analysis of the data.

We set out a detailed analysis of the data received, from which certain conclusions are drawn, on pages 117-131.

8. Concluding remarks

Certain conclusions are drawn from the analysis of the data, representations by taxpayers, industry bodies and SARS. These conclusions need not be summarized here as they are being succinctly presented on page 132.

SECTION III

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

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

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

1. *SARS: That "SARS has an obligation to manage risk and fraud. This inherently requires some manual intervention which takes time. ... Given the total universe of refund related complaints compared to the total volume of refunds processed, the number of complaints represents less than 1 % of the refunds SARS processed over the same period. Without explaining this broader context, and providing statistics that contextualise that delays occur within less than 1 % of cases processed, the overwhelming impression is that the findings apply to every refund processed by SARS, whereas this is far from the case. Therefore, in order to contextualise your report, and to ensure that a balanced analysis is possible, I request that you include in your report an overview of refunds in their entirety which should include statistics of the processing time of all refunds. For example, 92% of Personal Income Tax refunds were actually paid within 2 days in the 2016/17 year."*

OTO's Comment: Accepting that the percentage is correct, the truth is that the complaints spiked during the period December 2016 to February 2017. Secondly, and very importantly, the impact of delayed refund on each of the 1% taxpayer can be, and has in some cases been, devastating and even lead to near closure of businesses due to lack of cash flow. The problem therefore remains serious. In any case, whereas the 630 credits from the sample given by SARS may indeed constitute less than 0,01% in terms of numbers, their monetary value is however a whopping R25.86 billion. Therefore, the withholding of these refunds may have a significant impact on the collected revenue, and a devastating negative impact on the finances of individual taxpayers in varying degrees. In addition, and to properly contextualize the issue of the 92% of Personal Income Tax, the refunds were paid automatically by the system without any human intervention; with that, there is no delay and therefore no problem. The problem occurs in instances where there is a need for verifications and/or audits; that is, once there is human intervention.

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

and recommendations which are based on the investigation of factual scenarios and could also be interpreted as a certain bias.

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

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

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

OTO's Comment: Intention is a matter of inference from established facts. While this statement may hold in respect of other instances, it can hardly do so in respect of others. For example, in cases such as when an assessment is raised which comes up with a debt identical to the cent to that otherwise due to be paid to the taxpayer, the inference of intentional delay is irresistible. We deal with such cases in SECTION IV, paragraph 7.1.2, pages 107-111 below. Anyway, it is important to note that the purpose of this review is to investigate allegations of undue delays, intentional or otherwise.

SECTION IV

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

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

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

1.1. Our investigations and findings

1.1.1 Restatement of the complaint submitted by SAICA:

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

1.1.2 Cases for illustration

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

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

1.1.4 **Provisional Report:** Recommendations

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

1.2 SARS's response

- *"The Tax Ombud has not made a finding on this issue because no specific instances were presented. However, the report makes a theoretical finding on the hypothesis 'if the facts are true'.*
- *Similarly, provisional findings on a presumption of the correctness of the facts underlying an allegation are also made for alleged obstacles 6, 8, 10 and 11 whereas no facts were made available to test the veracity of the allegation or the underlying cause. The concern is that each allegation has not been*

explored fully while the cumulative impact of making hypothetical findings on the presumption of facts, points to systemic issues when this may not be the case.

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

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

2.1 Our investigations and findings

2.1.1 Summary

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

In their submissions, SAICA remarked as follows:

"In this regard, it should be noted that these requests are seemingly made randomly, after bank detail changes, without bank detail changes, after address changes, after audit completion, etc. The lack of communication as to why the bank account verification was required as opposed to its mere instruction is a communication challenge. This lack of communicated context together

with this process being applied incorrectly in terms of law results in inferences that it has become a tax refund payment delay mechanism which may not be factually accurate.”

Already in its letter of 8 November 2016 to SARS, this office identified this issue as systemic and made a formal observation to SARS. The response was only received on 24 April 2017, in the form of a letter dated 17 November 2016. This issue was therefore pertinently raised in the past with SARS, but complaints persisted. We quote our observation referred to above and SARS’s responses thereto: “That SARS should clarify why it is necessary for taxpayers to confirm their banking details when SARS’s procedures already require substantiating documents to be submitted by taxpayers when they change their banking details in order to confirm that any refunds due will be paid into the correct account. In other words SARS should clarify if the current fraud prevention process does not create an unnecessary administrative burden on taxpayers and on SARS”. **The following was SARS’s response:**

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

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

2.1.2 Cases for illustration:
See cases in paragraph 4.1.2 below, which are also applicable here.

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

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

2.2 SARS’s response

- *“It is proposed that the finding should make it clearer that SARS does not agree that refunds are deliberately delayed. Furthermore, the report should emphasise that one reason for stoppers is to limit fraud. One*

particular area of fraud is that banking details are manipulated and in order to misdirect the payment of a tax refund.”

- OTO’s Comment: Noted. We accept that fraud is a problem.
- *“SARS recognises that (SARS) could have communicated better with taxpayers and tax practitioners and undertakes to ensure that this finding is brought to the attention of front-end staff, and that we improve in providing more meaningful explanations to taxpayers in order to expedite the resolution of cases.”*
- OTO’s Comment: Noted. However, the problem is not communication, but failure to verify banking details timeously. This problem still remains.

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

3.1 Our investigations and findings

3.1.1 Summary

The placing of a stopper every time a new return for the next period is filed. The system blocks already verified refunds the moment a subsequent return is submitted by the taxpayer. Therefore even where specific returns are not identified for audit/verification, the mere submission of the next return results in the payment of the refund being stopped. This may have a knock-on effect especially in the case of VAT where the periods for declaration are close to each other.

3.1.2 Case study for illustration

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

“The system blocks refunds when new return is filed. The refunds were withheld by the system.”¹

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

3.1.4 **Provisional Report:** Recommendations

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

3.2 SARS’s response:

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

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

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

- OTO's Comment: The complaint is that section 190 of the TAA (discussed in detail on page 104 below) legislation does not allow SARS to withhold a refund on account of a subsequent return being submitted, or to withhold a refund for one period pending verification or audit of another period. While SARS's response provides a reasonable explanation why verifications or audits on various periods may sometimes overlap, it does not offer an explanation on the complaint raised.
- *"SARS introduced a remedy for VAT refunds in October 2016 and with the implementation of Generally Recognised Accounting Practice, the challenge experienced in income tax refunds should be addressed. SARS also undertakes to remedy cases on an individual basis."*
- OTO's Comment: While we note the response, the last illustrative case shows that whatever remedy SARS is referring to, does not work well and needs to be relooked at.

