

COMPENDIUM A STEP IN THE RIGHT DIRECTION FOR **TAXPAYER RIGHTS**

The goal of protecting and raising awareness of taxpayer rights has received a significant boost with the publication of the draft Tax Ombud's Compendium of Taxpayers' Rights, Entitlements and Obligations.

On 1 February 2022, Tax Ombud Judge Bernard Ngoepe released the draft Compendium – the first such document in South Africa – and called for public comment, giving interested parties until 18 March 2022 to make inputs. Until the Office of the Tax Ombud (OTO) published this Compendium, information about taxpayers' rights was spread across numerous documents, including the Constitution, but there was no single document highlighting some of the most important taxpayer rights, entitlements and obligations concerning their tax affairs and engagements with the South African Revenue Service (SARS) and OTO. The Tax Ombud and other stakeholders have for years been calling on the government to publish a Taxpayer Bill of Rights but no action has been taken. It is hoped that the release of the OTO's draft Compendium will be the catalyst for action on a Taxpayer Bill of Rights.

Judge Ngoepe notes that although the Compendium is not an enforceable Taxpayer Bill of Rights, it consolidates the numerous principles contained in the Constitution, tax legislation and other government documents. He adds that a clearly articulated set of taxpayer rights is important for improving the South African tax administration system and accountability by SARS.

He reiterates that the Compendium is not a replacement for a Taxpayer Bill of Rights, which government should initiate, but rather a "step in the right direction" which will assist millions of taxpayers understand what their rights are as guaranteed in the Constitution and legislations.

He adds that revenue authorities globally have massive powers to ensure their effectiveness in collecting taxes.

However, these powers may infringe on the fundamental rights of taxpayers and leave many of them intimidated and uninformed when the revenue collector is violating their rights.

[Continued on page 2]

Embracing taxpayer rights and obligations

It is a pleasure to welcome our readers to the 23rd edition of our newsletter and the first of 2022. The theme of this edition is "Embracing taxpayer rights and obligations", underlining the ongoing efforts of the Office of the Tax Ombud to ensure fairness when taxpayers deal with SARS. The publication also coincides with the Tax Ombud's call for stakeholders to comment on South Africa's first-ever draft Compendium of Taxpayers' Rights, Entitlements and Obligations. We urge all those who have not yet made inputs to do so before the deadline on 18 March 2022. The Compendium can be found on our website at www.taxombud.gov.za.

This edition also contains informative articles on the steps the Office of the Tax Ombud uses when a taxpayer lodges a tax complaint, insight on critical timelines for lodging disputes and other issues of importance to taxpayers.

Remember to tell us how we can improve our newsletter by sending an email to Communications@taxombud.gov.za.

Enjoy the read!

Pearl Seopela
Senior Manager:
Communications
& Stakeholder
Relations



4 Keep track of objection time frames

Taxpayers and taxpayer representatives are reminded of their responsibility to ensure that they adhere to dispute resolution timeframes to avoid frustrations.

6 SA not poor, just needs better management

Tax Ombud, Judge Ngoepe's comments at The Tax Faculty's Budget and Tax Review.

7 Lodging a complaint with the OTO: A step-by-step guide.

Tax Ombud's Corner



Although we are almost a quarter of the way through 2022, it is important for us to greet and wish you all the best for the new year, and to give our stakeholders an update on significant developments within the Office of the Tax Ombud and the tax sphere in general.

We are pleased with what we have achieved during the current financial year and confident that taxpayers and our other stakeholders will appreciate our contributions towards strengthening and protecting taxpayer rights and boosting tax compliance. When the 2022/23 financial year commences on 1 April 2022, the Office will begin implementing new targets and strategies to serve stakeholders better and contribute to improving the South African tax administration system.

I have been with the OTO for over eight years – ever since the Office was

established in October 2013 – and I can confidently state that our service offering has improved exponentially. We have put measures in place to ensure continued growth and improvement in line with our 2020 – 2025 Strategic Plan. The new 2022/23 Annual Performance Plan, submitted to Parliament, details how we plan to move forward with our new and ambitious targets set for the Office. I am optimistic that some of the important projects we have embarked upon will come to fruition in the next 12 months.

