

# FAIR PLAY

Keeping you up to date with the latest news ISSUE 2 - 2016



## JUDGE'S DESK

Welcome to the second edition of Fair Play and thank you for the feedback on the first issue of our newsletter.

Your valuable inputs enable us to gauge whether we are fulfilling our mandate and providing a service that you are both satisfied with and proud of. On numerous occasions, including in our 2014/15 Annual Report and in the media, I have mentioned that one of our primary objectives going forward as an institution is to promote the independence of the Office. This can only be achieved by amending the Tax Administration Act, which is the foundation of our existence and mandate as an institution.

**"I am pleased to state that our efforts and submissions regarding this matter have already borne some fruit with the release for public comment of the draft Tax Administration Laws Amendment Bill, 2016. These amendments address several issues around the independence of the Office and we urge our stakeholders and the general public to make submissions before 8 August 2016."**

### **New complaints management system introduced**

The first quarter of the 2016/17 financial year has seen many new developments in this Office, including the introduction of the new Service Manager Complaints System that will benefit taxpayers and improve efficiency in complaints management. We also held our first ever Strategic Workshop to discuss the strategic intent and way forward for the organisation.

We are already in the second quarter of the financial year and are pleased with what we have achieved in the past three months, and keen and committed to doing more as we pursue excellence. The South African Revenue Service (SARS) tax filing season is upon us and will see several million taxpayers filing their tax returns. To say SARS will be busy in the next few months would be an understatement as they



**Judge Bernard Ngoepe**  
Tax Ombud

will be attending to a host of tax-related matters, including disputes and complaints. Automatically this also means extra-busy months for the Office of the Tax Ombud with regard to complaints from taxpayers against SARS – and we are ready.

### **Be aware of what we can and cannot do**

As we expect a flood of complaints to come through in the next few months, it is important to inform taxpayers that we operate within the confines of the Tax Administration Act, which clearly states which matters we can deal with and which fall outside our mandate. It is equally important for taxpayers and tax practitioners to familiarise themselves with what we can and cannot do as the Office of the Tax Ombud. So you lodge a complaint with our Office and we explain that it is outside our mandate, it would not mean we don't want to help you; the simple truth is that we have no legal authority to address some of the matters brought to us. Please visit our communication platforms or call our office for more information.

## Please give your input on tax act changes

Going forward, let us continue to engage and participate in the important social, political, financial and legal dialogues shaping our country. In particular, we urge all our stakeholders to make inputs on the draft amendment to the Tax Administration Act.

The Office of the Tax Ombud is already three years old and it is pleasing to note that within this period we have built mutually beneficial relationships and partnerships with our stakeholders, including

taxpayers, the media, professional tax bodies and SARS. We will continue to engage with you through our various communications and marketing platforms, with the goal of raising awareness about the Office and increasing utilisation of services offered. Very importantly, we also hope to garner your thoughts on how to better serve taxpayers and help improve the country's tax collection system.

**Judge Bernard Ngoepe**  
Tax Ombud

# ENGAGING PARTNERS THROUGH WEBINARS

Webinar is proving itself an agile and effective way to interact with the stakeholders of the Office of the Tax Ombud (OTO).

In the past few months, OTO has continued using the popular webinar platform to engage with stakeholders on issues connected to tax and taxpayers' complaints against SARS. Tax Ombud Judge Bernard Ngoepe has extended his gratitude to the South African Institute of Professional Accountants (SAIPA) and South African Institute of Tax Professionals (SAIT) for co-hosting webinar sessions with the Office. He has also called for other bodies to join the OTO in using webinar to inform their members about the Office and engage in important discussions about the South African tax system.

"These sessions benefit all our stakeholders and more are planned for the coming months. Institutions interested in engaging the Office to do similar presentations through webinars are urged to contact our Office; we will be glad to engage as many of our stakeholders as possible," says Judge Ngoepe.

**Below is a list of some important matters raised and addressed during the webinar sessions so far:**

**Q: I have a taxpayer that has passed the 30 days to object on a VAT assessment. Is there another channel to object or is it now finalised?**

A: As a taxpayer you can still lodge an objection, but will have to advance exceptional circumstances which gave rise to the delay in lodging the objection.

**Q: An appeal was lodged via e-filing but I forgot to indicate that the taxpayer wants to make use of the Alternative Dispute Resolution (ADR) process. Will the SARS official still facilitate settlement discussions between the parties?**

A: An appeal can only be referred to ADR by agreement between the parties. SARS is required to notify the taxpayer within 30 days after receipt of the Notice of Appeal (NOA)/ADR2 whether or not the matter is suitable for ADR. If the taxpayer did not elect ADR on the NOA/ADR2 form, the

taxpayer must within 30 days after receipt of the notice that the matter is suitable for ADR, notify SARS that they agree to the ADR process (rule 13).