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

4.1 Our investigations and findings

- ##### **4.1.1**
- There has been a complaint by the professional bodies that the lifting of "special stoppers" takes unduly long. We have ourselves in the past also raised the matter with SARS. The following was a recommendation contained in our letter of 8 November 2016 to SARS referred to in paragraph 2.1.1 above; page 100:

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

SARS's response then (page 100 paragraph 2.1.1 above):

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

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

OTO CASE NUMBER	CASE INFORMATION
	Audit finalised 25/07/2016, no adjustment made. The taxpayer followed up several times and was eventually informed on 02/08/2016 to go to a SARS branch with specified documents. Following that, he was informed of different turnaround times for the stopper to be removed and had to visit the branch several further times because not all the information was submitted and SARS failed to inform him thereof while he was at the branch. The taxpayer eventually lodged all the supporting documents on 19/08/2016 and on 25/08/2016 a SARS official requested the special stopper to be lifted. The taxpayer lodged a complaint with SARS's internal mechanisms on 30/08/2016 which could not resolve the matter. The refund was only released on 18/10/2016.
	Operations Audit finalised on 04/08/2016, no adjustments made. Personal details confirmed and SARS official gave instruction for removal of special stopper on 26/08/2016. Refund only paid on 12/10/2016.
	Operations Audit finalised on 22/07/2016, no adjustment made. Personal details confirmed on 25/07/2016 and SARS official gave instruction for the removal of special stopper on 25/08/2016. Refund only paid on 01/12/2016.
	Operations Audit finalised on 03/10/2016, no adjustment made. Personal details confirmed and SARS official gave instruction for removal of special stopper on 22/09/2016. SARS told the taxpayer there is no turnaround time for special stoppers. Refund only paid on 15/11/2016.
	Personal details confirmed and SARS official gave instruction to remove the special stopper on 19/08/2016. Refund only released on 22/10/2016.
	Personal details confirmed and SARS official gave instruction to remove the special stopper on 23/08/2016. Refund only released on 19/10/2016.

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

4.1.4 **Provisional Report:** Recommendations

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

4.2 SARS's response:

- *The delay in uplifting special stoppers is noted. SARS has begun reviewing all stoppers and, going forward, will put in steps to ensure that inappropriate stoppers are removed within 21 days.*
- *It must be noted however, that stoppers will remain where SARS has identified a risk, for instance when fraud is suspected. If SARS fails to release a refund within the period, a taxpayer may follow SARS's complaints process."*

- OTO's Comment: Noted. However, SARS does not define what it means by "inappropriate stoppers". If this term includes stoppers that have been placed on a refund in error, undertaking to remove such stoppers within 21 days would not be reasonable; the period would be too long given possible hardships to the taxpayer. Regarding the "stoppers" we would recommend that SARS rather gives an undertaking to remove them as soon as the resolution of the incident that resulted in the stopper being placed.

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

5.1 Our investigations and findings

5.1.1 *Summary*

SARS refuses to release refunds that have been verified for a specific tax period until such time as all audits/verifications that may be pending on other tax periods have been finalised. What happens in practice is, for example, that a VAT period is identified for verification, but before the verification is completed the vendor is required to submit its next declaration which is also identified for verification. This may happen for several periods in a row. Even though the refund for the first period in this scenario has been verified, SARS refuses to pay it until such time as all the other verifications have also been finalised! A brief analysis of the applicable legal framework will show that this is wrong: Section 190(1) and (2) of the TAA states:

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

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

OTO CASE NUMBER	CASE INFORMATION
	A refund of R993,289 for the 2016/07 VAT period was withheld because there were ongoing verifications and an audit on other VAT periods. The refund was only paid on 16 October 2016 which was after the finalisation of the verifications and audits of the next period or even more.
	SARS has been auditing various VAT periods between 2009/03 and 2013/09 since 07 January 2014. Refunds to the total value of R273,743 were stopped from being paid out for eleven VAT periods between 2014/02 to 2016/05. Even after the complaint was referred to SARS by the OTO, SARS still insisted that the audit for the unrelated VAT periods be finalised before the refunds for subsequent periods were paid.
	SARS withheld payment of refunds to the value of approximately R14,000 for the 2014/01 and 2014/03 VAT periods while others were under audit. On this matter it must be noted that SARS stated on the close out/finalization report that when cases are referred to case selection, they go into a pool and in some cases they are not touched until a complaint is lodged with our office, and will only be prioritised at that stage. There is therefore serious prejudice to the taxpayer.
	The vendor submitted VAT returns for periods 11/2016 on 19 December, 12/2016 on 31 January and 01/2017 on 28 February 2017. SARS finalized the audit for period 11/2015 on 13th March 2017 with no changes. Refund was not paid out. SARS combined audits for periods 12/2016, 01/2017 and 02/2017. The audit was finalized on 31 March 2017. No changes were made in respect of these periods. The total value of all refunds was R10.5m, which was paid only on 8 May 2017. It is worth mentioning that the entity was caused great hardship and had to borrow money from the bank to survive.

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

5.1.4 **Provisional Report:** Recommendations

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

5.2 SARS's response

- *"Issues 3 and 5 are substantially similar.*
- *SARS acknowledges the frustration when refunds are held up because of the filing of a later return, and this is exacerbated if there is a short period between filing.*
- *SARS suggests that it should be acknowledged that a significant number of refunds present a risk to the fiscus, which is illustrated in paragraph 2.4.2 of the Provisional Report where it is reported that over 1/3rd of refunds claimed are reversed by SARS. It is proposed that this should be mentioned to contextualise the challenge to SARS when dealing with the practical challenge that, amongst the high volume of refunds claimed, there is a significant number of illicit refund claims. While risk identification is one method of preventing illicit claims from being paid out, the reality is that risk identification is done systematically, for example through the comparison of third-party data, but the resolution of identified risks is a manual procedure. The manual review naturally takes a longer time. While a manual audit/ verification is being carried out, other returns for later periods may be submitted - which creates a congestion of multiple refunds and at times simultaneous reviews of refunds being conducted on*

one taxpayer but for multiple periods. As the time when each review of each period is concluded is not synchronised this results in the same concluding processes being repeated for the same taxpayer - but for different periods. SARS notes that this overlapping of procedures can result in repetition which can be frustrating for taxpayers and which is also not the most efficient method of conducting verifications. The unfortunate perception raised by practitioner bodies is that SARS delays payment of refunds."

- OTO's Comment: The complaint is that section 190 of the TAA (discussed in detail on Page 104 above) legislation does not allow SARS to withhold a refund on account of a subsequent return being submitted, or to withhold a refund for one period pending verification or audit of another period. While SARS's response provides a reasonable explanation why verifications or audits on various periods may sometimes overlap, it does not offer an explanation on the complaint raised. Furthermore we remain of the view that the legal points canvassed above remain valid and raise concerns. The complaints are justified. Recommendations: SARS should operate within the legal framework; given also the hardship caused to taxpayers. The above practice should therefore cease.