You may remember that I have been advocating for a Taxpayer Bill of Rights since the inception of the OTO. Last month, we published the draft Tax Ombud's Compendium of Taxpayers' Rights, Entitlements and Obligations, with the deadline for public comment being 18 March 2022.

I want to express gratitude to all who have already made inputs and remind others that they still have a few days to comment on the draft. Your inputs are essential, and I believe they can only improve the Compendium. As I have said before, this Compendium is not a replacement for a Taxpayer Bill of Rights, which I firmly believe should become a reality sooner rather than later. This draft publication is a step in the right direction.

I thank you all for the support you have given the Office, enabling us to make a difference in the lives of taxpayers, and appeal for your continued support going forward.

Judge Bernard Makgabo Ngoepe

Tax Ombud



COMPENDIUM A STEP IN THE RIGHT DIRECTION FOR TAXPAYERS' RIGHTS

[Continued from page 1]

Some of the rights and entitlements listed in the Compendium include access to information, a fair, unbiased and just tax system, privacy, confidentiality and representation in dispute assessments/decisions. It also states that taxpayers are entitled to:

- complain without fear of victimisation,
- finality,
- make certain requests/proposals/applications to SARS,
- receive quality and timely service from SARS, and
- not have to pay any more than the correct amount of tax due to SARS.

"This Compendium of Taxpayers' Rights, Entitlements and Obligations will go a long way towards empowering taxpayers with knowledge about their tax rights and understanding of the level of service they are entitled to from SARS. It is important to note that while the OTO champions taxpayer rights, we also promote tax compliance," he concludes.



NB: Taxpayers and other stakeholders are requested to send their inputs on the draft Compendium of Taxpayers' Rights, Entitlements and Obligations to any of the OTO employees below:

- **Gert van Heerden**, Senior Manager: Legal Services and Systemic Investigations.
gvanheerden@taxombud.gov.za
081 702 5260
- **Frik Pretorius**, Specialist: Legal Services.
fpretorius@taxombud.gov.za
082 464 8961
- **Fundiswa Ngqeleni**, Specialist: Legal Services
fngqeleni@taxombud.gov.za
072 881 4460.

The draft Compendium of Taxpayers' Rights, Entitlements and Obligations is available at www.taxombud.gov.za

CEO's Note



Prof. Thabo Legwaila
Chief Executive Officer

I am pleased to present to you the first issue of our newsletter in 2022. It feels as if we have just celebrated the festive season, and yet in a few days, on 1 April, I will be celebrating my second anniversary with the Office of the Tax Ombud.

Time moves fast, especially when you are busy, as we have been in the past 12 months, improving numerous elements and processes within our organisation. We have been busy putting measures in place to ensure that we improve customer-centricity and better serve taxpayers who have complaints against SARS, while also promoting a healthy balance between SARS's powers and duties, on the one hand, and taxpayer rights and obligations on the other.

Our focus is on strengthening taxpayers' trust and confidence in tax administration by providing an impartial mechanism for dispute resolution with SARS, including improving digitisation in the Office. We are embracing new and more efficient ways of helping taxpayers by enabling easy access

to our services and simplifying the complaints process. We are almost halfway through implementing the deliverables in our Digital Communications Framework, and are prioritising the development of an online complaints process that allows taxpayers to lodge a complaint at their convenience. Aligned to this is the drive towards a paperless environment that will bring greater internal efficiency and convenience for taxpayers.

“Our focus is on strengthening taxpayers' trust and confidence in tax administration...”

In the not-so-distant future, we will unveil our new user-friendly website with improved content and access to information. The ultimate goal is to have an app or interactive automated platform where taxpayers can directly lodge their complaints and access regular and timely updates on the status of their complaints, such as when a complaint moves to a different level of the resolution process.

Some of the other initiatives we are planning for the coming year include implementing the comprehensive systemic investigation policy that we have developed, providing a framework for identifying and reviewing systemic and emerging issues. This is in addition to the Office's complaints resolution policy, which details all processes and procedures for optimal complaints resolution. The development of these policies, together with other initiatives such as digitising our complaints process, is geared towards improving customer-centricity and strengthening the tax administration system.

