

## Tax Season 2019 Ifikile The Tax Ombud is here to help

We are pleased to share another informative issue of our newsletter, Fair Play, reporting on some important activities in the Office of the Tax Ombud (OTO) and the tax environment. The second half of 2019 is an important time for taxpayers and the Office, as it marks the beginning of the South African Revenue Service's (SARS) tax season, which

will run concurrently with our education and awareness campaign, aptly called *Tax Season 2019 Ifikile - The Tax Ombud is here to help*. The campaign is indicative of the OTO's continued commitment to promote and protect taxpayers' rights and remind them of their responsibilities to pay taxes.



GERT VAN HEERDEN  
ACTING CHIEF EXECUTIVE OFFICER

### AIMING HIGH TO MEET THE GROWING DEMAND FOR SERVICES

#### OPPORTUNITY TO IMPROVE

The organisation has some ground to cover before being where it aims to be, with substantial policy changes involving the independence and powers of the Tax Ombud still required. More emphasis has been placed on improving the quality of services provided as there is growing public demand not only for excellence in service delivery, but for transparency and clean governance in government and state-owned entities.

in delivering on its mandate and encourage accountability, transparency and the continued pursuit of excellence," says van Heerden.

Priorities include further improving the quality of service delivery and creating an agile organisation that is able to efficiently scale to meet demand.

The OTO strives to be an institution that stakeholders trust and to provide the highest quality and standard of service to taxpayers who use its services to have their disputes with SARS resolved fairly and impartially.

The beginning of the 2019/20 financial year marks a period of renewed vigour and effort in building on the strong foundation that was laid during the first "five years of fairness" of the Office of the Tax Ombud.

Gert van Heerden, Acting Chief Executive Officer, says that "in the new financial year, the focus will be on consolidating what has already been achieved while creating a new growth path that extends beyond the current financial year, providing direction for the next five years."

One of the methods employed by the Office to fulfil stakeholder expectations involves setting quantifiable targets for deliverables that were not previously measured. "These targets will provide stakeholders with the means to measure the efficiency of the OTO

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# TAX OMBUD'S CORNER

Looking forward to the journey we still need to travel, we continually remind ourselves of the mandate and purpose of the Office in all our endeavours to offer a quality service to our stakeholders. Our values, guided by the prescripts of the Tax Administration Act (TAA), have shaped us as a respected organisation in tax administration matters and in the protection of taxpayers' rights.

The Office is cognisant that this year's filing season kicks off from 1 July 2019 for taxpayers who are registered for e-filing or have access to MobiApp, and 1 August 2019 for branch filers. Our education and awareness campaign, themed *Tax Season 2019 Ifikile - The Tax Ombud is here to help*, will feature numerous activities across large parts of the country.

The build-up to the launch of the campaign will commence on 18 June 2019 with extensive advertising on print, broadcast, out-of-home and digital platforms. The

official launch will be on 1 July 2019 during the Tax Ombud Dialogue in conjunction with Tiso Blackstar at the Fusion Boutique Hotel in Polokwane. Other activities include presentations at both public and private sector institutions and activations at the Mall of the North and Savannah Mall. We are strategically targeting Limpopo because our statistics indicated that the majority of taxpayers in the province are not utilising our services.

Generally speaking, demand for our services is anticipated to be high during this period and we will do our utmost to pursue service excellence despite the increased workload that we anticipate. We will work hard and efficiently to maintain the trust the public has shown in us. Our everyday interaction both with taxpayers and SARS during this crucial time will be characterised by impartial and speedy tax resolution services and an unwavering commitment to upholding fairness.



JUDGE BERNARD MAKGABO NGOEPE  
TAX OMBUD

## STRENGTHENING IMPORTANT PARTNERSHIPS

The first quarter of the 2019/20 financial year has given rise to some major developments in the partnerships that we have developed and nurtured over the past five years.

In April, an important Memorandum of Understanding (MoU) was signed between our institution and the Office of the Public Protector South Africa. The MoU signals formal cooperation between the two institutions and I am pleased and confident that it will benefit taxpayers and strengthen both institutions' abilities to fulfil their respective mandates.

