



OFFICE OF THE
TAX OMBUD

Ensuring fairness



Complaints Guide

We are here to help



FOREWORD

WE OFFER YOU AN INDEPENDENT AND IMPARTIAL PLATFORM TO ENGAGE SARS

As a citizen or resident of a constitutional democracy, you have rights and duties when engaging with South Africa's public administration. Some of your rights are set out in chapter 10 of our Constitution which specifically governs public administration.

Amongst others, it requires: (1) a high standard of professional ethics; (2) efficient, economic and effective use of resources; (3) the provision of impartial, fair, and equitable service; and (4) transparency and accountability.

As an agent of the Public Administration, the South African Revenue Service (SARS) is bound by this constitutional mandate. In fact, the Tax Administration Act, which gave birth to my Office, is a step in the direction of making these constitutional imperatives a reality in tax administration.

My Office provides you with a simple and impartial channel to seek a resolution for a service, procedural or administrative dispute you might have already unsuccessfully tried to resolve through SARS' complaints management channels. We offer you an independent and impartial platform to engage SARS.

The purpose of this booklet is to explain the role and processes of the Office of the Tax Ombud. This includes who we assist, how we work and what we can and cannot do in terms of our mandate as a redress channel for taxpayers. For your convenience, this booklet includes frequently asked questions and answers about the Office.

Judge Bernard Ngoepe
South African Tax Ombud



WHO WE ARE: INDEPENDENT AND IMPARTIAL

The Office of the Tax Ombud was established in October 2013 to enhance the tax administration system. Until then, there was no independent redress channel for taxpayers who had exhausted the normal SARS complaints mechanisms.

Our Office is based on best international practice and was modelled on the Tax Ombud systems of Canada, the United States of America and the United Kingdom.

The Office is independent and operates separately from SARS.

The current Tax Ombud is retired Judge President of the Gauteng High Courts Judge Bernard Ngoepe, who was appointed by the Minister of Finance for a three- year term from 1 October 2013, which has been extended for a further three years. He is assisted by the Chief Executive Officer, Advocate Eric Mkhawane, and a team of experts in tax law, complaints resolution, communications and outreach, among others.





OUR MANDATE

The mandate of the Tax Ombud is to 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 review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, any systemic and emerging issues related to a service matter or the application of the provisions of this Act or procedural or administrative provisions of a tax Act.

OUR MOTTO

Our motto is "Ensuring Fairness".

OUR MISSION

The Tax Ombud is committed to being an efficient, independent, impartial and fair redress channel for taxpayers.

OUR VISION

The vision of the Tax Ombud is to strengthen Taxpayers' confidence in tax administration.

OUR VALUES

ACCOUNTABILITY

Taxpayers are entitled to a rational and fair reason for decisions and actions taken.

INDEPENDENCE

In dealing with taxpayer complaints, the Tax Ombud operates independently of SARS.

EFFICIENCY

The Tax Ombud ensures that all taxpayer complaints are resolved promptly and efficiently.

FAIRNESS

The Tax Ombud acts in fairness at all times.

CONFIDENTIALITY

The Tax Ombud holds all communications with taxpayers in strict confidence unless authorised by the taxpayer.



WHY WE EXIST: INSPIRING TAXPAYER CONFIDENCE

We are here to listen to you, the taxpayer, and to work with the South African Revenue Service (SARS) for service excellence, and procedural and administrative fairness.

South Africa has one of the most efficient, modern tax administration systems in the world. Excellent though this system is, it is vital to have a fair, independent and impartial avenue for taxpayers to use if they have a complaint that has not been resolved through the complaints channels.

The Office of the Tax Ombud was specifically established to be an independent and impartial channel for taxpayers who have been unable to resolve a service, procedural or administrative complaint through the normal complaints management channels of SARS. Impartiality means that we are neither for SARS nor for the taxpayer. We simply look at the facts of the complaint concerned and, where possible, propose a solution. Our work is based purely and simply on the facts, the laws of the land and, ultimately, on the Constitution.