**Q: I recently phoned the call centre for an extension for an appeal as we did not have the final details finished, and we were informed that extensions were only granted for IT14SDs (supplementary declaration forms). How do we attend to this matter in future if the call centre agents are not up to date with the latest SARS protocols? This has also been a problem with other matters - that the call centre is not up to date with their own SARS-issued guidelines.**

A: The best way to apply for an extension for an appeal is to send it to the clerk of the Tax Board of that particular region (where the taxpayer is registered).

**Q: What is the timeframe within which the Ombud must reply? We have matters that take a long time - the Latin maxim about who will guard the guards comes to mind when the Ombud takes time to reply.**

A: The OTO tries to facilitate the resolution of complaints within 15 days; however this is not always possible. The OTO does follow up and meet with SARS on a regular basis to revisit outstanding cases and to find out the progress and soonest resolution dates, and you should be kept informed periodically of the status. If you do not receive feedback from the OTO, please feel free to escalate this lack of updates to the Manager of Operations, Mr Reason Dube. The messages should be for his attention, his details are [complaints@taxombud.gov.za](mailto:complaints@taxombud.gov.za), or tel: 0800 662 837

**Q: What happens when you have lodged an objection and the statement of accounts show that the matter has been dealt with partially, but you have got no response from SARS re the findings?**

A: You can contact SARS and request a copy of the notice of partial allowance.

**Q: What is the best procedure to get to tax court for a client? All our applications and appeals have been declined and SARS is threatening collection. Debt is quite high.**

A: From the facts provided, unfortunately we cannot furnish you with an answer as it is not indicated why the appeals were declined (invalidated) by SARS. You can submit a complaint to our Office, if the SARS Complaints Management Office cannot assist, detailing all the facts and we will establish if it falls within our mandate.

**Q: How long does SARS have to respond to a Request for Remission (RFR) which I submitted in December 2015 for a company? SARS keep saying it's in process.**

A: There are no prescribed timeframes nor is there a service charter that establishes turnaround times. The question of how long a reasonable period would be for a response is therefore subjective and must be evaluated taking all facts into consideration. We would recommend you

lodge a complaint with the SARS Complaints Management Office and if they cannot resolve the issue, you can lodge a complaint with the OTO.

**Q: What happens when the Tax Ombud makes a recommendation and SARS either doesn't comply or takes their own time to do so? A client had someone move their taxes without authorisation and the Tax Ombud recommended that it must be reversed but the SARS Complaints Management Office says that there are system issues. The other frustration is that an override code was issued without a request to move taxes having been done.**

A: The Tax Administration Act requires the Office of the Tax Ombud to facilitate the resolution of complaints lodged by a taxpayer by informal means. If SARS fails to act on the recommendations made by the OTO, this will be recorded in the Tax Ombud's Annual Report that is submitted to the Minister of Finance for tabling in Parliament. The OTO is in the process of concluding a Memorandum of Understanding with SARS which will include the timelines within which SARS should respond to its (OTO) recommendations.



## EXPERT'S CORNER

### SUBMITTING INCOME TAX RETURNS AND CHECKING ASSESSMENTS FROM SARS

Dr Beric Croome, Tax Executive ENS

Filing season for natural persons opened on 1 July 2016. Those taxpayers who are not provisional taxpayers need to submit their tax returns by 25 November 2016, either via a SARS branch or via e-filing. In the case of provisional taxpayers, the tax return must be submitted by 31 January 2017. It is important that taxpayers exercise care when completing their tax returns by ensuring that the information submitted to SARS is correct and can be supported by the documents that the taxpayer holds.

Taxpayers will in most cases receive an assessment from SARS very promptly, particularly via the e-filing system, and it is important that taxpayers check the tax assessment received against the actual tax return submitted.

If the tax assessment received does not agree with the tax return submitted or SARS later amends the assessment, the taxpayer is entitled to dispute the assessment if they do not agree with that assessment, but the timing of disputing the assessment is important.

#### Timing of objections is critical

Where the taxpayer has received reasons from SARS for adjustments made to an assessment, any objection or disputing of the assessment must take place within 30 business days after the date of the assessment. It must be noted that the 30 days is determined by excluding public holidays and weekends, as well as the period from 16 December to 15 January of each year.

