



**SARS Response to queries relating to the VAT refunds paid to Oakbay related entities between December 2016 and April 2018**

1. What we have is a snapshot of how Oakbay used third party paying agents to move money around in suspicious and untraceable transactions. To how many pay agents have SARS paid tax refunds owed to the Oakbay Group and what was the total amount of VAT refunds paid to third parties due to the Oakbay Group between 1 December 2016 and 27 July 2018;

***Earlier this year the Acting Commissioner of SARS requested his office to conduct an end-to-end review of the matter based on what was available in the public domain at the time. The review included internal governance processes and procedures. The Acting Commissioner received an interim report, but at this stage information relating to the number of third parties and the value of refunds is limited to what is available in the public domain.***

2. Can Sars confirm if any VAT payments or PIT payments due to companies or individuals in the Oakbay/Sahara groups were made to the following entities:

***SARS is not aware of payments of this nature.***

- a) Smart City Innovations
  - b) Option Maritime Rainbow; and/or
  - c) The White Lion
  - d) And if so, the amounts and dates of these payments?
  - e) Who authorised payments to the abovementioned third parties?
3. Who attended the December 2016 meeting with Terbium and Oakbay representatives on behalf of SARS;

***This information is not available at this point time.***

4. During the mentioned time period, Oakbay Group had bank accounts with Bank of Baroda. The VAT payments effected by SARS were large and frequent. Why did SARS not, considering the big amounts paid, verify the company details;

***Verification of details relating to any refund, or for that matter any VAT return submitted, forms part of the internal risk processes of SARS. By all accounts the SARS processes in so far refunds are concerned have been followed however all these are being reviewed to ensure the robustness of the SARS Systems and processes.***

5. We can prove SARS paid R36m in VAT and PIT refunds into an attorney's trust account; around R200m in VAT refunds into a third party pay agent that was not registered with PASA; and R183m in VAT refunds to a third party shelf company that had no address and was not registered with PASA. We do not need to lecture SARS on the law applicable to VAT and PIT refunds.

***In so far as the use of an attorneys trust account is concerned, payment into such an account would be a direct contravention of the provisions of section 44(3)(d) of the VAT Act.***

Explain to us:

- a) how the system failed and what caused the system to fail;

***This forms part of the internal end-to-end review mentioned above. No finding is available yet.***

- b) on whose authority did SARS repeatedly change the VAT Vendor details;

***This forms part of the internal end-to-end review mentioned above. No finding is available yet.***

- c) what happened in May 2017 that caused Ragavan to fire off several letters to SARS officials, allowing the matter to be brought to the attention of SARS' legal department;

***At this stage, this information is not available to SARS.***

- d) Head of Legal Refiloe Mokoena based her “legal advice” on the 2009 version of the VAT Act. She invoked Moyane’s name and put inordinate pressure on SARS officials to effect illegal VAT payments to the Guptas;

***Ms Mokoena denies that she invoked Commissioner Moyane’s name and denies that she based her advice on the pre-amended 2009 version of the particular section. Ms Mokoena further denies that she put undue pressure on any SARS official.***

- e) When Oakbay needed their VAT paid into a different bank account, did the company representatives send memorandums of incorporation or trust deeds, original identity documents, bank statements, proof of residential address, proof of the business’ physical address and a copy of the taxpayer’s notice of assessment or statement of account to SARS;

***This forms part of the internal end-to-end review mentioned above. No finding is available yet.***

- f) When did SARS become aware that more VAT refunds had been paid to Estelle de Jager’s trust account and other third party pay agents than Moyane admitted to in March 2018;

***In the ordinary course of doing business SARS would be aware of all refunds to all vendors and this can be extracted at any point in time. It is not known whether Mr Moyane was aware of any other refunds.***

6. It is clear from the above that SARS’ systems and processes have failed. What steps will SARS take to strengthen its procedures?

***By all accounts the SARS processes in so far refunds are concerned have been followed however all these are being reviewed to ensure the robustness of the SARS Systems and processes. The possibility that governance processes, which include standard operating procedures, have failed and the reasons for the failure is part of our overall review referenced earlier.***

7. Scorpio sent SARS questions pertaining to our first story labelled the Moyane dossier. We received answers from SARS on 15 March 2018. We attach these answers verbatim. It is clear that Moyane lied when he told Scorpio:
- a) the Oakbay request did not force SARS to deviate from normal practice;  
***This forms part of the internal end-to-end review mentioned above. No finding is available yet.***
  - b) the refunds could not be paid into the attorneys trust account as it would expose SARS to risk – by March 2018 SARS had exposed itself to an enormous amount of risk at behest of the Guptas, as detailed above;  
***VAT refund payments into an attorneys trust account would be a direct contravention of the provisions of section 44(3)(d) of the VAT Act.***
  - c) that SARS cannot comment on whether the Guptas traded with the mine rehabilitation trust accounts – SARS is compelled to investigate any such allegation;  
***Where information becomes available that triggers a material risk, the standard operating procedures of SARS require an evaluation of the risk. Whether such a risk exists or whether an investigation into the affairs of a rehabilitation trust has commenced is, however, taxpayer information which, as you know, cannot be revealed by SARS. That said, you are correct that SARS has a duty to evaluate information of this.***
  - d) that Mokoena did not overrule any decision – from emails we have seen, it is clear that at least five senior SARS officials, the top VAT experts in SARS, told her not to allow the payment of VAT refunds to a third party pay agent. Yet Mokoena went ahead;  
***This forms part of the internal end-to-end review mentioned above. No finding is available yet.***
  - e) Moyane argues that he was a silent spectator who had no influence on the payment of the VAT refunds and did not interfere. Yet Mokoena invokes his name in order to silence her staff and, in contradiction, Moyane points out later in the same correspondence that he did exercise his discretion in terms of s72 of the VAT act;

