



CEO: Office of the Tax Ombud Advocate Eric Mkhawane

BACKGROUND

- ❖ *Third Interim report of Katz Commission Proposal to introduce the Tax Ombud to*
 - (a) protect taxpayer rights*
 - (b) mediate between taxpayers and revenue authorities*

ROLE OF AN OMBUD

- ❖ *Ombud is an independent and impartial officer who deals with complaints about an organization/agency, whether private or public.*
- ❖ *Typically these complaints involve issues that the organization or agency has been unable or unwilling, to resolve to the complainant's satisfaction.*
- ❖ *Notably – Ombud – represents many of the concerns left untouched.*
 - *He is impartial*
 - *His services are free and available to all*
 - *He operates informally.*

SARS SERVICE MONITORING OFFICE

- ❖ *SARS Service Monitoring Office (SSMO) was established in 2002 to resolve disputes of service, procedural or administrative nature.*
- ❖ *In September 2015, the SSMO became the SARS Complaints Management Office (CMO).*
- ❖ *No independence.*

TAX OMBUD

- ❖ *Established in terms of the Tax Administration Act (Act 28 of 2011)*
- ❖ *One of the key objectives of the Act is to achieve a balance between SARS powers and duties, on the one hand, and taxpayer rights and obligations on the other.*
- ❖ *The Tax Administrative Act draws largely from the Canadian, US and UK models.*

APPOINTMENT AND INDEPENDENCE

- ❖ *s14 – The Tax Ombud is appointed by the Minister to ensure independence from SARS. Similar to Canada, the terms and conditions of employment are determined by the Minister. (Renewable term of 3 (three) years). (Terms and Conditions of employment and determined by Minister.)*
- ❖ *Can only be removed by the Minister - s14(2).*
- ❖ *The Tax Ombud is accountable to the Minister s14(5)(a).*
- ❖ *The Tax Ombud reports directly to the Minister - s19(1)(a).*
- ❖ *To submits an annual report to the Minister within 5 months of end of SARS' financial year – s19(1)(b). (Similar to Canada)*

APPOINTMENT AND INDEPENDENCE (cont.)

- ❖ *s15- The staff of the Office of the Tax Ombud (OTO) must be employed in terms of the SARS Act (and be seconded to the Office of the Tax Ombud at the request of the Tax Ombud in consultation with the Commissioner).*
- ❖ *In Canada, the staff is also employed pursuant to Canada Revenue Agency Act, and shall be within the Agency*
- ❖ *S15(4) – Expenditure connected with the functions of the Tax Ombud is paid out of the funds of SARS.*

MANDATE OF TAX OMBUD

s16. *Review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS. (Currently includes Customs & Excise – since 2012. All legislation administered by the Commissioner).*

In discharging his or her mandate, the Tax Ombud must—

- (a) review a complaint and, if necessary, resolve it through mediation or conciliation;*
- (b) act independently in resolving a complaint;*
- (c) follow informal, fair and cost-effective procedures in resolving a complaint;*

MANDATE OF TAX OMBUD (cont.)

- (d) *provide information to a taxpayer about the mandate of the Tax Ombud and the procedures to pursue a complaint;*
- (e) *facilitate access by taxpayers to complaint resolution mechanisms within SARS to address complaints; and*
- (f) *identify and review systemic and emerging issues related to service matters or the application of the provisions of this Act or procedural or administrative provisions of a tax Act that impact negatively on taxpayers.*

LIMITATIONS ON AUTHORITY

s17. The Tax Ombud may not review

- (a) legislation or tax policy;*
- (b) SARS policy or practice generally prevailing, other than to the extent that it relates to a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS;*
- (c) a matter subject to objection and appeal under a tax Act, except for an administrative matter relating to such objection and appeal; or*
- (d) a decision of, proceeding in or matter before the tax court.*

LIMITATIONS ON AUTHORITY (cont.)