We are confident that with your continued support, the OTO will triumph and be exemplary in delivering excellent service while making a difference in taxpayers' lives.

Thank you.

Prof. Thabo Legwaila
Chief Executive Officer

TAX TIPS

PAY NOW AND ARGUE LATER!

Taxpayers are required to pay a tax debt before a dispute is finalised or resolved (a principle known as the “pay-now, argue-later” rule) unless an application to suspend the payment of the debt is lodged and approved by SARS pending the outcome of the objection or appeal. Thus, the obligation to pay tax, which arises upon the issue of an assessment, is not “automatically” suspended by an objection or appeal.

TAXPAYERS ADVISED TO KEEP TRACK OF OBJECTION TIMEFRAMES

Sibusiso Thungo
Specialist: Systemic Investigations



The stakeholder webinars that the OTO has been hosting are a mutual learning experience. At one of our webinars, a stakeholder detailed a challenge experienced with SARS that the Office felt should be unpacked for the benefit of other taxpayers.

The issue raised was: "SARS issued an additional assessment for the 2017 tax year in August 2021. We requested reasons, and SARS rejected the objection, citing the three-year rule".

What is an objection?

Taxpayers dissatisfied with an assessment issued by SARS have the right to object to such an assessment; however, it should be noted that they do not have the right to object to a self-assessment that SARS did not issue.

It is also important to note that the objection process is not limited to SARS assessments; taxpayers may also object to a decision by SARS to decline a request for remission of specific administrative non-compliance penalties or interest.

These include late penalties for value added tax (VAT), Pay as You Earn (PAYE), Unemployment Insurance Fund (UIF) contributions and skills development levies (SDL), as well as late penalties on provisional tax and late payment of VAT and PAYE interest (excluding UIF and SDL).

Furthermore, an objection may be filed to the imposition of other tax-related penalties such as understatement penalties, tax-free investment penalties, Employment Tax Incentive (ETI) sectorial wage penalties, ETI displacement penalties and Reportable Arrangement Penalties, as well as penalties under paragraph 20 of the Fourth Schedule (underestimation of income). Currently, taxpayers have no right to object to the imposition of statutory interest, such as late payment of interest on UIF and SDL or on income tax, VAT and other SARS-administered taxes.

If SARS disallows input VAT because an invoice was deemed invalid in terms of section 20(4) of the VAT Act, the vendor cannot object to the assessment raised by SARS. However, the vendor can claim the input tax on the valid tax invoice

in the period in which the valid tax invoice is obtained. The vendor can make such a claim within five years of the date that the invoice should have been issued for that supply.

Taxpayers and taxpayer representatives must be aware that the late submission of an objection might not be allowed; SARS will not allow the late objection if no exceptional reasons are provided. If the late objection is not allowed, the taxpayer has the right to object to the decision not to condone the late submission of the objection.

Objection timeframes

The objection must be filed within 30 business days of the date of the assessment or SARS decision, according to Rule 7 of the Alternative Dispute Resolution (ADR) rules. Objections must be filed using the prescribed forms. If a request for assessment reasons was made, the objection must be submitted within 30 business days of receiving such reasons from SARS.

[continued on page 5]