**SARS can find no record of such a section 72 decision at that time. In any event, the Acting Commissioner of SARS has serious concerns relating to the application of section 72 of the VAT Act in order to override the provisions of section 44(3)(d) of the VAT Act and has requested external legal advice in this regard.**

- f) Moyane argues that the only legal question was to which bank account the payment must be made. He references sections 44(3)(d) and 72 of the VAT Act. My understanding is that sections 44(3)(d) is part of the amended VAT Act. How is it possible that Mokoena base her “legal advice” on the 2009 version of the VAT act, yet Moyane now references the amended version of the VAT Act which strictly prohibits the payment of VAT refunds to a third party?

**SARS recognises the restrictions of section 44(3)(d) of the VAT Act in paying refunds into third party bank accounts, especially in light of the history of the amendments of the section in 2009. As mentioned above, Ms Mokoena denies that she based her advice on the pre-amended 2009 version of the particular section.**

- g) Moyane further argues that “the allegation of illegality therefore has no basis”.

**As mentioned above, SARS can find no record of a section 72 decision in this regard at that time, and SARS recognises the restrictions of section 44(3)(d) of the VAT Act in paying refunds into third party bank accounts, especially in light of the history of the amendments of the section in 2009.**

In the light of the above, does SARS stand by Moyane’s comments? Address each point separately.

**Without going into the details of a specific case, SARS can confirm the following:**

- a) **It is possible for a particular case to require extraordinary attention to address, for example, a complaint that was not resolved on a lower level.**

***This is part of the SARS complaints escalation process. What needs to be determined, however, is whether the special attention was exercised within the parameters of both good governance and the law.***

***b) SARS has been unable to find any evidence of the exercise of the discretionary power under section 72 of the VAT Act by Commissioner Moyane or any other SARS employee at that time;***

***c) The explanatory memorandum relating to the Revenue Laws Second Amendment Act of 2008 (available on the SARS website at***

***<http://www.sars.gov.za/AllDocs/LegalDoclib/ExplMemo/LAPD-LPrep-EM-2008-02%20-%20Memorandum%20Objects%20Revenue%20Laws%20Second%20Amendment%20Bill%202008.pdf>***

***) explains the amendment to section 44 as follows:***

#### **2.43 Amendment of section 44 of Value-Added Tax Act, 1991**

The proposed amendment permits only non-resident companies and subsidiary companies of a holding company to use the bank account of third parties (and, in the case of subsidiaries, the bank of its holding company) for purposes of obtaining a refund. Due to concerns involving fraud, no other third-party bank accounts of this nature will be permitted.

This amendment will be effective from 1 April 2009 in order to allow vendors affected by this proposed amendment an opportunity to inform SARS of their banking particulars.

***At the same time, section 45 of the VAT Act (which deals with interest on refunds) was amended to ensure that SARS pays no interest on a refund until bank details are provided as required under the amended section 44.***

8. The VAT refunds had been properly audited and was legally due to Oakbay, Moyane argues repeatedly. Yet the volume and frequency of the VAT payments are described as suspicious and unusual. We further only have a snapshot of what SARS paid to Oakbay Groups' pay agents and attorneys. It is safe to argue there may have been many more pay agents and attorneys receiving tax refunds for Oakbay. Has SARS audited and questioned the legality of the Gupta tax claims, and if so, what were the findings?

***SARS has strict standard operating procedures in place to minimise risks associated with any type of refund. These procedures (and reasons for deviation if any) are currently under review, as indicated above, to determine whether the procedures require enhancements and/ or whether***

***any action by any employee of SARS may or have resulted in any unauthorised or unlawful deviation from these processes.***

9. Did SARS at any time following media queries over the specific payments to Terbiem Financial Services initiate any investigation into the VAT and other tax affairs of the individuals and companies involved to determine the truth and sequence of events?

***Without going into the details of a particular case, it is standard practice in SARS to evaluate and where necessary act on information that becomes available from 3<sup>rd</sup> party sources, including the media.***

10. The Oakbay Group received clear preferential treatment from SARS. What is your comment?

***As mentioned above, and without going into the details of a specific case, it is possible for a particular case to require extraordinary attention to address, for example, a complaint that was not resolved on a lower level. This is part of the SARS complaints escalation process. What needs to be determined, however, is whether the special attention was exercised within the parameters of both good governance and the law and this is part of the review referenced above.***

**SARS Media**

