

# FAIR PLAY

Keeping you up to date with the latest news **ISSUE 9 - 2018**



OFFICE OF THE  
**TAX OMBUD**

*Ensuring fairness*

**5 YEARS**  
OF FAIRNESS  
2013 - 2018



**YOU HAVE THE RIGHT  
TO BE TREATED FAIRLY  
BY SARS**

Page 1  
**JUDGE'S CORNER**

Page 2  
**WE SPEAK FAIRNESS**

Page 3  
**EXPERT'S CORNER**

Page 4  
**10 TIPS FOR  
FILING SEASON**

# JUDGE'S CORNER

Welcome to the second quarter of the 2018/19 financial year! We hope the first six months of 2018 have been as productive for you as they have been for our institution. We are pleased to present another informative issue of Fair Play, tackling some pertinent issues in the tax sphere, mainly the rights of taxpayers; this topic also happens to be the theme for the newsletter. The concept is appropriate for this period as we are in the tax filing season and we need to remind taxpayers about their rights. These rights are protected in the Constitution of the country, and clearly stated in the South African Revenue Service (SARS) Service Charter – but this does not mean citizens may neglect their tax obligations. In fact, this Office calls on all to fulfil their tax responsibilities to the country.

## OUR CONSTITUTION AND TAXPAYERS' RIGHTS

This document has been described by scholars as one of “the most admirable Constitution in the world,” and, rightly so, perceived as a document worth emulating. The South African Constitution not only embraces basic human rights but also goes further and endeavours to eliminate discrimination and redress many historical inequalities. There are numerous rights enshrined in our exemplary Constitution, but sadly the majority of our people are oblivious to these, largely because such rights have not been compiled in a Taxpayers' Bill of Rights (TBOR). It should be of serious concern that South Africa is yet to have such a bill.

## SARS SERVICE CHARTER

I am pleased that SARS has finally launched its Service Charter, and I'm confident that if taxpayers are properly engaged with its contents, this will keep them empowered and do wonders for the understanding of their rights as taxpayers, thereby contributing to the country's tax administration system. The SARS Acting Commissioner says the updated Charter marks a significant chapter in the organisation and “gives us another opportunity to place the taxpayer at the centre of what we do by improving and aligning our internal processes.” I could not agree more. The Service Charter clearly states what taxpayers should expect from SARS regarding services, fair treatment, constitutional rights and privacy, to mention just a few. It also deals with obligations. I urge every taxpayer not only to familiarise themselves with the contents of the Charter but also to fully comprehend what it means. My Office will be there to ensure that SARS lives to the declarations contained in the Charter.

## TAXPAYER RIGHTS AND OBLIGATIONS VS SARS POWERS AND RESPONSIBILITIES

It is important to remind all that no rights are absolute: the Constitution is the ultimate document guaranteeing the protection of our rights, but it also defines the limits of each right. It is thus acceptable that rights may not only be restricted but also create a corresponding obligation. A simple example is that SARS possesses certain powers or “rights” to collect or take money from a taxpayer – in essence, the tax authority is under an obligation to enforce such a right. But at the same time, while collecting revenue, the authority is obliged to act within certain restraints such as not to violate the rights of the taxpayer, who, in turn, is under an obligation to pay due tax – simply, both have rights and obligations vis-à-vis each other.



**TAX OMBUD**  
JUDGE BERNARD NGOEPE

## JUSTIFIED AND UNJUSTIFIED INFRINGEMENTS

It is also essential to note that there are instances where the line between justified and unjustified infringements has been very thin. One of the foremost obligations placed on SARS is to keep the taxpayer's affairs confidential, the obverse thereof being the latter's right to confidentiality. Some might be aware of allegations that SARS has breached this confidentiality by releasing the tax affairs of a taxpayer into the public domain. What should happen in the event where there are allegations of non-compliance by a particular taxpayer? Would SARS always be entitled to protect him or her by invoking the confidentiality provisions and refuse to enlighten the public, even if the taxpayer is a public figure who enjoys huge benefits from the State? If the allegations of non-compliance were to be true, this would mean that if he or she were not to pay due tax, the person would be enjoying the free benefits at the expense of those who do pay their taxes. These are merely some of the issues that need to be thoroughly researched and, regarding which, clear direction should be given. When is it okay to disclose taxpayers' tax details?