In those cases where the taxpayer does not understand the basis on which the assessment has been issued, they are entitled, under the rules governing objections and appeals, to request reasons from SARS explaining the basis on which the assessment was issued. The request for reasons must be delivered to SARS within 30 business days of the date of the assessment. The period of 30 business days equates to about six weeks from the date of assessment. It is most important that taxpayers comply with the limited time period in which to dispute an assessment. If a taxpayer fails to meet the deadline, the time period for lodging an objection may not be extended for more than 21 business days unless a senior SARS official is satisfied that exceptional circumstances exist which resulted in the taxpayer's delay in submitting the objection.

Where the assessment is older than three years, the taxpayer is not entitled to challenge the assessment as the legal rights available to dispute the assessment have expired. It is important to know that the extension of time in which to dispute an assessment requires a very high threshold which is not easily met. It is therefore far preferable if taxpayers check their assessments carefully to ensure that the assessment agrees with the tax return submitted and that they do not require an extension of time in which to submit an objection.

In summary, it is critical that taxpayers prepare the information required for the completion of their tax return and ensure that the tax return submitted by them is complete and accurate. Once the assessment is

received, taxpayers should ensure that the assessment received agrees with the tax return submitted or that they understand the basis on which SARS has made any adjustments to that assessment. Taxpayers are fully entitled to challenge an assessment but must do so within the limited time period contained in the law, failing which the assessment will become final and the tax reflected as payable thereon will remain due and payable to SARS.

The article is contributed by **Dr Beric Croome, Tax Executive ENS**. BCom, CTA, BProc, LLB, Higher Diploma in Tax Law (cum laude), Doctor of Philosophy (Commercial Law), Admitted as an Advocate of the High Court of South Africa, CA (SA), FCMA (UK), CGMA, MTP (SA), TEP, IFA

## Proposed Amendments to the TAA

**The draft Tax Administration Laws Amendment Bill, 2016, was published on 8 July for public comments. The closing date for comments is 8 August 2016. The Office of the Tax Ombud urges the public to comment on the amendments, which could have a significant positive impact on the independence of the Office.**

Tax Ombud Judge Bernard Ngoepe says he is pleased with the proposed amendments as they are a step in the right direction towards ensuring increased independence of the Office and separation from SARS. "We have worked hard to ensure that these proposals are included in the Bill and we will continue engaging relevant structures to ensure we have a better mandate to address issues raised by taxpayers," says Judge Ngoepe.

He has also extended a call to the general public and stakeholders to comment on the draft bill before the deadline on 8 August. "It is important that taxpayers have a say in this piece of legislation which has a huge impact on their lives."

**Below are the proposed amendments in relation to the Office of the Tax Ombud:**

**47.** Section 14 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister must appoint a person as Tax Ombud—

- (a) for a term of **[three] five years**, which term may be renewed; and
- (b) under such conditions regarding remuneration and allowances as the Minister may determine."

**48.** Section 15 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The **Tax Ombud must employ the** staff of the Office of the Tax Ombud **[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].**"; and

(b) by the substitution for subsection (4) of the following subsection:

"(4) The expenditure connected with the functions of the Office of the Tax Ombud is paid out of the funds of SARS, **in accordance with the budget approved by the Minister for that office.**"

**49.** Section 16 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The mandate of the Tax Ombud is to—

- (a) 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; **and**
- (b) **review, at the request of the Minister, any systemic and emerging issue related to a service matter or the application of the provisions of this Act or procedural or administrative provisions of a tax Act.**"

50. Section 20 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Tax Ombud’s recommendations are not binding on **[taxpayers]** a taxpayer or SARS, **but if not accepted by a taxpayer or SARS, reasons for such decision must be provided to the Tax Ombud and may be included by the Tax Ombud in a report to the Minister or the Commissioner under section 19.”**

Please read the proposed amendments and make your submission in time. Comments should be sent to Adele Collins @ [acollins@sars.gov.za](mailto:acollins@sars.gov.za). The Draft Tax Administration Laws Amendment Bill 2016 can be downloaded from [www.taxombud.gov.za](http://www.taxombud.gov.za).

# WE CONTINUE TO SERVE WITH EXCELLENCE

**We continue to educate taxpayers and tax practitioners about our mandate and services. Below are examples of cases we have dealt with. We hope they may empower you with knowledge on what the Office of the Tax Ombud is about.**

## CASE 1

### FACTS

The taxpayer made a PAYE payment in excess of R200, 000.00 to SARS on the date the return was filed. SARS erroneously transferred the entire payment to an incorrect PAYE number, resulting in a debt for the taxpayer. SARS subsequently initiated debt collection steps and deducted the money from the taxpayer’s bank account. The taxpayer tried to communicate with debt management and the SARS Complaints Management Office on numerous occasions about the debt but was not assisted.