S259(2) The first Tax Ombud may not review a matter that arose more than one year before the day on which the Tax Ombud is appointed, unless the Minister requests him to do so. (Currently the Ombud has approval from the Minister to review these cases).

REVIEW OF COMPLAINT

18. (2) *The Tax Ombud may—*

- (a) determine how a review is to be conducted; and*
- (b) determine whether a review should be terminated before completion.*

(4) The Tax Ombud may only review a request if the requester has exhausted the available complaints resolution mechanisms in SARS, unless there are compelling circumstances for not doing so.

(5) To determine whether there are compelling circumstances, the Tax Ombud must consider factor such as whether:

REVIEW OF COMPLAINT (cont.)

- (a) *the request raises systemic issues;*
- (b) *exhausting the complaints resolution mechanisms will cause undue hardship to the requester; or*
- (c) *exhausting the complaints resolution mechanisms is unlikely to produce a result within a period of time that the Tax Ombud considers reasonable.*

RESOLUTION AND RECOMMENDATIONS

s20. (2) The Tax Ombud's recommendations are not binding on taxpayers or SARS.

CONFIDENTIALITY

- s21 (1) *The provisions of Chapter 6 apply with the changes required by the context for the purpose of this Part. Deals with general prohibition of disclosure – Secrecy Provisions.*
- (2) *SARS must allow the Tax Ombud access to information that relates to the Tax Ombud's powers and duties under this Act.*
- (3) *The Tax Ombud and any person acting on the Tax Ombud's behalf may not disclose information of any kind that is obtained by or on behalf of the Tax Ombud, or prepared from information obtained by or on behalf of the Tax Ombud, to SARS, except to the extent required for the purpose of the performance of functions and duties under this Part.*

Internal SARS Complaints Mechanisms

Quotes from SARS's "How to lodge a complaint" webpage:

"A taxpayer should first seek to resolve a complaint directly with SARS or, if dissatisfied with the outcome, escalate the matter to the SARS Complaints Management Office (CMO) by calling the CMO on 0860 12 12 16 or by lodging a complaint via eFiling. See how to lodge a complaint for more info."

There are three preferred ways to send your complaint:

- Via eFiling, see our step-by-step guide.
- Visit your nearest SARS Branch.
- By calling the SARS Complaints Management Office (CMO) on 0860 12 12 16."

INTERNAL SARS COMPLAINTS MECHANISMS (cont.)

“When you’ve logged your complaint, you will receive an acknowledgement notification the same day.

The resolution date will be a maximum of 21 days after the complaint was logged.

If you are still not satisfied with the outcome, you may follow the Tax Ombud process.”

OTO PROCEDURE

- ❖ If the CMO rejects the complaint or does not resolve it within 21 days as promised by SARS you can complain to the OTO.
- ❖ If the CMO procedure was not exhausted the OTO is not allowed to review the complaint unless there are compelling circumstances for the taxpayer to not exhaust it first.
- ❖ Complete the OTO complaints form in full.
- ❖ Submit the complaint to the OTO via the designated channels.
- ❖ The OTO will acknowledge the complaint and determine if it falls within our mandate and if it does, whether or not any of the limitations thereto apply.

OTO PROCEDURE (cont.)

- ❖ If the complaint does not fall within our mandate the complaint must be rejected.
- ❖ If the complaint falls within our mandate, the OTO will investigate the factual background to determine if and how a review should be conducted.
- ❖ If the complaint is valid the OTO will take the appropriate steps to engage SARS and resolve the complaint.

TOP FIVE ISSUES RAISED BY TAXPAYERS

ASSESSMENTS	23%
REFUNDS	22%
DISPUTE RESOLUTION	19%
GENERAL SERVICE	14%
OTHERS	13%

CASES

❖ INCORRECT PAYE PAYMENT ALLOCATION:

- ❖ *The complaint relates to a misallocation of PAYE payment by SARS. SARS Debt Management contacted the Taxpayer for payment. The Taxpayer lodged this complaint with the OTO on the 20 November 2015.*
- ❖ *OTO investigated the matter and discovered that the payment made by taxpayer/complainant had been misallocated by SARS.*
- ❖ *OTO recommended to SARS to correctly allocate to relevant period. SARS corrected this and sent a letter of apology. The case was finalised on the 08 December 2015.*

CASES (cont.)