## RESOLUTE IN PROTECTING TAXPAYERS' RIGHTS

It is important to remind all that our Constitution should not just be an admired document, but a living one to which we can all aspire, espousing the values enshrined in it and being supported by institutions that protect the rights of citizens. The Office of the Tax Ombud is built on this premise: that it will protect the rights of taxpayers whilst promoting adherence. We do not prioritise SARS over taxpayers; we look at the fact and make recommendations based on that. As a country in general, and as an institution that operates in the tax and tax recourse sphere, we need to be vigilant, respecting and protecting the rights of taxpayers. We are optimistic that the long-awaited TBOR will become a reality sooner rather than later so we can continue strengthening the country's tax administration system.

TAX OMBUD  
Judge Bernard Ngoepe

# WE SPEAK FAIRNESS

## IT'S TAX FILING SEASON



Since the establishment of the Office of the Tax Ombud in October 2013, we have been promoting fairness by ensuring not only that taxpayers are treated fairly, but also that their rights are protected by helping resolve their tax complaints against SARS. We have already taken our education campaign, themed “We Speak Fairness”, to the length and breadth of the country, informing our stakeholders of ways in which we could assist them to resolve their tax complaints against SARS. As the 2018 Tax Filing Season is in full swing, we will intensify our awareness campaign, and remain resolute in our pursuit of actively promoting fairness as well as providing free, impartial and speedy tax recourse services to taxpayers.

We will continue to embrace our values of Accountability, Independence, Efficiency, Fairness and Confidentiality in our everyday interaction with taxpayers and SARS, and thus help streamline the South African tax system.

We strive to maintain a healthy balance between SARS powers and duties, on the one hand, and taxpayer rights and obligations on the other. Fulfil your tax obligations to the country – and we will “have your back” if SARS infringes your Constitutional rights as a taxpayer!

## SARS SERVICE CHARTER WELCOMED

The Office of the Tax Ombud welcomes the release of the Service Charter. The charter was released together with Taxpayer and Trader rights and obligations. In the charter SARS makes service promises to taxpayers.

The Charter, which as OTO CEO Advocate Eric Mkhawane has pointed out still requires “refining”, was released to the public on 1 July 2018. The OTO has been calling for the publication of the charter for many months because it will provide a means for SARS services to be measured and taxpayers to know what they can expect from the revenue collector. The CEO adds, “We made inputs to the service charter and repeatedly called on SARS to release it so that taxpayers can know what to expect and be able to hold them accountable when they fall short of promises made.

“The Service Charter and the taxpayer rights are very important in South Africa’s tax system and will go a long way towards ensuring that taxpayers’ rights are protected, and that when SARS does not observe these rights, it is held accountable,” Mkhawane continued. The OTO provided SARS with a draft document setting out the rights and obligations of taxpayers. These were in line with what later became the Davis Tax Committee recommendations. The Committee has emphasised the need for a bill of rights that is “enforceable and with legal effect”, to guarantee the rights of taxpayers and ensure that



**CHIEF EXECUTIVE OFFICER**  
ADVOCATE ERIC MKHAWANE

SARS takes responsibility for its dealings with them. While the OTO is not currently regarded as the custodian of taxpayer rights, there have been calls for it to be so, with the Davis Tax Committee stating that “...the Tax Ombud should be given direct powers, explicitly to enforce the rights in the TBOR. It is noted that there is recourse provided in other instruments, as stated above, such as the Constitution and the TAA. It is recommended that where there is recourse provided in other instruments, the taxpayer should still have recourse to the Tax Ombud as an alternative to the recourse provided for elsewhere.”