In the same month, the long-awaited MoU with SARS became a reality. I am confident that this agreement will resolve some of the challenges

that for years have negatively affected the two institutions' attempts to cooperate. We also welcome the new SARS Commissioner, Mr Kieswetter, and look forward to the usual co-operation between the two institutions.

As we move forward with vigour and focus to better serve and protect taxpayers' rights, as well as to improve the country's tax administration system, we express gratitude for the continued support from our stakeholders. Where we fall short on delivering on our mandate and your expectations, your feedback will help steer us in the right direction.

Tax Ombud  
Judge Bernard Makgabo Ngoepe

## TAX OMBUD SAYS:



Comply and fulfil all your tax obligations;



Know your tax rights and demand fair treatment from the South African Revenue Service; and



Remember that the Tax Ombud will independently and impartially help resolve your tax complaints against the revenue collector.

# TAX OMBUD SIGNS MOU WITH PUBLIC PROTECTOR

The Tax Ombud Judge Bernard Ngoepe and Public Protector Advocate Busisiwe Mkhwebane have signed a Memorandum of Understanding (MoU) signalling formal cooperation between the two institutions. The MoU, signed on 9 April 2019, is the first formal agreement between the Office of the Tax Ombud and the Public Protector. The objective of the MoU is to provide for a framework for cooperation and collaboration between the two offices with a view to sharing information and enhancing the efficacy of the institutions.

**The MoU also provides for the establishment of a Monitoring and Evaluation Committee which will meet quarterly. The committee will be mandated among others to:**

- maintain a database of all cases to track progress;
- follow up the implementation of the recommendations; and
- report on the progress of referrals.



PUBLIC PROTECTOR ADVOCATE BUSISIWE MKHWEBANE AND TAX OMBUD JUDGE BERNARD NGOEPE

# MOU BETWEEN THE OTO AND SARS FINALLY HERE

The five-year wait for the signing of a Memorandum of Understanding (MoU) between the Office of the Tax Ombud (OTO) and the South African Revenue Service (SARS) has finally come to an end.

On 26 April 2019, Tax Ombud Judge Bernard Ngoepe and Acting SARS Commissioner Mark Kingon signed a high-level agreement on corporate and operational matters between the parties.

Among others, the MoU is expected to address the delays in the finalisation of taxpayers' complaints lodged with the OTO against the revenue collector. For many years, the OTO has raised concerns that SARS' failure to urgently respond to the OTO's recommendations on complaints was not only hampering the OTO's ability to provide quick service but also poses a reputational risk.

**Some of the important points agreed to by both parties include:**

- On receipt of a referral from the Tax Ombud, SARS must acknowledge receipt within five days;
- SARS must finalise the OTO's referral within 15 business days. If the complaint cannot be resolved within 15 days, SARS must inform the Tax Ombud of the time period within which it will be resolved; and
- Should SARS not accept a recommendation made by the Tax Ombud, SARS will provide reasons for such decision within 30 days of receipt.



TAX OMBUD JUDGE BERNARD NGOEPE AND FORMER SARS ACTING COMMISSIONER MARK KINGON

# EXPERT'S CORNER

## HOW TO CHOOSE THE RIGHT TAX PRACTITIONER

### BY OPERATIONAL SPECIALIST: TAXES (OFFICE OF THE TAX OMBUD)

Many taxpayers, including individuals or corporate taxpayers, believe that it is not necessary to employ the services of a registered tax practitioner to complete and submit their income tax, VAT and other tax returns. This view is not entirely correct. You would not allow an unqualified person to work on the electrical system at your house, or even worse, trust a complete novice to perform a specialised medical procedure on your child.

The Tax Administration Act (TAA) No 28 of 2011 makes provision to protect taxpayers' rights when they engage tax practitioners. In terms of the provisions of section 240 of the TAA, as amended, every natural person who—

- a. provides advice to another person with respect to the application of a tax Act; or
- b. completes or assists in completing a return by another person, must—
  - i. register with or fall under the jurisdiction of a "recognised controlling body" (e.g. South African Institute of Tax Practitioners) by not later than 21 business days after the date on which that person for the first time provides such advice or completes or assists in completing the return; and
  - ii. register with SARS as a tax practitioner in the prescribed form and manner, within 21 business days after the date on which that person for the first time provides the advice or completes or assists in completing the return.