6. Alleged obstacle: SARS using historic returns.

6.1 Our investigations and findings

6.1.1 Summary

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

6.1.2 Cases for illustration

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

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

6.1.4 Provisional Report: Recommendations

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

6.2 SARS's response:

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

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

comment in respect of obstacle 11 is different: there we find that it was the taxpayer's fault.

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

7.1 Our investigations and findings

7.1.1 Summary

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

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

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

7.1.2 Cases for illustration

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

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

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

23/03/2015: The taxpayer's representative queried the TPA providing proof that the declarations were correct and had already been paid in full. In the same letter the taxpayer requested SARS to refund the full amount that was withdrawn from the bank account.

- 01/07/2015: SARS informed the taxpayer that R2,917.16 of the amount was utilised to set off another tax debt, but that the account has been rectified and R552,304.56 was at that stage an unallocated credit on the account. Notwithstanding the fact that the taxpayer already requested this amount to be refunded, SARS asked whether it should be refunded or be utilised to offset future periods. SARS also apologised for the inconvenience caused.
- 16/07/2015: At this stage the taxpayer had already ceased trading and was arranging to be wound up. Accordingly the taxpayer requested deregistration as employer.
- 21/07/2015: SARS noted on its system that there was a credit on the account and sent the taxpayer a letter notifying it thereof. It must be noted that the letter does not require any action by the taxpayer and merely notifies it of the credit. From the procedures set out in its policies SARS is supposed to send the taxpayer a letter and only raise assessments if the taxpayer does not respond. Yet the letter written did not really require any reaction.
- 30/07/2015: SARS noted on its system that it received the request for deregistration.
- 03/08/2015: SARS noted on its system that the request for a deregistration and authentication have been received.
- 12/08/2015: SARS again noted and sent the exact same letter notifying the taxpayer of the credit. Again the notifications did not require any action from the taxpayer.
- 01/09/2015: SARS made a note on its system referring to a Head Office Project and notes "NO REPLY FOR UNALLOCATED LETTER SEND [sic]. ASSESSMENT DONE ON 2015/02." There was however no assessment raised for the 02/2015 period on the PAYE account. Instead the SARS official raised the assessment on the UIF account for the 02/2015 period. The assessment created a UIF liability of R552,304.56 which is exactly the amount of the credit which SARS confirmed to the taxpayer was available. It must be noted that at this stage SARS acknowledged it was an error to collect the money by way of a TPA, and apologised. To re-iterate, the taxpayer had already, made it clear that it wanted the funds to be refunded, and also notified SARS that it was no longer trading and was deregistering. This information was on SARS systems and the official who raised the assessment on UIF to absorb the credit ought to have been aware of it.
- 02/09/2015: The assessment on the UIF account was approved.

- 30/09/2015: SARS took the credit from the PAYE account to pay the UIF assessment.
- 03/02/2017: The Tax Ombud accepted a complaint by the taxpayer and recommended to SARS that the refund be paid as it was not proper to raise an assessment on the UIF for the purpose of absorbing the credit.
- 15/03/2017: SARS revised the UIF assessment; and the credit once again reflected on the taxpayer's account.
- 27/03/2017: Regardless of the fact that at this stage SARS had acknowledged that the credit was valid and the fact that the OTO had also referred SARS's own acknowledgment to its own notes of its error in initiating a third party appointment, SARS again requested proof that the taxpayer actually paid the money to SARS.
- 30/03/2017: SARS approved the payment of the refund, but it was not actioned yet.
- 31/03/2017: SARS actions the refund (but not yet paid).
- 05/04/2017: The taxpayer contacted the OTO and confirmed the refund reflected in its bank account on 04/04/2017.

Follow-ups, by one internal unit to the relevant one got no response. SARS was obliged in terms of section 96 of the TAA to serve a notice of assessment, together with reasons to the taxpayer.

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

b) Other cases

OTO CASE NUMBER	CASE INFORMATION
	SARS raised assessments on two VAT periods 2016/08 and 2016/12. The taxpayer paid the debts, but lodged objections thereto which were partially allowed. After the assessments were revised there was an overpayment by the taxpayer of R39,784.88. SARS raised estimated assessments to absorb the credits notwithstanding the taxpayer's request to be refunded. ²
	The taxpayer accidentally paid its 2016/12 VAT account twice. The representative provided SARS with proof of duplicate payment as well as a request for the credit to be refunded. SARS raised an assessment on 11 March 2017 to absorb the credit of R121,269. Again, the assessment raised exactly the same amount as the undisputed overpayment.
	The taxpayer accidentally paid its 2016/12 VAT account twice. The representative provided SARS with proof of duplicate payment as well as a request for the credit to be refunded. SARS raised an assessment on 13 March 2017 to absorb the credit of R120,282. Again, somehow, the assessment matched the undisputed overpayment.

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

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

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

7.1.4 **Provisional Report:** Recommendations:
It is strongly felt that the above practice be discontinued.

7.2 SARS's response:

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

- OTO's Comment: This is commendable. However, SARS does not state when it ceased these inappropriate practices. It was important for us to know the effective date to enable us to properly handle taxpayers' complaints.

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

8.1 Our investigations and findings

8.1.1 Summary

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

8.1.2 Cases for illustration

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

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

When the taxpayer called the SARS Call Centre to enquire progress on the matter, the latter advised the taxpayer that it had to wait for a further 30 days for the refund. A third similar letter was issued by SARS on 31 March 2016 requesting similar information as the 1st and 2nd letters.

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

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

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

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

8.1.4 **Provisional Report:** Recommendations:

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

8.2 SARS's response

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

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

9.1 Our investigations and findings

9.1.1 Summary

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

Analysis of the Issue

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

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

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

³ Section 164(1) of the TAA.

⁴ Section 164(7) of the TAA.