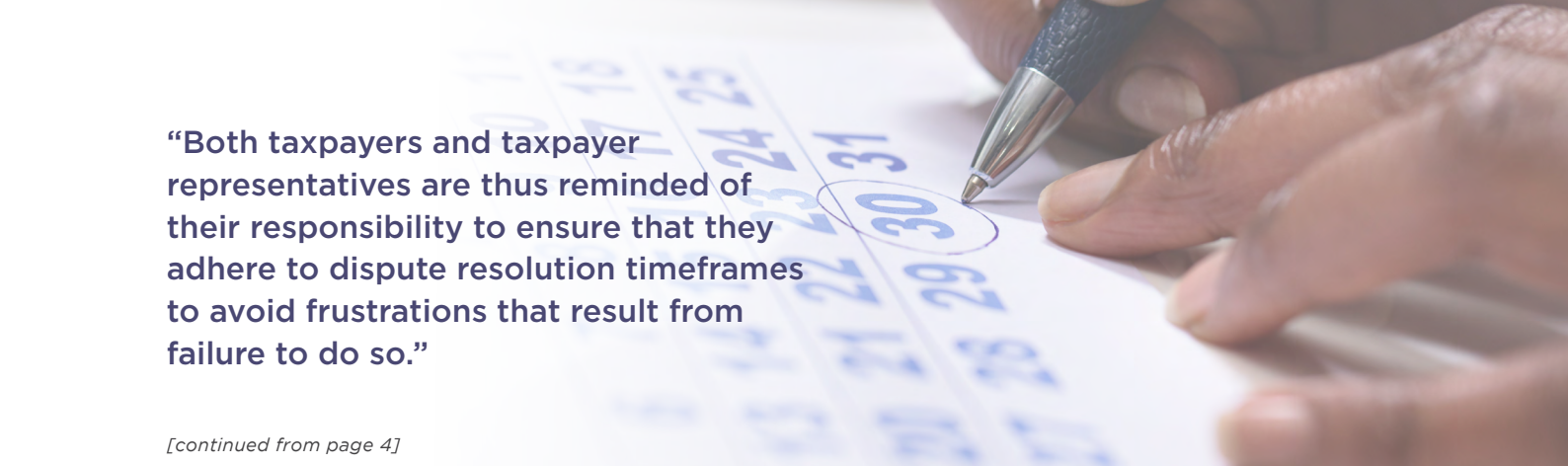
**TAX
TIPS**

ALLOW SARS ADEQUATE TIME TO DEAL WITH YOUR TAX COMPLAINTS

Prior to approaching the SARS Complaints Management Office (CMO) to lodge a complaint, a taxpayer needs to approach the SARS call centre or branch. A response from them will take up to 21 working days. After these 21 days, a taxpayer can approach the SARS CMO to lodge a complaint.

The CMO then has a 21-day turnaround time to deal with or reject the complaint. Should the 21 days lapse, or should the CMO reject incorrectly, a taxpayer can approach the OTO to lodge a complaint, unless there are compelling circumstances to approach the Office without approaching the CMO.





“Both taxpayers and taxpayer representatives are thus reminded of their responsibility to ensure that they adhere to dispute resolution timeframes to avoid frustrations that result from failure to do so.”

[continued from page 4]

Taxpayers and taxpayer representatives should be aware that, according to Section 1 of the Tax Act (TAA), business days exclude weekends, public holidays and the 16 days between December 16 and January 15 of the following year as these days are treated as dies-non (days on which no legal business may be transacted). If a taxpayer fails to submit an objection on time, the taxpayer is expected to provide valid reasons for the delay. A senior SARS official will then consider the late submission first; if the reason for the late submission is found to be reasonable or exceptional, the condonation will be granted. Following that, the merits of the objection will then be considered. SARS has 60 business days from the date the objection was submitted to finalise the objection and provide a taxpayer with an outcome, unless additional supporting documentation is requested or the revenue collector issues a notice of a delay due to exceptional circumstances.

If SARS fails to provide the outcome within the timeframe specified, a taxpayer has the right to file a complaint with the Office of the Tax Ombud because this is one of the systemic issues identified under section 18(5)(a) of the TAA. It is important to note that SARS will not accept objections after three years from the date of the assessment as the assessment has become final and conclusive by then. Taxpayers and taxpayer representatives must understand that this is mandated by the TAA and that SARS is not acting maliciously. There is case law that confirms once the three year period has lapsed, a taxpayer cannot force SARS to adjust the assessment even if it is patently wrong. Both taxpayers

and taxpayer representatives are thus reminded of their responsibility to ensure that they adhere to dispute resolution timeframes to avoid frustrations that result from failure to do so.

Please note that the above limitation does not only apply to objection matters; Section 107(2) of the TAA allows for no more than a 45-day extension on the matter of an appeal, so taxpayers and taxpayer representatives must ensure that their notice of appeals are also lodged within the prescribed timeframe if the objection was disallowed or partially allowed. This is critical because SARS will reject any appeal filed after 75 days as such assessment is considered final and conclusive under section 100(1)(c) of the TAA.