# EXPERT'S CORNER

BY DR BERIC CROOME

Tax Executive at ENSafrica

## EMPLOYERS' AND EMPLOYEES' TAX OBLIGATIONS

The tax filing season is upon us, and from now (1 July 2018) until 1 January 2019, taxpayers will be filing their taxes with SARS. It is a very stressful period for taxpayers and employers, as there is frequently conflict regarding IRP5 and tax certificates, who is obligated to do what and the consequences of non-adherence.

Any employer paying remuneration to an employee is required, under the provisions of the Fourth Schedule to the Income Tax Act, 58 of 1962, to deduct and withhold Pay As You Earn (PAYE) or employees' tax from the remuneration paid. The employer must pay the tax collected over to the Commissioner: SARS.

It does not matter whether the remuneration is paid in cash or in kind. Certain payments may be exempt from tax, but those fall outside the scope of this article.

The employer must deduct the tax from the remuneration and pay that over to SARS by the 7th of the month following the month in which the tax was deducted. If the 7th falls on a weekend or public holiday, the PAYE must, together with the other employment-related taxes, be paid on the preceding business day.

The tax year for natural persons commences on 1 March of each year and ends on the last day of February of the following year. The employer is required by law to provide its employees with a tax certificate, the IRP5 certificate, reflecting the amount of remuneration paid to the employee and the PAYE deducted from that remuneration. The IRP5 must cover the full tax year or, if the employee only worked for a part of the tax year, only that part.

The employee will receive the tax certificate around July and then has the personal obligation to complete and submit an income tax return to SARS, subject to certain exceptions.

If the employee fails to file their tax return within the prescribed period, SARS will impose administrative penalties on the employee for the late filing of the return. The penalty is determined by taking account of the level of taxable income reflected by the taxpayer, and could range from R250 to R16 000 per month until the tax return is filed. Where SARS is aware of the taxpayer's latest address, the penalty can be imposed for up to 36 months, while where SARS does not have the taxpayer's latest details, the penalty can be levied for up to 48 months. In addition, SARS is able to institute criminal proceedings against a taxpayer for the failure to submit a tax return in time and has indicated that in future it intends to use the Tax Court to expedite the prosecution of defaulting taxpayers. In such cases, the taxpayer will remain liable to pay the administrative penalty to SARS, as well as whatever fine the court may impose.

Thus, where a taxpayer is required to submit a tax return and fails to do so, the penalty will be imposed and might add up to a substantial amount becoming due to SARS. It is critical therefore that taxpayers file their tax returns timeously.

The first time a taxpayer may become aware of a debt due to SARS is when they receive a letter of demand from SARS or if SARS instructs the taxpayer's employer to withhold amounts of the taxpayer's



**TAX EXECUTIVE: ENSAFRICA**  
DR BERIC CROOME

salary to settle the debt due to SARS by way of a garnishee order. Employers do not have a legal obligation under the Act to assist or inform their employees that they must complete and submit an annual income tax return to SARS. However, in practice, it appears that personnel are not always aware of the obligation to file an income tax return. This is especially true of school leavers or graduates who may have been employed for the first time and are not aware of the tax rules in the country.

Those schools that do not teach basic financial skills, including basic tax rules, to their learners should do so, thereby enabling them to be properly equipped to become compliant, tax-paying citizens when they embark on a business venture for their own account or enter into employment and receive remuneration.

Whilst employers may not have a statutory duty to advise their employees to register and submit an annual income tax return, many employers do assist the latter in this regard. When a new employee commences employment with an employer, the latter should remind the former of the obligation to register and submit annual tax returns to SARS.

Ideally, the employer should arrange for tax information sessions where employees are reminded of the obligation to file a tax return and are taught how to do so. Most people fear SARS and are loath to deal with their tax affairs. This is often as a result of ignorance of how the tax system in the country works and how a tax return should be completed.

