

What are taxpayers' rights to a refund from Sars?

By [Graeme Palmer](#)

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The South African Revenue Service (Sars) is obliged to refund a taxpayer in two instances. First, if an amount is properly refundable to a taxpayer under a tax Act and reflected in an assessment. Second, where an amount is erroneously paid to Sars in excess of the amount payable under an assessment.



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There is however an exception to the refund rule. Sars does not have to refund a taxpayer until such time that a verification, inspection, audit or criminal investigation of the refund has been finalised.

Sars cannot withhold a refund due to a taxpayer for a period that is not the subject of a verification, inspection, audit or criminal investigation. For example, Sars cannot withhold a refund due to a taxpayer for the 2022 year of assessment because the same taxpayer's 2021 year of assessment is being audited.

'Reasonable period'

What happens if Sars drags its feet in finalising an audit for a period where the taxpayer is due a refund? Unfortunately, there is no prescribed time period within which an audit must be completed, but the courts have said that audits should be finalised within a reasonable period, taking into account the circumstances.



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Taxpayers have a right to be kept informed at regular intervals about the progress of an audit. If Sars is taking an unreasonable time to finalise an audit, they must be asked to explain the cause of the delay.

Sars must authorise the payment of a refund before the finalisation of the verification, inspection, audit or criminal investigation if security in a form acceptable to Sars is provided by the taxpayer. A part refund could be received by the taxpayer if he or she is only able to provide acceptable security for part of the value of the refund.

Objections

There could be several factors and calculations involved in Sars refusing a refund under an assessment. If Sars persists with its refusal, the taxpayer can file an objection. Because of the potential complexities, the taxpayer should in such circumstances object against the whole of the assessment under section 104 of the Tax Administration Act, 2011 (TAA), and not just the decision to refuse the refund.

If Sars does not authorise a refund of an amount because the taxpayer erroneously overpaid Sars on an assessment, then the taxpayer does not need object against the entire assessment but only against Sars' decision, which objection can be lodged under section 190(6) of the TAA.

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