



NOVEMBER

2022

EXPEDITING VAT REFUNDS
Practical Tips on How to Engage with
SARS from A Tax Attorney's Perspective

PRESENTED BY:

ANDRÉ DANIELS &
COLLEEN KAUFMANN

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Our Professional Partner Network (PPN) was created for fellow professionals in the law, accounting, and tax spheres, allowing them to provide their clients with services that may fall outside their usual scope of work. PPN now has over 180 strong fellow professionals around the world who are confidently servicing their clientele through us, under the umbrella of their own firm.

While maintaining professional boundaries and offering legal privilege for sensitive matters, we offer you peace of mind in your business. We are there to assist you with your clients' demands, no matter how complicated it might be. Gaining access to our extensive network of professionals, will broaden your available services and potentially increase revenue without running the risk of alienating your existing clients.



MEET THE SPEAKERS

THE SPEAKERS



ANDRÉ DANIELS

**Legal Manager: Tax Controversy & Dispute Resolution
Admitted Attorney, LLB**

André Daniels is the Legal Manager for Tax Controversy and Dispute Resolution. He holds an LLB degree from the University of Johannesburg with 4 years of legal experience in various aspects of South African law. He is an admitted attorney of the High Court of the Republic of South Africa with both practical litigation and consulting experience. On a daily basis, André deals mainly with tax law, specifically dealing with the elements of tax disputes, voluntary disclosures and all SARS engagements.



COLLEEN KAUFMANN

Tax Attorney: Admitted Attorney, LLB

Colleen Kaufmann, LLB, is an Admitted Attorney of the High Court of South Africa, and part of the legal team at Tax Consulting. As part of the tax legal team, Colleen is currently being exposed to commercial tax and related technical areas, as well as SARS engagements and any ancillary matters thereto.

1.

LET'S START WITH WHAT WE ALL KNOW DOES NOT WORK

- Raising a complaint under SARS' Service Charter.
- Referring the matter to the Tax Ombudsman.
- Allow SARS to miss a deadline and hope that efficiency will occur eventually.



Tax

SO WHY ARE WE ARE HERE?

Dear Colleen

Its time to fight with SARS again!

We submitted our VAT return for July – August 2022 and have a refund of R1.5m due to us.

I have submitted the verification documentation and as usual no response from SARS.

Please can you take this further, I will await the request for access to our VAT profile.

Thank You

THE ITEMS OF GENERAL FRUSTRATION

- Subsequent to a verification/audit being initiated by SARS, taxpayers may not upload supporting documentation timeously.
- Phoning the SARS call centre and waiting for a response, only to have the call dropped due to signal/other issues.
- Allowing pressure to build up from a cash flow perspective due to a VAT refund not being paid out.
- VAT audits when there is a large VAT refund due.

Tax

OTHER CONSIDERATIONS...

- In terms of section 44 of the VAT Act:

- Section 44(3):

*“(3) The Commissioner shall not make a refund under subsection (2), unless- 25
(a) the claim for the refund of such excess amount of tax, additional tax, penalty or interest is made within five years after the date upon which payment of the amount claimed to be refundable was made...”*

- Section 44(6):

“Where any vendor - has failed to pay to the Commissioner within the period prescribed for payment any amount of tax, additional tax, penalty or interest payable by the vendor under this Act; or (b) owes any amount of tax, interest or penalty levied under any Act of Parliament administered by the Commissioner and the vendor is in default in respect of the payment of such amount, the Commissioner may set off against the amounts referred to in paragraphs (a) and (b) any amount or part thereof which has become refundable to the vendor under this section or any interest which has become payable to the vendor in terms of section 45”

OTHER CONSIDERATIONS... (CON.)

- Section 44(7):

“Where the vendor has failed to furnish a return for any tax period as required by this Act, the Commissioner may withhold payment of any amount refundable to the vendor under subsection (1) or any amount of interest payable to the vendor in terms of section 45 until the vendor has furnished such return as so required”

- Compliance is of utmost importance, especially when SARS may look for any reason to not pay a VAT refund, and the law is on their side.