Employers should empower their employees by educating them about the need to submit tax returns and furthermore assist them by providing information as to how tax returns should be completed. This will prevent situations where personnel receive a nasty shock at the end of the month when they obtain their pay slip and, for the first time, become aware that an amount has been deducted on behalf of SARS for the failure to pay an income tax debt on time, and/or as a result of an administrative penalty imposed for late or non-submission of a tax return.

Employees who have debts due to SARS may well be distracted and may not be as efficient as they could have been if their tax affairs had been in order and up to date. It is contended that if an employer assists its staff in attending to their personal tax obligations, this will contribute to a contented workforce and encourage tax compliance in the country.



# 10 TIPS FOR FILING SEASON

## ETTIENE RETIEF

*Professional Accountant (SA), Professional Tax Specialist (SA),  
Registered Tax Practitioner Chairperson of the National Tax Committee  
of SAIPA*



## CHAIRPERSON OF THE NATIONAL TAX COMMITTEE OF SAIPA

ETTIENE RETIEF

Every year, the tax filing deadline looms. This year the deadline has been shifted closer!

But don't let taxes stress you out.

Here are 10 tips that can help you tackle tax season 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 to whatever you reported.

Financial Institutions, employers, and other 3rd 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 employees' 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), income tax certificates (IT3) from financial institutions in regards interest earned and investment earnings (such as unit trusts).

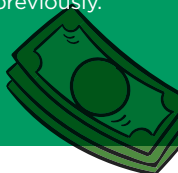
Check all the certificates and supporting documents for errors. If a certificate incorrectly reflects your income you could be assessed for income you didn't earn.

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 3rd party.

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

Remember that you have a requirement by law to retain the supporting documentation for at least 5 years. You need to retain the supporting documentation even if you have submitted such to SARS previously.



### 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. It is your onus 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, ensure 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 & TRUST DISTRIBUTIONS

If you have traded or invested in cryptocurrency (such as Bitcoin) the gains made is subject to tax. The taxing of crypto currency 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 are 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 filling 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 you tax compliance status throughout the year, as outstanding liability or returns will result in a non-compliant status. If you ignore your status, and may only become aware of an amount owing to SARS some months later when SARS is taking judgement against you or instructing your employer to withhold 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 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.



# COMPELLING CIRCUMSTANCES SIMPLIFIED

The Office of the Tax Ombud is trying to provide simplified examples of matters that fall within its mandate and the type of assistance it provides to taxpayers. The cases below illustrate examples of compelling circumstances which allow taxpayers to complain directly to the Tax Ombud.

## Case 1

### BACKGROUND

The complaint concerned SARS's withholding a refund. SARS requested that a taxpayer update their banking details. The latter visited a branch to do so but these details were not amended on SARS's system. After the refund was refused the taxpayer approached the OTO for assistance.

The taxpayer had a refund due, of R3 522.88, as a result of overpayment of provisional tax. SARS placed a special stopper on the refund; consequently the taxpayer went to a SARS branch to update the banking details on 15 February 2018. However, SARS attached the supporting documents to an incorrect case number. The taxpayer made follow-ups on the payment of this refund and was requested to submit supporting documents at the branch. This had already been done by the taxpayer, and the banking details appeared valid on the system.

### FINDINGS

The complaint was found to be valid and related to a service matter, that of SARS delaying paying out the refund. The taxpayer had not exhausted the SARS internal complaint mechanisms in terms of section 18(4) of the TAA; however, there were compelling circumstances not to have done so, because the matter raised an identified systemic issue: that of SARS delaying paying the refund.

### RESOLUTION

The matter was accepted in terms of section 18(5) (a) of the TAA since it had raised the said systemic issue. The Office of the Tax Ombud recommended that SARS release the refund since the taxpayer had already updated the banking details.

## Case 2

### BACKGROUND

The complaint related to a request for SARS to finalise the Notice of Appeal against a 2016 Income Tax Assessment. The taxpayer approached the Office of the Tax Ombud to intervene so that SARS could effect this finalisation.