OTO CASE NUMBER	CASE INFORMATION
	<p>SARS raised an assessment which the taxpayer paid according to the pay now argue later rule. The assessment was disputed and on appeal SARS conceded. The revised assessment resulted in a credit of R255,147.75 which was due to the taxpayer. This amount was supposed to be refunded to the taxpayer but instead SARS raised assessments on 21 September 2016 to absorb the credits. On 24 October 2016, the taxpayer requested reasons for the assessment as he noted none were provided when the assessment was raised.</p> <p>SARS responded on 15 November 2016 to the request by asking for proof of payment. The taxpayer responded with all requested documents on 22 November 2016.</p> <p>On 10 February 2017 the taxpayer lodged a complaint with SARS's internal Complaints Management Office. It took the CMO almost a month to find a person who could attend to the complaint and on 02 March 2017 the taxpayer was informed that he was supposed to object to the assessment. CMO was happy with this response and closed the case.</p> <p>The taxpayer then lodged a complaint with the OTO and after it was again referred to SARS the refund was paid on 22 May 2017 without any need for the taxpayer to lodge an objection.⁵</p>

SARS made several errors in this case:

- a) it did not comply with its legal obligation to refund excess amounts created after an assessment was paid, but later revised after being successfully disputed;
- b) it raised assessments to absorb a credit;⁶
- c) it did not provide the taxpayer with reasons for the assessment as obliged;⁷
- d) when the taxpayer asked for reasons for the assessment it could not refer the taxpayer to any document with reasons, nor provide the reasons as obliged; rather, it chose to respond to the taxpayer's questions by asking questions;⁸
- e) it did not refund the credit after the taxpayer complied with its requirements to provide proof of payment of the amounts;
- f) it expected the taxpayer to lodge an objection to an estimated assessment which was raised with the sole purpose of avoiding to pay a refund that was the result of a revised assessment after SARS conceded on appeal that it was incorrect to have raised the additional assessment in the first place. In other words, a justifiable inference can be drawn that SARS wanted to keep the money it was not entitled to.

9.1.3 Our finding is that such complaints are justified.

9.1.4 Recommendations

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

⁵ This example is also applicable to complaint 7 above.

⁷ Section 96 of the TAA.

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

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

9.2 SARS's response:

- *"SARS acknowledges that there are instances when a reduced assessment is not made swiftly to reflect the outcome of a dispute. An undertaking is given that SARS will endeavour to revise an assessment within 45 days of the resolution of a dispute".*
- OTO's Comment: While the move is commendable, the period of 45 days is too long. Considering the hardships which the delay can cause to a taxpayer, a shorter period should be considered.

10. Alleged obstacle regarding Diesel Refunds delays

10.1 Our investigations and findings

10.1.1 Summary

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

10.1.2 Cases for illustration

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

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

10.1.4 **Provisional Report:** Recommendations
It is suggested that the returns be split.

10.2 SARS's response:

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

11. Alleged obstacle: Raising Assessments Prematurely

11.1 Our investigations and findings

11.1.1 Summary

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

11.1.2 Cases for illustration

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

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

11.1.4 **Provisional Report:** Recommendations

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

11.2 SARS's response:

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

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

12.1 Our investigations and findings

12.1.1 Summary

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

12.1.2 Cases for illustration

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

and 10th of May 2017 that payments of about R98m were made. It transpired that the refunds that had already been confirmed had been utilised by SARS to off-set debts created due to additional assessments that were in dispute. This was done notwithstanding the fact that SARS had not notified the taxpayer whether or not the request for suspension of payment pending the dispute was granted.

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

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

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

12.2 SARS's response:

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

SECTION V

CONSIDERED DATA

1. INFORMATION REQUESTED BY THE OTO FROM SARS

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

- 1.1 Further explanation on why the "Returns not Received" data anomaly identified in April 2016 for VAT would reduce the credit book.
- 1.2 The Nett Credit book for April 2017.
- 1.3 An age analysis of refunds higher than R500,000;
- 1.4 Month by Month rand value and number of cases where credits were paid out to taxpayers for the 2016 and 2017 financial years, in respect of refunds higher than R500,000 in value;
- 1.5 Specific tax reference numbers for all 630 cases refunds higher than R10,000,000;
- 1.6 Month by month rand value of credits identified for audit/verification for the 2017 financial year;
- 1.7 Age analysis of cases referred for audit, from the date they were identified until the time they were allocated to auditors; the duration of the audits; and then in the cases where refunds were still payable, the time from when the audit was finalised until date of payment;
- 1.8 Month by month rand value of reduction of the credit book due to audit/verification for the 2017 financial year;
- 1.9 Month by month number of cases identified for audit/verification for the 2017 financial year;
- 1.10 Month by month number of cases identified for audit/verification where assessments were raised to reduce credits for the 2017 financial year;
- 1.11 Rand value and number of cases where assessments were raised in order to reduce unallocated credits (overpayments of tax) to zero for the 2016 and 2017 financial years;
- 1.12 Further elaboration on the cause and the extent of the backlog cleared during December 2016 referring specifically to tax types, number of cases as well as rand values.

2. ANALYSIS OF THE INFORMATION RECEIVED

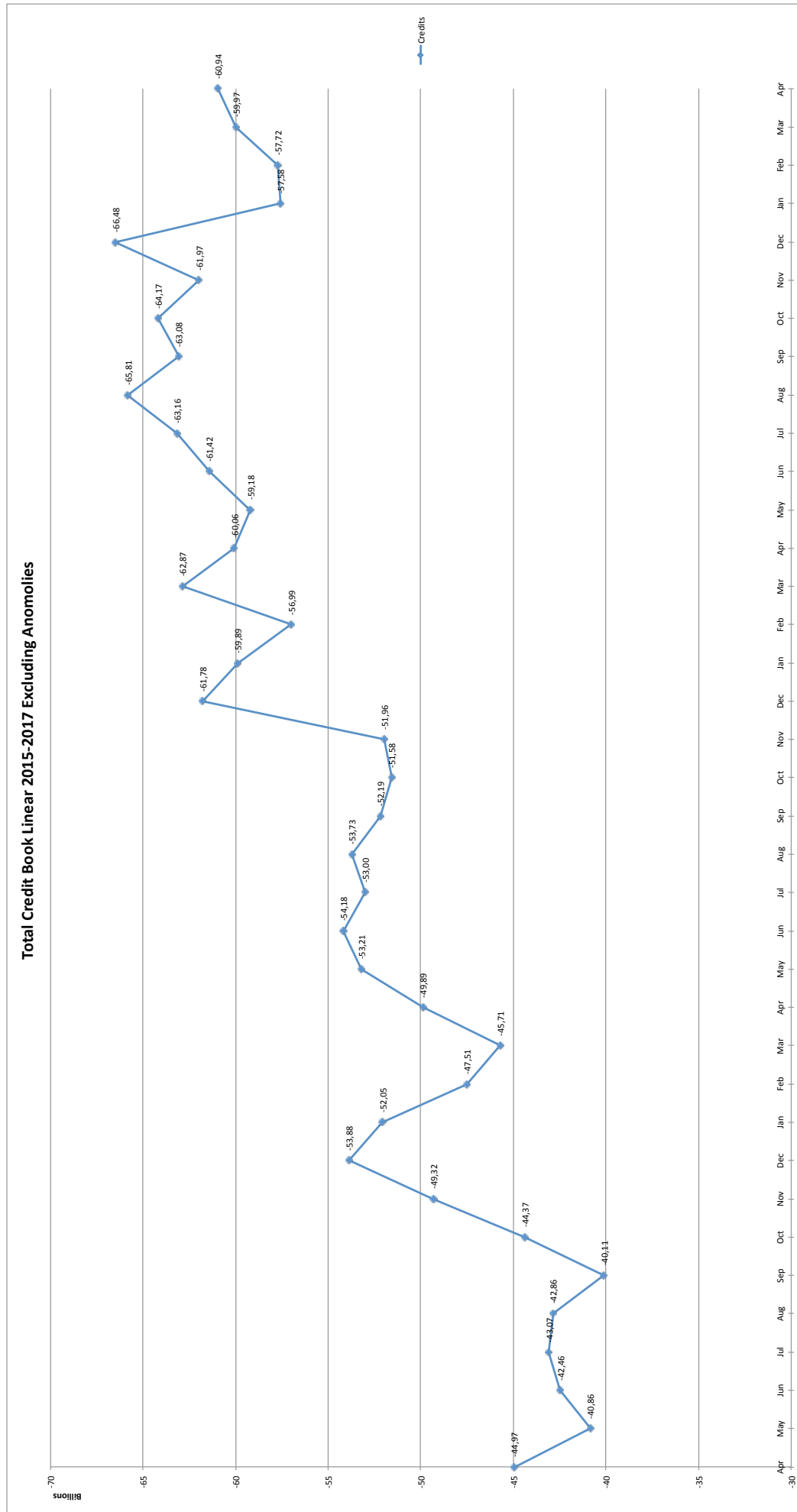
2.1 **The monthly taxpayer credit book; refunds paid to taxpayers; and the anomalies of refunds paid during the period January – March 2017.**

