



‘CONSISTENCY CHECK’ CASES ARE CONTRIBUTING TO DELAYS IN PAYING TAX REFUNDS

Delays in the payment of tax refunds are still the most frequent complaints lodged with the Office of the Tax Ombud. This is despite the OTO previously compiling a hard-hitting report on the issue, together with recommendations on how the South African Revenue Service (SARS) could resolve the matter. Now the OTO has identified another SARS practice that contributes to delays.

A NEW SYSTEMIC ISSUE CONTRIBUTES TO DELAYS

The Office of the Tax Ombud, in cooperation with SARS, has worked hard to reduce systemic issues plaguing taxpayers. Systemic issues are matters that can be regarded as the underlying causes of complaints that affect or will affect many taxpayers in the tax system.

These systemic issues often relate to how specific SARS systems function, how SARS drafts and implements policies, practices or procedures, and how it applies or disregards legislative provisions.

In the past four years, the number of open systemic issues has been reduced from over 20 to just 11 by October 2022. A list of the current open systemic issues can be [accessed online](#). However, an investigation by this Office discovered an increase in complaints about delays in the payment of VAT refunds fuelled by a SARS practice that we refer to as “consistency check” cases.

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BACKGROUND

The issue was brought to the OTO’s attention when we received a complaint about a VAT refund that was not paid out. A preliminary investigation revealed that a consistency check case on the SARS system was the cause of the delayed payment of the refund.

It was established that SARS uses consistency checks when it is concerned about the declarations and claims made in returns submitted by taxpayers or VAT vendors. After identifying certain risks, SARS would contact the vendor to clarify whatever issue it has with the information on the return. If the information is confirmed to be correct, SARS loads the return on the vendor’s profile.

At face value, there does not appear to be anything wrong with SARS verifying information on returns, but a closer look reveals why this practice is problematic.

The first problem with this practice is that, pending the finalisation of these cases, the return does not reflect as being submitted on the vendor’s profile. This affects the vendor’s tax compliance status.

Furthermore, unless supporting documents are required, SARS is allowed 21 days from submission of a VAT return to pay out a VAT refund before interest is payable to a vendor for the late payment of the refund. This means that when a consistency check case takes longer than 21 days to finalise, interest will not start accruing to the vendor, as the return will reflect as not being submitted on time.

SUBSTANTIAL AMOUNTS INVOLVED

Since identifying the first case, the OTO has received several more complaints where consistency checks were deemed the main reason for delaying the payment of refunds. In a sample of five of these cases, we found that this practice delayed refunds of just under R34 million due to vendors.

OUR CONCLUSION

After engaging SARS, the OTO identified consistency checks as a systemic issue.

While the OTO acknowledges that SARS must ensure the correctness of VAT returns, especially when refunds are involved, Chapter 5 of the Tax Administration Act (TAA) is very clear in respect of the process for doing so.

SARS is well within its rights to request a vendor to submit an amended return if there is an error in that return. However, this TAA provision applies only if that error is undisputed. This would allow the taxpayer to correct the error and avoid an assessment being issued based on a clearly incorrect return, as well as the time-consuming dispute resolution process to have the assessment corrected. However, the consistency check cases that we investigated do not fall into the category of undisputed errors on the returns.

How SARS treated the cases in question was in line with the verification process, but the process took place before the return was loaded on the vendor's profile and reflected as submitted. This was not in accordance with SARS's normal verification process.

The OTO has recommended that SARS immediately stop creating consistency check cases to do verifications outside the established verification process.

NEXT STEPS

The OTO has informed SARS that this issue has been identified as systemic and the revenue collector has indicated that it is in the process of attending to the OTO recommendation urgently.

In the meantime, any taxpayer who is subjected to this process is free to lodge complaints with the OTO.

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