### FINDINGS

SARS allowed the late submission of an appeal on 17 October 2017. The office of the Tax Ombud established that an ADR hearing had been held on 30 October 2017; in addition, SARS requested additional information which was submitted on 03 November 2017.

SARS failed to finalise the Notice of Appeal lodged on 17 October 2017 within the turnaround time of 90 business days. The complaint was found to be valid and related to a service matter which concerned the request for rectification of an assessment.

The taxpayer had not exhausted the SARS internal complaint mechanisms in terms of section 18(4) of the TAA; however, there were again compelling circumstances why this had not been done. The matter raised another identified systemic issue: that of SARS not adhering to the dispute resolution timeframe.

### RESOLUTION

The matter was accepted in terms of section 18(5) (a) of the TAA, since it also raised a specific systemic issue. The Office of the Tax Ombud recommended that SARS finalise the Notice of Appeal lodged on 17 October 2017 and communicate the outcome to the taxpayer.

## INVITATION

**5 YEARS**  
*OF FAIRNESS*  
2013 - 2018



OFFICE OF THE  
**TAX OMBUD**  
*Ensuring fairness*

## TAX OMBUD ANNUAL REPORT AND FIVE YEARS OF FAIRNESS



Judge Bernard Makgabo Ngoepe  
Tax Ombud

Join Judge Bernard Makgabo Ngoepe in conversation with Joanne Joseph at the next *Business Day Dialogues* as they unpack the Tax Ombud 2017/18 Annual Report and celebrate five years of fairness.

**9<sup>th</sup> October | 11:30 for 12:00 | The Protea Fire and Ice Hotel, Menlyn**

RSVP by the 18th September 2018 to Phila Nkanunu on  
[nkanunup@tisoblackstar.co.za](mailto:nkanunup@tisoblackstar.co.za)

in association with

**BusinessDay**  
DIALOGUES

tiso  
blackstar  
events.



# PARTICIPATION AT THE TAX INDABA

The OTO is pleased to be participating in the upcoming Tax Indaba 2018 scheduled for 10 to 14 September at the Sandton Convention Centre in Johannesburg. Once again, the Office will join thousands of influential voices in the tax sphere who attend this annual event in order to discuss pivotal issues regarding tax. Visit our exhibition stand at the Indaba to find out more about how we can help resolve your tax complaints against SARS. Make sure not to miss the Tax Ombud Judge Bernard Ngoepe on 11 September on his thought leadership panel discussion about "A fair tax administration system", and again on the last day of the Indaba Friday 14 September where you will have an opportunity to have your say and ask him anything.



## 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](mailto:PSeopela@taxombud.gov.za) or [InternalCommunications@taxombud.gov.za](mailto:InternalCommunications@taxombud.gov.za).

## COPYRIGHT NOTICE AND DISCLAIMER




The information provided in this document is protected by applicable intellectual property laws and may not be copied, distributed or modified for any purpose without the explicit consent of the Tax Ombud.

The information was correct at the time of publication but may have subsequently changed. This newsletter is for information purposes only and cannot be considered to be a legal reference. The use of this information by any person shall be entirely at that person's discretion. The Office of the Tax Ombud does not expressly or by implication represent, recommend or propose that services referred to in this document are appropriate to the needs of any particular person. The Tax Ombud does not accept any liability due to any loss, damages, costs and expenses, which may be sustained or incurred directly or indirectly as a result of any error or omission contained in this newsletter. The information does not supersede any legislation and readers who are in doubt regarding any aspect of the information displayed in the newsletter should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.

## FOLLOW OTO ON SOCIAL MEDIA

The OTO has a unique type of following, which includes tax practitioners, accountants, tax experts and journalists who use the platform to engage with the organisation on numerous tax-related matters.

Follow the OTO on:

-  @TaxOmbud
-  Office of the Tax Ombud
-  taxombudsa