### OUR INTERVENTION

When the taxpayer approached the Office of the Tax Ombud, the operational specialist responsible with the matter discovered SARS’s error and made a recommendation to SARS to transfer the payment to the correct account and allocate it to the correct period.

SARS accepted the recommendation and transferred the payment to the correct PAYE number and journals were done to transfer the money to the correct PAYE period. SARS sent an email to the taxpayer explaining the correction of the account and apologising for the inconvenience caused.

### LESSONS LEARNT

If taxpayers find themselves in this kind of situation they need to approach SARS and report the case to the SARS Complaints Management Office as soon as possible. If the SARS Complaints Management Office is not able to resolve the matter, a complaint can be lodged with the Tax Ombud.

## CASE 2

### FACTS

SARS raised an assessment that resulted in a debt for the taxpayer. The taxpayer entered into a deferred payment arrangement with SARS to make monthly payments and stipulated a condition that should he receive any lump sum payments, 50% thereof would be paid towards the debt.

The taxpayer was due for an annuity lump sum payout and SARS did a third party appointment, resulting in the full amount of the lump sum being paid over to SARS, despite the agreement. The taxpayer complained to SARS and they refunded 50% of the lump sum. Subsequently a second lump sum became due to the taxpayer and SARS again did a third party appointment for the full amount, contrary to the agreement. The taxpayer again complained to SARS; however this time SARS refused to repay 50% as per the agreement noting that the third party appointment was done in terms of SARS’ policy and procedures.

### OUR INTERVENTION

We recommended that SARS complies with the conditions as set out in the deferred payment arrangement and refund 50% of the second lump sum as they did with the first. SARS accepted the recommendation and deposited the money into the taxpayer’s bank account.

### LESSONS LEARNT

SARS’ system should be adjusted to identify where taxpayers have standing deferred payment arrangements to avoid automatic third party appointments being issued on lump sum payments due to taxpayers.

# WHAT YOU NEED TO KNOW

- The 2016 threshold for submitting a personal income tax return is R350 000 unless the taxpayer wants to claim expenses against allowances.
- Taxpayers are urged to use legitimate tax practitioners who are registered with professional bodies.
- Taxpayers should be honest when submitting their tax returns and claim for legitimate expenses.
- Taxpayers need to ensure that information submitted by their practitioners is correct as the consequences of submitting false information will fall on taxpayers.
- SARS is allowed to conduct an audit before paying a refund, the Tax Ombud cannot assist in bypassing the audit process.
- After submitting a tax return, the taxpayer should follow up with SARS to find out the turnaround times.
- File on time so that there are no delays in receiving your assessment outcomes.
- If you are not happy with your assessment, make sure you lodge your objection with SARS within 30 days of the assessment date.
- Make sure details with SARS are up to date, including your address, contact details and bank accounts.
- Ask SARS about the complaint process if you are not happy with the outcome.
- Provide SARS with all requested information and supporting documents on time.
- The Tax Ombud cannot assist in writing off the tax debt after the return is processed.

## Reaching out to Probono.org

The CEO of the Office of the Tax Ombud, Advocate Eric Mkhawane, made a presentation to legal professionals from different legal organisations informing them about the Office, its mandate and services. The presentation, at Hogan Lovells Attorneys in Sandton, was organised in collaboration with ProBono.org (a non-governmental organisation that works with the legal profession to provide pro bono legal services to the poor).

Adv Mkhawane informed the legal professionals about the legal channels available for them to use within the Office of the Tax Ombud.

Ms Tshenolo Masha, Head of Legal at ProBono.org, thanked the OTO for the partnership, adding that the organisation was keen to pursue future collaboration. Adv Mkhawane shared this sentiment and also challenged the legal professionals to make inputs on how the Office can improve and better serve their needs and those of taxpayers.

The Office of the Tax Ombud will continue to look for opportunities to collaborate with other institutions as part of ongoing public education awareness.

### Notice

This is a quarterly newsletter that will be published every three months. The next issue will be out in the next quarter. We urge our readers and stakeholders to make inputs on any matter concerning this Office or tax issues. Your inputs could be in the form of comments or letters to the editor, and should be emailed to [PSeopela@taxombud.gov.za](mailto:PSeopela@taxombud.gov.za) or to [InternalCommunications@taxombud.gov.za](mailto:InternalCommunications@taxombud.gov.za).

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