The above provisions do not apply in respect of a person who only provides advice, or completes or assists in completing a return for no consideration to that person or his or her employer or a connected person in relation to that employer or that person.

Thus an individual who completes a friend or family member's income tax return for no payment need not register as a tax practitioner. Similarly, an individual who is employed by a corporate taxpayer, or by a connected person in relation to a corporate taxpayer, does not need to register as a tax practitioner. Thus, an accountant may complete and submit his employer's tax returns, as well as the tax returns of the companies forming part of the same group as his employer company. In practice, however, it is strongly recommended that properly qualified and experienced registered tax practitioners be engaged to assist with the completion and submission of more complex tax returns. In addition, it is essential to obtain satisfactory answers to the following questions before making a decision to appoint a tax practitioner.

#### 1. ARE YOU A REGISTERED TAX PRACTITIONER?

By selecting a registered tax practitioner, you will have the comfort of knowing that the person is a qualified member of a controlling body, that he/she attends the compulsory continuing professional development training sessions offered by such body and that the person is in good standing with SARS.



JOHANN BENADÉ  
OPERATIONAL SPECIALIST: TAXES

#### 2. WHAT RELEVANT TAX EXPERIENCE DO YOU HAVE?

The South African tax system is becoming increasingly complex and it will serve no good purpose if a person who is appointed lacks the specific expertise and experience to deal with your particular problem.

#### 3. HAVE YOU PREVIOUSLY DEALT WITH A SITUATION LIKE MINE?

Once again, it is essential to engage a person with the appropriate level of experience. This is particularly true if the subject matter is complex. Even in simple objection and appeal cases, the Office of the Tax Ombud is coming across elementary mistakes that result in disputed assessments becoming final and conclusive without being corrected, to the obvious prejudice of the taxpayer involved.

#### 4. WHAT DOCUMENTS WILL YOU REQUIRE FROM ME?

It is important to establish this up-front, in order to avoid delays in resolving disputes with SARS due to the relevant documentation only being requested at the last minute. The timeous communication of this information will also enable the taxpayer to maintain the correct records right from the outset, e.g. a detailed logbook of business travel.

#### 5. ON WHAT BASIS DO YOU CALCULATE YOUR FEES?

The necessity for this being established right at the outset is self-explanatory. Many a professional relationship has turned sour due to fees not being addressed timeously. You do not want to get into a dispute about fees with the person whom you need to resolve a major tax issue on your behalf.

#### 6. WILL YOU SUBMIT MY TAX RETURN ON E-FILING?

The submission of all tax returns on e-filing is now effectively mandatory and it almost impossible to effectively communicate with and submit returns and disputes to SARS in any other way. The person you appoint must be an experienced e-filer.

#### 7. WHAT HAPPENS IF I AM AUDITED?

While the submission of tax returns on e-filing is a fairly simple and straightforward process, the real fun starts when your return is selected for verification or audit. This is a tightly defined process, with prescribed timelines for both taxpayer and SARS alike. Your tax practitioner needs to be aware of the relevant requirements, as failure to do so could be costly.



## 8. WHAT IS THE BEST WAY TO GET HOLD OF YOU, AND WHERE ARE YOUR OFFICES LOCATED?

You should preferably engage a person who operates from established business premises, and has staff who can assist you in urgent circumstances when he or she is not personally available. Proper offices and systems are also essential for record-keeping of your files and documents. Often, SARS decides to carry out an audit, or to send a query, relating to previous tax years. A person operating from the boot of his or her car will not be able to support you appropriately.

# Tax Season 2019

This year's filing season kicks off from 1 July 2019 for taxpayers who are registered for e-filing or have access to MobiApp, and 1 August 2019 for branch filers. Fair Play shares important tips that can help taxpayers file their return with confidence.

### 1. BE HONEST

It may be tempting to fudge the numbers to get a tax refund, but it's not worth the risk. When SARS reviews or audits you, you'll be liable for whatever you reported.