Consider the following examples illustrating what has been covered so far:

Example 1: Taxpayer A filed a 2016 income tax return on 1 February 2016, and SARS issued an assessment on 2 May 2016 to disallow travel expenses claimed. From that date until 1 December 2020, the taxpayer did not file any objections. Consequently, owing to the three-year prescription rule, SARS did not consider the objection. The 30 days and three years began on the date of the assessment, which was 2 May 2016. This means SARS correctly addressed this matter.

Example 2: Taxpayer B filed a 2016 income tax return on 1 February 2016, and the verification was completed with no changes. SARS issued an additional assessment on 10 November 2021, in accordance with Section 99(2)(a)(ii) of the

TAA. The taxpayer has not yet filed an objection; however, if he is dissatisfied with the additional assessment issued by SARS, there is still time to do so because the three-year prescription period had not expired when the additional assessment was issued in November 2021. Even though 30 days have passed, the taxpayer will thus be required to provide reasons for the late submission for the senior SARS official to consider. If exceptional circumstances are proven and accepted, the 30-day period may be extended by an additional 21 days.

OTO conclusion

Given the preceding explanations and two examples above, it is likely that the SARS official/SARS system made an error in calculating the period in the case raised during the stakeholder engagement session. The calculation of three years was based on the original assessment period of 2017 issued in the same year and thus failed to consider the additional assessment issued by SARS in August 2021. Taxpayers and taxpayer representatives must ensure that they focus on the date the assessment was issued and that this date is reflected on any notice of assessments issued. It is critical to be aware of the first and second due dates reflected on the notices of assessment, as many become confused by these dates and fail to file an objection on time.

Finally, anyone affected by the same circumstances as the case raised during a stakeholder engagement, should first lodge a complaint with the SARS Complaints Management Office (CMO), failing which the Tax Ombud may be approached to intervene.



ABOVE: The Tax Faculty CEO, Stiaan Klue greets Tax Ombud, Judge Bernard Makgabo Ngoepe, ahead of The Tax Faculty's Budget and Tax Review, on Wednesday 9 March.

SA NOT POOR, JUST NEEDS BETTER MANAGEMENT

South Africa is not a “particularly poor country”, the problem is corruption and not bringing the best people to manage its budget.

This is according to Tax Ombud Judge Bernard Ngoepe when addressing some of the country's top tax minds at the Tax Faculty's Budget and Tax Review held in Menlyn in Pretoria on 9 March 2022.

The event, which serves to unpack the tax proposals announced in Finance Minister Enoch Godongwana's 2022 Budget Speech, saw Judge Ngoepe reiterating the importance of the budget speech and the impact that corruption has in the country's economy and distribution of wealth.

“This country is not particularly poor. There is a lot of money, the problem is how it is distributed. We need to ensure that the poor don't get poorer and the rich richer,” says Ngoepe adding that South Africa was better off than many countries in the continent, some whose budget was equal to that of the City of Johannesburg, but use it better. “Our government should come up with plans to speed up economic growth. People are fighting for economic space.”

He adds that the challenge was with the people tasked with managing the country's coffers. “We need to appoint people on merit and not on political connection to manage our budget. We have a problem of corruption,” he said.

He adds that despite economic challenges facing the country, South Africans are entitled to have some guarded cautious optimism.

Judge Ngoepe says the budget speech is very important for the country and helps determine the public's spending patterns, and affects everyone, especially the poor. He also commends the South African Revenue Service (SARS) for collecting more taxes than expected, adding that some of the improvement in the revenue collector should be attributed to the contributions made by the Office of the Tax Ombud in helping it restore some of its credibility. “The budget indicates that the SARS of today performs better than the SARS of previous years,” he says, further stating that the OTO had competent tax experts “to go toe-to-toe” with SARS and help protect taxpayer rights.

LODGING A COMPLAINT WITH THE OFFICE OF THE TAX OMBUD

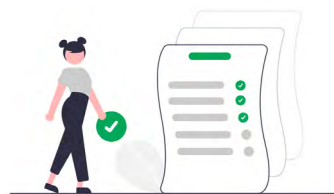
Many taxpayers do not fully understand the types of complaints that the OTO may accept. Also, they often do not know how the Office evaluates taxpayer complaints against SARS.