Tax

2. INTRODUCTION – WHAT WE ALL KNOW

- VAT is an indirect tax on the consumption of goods and services in the economy.
- VAT is levied at a standard rate of 15% on the supply of goods and services by registered VAT vendors.
- Taxpayers must register for VAT where the total value of taxable goods or services is more than R1 million in a 12-month period or is expected to exceed this amount (compulsory VAT registration).
- A taxpayer may also register for VAT if the income earned in the past 12-month period exceeded R50 000 (voluntary VAT registration). – Why would one voluntarily register for VAT? Positively affects cash flow, you need all the cash flow you can get, especially with a new business.
- Taxpayers who are registered for VAT must file a VAT return monthly or bi-monthly, as SARS dictate.
- When filing a VAT return, the taxpayer must provide SARS with all documentary evidence required to substantiate their entitlement to input tax.
- If you have difficulty with registration, we hold a mutually respected working relationship with the George branch of SARS – who are very efficient.

3. FRUSTRATION AT ALL FOUR STAGES

- VAT refunds are often delayed due to:
 1. SARS disallow a taxpayer's input VAT claim (sometimes for no reason);
 2. SARS puts the taxpayer through the verification/audit process, requesting certain documentation and a VAT schedule, which the taxpayer then duly provides, and then thereafter hears nothing from SARS as to the payment of the refund;
 3. The taxpayer is successful in a VAT dispute with SARS, and the reduced assessment is not issued; and/or
 4. The credit sits on the taxpayer's statement of account and no refund is received.

Tax



PRACTITIONER GUIDANCE

- According to section 190 of the TAA, SARS is obliged to pay the refund to the taxpayer if the taxpayer is entitled to a refund.
- Should SARS disallow a taxpayer's input VAT claim, the taxpayer must then engage SARS through the formal dispute resolution process by filing a dispute/objection.
- Should SARS select a taxpayer for verification/audit of the refund, and the taxpayer provides SARS with the additional information required within the 21-day time period, in terms of section 190(2) of the TAA, the failure of SARS to pay the refund for a period within a reasonable time may be justified as SARS need not authorise a refund until such time that the verification of the refund in accordance with Chapter 5 has been finalised. The relevant section reads as follows:

“(2) SARS need not authorise a verified refund as referred to in subsection (1) until such time that a verification, inspection or audit of the verified refund in accordance with Chapter 5 has been finalised.” (emphasis added).

WHAT RECOURSE IS AVAILABLE TO TAXPAYERS IN PRACTICE? (CNT)

- However, in terms of Chapter 5, and in particular section 42 of the TAA, SARS has to keep the taxpayer informed and provide the taxpayer with a report indicating the stage of completion of the audit.
- In terms of paragraph 2 on page 5 of The SARS Service Charter (the “Service Charter”), issued 1 July 2018, it states that SARS *“will endeavour to...Pay the current filing period refunds, above R100, within 7 business days of finalising the final assessment”*.
- Therefore, and in terms of the Service Charter, the repayments of refunds are due within a reasonable timeframe after the return was submitted. As a result, SARS may be in breach of its own Service Charter, in respect of many matters with taxpayers.
- There is usually no reason for the delay in the refund being effected to the taxpayer, and such is indicative of SARS’ conduct as discussed in the Tax Ombud’s report dated 28 August 2017, issued in terms of section 16(1)(B) of the TAA, where it was found that:

“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.”

RECENT PRACTICAL EXAMPLES

- Scenario 1:
 - We engaged SARS on a legal basis on 17 October 2022.
 - SARS confirmed receipt of our communication and apologised for the delay, confirming that the matter was receiving urgent attention.
 - SARS confirmed on 23 October 2022 that the refund would be paid.
 - Client confirmed receipt of the funds in their bank account on 25 October 2022.
- Scenario 2:
 - We engaged SARS on a legal basis on 17 October 2022.
 - On 26 October 2022, SARS confirmed that the refund would be paid.
 - On 28 October 2022, client confirmed receipt of the funds in their bank account. Approx. R48 Million.
- Scenario 3:
 - We engaged SARS on a legal basis on 1 November 2022.
 - SARS advised on 7 November 2022 that the refund was paid.
 - Client confirmed receipt of the funds in their bank account on 9 November 2022.

RECENT PRACTICAL EXAMPLES - CONTINUED

Dear Taxpayer

VERIFICATION OF VALUE-ADDED TAX DECLARATION (VAT201)

The South African Revenue Service (SARS) thanks you for submitting your VAT201 declaration for the 202207 tax period.

Please note that, in terms of the Tax Administration Act, your VAT201 declaration has been identified for verification as a result of variances detected in this submission.