Financial Institutions, employers and other third parties report to SARS, and SARS uses this information to validate what you file in your tax return. Make sure you include everything, no matter how insignificant the value. Even if an exemption or exclusion applies, and effectively no tax liability, disclosure should still be made. When you file a return you must make a full and honest disclosure of all items required (and not only what you think is relevant).

### 2. GET ORGANISED

Don't wait for the last minute to submit your tax return. Waiting until the last minute only adds more stress to the filing process. You want to ensure that you have gathered all relevant documents and information before filing your tax return.

A good place to start is to ensure that you have your employee tax certificate (IRP5 and IT3 certificates) from your employer, proof of contributions made to retirement funds (pension, provident and retirement annuity), proof of contributions to medical aid or hospital plan (and out-of-pocket medical expenses not covered by the medical aid) and income tax certificates (IT3) from financial institutions as regards interest earned and investment earnings (such as unit trusts).

Check all the certificates and supporting documents for errors. If a certificate incorrectly reflects your income you could be assessed for income you didn't earn.

If you received a travel allowance or use of a company car, you need to submit a travel logbook providing details of business travel. Review your bank statements and contract entered into during the year, ensuring you have recognised all income received (such as rental income), as well as capital gains (such as sale of a property). Not all transactions have tax certificates issued by a third party.

If you have rental income, you can claim a deduction for the expenses incurred to earn the rental income.

Remember that you have a requirement by law to retain the supporting documentation for at least five years. You need to retain the supporting documentation even if you have submitted such to SARS previously.

In conclusion, while the appointment of a registered tax practitioner is often seen as an unnecessary and unjustified expense, the day will come when you are glad to have him or her on your side. You need to exercise care when it comes to dealing with your tax affairs. In this regard, the appointment of a registered tax practitioner will be essential, and highly recommended.



### 3. CONSIDER YOUR RETIREMENT CONTRIBUTIONS AND MEDICAL EXPENSES/CONTRIBUTIONS

By the time you start completing your return you should have the contribution tax certificates from the medical aid provider and financial institutions. SARS now prepopulates the information received from the medical aid and financial institutions on your return. You should check to ensure that all contributions are reflected. The onus is on you to ensure it is correct before submitting your return.

Where you qualify for medical out-of-pocket expenses to be recognised, such as in the case of disability, you need to prepare a schedule of the expenses, ensuring that you are not claiming for expenses paid by the medical aid or hospital plan. SARS will expect you to provide reasons why the medical aid or hospital plan didn't cover the expenses, together with proof of the expenses (invoices and receipts), as well as proof of payment. For qualifying disability you will also need to submit the confirmation of diagnosis of disability.

### 4. CRYPTOCURRENCY AND TRUST DISTRIBUTIONS

If you have traded or invested in cryptocurrency (such as Bitcoin) the gains made are subject to tax. The taxing of cryptocurrency transactions may be overlooked where no tax certificate is issued. Consider any distribution or vesting made to you from a trust, as the income attributable to or distributed to the beneficiary is taxed in the hands of the beneficiary and not the trust, even if no cash changed hands. It is easy to overlook a distribution or vesting when no cash was transferred into your bank account.

### 5. GIVING

Where you made donations during the year in excess of the annual exclusion of R100 000, ensure that it has been correctly recognised, and relevant donations tax has been paid. This includes gifts you give your children!

Some donations may qualify for a tax deduction in terms of section 18A (typically a non-profit organisation). But you must have the supporting donation certificate as proof of your section 18A donation; and you should check to ensure that the organisation is registered with SARS in terms of section 18A (the full list of registered organisations is available from SARS website).

### 6. DIY OR ASKING FOR HELP

While self-filing online is a good option, with support available from SARS, it can be worth the extra cost to engage the services of a tax practitioner to assist in filing. Filing is more than just filing in the return; a tax practitioner could assist in ensuring that all relevant documentation is prepared in the correct format, ensure that correct disclosure is made, and ultimately could review the assessment to ensure that you are not paying more tax than required (and help with disputing any assessment you are not in agreement with).

If you elect to use someone to assist with your filing, please ensure that they are registered as a tax practitioner with SARS and hold membership with a recognised controlling body (such as SAIPA, SAICA, SAIT, ACCA). Do not agree to a contingency fee, as it is not permitted to pay a tax practitioner a fee based on a percentage of refund received from SARS. Contingency fees based on refund values may expose you to under-declaration of income or inflated deductions.

