

### Refunds and suspect assessments

From my experience and from the evidence which has been presented to the current SARS commission of enquiry, SARS will try any trick, to hold onto a tax refund, or, in the alternative, simply avoid dealing with the request for a refund.

One of their tricks, is to issue an assessment, for the same value, as the refund. In that way, an amount due to the taxpayer, is suddenly cancelled by a debt, which is due to SARS. Neat.

So, can SARS issue such an assessment? More importantly, when can SARS issue an assessment?

In the case of Commissioner for South African Revenue Service v Pretoria East Motors (Pty) Ltd, 76 SATC 293, the Supreme Court of Appeal, described assessments as follows:

*“The raising of an additional assessment **must be based on proper grounds** for believing that,*

*a) in the case of VAT, there has been an under declaration of supplies and hence of output tax, or an unjustified deduction of input tax; or*

*b) In the case of income tax, that there is undeclared income or a claim for a deduction or allowance that is unjustified.*

*It is only in this way that SARS can engage the taxpayer in an administratively fair manner, as it is obliged to do. It is also the only basis upon which it can, as it must, provide grounds for raising the assessment to which the taxpayer must then respond by demonstrating that the assessment*

*is wrong.”*

In the light of this judgement, a refund cannot be the subject of an assessment. Consequently, where SARS does issue an assessment, to simply cancel a credit, and prevent the payment of a refund, that assessment is legally invalid.

Unfortunately however, a refund is only due to a taxpayer, when it has been audited, or verified by SARS. While that process should take place within 21 business days of receipt of a VAT return, there is no such deadline in the case of other taxes. Until a taxpayer takes the initiative to force them to act, SARS is apparently in no hurry to audit or verify any refund

It appears that SARS employs the “assessment trick”, to prevent the payment of an unaudited refund.

If you are a victim of such an “assessment”, there are a number of simple, effective, and relatively inexpensive steps, I can employ, to recover your refund.