Below are the essential issues the OTO considers when dealing with taxpayer complaints:

Complaint Evaluation:

1 EVALUATING A COMPLAINT

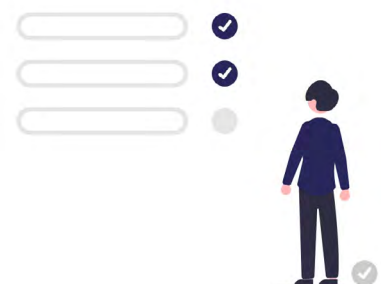
- Is the complaint against SARS?
- Does the complaint relate to the application of a tax act?
- Does the complaint relate to a service, administrative or procedural issue?



If the answer to any of these questions is **No**, the matter is not within the mandate. The complaint is **rejected**. If the answer to all of these questions is **Yes**, the complaint is within mandate, and proceeds to **STEP 2**.

2 WERE THE RIGHT PROCESSES FOLLOWED?

- Did the taxpayer lodge a complaint with the SARS Complaints Management Office (CMO) and has the turn around time elapsed? If **YES**, the matter is in mandate and taxpayer has exhausted SARS processes: **PROCEED TO STEP 3**
- If the taxpayer has not approached the CMO, are there compelling circumstances to not refer the taxpayer to SARS to exhaust? If not, the complaint is **rejected**.



Compelling issues include:

- the complaint has been identified as a systemic issue;
- referring the taxpayer back to the SARS CMO will cause undue hardship; or
- referring the taxpayer back to the SARS CMO will not resolve the issue within a reasonable time.

[continued on page 8]

**TAX
TIPS**

HOW LONG DO I HAVE TO APPEAL A TAX ASSESSMENT?

If SARS took a decision on an objection, a taxpayer has 30 days to appeal the outcome of the objection. This 30-day period can be extended to a maximum of 45 more days. It is important to be aware that if 75 days have passed since the objection was disallowed and no appeal is noted, the assessment becomes final and payable without any further legal recourse. Note that if you need your assessment to be revised by SARS, you have to engage SARS on the matter first, before lodging a complaint with the OTO.

3 WHAT IS THE OTO NOT ALLOWED TO INVESTIGATE?

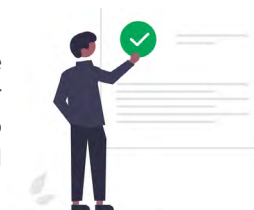
- Is the taxpayer asking the OTO to review legislation or tax policy?
- Is the taxpayer asking the OTO to review SARS's practice generally prevailing?
- Is the taxpayer asking the OTO to review a matter subject to objection or appeal?
- Is the taxpayer asking the OTO to review a matter before tax court?

If the answer to any of these questions is **YES**, then although the matter is in mandate, the taxpayer has exhausted SARS processes or compelling reasons exist, *but* limitations apply: **reject**.



4 INVESTIGATING THE MERITS OF THE COMPLAINT

Finally, if the matter is within mandate, there are no limitations and the taxpayer has exhausted SARS mechanisms or compelling reasons exist for not doing so, the OTO will investigate the complaint. The first step is to determine the facts of the complaint by considering the taxpayer's and SARS's actions.



Does the taxpayer have a valid complaint against SARS?

If **YES**, the OTO determines the best way to facilitate resolution and refers the matter to SARS with a **recommendation**.

5 WHAT HAPPENS AFTER THE MERITS OF A COMPLAINT HAVE BEEN ESTABLISHED?

- The OTO will either reject, terminate and send recommendation to taxpayers, terminate or accept the complaint.
- For accepted cases, the OTO sends a recommendation to SARS for consideration and notifies the complainant and to implement as follows:
 - SARS has 15 business days to implement the OTO's recommendation as per the MOU or provide reasons for not implementing the OTO recommendations within 30 days as per section 20(2) of the TAA.
 - Once SARS has considered the OTO's recommendations, it responds with a close out report.
 - Finally, within four business days of receiving the closeout report, the OTO verifies whether the report is aligned with our recommendations and communicates the outcome to the complainant.



Remember the 42 day rule - 21 days' turnaround for SARS complains department to resolve an issue, and then another 21 days' turnaround for the CMO to resolve the issue.

Notice

This is a quarterly newsletter that is 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 Communications@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.