### 7. CHECK IT TWICE

Before you submit your return, review every page to ensure that the information is correct. Double check the numbers, and ensure they match your supporting documentation and certificates.

You should review the return before submitting even if you have a tax practitioner filing for you.

Compare with last year's return to ensure that you have not missed anything, and to ensure that closing values used for travel allowance or use of company car match the opening values in the current return.

### 8. CHECK ASSESSMENT, REPLY TO SARS' REQUEST FOR INFORMATION

Once you submit your return, SARS will issue the assessment. Check the assessment to ensure that you are in agreement. If there is any error or you are aggrieved by the assessment, you must file a notice of correction or notice of objection.

It is common practice for SARS to send a notification to submit supporting documentation. This must be done within the period prescribed (generally 21 calendar days). Failing to submit documentation could result in disallowance of deductions or exemptions.

### 9. KNOW YOUR STATUS (DON'T JUST ASSUME IT'S ALL OKAY)

You should check your tax compliance status throughout the year, as outstanding liability or returns will result in a non-compliant status.

If you ignore your status, you may only become aware of an amount owing to SARS some months later when SARS is taking judgment against you or instructing your employer to withhold money from your next salary.

### 10. KNOW YOUR RIGHTS

Know your rights as a taxpayer. SARS is due to publish its new client charter, and you should hold it to the timelines and obligations set out in this charter.

If you are not in agreement with an assessment issued by SARS, or a decision made by SARS, you may lodge an objection, but it's important to remember that you are still liable to pay the tax due (known as the 'pay now, argue later' principal). However, you could request a suspension of payment pending the outcome of the dispute. If SARS did not provide sufficient reasons for an assessment, you should request such reasons from SARS. The request for reasons will suspend the time period in which you have to submit the objection, but most of all; you need to understand the issue before you can formulate a proper objection.

If you are not familiar with the dispute resolution rules, or the relevant tax law applicable in the dispute, it is advisable to engage the services of a specialist tax practitioner.

Where SARS fails to address the dispute or request for reasons within the required timelines, you can escalate this to SARS' management. If the issue persists you can knock on the door of the Office of the Tax Ombud.

Contributor: ETTIENE RETIEF, CHAIRPERSON OF THE NATIONAL TAX COMMITTEE OF SAIPA

# SARS UPDATES FOR 2019 TAX SEASON

This year's filing season kicks off from 1 July 2019 for taxpayers who are registered for e-filing or have access to MobiApp, and 1 August 2019 for branch filers.

The South African Revenue Service has increased the filing threshold for annual earnings from R350 000 to R500 000. This means that a taxpayer is not required to submit a return if their total income for the year is less than R500 000, providing they only receive income from a single employer and have no other form of income, and there are no additional allowable deductions.

### IMPORTANT CLOSING DATES FOR THE 2019 TAX SEASON ARE:

- 31 October 2019: branch filing
- 4 December 2019: non-provisional taxpayers using e-filing and the MobiApp
- 31 January 2020: provisional taxpayers via e-filing

For more information, visit the SARS website at: [www.sars.gov.za](http://www.sars.gov.za).



# CUSTOMER EXPERIENCE SURVEY

## BY SENIOR MANAGER: OPERATIONS

The Office of the Tax Ombud (OTO) is administering a Customer Experience Survey intended to give the organisation better insight into its stakeholders' expectations, identify ways to help improve delivery and determine taxpayers' perceptions when interacting with the Office.

The survey is part of the OTO's strategy to find innovative ways to continually improve and modernise its processes in order to ensure that complainants have a better experience when interacting with the Office. It also evaluates the ease of lodging complaints with the Office and looks at whether complainants understood the contents of the letters they received and were satisfied with the service they received. The survey questionnaires are being sent to taxpayers after the finalisation of complaints they lodged with the OTO, regardless of whether the complaints were accepted, rejected or terminated.



Talitha Muade, Senior Manager: Operations called on taxpayers and tax practitioners to embrace the survey. "We need your honest inputs on your overall experience with our Office and the service we provide. Your inputs will tell us what we need to improve...overall participation in the survey will be mutually beneficial," she said.