❖ ASSESSMENT – DELAY IN FINALISING AN OBJECTION:

- ❖ *The Taxpayer objected to an assessment on 30 September 2011. Collection steps were initiated in February 2015. The Taxpayer lodged this complaint with OTO in October 2015.*
- ❖ *OTO investigated the matter and discovered that the objection lodged in 2011 had not been finalized.*
- ❖ *OTO recommended to SARS to finalise the objection submitted on 30 September 2011. SARS allowed an objection. The case was finalised on the 30 October 2015.*

SYSTEMIC ISSUES

- ❖ *INCOMES BEING INCLUDED, BUT IRP5 CREDITS NOT INCLUDED*
 - ❖ *The Taxpayer's incomes included in 2013 assessment, but the tax credits of over R90 000, as per IRP5's, not taken into account. The Taxpayer objected on 11 July 2015, which was incorrectly disallowed confirming the lump sums were correctly taken into account. A second objection submitted 14 September 2015 was incorrectly invalidated. The Taxpayer lodged this complaint with OTO in October 2015.*
 - ❖ *OTO recommended to SARS to revise the assessment i.t.o Section 93 of the TAA. SARS revised the assessment to include the tax credits and also included a R17 000 exemption. A revised IT34 was issued on 10 November 2015. The case was finalised on the 12 November 2015.*

PROCEDURAL ISSUES

- ❖ *Failure to finalise audit and communicate the outcome.*
- ❖ *A taxpayer submitted the supporting documents which were requested in order to finalise an audit on 15 July 2015. The Taxpayer lodged this complaint with OTO in September 2015.*
- ❖ *OTO investigated the matter and discovered that after numerous follow-ups, the audit was still not finalised in the turn around time provided.*
- ❖ *OTO recommended to SARS to finalise the audit and communicate the outcome to the taxpayer. SARS assigned an auditor on 29 October 2015 – the audit case was finalised the same day. The refund was paid on 03 November 2015.*

HOW MANY CASES HAVE BEEN REVIEWED BY THE OTO?

	Period 01/10/2013 to 31/03/2014	Period 01/04/2014 to 31/03/2015	Period 01/04/2015 to 29/02/2016
Queries	514	4 726	3 203
Rejected not falling within our mandate	64	861	871
Accepted complaints falling within our mandate	61	409	843
Concerns (older than 1 year – approval to deal with such complaints was granted on 23 May 2014)	31	7	0
Total Contacts received	670	6 003	5 012

WHAT PERCENTAGE COMES FROM TAX PRACTITIONERS VS TAX PAYERS?

Percentage	Period 01/10/2013 to 31/03/2014	Period 01/04/2014 to 31/03/2015	Period 01/04/2015 to 29/02/2016
Taxpayers	62%	78%	72%
Tax Practitioners	24%	15%	18%
Other (Attorneys; Trustees etc.)	14%	7%	10%

HOW TO CONTACT THE OTO

- ❖ *Phone: 0800 662 837 or (+27) 12 431-9105*
- ❖ *Fax: (+ 27) 12- 452-5013 or 0102083054*
- ❖ *Email: complaints@taxombud.gov.za*
- ❖ *Download the [complaints form](#) from our website: www.taxombud.gov.za, or request a manual form.*
- ❖ *Physical address: Menlyn Corner, 2nd Floor, 87 Frikkie de Beer Street, Menlyn*
- ❖ *Postal address: P O Box 12314, Hatfield, 0028*



OFFICE OF THE
TAX OMBUD
Ensuring fairness

THANK YOU