



Fairness for all

The Office of the Tax Ombud (OTO) is pleased to present to you the second issue of **Fairness for all**, the Office's informative monthly newsletter, featuring important case studies. The current issue features a crucial case which saw highly questionable actions by the revenue collector, several contraventions of tax legislation, and a possible abuse of power. The result of the case was a payment from SARS of:



Over **R73 million** in refunds,



As well as **R6 million** in interest payment by SARS, due to the delay in paying these refunds.

Background


What was the tax complaint?

- This case relates to a complaint lodged on **18 December 2017** on behalf of a taxpayer.
- The complaint was due to delays in the payment of SARS refunds of approximately **R5 million** for **two** VAT periods dating back to **2016**.
- By **September 2018**, SARS had finalised verifications for each VAT declaration submitted by the taxpayer, after the periods for which the complaint was lodged.
- No **audits or investigations** were initiated. Yet, the refunds had **not** been paid out.
- By this time the refunds due to the taxpayer had **increased** to more than **R24 million**.




Based on the above information, what did the OTO decide to do?

The OTO informed SARS:



That it was extending the acceptance of the complaint to include all the subsequent refunds;

AND



That unless SARS could provide a legal basis on which the refunds were withheld, this could be seen as an abuse of power.

In **October 2018**, SARS initiated an audit that included the VAT periods from 2014 to August 2018. At this point, the total refunds claimed, but not paid, amounted to more than **R30 million**.

During **July 2019**, SARS sent a progress report to the taxpayer, still indicating the scope of the audit as being up to and including August 2018. By this stage, the refunds claimed amounted to more than **R49 million**, of which more than R27 million fell in periods outside the scope of the audit (i.e. the period between August 2018 and July 2019).

The OTO escalated the complaint yet again, referring to the previous questions about the legality of SARS's actions that had been ignored. SARS was again requested to provide the legal basis on which it was withholding refunds that were not under audit or verification; as well as justification for why its actions did not constitute an abuse of power. SARS again ignored the request. However, the next progress report on the audit sent to the taxpayer (after the OTO escalation) suddenly included the VAT periods up to and including August 2019.

Findings

Who was at fault?

The initial finding was that SARS conducted assessments prematurely. It provided the taxpayer 21 days to submit documents, but assessments took place before this period expired. It became apparent that SARS was continuously disregarding the provisions of the Tax Administration Act by withholding refunds for periods where there were no verifications or audits pending.

“

What is of great concern is the fact that, on face value at least, it seems as though SARS was content to hold back refunds it was not legally allowed to withhold – until the OTO raised the issue.

”

Only after its non-compliance was placed on record did SARS conveniently initiate an audit in 2018, and only after it was again informed of continued non-compliance did it extend the audit to include periods that were not included in 2019.

In the OTO's view, this was purely an attempt to legitimise its disregard for the legal provisions. The law is just as applicable to SARS as to taxpayers, not to mention that this is the very legislation that SARS administers.

The conduct by SARS in this matter left a lot to be desired and had a direct negative financial impact on the taxpayer, the economy, and on its own constrained capacity due to loss of working hours.

Other errors made by SARS during this matter also included:



SARS not responding to a request for suspension of payment;

AND



Contravening s164(6): taking debt recovery steps on a tax debt for which a request for suspension of payment was pending.

Resolution

What was the outcome?

Refunds totaling more than **R73 million** were paid to the taxpayer in **January 2020**. In addition to this amount, interest of over **R6 million** was paid and was directly attributable to SARS's conduct. SARS could find fault with only R1,6 million of the declarations made spread over nine periods between August 2015 and December 2018.



Important

*It is noted that the interest paid is a direct result of SARS's disregard for not only the law, but also for the recommendations made by the OTO. Had SARS taken the recommendations of this Office seriously, interest would not have accrued to this extent, since the OTO had notified SARS from the beginning that it was not allowed to withhold refunds under these circumstances. **Furthermore, tens of millions of rands were kept out of the economy by SARS's conduct, for an extended period.***

Conclusion

What can be learnt?

Most entities who are subjected to the same treatment by SARS would surely not be able to survive. The outcome in this matter is an expensive one for the taxpayers who foot the bill for the interest paid. It cannot be in the best interest of South Africa's economy and its citizens for this kind of practice to be repeated.

Notice

This monthly newsletter will be published towards the end of each month. Please send your feedback on the newsletter and the types of cases featured to PSeopela@taxombud.gov.za or Communications@taxombud.gov.za.

Copyright Notice And Disclaimer

The information provided in this document is protected by applicable intellectual property laws and may not be copied, distributed or modified for any purpose without the explicit consent of the Tax Ombud. The information was correct at the time of publication but may have subsequently changed. This newsletter is for information purposes only and cannot be considered to be a legal reference. The use of this information by any person shall be entirely at that person's discretion. The Office of the Tax Ombud does not expressly or by implication represent, recommend or propose that services referred to in this document are appropriate to the needs of any particular person. The Tax Ombud does not accept any liability due to any loss, damages, costs and expenses, which may be sustained or incurred directly or indirectly as a result of any error or omission contained in this newsletter. The information does not supersede any legislation and readers who are in doubt regarding any aspect of the information displayed in the newsletter should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.