Please review your VAT201 declaration against your relevant Value-Added Tax (VAT) calculations and relevant material. If you find any errors, correct them by submitting a request for correction.

If you cannot find any errors pertaining to the VAT201 declaration, you are required to submit the following relevant material:

The output tax schedule, input tax schedule, all documents relating to capital expenditure claimed (if applicable), and other transactional documents that would for example, substantiate any increase/decrease in sales, inventory, change in use adjustment or bad debts.

Please ensure that you enclose this original letter when submitting your relevant material, as it contains a unique bar-coded reference which links it to your VAT account with SARS. A photocopy of this letter will not be accepted by SARS. You may however make a copy of this letter for your records.

Summary Information

| | |
|------------------------|-----------------------|
| TRANSACTION YEAR 2023 | -48 005 764.68 |
| UNALLOCATED PAYMENTS | 0.00 |
| CLOSING BALANCE | -48 005 764.68 |

Morning André

We have received 2 refunds this morning. [REDACTED] please can you pull a statement of account to confirm which refunds have been paid out?

Thanks
Kevin

RECENT PRACTICAL EXAMPLES - CONTINUED

Dear Mr Daniels & Ms Kaufmann

The above matter refers.

Be advised that the matter has been allocated to me to facilitate the litigation process.

We hereby acknowledge receipt of [REDACTED] of the Tax Administration Act No. 28 of 2011 and are attending to it.

I am currently engaging with the relevant internal role- players prior to formally responding to [REDACTED] This is a very protracted process as it involves consulting with c

We request your indulgence in granting us an extension as we are attending to it on an urgent basis.

Good day Colleen

The above matter refers.

Kindly be advised that the issue in dispute has been escalated to the SARS VAT Audit Department for urgent attention.

We will revert and request your kind indulgence, whilst we attempt to resolve this matter amicably.

Kind Regards

SOLUTION-BASED THINKING

- Should the taxpayer have provided SARS with the requested supporting documentation and has waited in excess of the 21-day verification/audit period for SARS to effect the refund to the taxpayer, as well as in instances where a credit may reflect on the taxpayer's statement of account and no refund is paid out by SARS, as well as being successful in a dispute and the reduced assessment has not been issued, the taxpayer may have no alternative but to take appropriate legal steps in order to obtain the refund legally due to them.
- We encourage taxpayers to make use of solution-based thinking and involve tax attorneys from the outset as seeking the assistance of astute professionals can help taxpayers expedite, what could have been a very timeous, expensive and frustrating exercise.
- Taxpayers must be cognisant that their business does not have to suffer financial constraints as a result of delays, and that a solution-based approach is often most beneficial.
- Making "enquiries" with SARS and attempting to resolve the matter is all fair and well, however, SARS may not take this seriously, and often, may only respond to legal notices where we seek to compel them to pay out a refund due.

WHERE WE CAN ADD VALUE

- We are happy to drive the process in the background, whilst respecting your client relationship.
- We are here to assist you – think of our role as an advocate to you, the attorney. As we certainly do not take over the client relationship, as we assist on a referral basis.
- We have assisted countless practitioners and their clients, while maintaining a respected working relationship with the practitioner, the taxpayer, and even SARS.

FOOD FOR THOUGHT – OUR RECOMENDATIONS

- You must explain to your clients that if they need the refund paid in a timeous manner, they must agree that you as a Practitioner follow the correct process from the outset.
- If you are unsure, make contact with us sooner rather than later.
- Warn your client that they must not contact you after a period of time passes, because our experience is that the system does not work in that manner.
- If you have a long outstanding VAT refund, this is only resolved by applying legal pressure.
- If you have a client that requires the VAT refund due to cashflow constraints, please keep us in the loop so that we can follow the strict legal process and escalate the matter immediately, and upon the expiry of the legal period allowable for VAT refunds, focused away from an audit perspective, towards a legal perspective.
- There is a false perception that once you engage SARS legally, future VAT refunds are made extraordinarily difficult. This is incorrect and we have found that exactly the opposite is true.

A person in a blue suit is writing in a notebook with a pen. The scene is dimly lit, with a scale of justice visible in the background. The word "QUESTIONS?" is overlaid in large white text.

QUESTIONS?



THANK YOU

ANDRÉ DANIELS

andre@taxconsulting.co.za
colleen@taxconsulting.co.za