- 2.1.1 The credit book reflects all amounts owed to taxpayers. At the risk of over simplifying the operation of the credit book, there are certain principles that must be affirmed before the analysis can be discussed. The Credits are created on this account when a refund is claimed on a return, if an overpayment is made on taxpayer account, or if a payment is made into an incorrect account. A credit created by a payment without a return will not be paid to a taxpayer but will be absorbed either when the return is submitted or where SARS raises an assessment to create the necessary debit on the taxpayer's account after ensuring that it does in fact relate to a return that was not submitted.

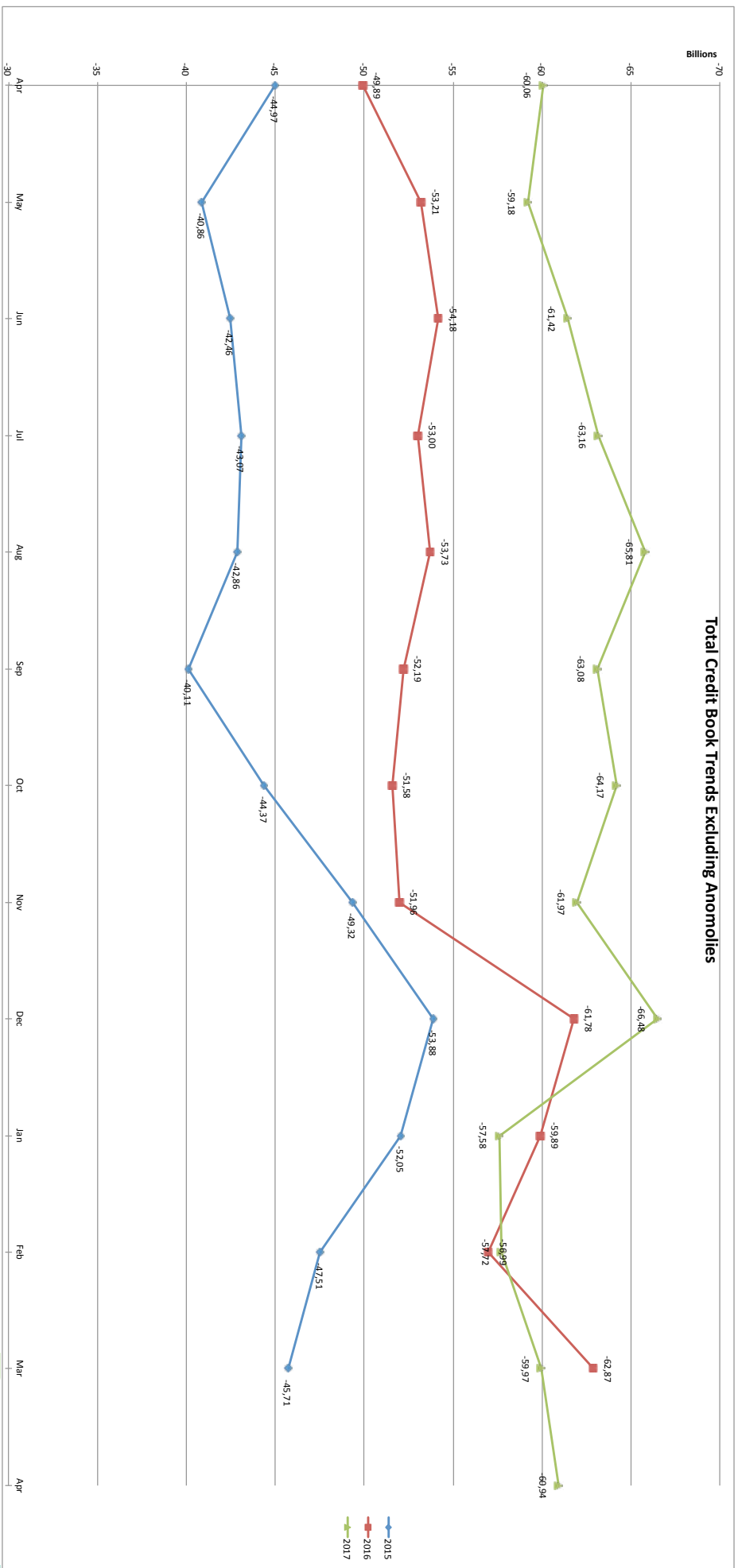
Furthermore refunds claimed may be subjected to verifications, audits or criminal investigation and will also reflect as credits until such time as these procedures are finalised at which point they will either be confirmed and paid to taxpayers, or adjusted by way of additional assessment. Lastly, valid refunds will be utilised to reduce any debits on other tax periods or tax types before they are refunded to a taxpayer to ensure full compliance.