### THE SURVEY, WHICH RATES COMPLAINANTS' EXPERIENCES, ASKS THE QUESTIONS BELOW:

- On a scale of 1 - 7, where 1 is extremely easy and 7 extremely difficult;
- ? How easy was it to lodge your complaint with the Office?
- On a scale of 1 - 7, where 1 is extremely easy and 7 extremely difficult;
- ? How easy was it to understand the contents of the letter you received?
- On a scale of 1 - 10, where 1 is not at all satisfied and 10 extremely satisfied;
- ? How satisfied are you with the service you received?
- ? What could you change about your recent experience with the Office of the Tax Ombud?

Information gathered from the ongoing survey will be used to establish innovative ways to better serve taxpayers' needs and improve the customer-centricity of the organisation.

## CASE STUDIES

Reading about how other taxpayers' complaints have been handled can be useful. The cases below are examples of complaints that the Tax Ombud has helped resolve.

### CASE STUDY 1

#### BACKGROUND

The complaint related to the taxpayer's 2013 income tax refund which SARS incorrectly paid into his previous employer's bank account.

#### FINDINGS

The OTO investigation revealed that all prior 2013 income tax refunds were paid into the taxpayer's bank account. However, on 22 January 2014 and 6 June 2014, SARS paid the 2013 income tax assessment refunds of R271 250.06 and R104 874.88 to the taxpayer's previous employer's bank account, as the taxpayer was working outside the country. This raised both service and procedural issues against SARS because the law prohibits the revenue collector from paying income tax refunds into another person's bank account.

#### RECOMMENDATIONS

It was recommended that SARS recover the 2013 income tax refunds that were erroneously paid to a third party's bank account and pay the refunds back into the taxpayer's bank account. SARS was also requested to provide an explanation for paying the refunds to the third-party account.

#### RESOLUTION

On 2 March 2019 and 19 March 2019, SARS paid R375 810.95 plus interest of R185 324.95 into the taxpayer's bank account and the matter was therefore resolved through the intervention of this Office.



## BACKGROUND

The complaint related to a delay by SARS in finalising the verification of the income tax assessment issued to the taxpayer in respect of the 2016 year of assessment, thereby delaying the payment of a possible refund.

## FINDINGS

The supporting documents required for purposes of the aforementioned verification were submitted on 6 September 2018. SARS delayed the finalisation of the case, thereby delaying the payment of a possible refund to the taxpayer.

## RECOMMENDATIONS

We recommended that SARS finalise the verification of the taxpayer's 2016 income tax assessment and pay out the refund if applicable.

## RESOLUTION

The OTO escalated the complaint to SARS on 12 April 2019, resulting in SARS finalising the Operations Audit and paying out the refund within eight days. The verification was finalised on 16 April 2019 and the refund was paid out on 20 April 2019.

# DID YOU KNOW?

To follow up on the status of your accepted tax complaint, you can contact the Office of the Tax Ombud's Operational Specialist whose contact details (email and phone number) appear on the acceptance letter.



DR BERIC CROOME

## FAREWELL DR BERIC CROOME

The Office of the Tax Ombud is deeply saddened by the passing of Dr Beric Croome, and expresses its condolences to his family, colleagues and those close to him.

Dr Croome was supportive of many of our endeavours as an institution since our establishment. The OTO is grateful for his contribution to the country's tax administration system. His record as an advocate for taxpayers' rights is well known and documented, and can only be matched by his commitment towards

a tax administration system that embraces tax compliance and treats all taxpayers fairly.

His insight on complex tax matters, advocacy for a taxpayers' bill of rights and humanity will be solely missed. Future generations are guaranteed a wealth of knowledge, thanks to his contributions.

In rest, may he find the peace we all seek.

Office of the Tax Ombud

## NOTICE

This is a quarterly newsletter that will be published every three months. We urge our readers and stakeholders to contribute (in the form of articles, important announcements, opinion pieces or letters to the editor) on any matter concerning this Office or tax issues. Your contributions should be emailed to PSeopela@taxombud.gov.za or InternalCommunications@taxombud.gov.za.

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