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

GRAPH A

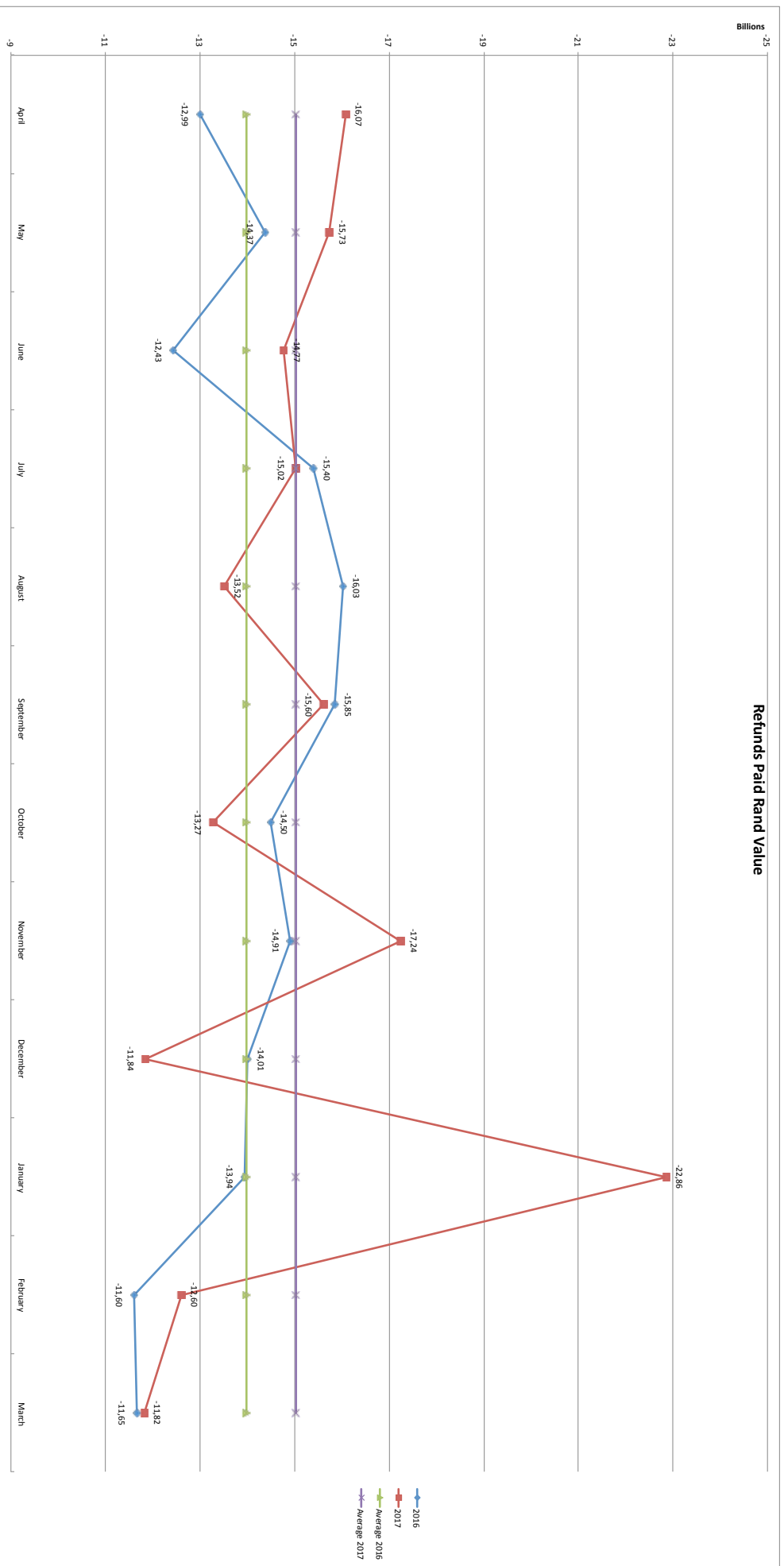


GRAPH B

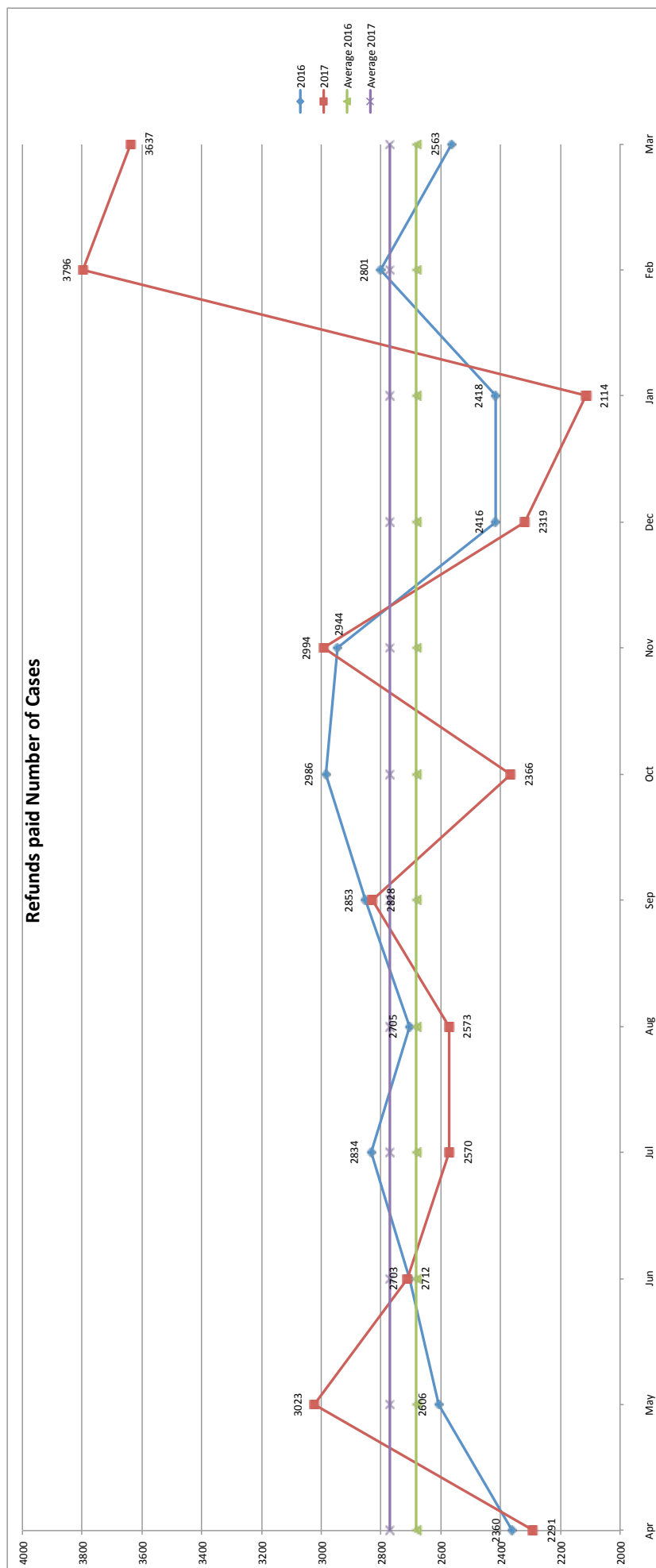




GRAPH D



GRAPH E



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

SARS response:

- *“January 2017 reflects the highest value of refunds paid in the last three financial years. The Provisional Report states that “(T)he period January 2017 is an anomaly that has not been explained to this office” but acknowledges that SARS indicated that the anomaly is explained by clearing a backlog of low volume and high value cases. While the Reports notes this as plausible, the Report does not accept that this is an annual occurrence because January 2016 reflects a significant reduction in the value of refunds paid.*
- *The following is presented as an explanation of the anomaly and explains that SARS’s focus on backlogged low volume, high value refunds is an annual occurrence.*
 - *The number of routine business transactions reduces during December each year, and this provides an opportunity for SARS to concentrate on larger cases that naturally take longer to scrutinise and finalise.*
 - *These verifications/audits take place during December and are approved at higher levels within SARS, before the festive season begins and offices operate on skeleton staff.*
 - *Refunds finalised in December would usually be paid in January of the following year.*
 - *The approach in the 2016/17 year was no different, except that the value of refunds paid in January 2017 was approximately R10 billion greater than the value paid in January 2016.*
 - *As the OTO requires a more detailed explanation, SARS has extracted additional information.*
 - *Approximately 70% of the value of VAT refunds paid in January*

2017 was paid to 150 vendors - this accounts for R15.94 billion in refunds paid. We tracked the amounts refunded in January of each of the three preceding years to those vendors appearing in the top 150 for the 2017 year. Those vendors who appear in the 2017 year's top 150 were paid an amount of R 6.12 billion in 2016.

- Not all these vendors appeared in the Top 150 vendors of the preceding years. For example, only 97 of the vendors who are reflected in the Top 150 for 2017 were refunded in the 2016 year. All these 97 vendors were refunded amounts less than R500 million each in 2016, while in 2017:
 - 145 of the 150 vendors were refunded amounts less than R 500 million; 3 of the 150 vendors were refunded amounts between R500 million and R1 billion; and
 - 2 of the 150 vendors were refunded between R1 billion and R3 billion.
- If the same approach is applied to identify the top 150 taxpayer receiving refunds in January 2016, the result is similar, in that they have been paid R8.5bn (61%) of the total R 13.8bn of VAT refunds.
- From this analysis it is evident that 2016 was an anomalous year for the opposite reason that 2017 is an anomalous year. In 2016 not all the top 150 vendors who were paid refunds in 2017 were paid refunds in 2016 - they were paid almost R10 billion less (R15.94 billion in 2017 and R6.12 billion in 2016). The top 150 vendors who were paid refunds in 2016 were paid R 8.5 billion and the top 150 in 2017 were paid R15.94 billion - a difference of R7.44 billion. This suggests that the top refunds paid in 2016 were un-expectantly low and counterintuitive to a trend of increasing values.
- Considering that the value of refunds in January 2017 was high and the value of refunds in January 2016 was lower than expected, the difference between the two years would create an even greater perception of an anomaly in January 2017".

- OTO's Comment: We understand and accept the above exposition. However the amounts of the refunds paid out in January, February and March 2017 were lower than the average in the year (see also para 2.1.4 above). The graphs show that the credit book has increased significantly over the last three years. Graph C clearly shows a spike in refunds paid during July of each year. Thereafter the value gets progressively less, with refunds paid during January, February and March seemingly below average. The exception was January 2017, with fewer payments, but of high value. Paragraph 2.1.6 below shows that in value terms, less money was paid out.

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

VALUE	NUMBER OF CASES
< -100	3,724,202
-100 to -1,000	600,388
-1000 to -5,000	381,613
-5,000 to -10,000	134,463
-10,000 to -30,000	136,937
-30,000 to -40,000	23,461
-40,000 to -50,000	15,092
-50,000 to -100,000	34,644
-100,000 to -250,000	23,245
-250,000 to -500,000	9,761
-500,000 to -1,000,000	5,517
-1,000,000 to -10,000,000	5,588
-10,000,000 to -25,000,000	404
-25,000,000 to -50,000,000	122
-50,000,000 to -62,000,000	20
< -62,000,000	84
Total	5,095,541

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

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

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

This category of credits amounts to R25,68 billion which is a significant amount.

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

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

- 4 Refunds delayed due to bank account verifications;
- 1 Refund paid but recalled by way of Third Party Appointment;

- 8 Refunds set off against other tax debts;
- 12 Refunds pending audit/verification/investigation;
- 9 Matters simply stating “Stopper 80 – Refund Stopped”.

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

SARS response:

- *“SARS was not included or involved in the selection and the analysis of this sample, and has not been provided with details of the OTO’s analysis. Apart from advising that we have not been able to reconcile the granulated results back to the sample of 60, it is unfortunate that we cannot comment on the results.*
- *It would be expected that the sampling technique be described in order to give creditability to the results i.e. was the sample selected randomly. This is considered to be more important in that:*
 - *The 630 cases supplied by SARS is already skewed in that they represent the highest refund value and thus do not reflect what the entire population of 5 095 541 refund cases would represent; and*
 - *As mentioned, manual verification/audit takes time and since these cases represent the highest number of cases in value, it would be expected that SARS would apply greater attention to verify the validity of the claim. By their very nature, it would be expected that more time spent on these cases.*
- *Your report notes that 54 of the 60 cases are older than 60 days. The insinuated impression is that 90% of cases involving a refund in excess of R 10 million are delayed beyond 60 days. Although you have not provided SARS with any details of the sample, our statistics are that:*
 - *95% of volume and 90% of Rand value of personal income tax refunds are paid within 60 days;*
 - *80% of volume and 58% of Rand value of company income tax refunds are paid within 60 days; and*
 - *92% of volume and 90% of Rand value of VAT refunds are paid within 60 days.*
- *It is submitted that in order to contextualise your comments, that reference be made to the total number and value of refunds paid within the time periods”.*
- *OTO’s Comment: We agree that the 630 sample was small. It is conceded that SARS was not involved in the selection and analysis of the sample; however no details were asked of the OTO about the sample. We are however grateful for the information given, namely, that 89% of the total refunds (2017) or 79% of the rand value, were paid within 60 days. Our concern though is about the refunds beyond the 60 days (the 11% of the refunds, representing the 21% of the refund rand value).*

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

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

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

VALUES	RAND VALUE	% REDUCTION
Original Return	-200,128,001,510	
Adjustment/Reduction	34,776,054,832	-17.38%
Final Assessment	-165,351,946,677	

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

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

AUDIT OUTCOMES	NUMBER OF CASES	PERCENTAGE
No change	964,910	
SARS Favour	504,468	33.60%
Taxpayer Favour	31,818	

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

SARS response:

- *"The (Provisional) Report suggests that because SARS finalises a large number of refund audits/verifications (1 501 196) SARS has adequate capacity to deal with current and backlogged cases. The Report notes that this suggestion is contrary to SARS's statement that there are limited resources available.*
- *This "suggestion" in the Report, with respect, is incorrectly based on output figures alone, and creates an unfounded suggestion that SARS has sufficient capacity.*
- *An analysis of SARS's audit/verification capacity, productivity and efficiency is a different exercise that must take into account productivity variables such as head count, standard times and seasonality as well as the work force's range of experience and capabilities.*

- *In addition, such a capacity analysis should include an analysis of comparable tax administrations”.*
- *OTO’s Comment: We previously raised the issue of capacity constraints. While we accept what SARS says, it is still not clear from SARS’s response whether there are such constraints; but it is a matter which is peculiarly within SARS’s knowledge.*

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

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

AUDIT TYPE	PRODUCT TYPE	AUDIT - CREATE TO ALLOCATE	AUDIT - EXECUTION	REFUND - AUDIT TO PAYMENT
1. COMPLIANCE	CIT	22	9	13
	PIT	26	5	7
	VAT	31	13	5
2. LIMITED	CIT	22	43	12
	PIT	24	44	7
	VAT	10	73	12
3. FULL	CIT	19	100	52
	PIT	4	78	13
	VAT	8	108	42

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

- 2.5.1 There should be very minimal delays in the first and last columns. It should ideally not take months to allocate a case to an auditor once it has been identified for audit; otherwise the case is lying dormant for no justifiable reason. Similarly, after the audit or verification has been completed and the taxpayer complied with his/her/its obligations, there should be no justifiable reason why payment should not be made immediately.
- 2.5.2 The above table provided by SARS presents two problems.
- 2.5.2.1 The first one is that SARS says that payment cannot be accurately tracked because there are too many variables that may delay payment; for instance, outstanding returns and bank account verifications. SARS has also indicated that there are systems limitations that make tracking this information across its different systems near impossible. The information in the last column is therefore not useful, except that

it shows the need for the up-front verification of administrative issues to ensure that when the audit/verification is finalised there are no further administrative issues to delay payment.

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

Illustrative case:

On 15 July 2016 this matter was identified for audit and SARS issued a Referral for Audit letter. On 20 September and 05 October 2016 Taxpayer requested feedback from SARS and was advised that the Personal Income Tax Assurance audit was in progress and that the Turn Around Time was 3-12 months. The taxpayer lodged a complaint with this office and on 21 October 2016 a recommendation was sent to SARS to attend to the Personal Income Tax assurance audit and give the taxpayer progress report. According to SARS the matter was immediately allocated to an auditor and the audit was finalised on 24 November 2016 with the refund paid on 29 November 2016.

SARS response:

- *“The Report refers to a Table which represents average time frames, and the Report states that the OTO has had cases where the periods are longer. As the time periods in the illustrative table are average time periods, individual cases will be both longer and shorter than an average time. The specific reference of cases in the OTO’s inventory which have longer time periods creates a negative tone and if this remark is made then it should be balanced with a comment that there are individual cases that have shorter periods”.*
- OTO’s Comment: While this is noted, it must be borne in mind that the complaints are about delayed refunds; refunds within

a short period are not an issue. Anyway, the word “average” means just that; it acknowledges that there are cases in either category: shorter period and longer period. The point must be made though that a delayed refund may have a devastating impact on a taxpayer.

- SARS: *“As raised at the outset, the meaning of systemic is that which relates to the system as a whole. By placing emphasis on some cases in the OTO’s inventory the Provisional Report skews the objective of a systemic analysis”.*
- OTO’s Comment: By virtue of the fact that the Ombud in general deals with complaints, any investigation of a systemic issue will naturally concentrate on negative aspects of the subject of the review. Systemic reviews by the Tax Ombud must seek to investigate any underlying issues in the tax system that negatively impact on taxpayers. The present issue is the alleged undue delay in the payment of verified refunds. Therefore, by placing emphasis on such complaints, the objective is not skewed, but focussed exactly where it should be.

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

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

What is important to note is that from August 2016 to March 2017 only, more than R220million was reduced on PAYE in this fashion. While this number may seem trivial in relation to a trillion rand revenue collected by SARS, the practice of raising assessments solely to absorb credits simply because a taxpayer has not explained an overpayment is of grave concern. This issue is linked to that of the raising of assessments to absorb credits (pages 107-111).

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

SECTION VI

FINAL REMARKS AND CONCLUSION

1. Final Remarks

- 1.1. Complaints increased during the latter part of 2016 to March 2017.
- 1.2. Where appropriate, recommendations have been made relative to the complaint(s) raised.
- 1.3. A number of complaints that the payments of refunds were unduly delayed were justified; the refunds could and should have been paid earlier. In such instances, no satisfactory explanations were given by SARS for the delays.
- 1.4. Some of the mechanisms employed by SARS discussed above, have justifiably given taxpayers the impression that SARS's intention is, at least in some instances, to avoid parting with the money it should pay out; see for example paragraph 7 SECTION IV, pages 107-112; and paragraph 2.6 SECTION V, page 131.
- 1.5. The financial hardship to taxpayers caused by the delayed payment of refunds has been drastic in some instances; how much the amount is, does not matter.
- 1.6. It is accepted that SARS is confronted with the problem of fraudulent refund claims. Some of the measures it puts in place should be understood in this context.
- 1.7. Notwithstanding paragraph 1.6 above, once verification/audit of the refund is completed, there should be no undue delay; yet illustrative cases show that this has been happening.
- 1.8. It was commendable to pay out as many taxpayers as possible as SARS says it did, however:
 - 1.8.1 that would be of no comfort to a taxpayer whose refund remains unpaid, and who may be enduring financial hardships;
 - 1.8.2 the residual (non-paid) taxpayers may be of very high value, as indicated in the Report, whose payments, once made, would reduce the amount of tax collected over that particular period. It is therefore imperative that they be paid out timeously.
- 1.9 We finally conclude by pointing out the need for ensuring that refund payments are made as speedily as possible. Illustrative cases have shown that the system as presently administered by SARS does not always achieve this.

2. Conclusion

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



JUDGE B M NGOEPE
TAX OMBUD

Dated: 28 August 2017

ANNEXURE 1

INVENTORY

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

ANNEXURE 2

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

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

ANNEXURE 3

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

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

ANNEXURE 4

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

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

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





**Menlyn Corner, 2nd Floor
87 Frikkie De Beer Street Pretoria, 0181
PO Box 12314, Hatfield, 0028**

T 0800 662 837 or + 27 12 431 9105

F + 27 12 452 5013

E complaints@taxombud.gov.za

W www.taxombud.gov.za

© OFFICE OF THE TAX OMBUD 2017

ISBN RP291/2017 ISBN: 978-0-621-45818-3