WHO WE ASSIST: TAXPAYERS SEEKING REDRESS

As a redress channel for taxpayers, we strive to ensure that taxpayers receive the professional service and fair treatment that they are entitled to from SARS.

Before approaching the Tax Ombud, taxpayers should ensure that they have exhausted SARS' internal complaint resolution mechanisms unless there are compelling circumstances for not doing so.

To direct a complaint to SARS, a taxpayer needs to approach **SARS Complaints Management Office** on **0860 121 216**.

If you are still not satisfied with the way SARS has handled your complaint, you may approach the Office of the Tax Ombud.

If your complaint falls within our mandate, we will do everything possible to find a solution to your problem.

HOW WE WORK: ENSURING FAIRNESS

As an impartial redress channel, our motto is “Ensuring Fairness”. To put this into practice, we look at the facts of each complaint, and nothing but the facts. We strive to resolve complaints within 15 business days of accepting them, and will let you know if the complaint cannot be resolved within this period. Throughout the process, we maintain an impartial position, looking at all sides of the problem.

Our complaint resolution efforts entail:

- Reviewing your complaint to determine if it falls within our mandate, how it will be managed, and preparing a preliminary assessment of your complaint.
- Sending your complaint, supporting documentation, outcome of our preliminary investigation and/or recommendations to SARS.
- Evaluating SARS’ response and, where appropriate, further investigating your complaint.
- Sending you a “close-out report”, summarising the outcome of your complaint and, when appropriate, making recommendations for further action.

Our recommendations are not binding on a taxpayer or SARS, but if not accepted by a taxpayer or SARS, reasons for such decision must be provided to the Tax Ombud within 30 days of notification of the recommendations and may be included by the Tax Ombud in a report to the Minister or the Commissioner under sections 19.

OUR COMMITMENT: TO CONFIDENTIALITY

The Office of the Tax Ombud is legally obliged to protect confidential taxpayer information and all our staff sign an Oath of Secrecy.

These confidentiality requirements are set out in Section 21(2) of the Tax Administration Act.

The Tax Ombud and any person acting on his behalf may not disclose information of any kind that is obtained by or on behalf of the Tax Ombud, or prepared from information obtained by or on behalf of the Tax Ombud, to SARS, except to the extent required to perform its functions and duties under the Act.

The Act states that SARS must allow the Tax Ombud access to information that relates to the Tax Ombud's powers and duties.

HOW DO YOU LODGE A COMPLAINT?

Below is the process of lodging a complaint.

- To obtain a complaint form, visit the Office of the Tax Ombud or contact the Office by telephone, fax or email to request a copy of the complaint form. The form is also available on our website.
- Complete the form. Take the time to read through the form and gather the necessary information before completing it. Please document the factual situation of your complaint in chronological order. Attach all the supporting documents relevant to the complaint. Ensure that the form is completed in full. Write down the reference numbers from SARS or, if escalated to a SARS branch, indicate the name of the branch, date and person you escalated the case to.
- All complaint forms must be signed and dated. If the form does not allow you to relate your complaint fully, use extra paper which must be attached to your complaint form.

The Office of the Tax Ombud will not accept unsigned forms. Taxpayer representatives must confirm their authority to act on behalf of their clients through a fully completed power of attorney.

If there is not enough evidence to support your complaint, the matter may be closed. However, we will first give you an opportunity to substantiate your complaint or provide the necessary evidence.

TIMELY SUBMISSION

Please submit your complaint to the Office of the Tax Ombud within a reasonable time after SARS has completed its review of the complaint.

Once we have received your form, the Tax Ombud will investigate the complaint and decide how to handle it if it falls within our mandate, otherwise we will advise on alternative remedies.

WHEN LODGING A COMPLAINT

be sure to have the following important information listed

Contact Details:

Home Telephone Number
Cell Number
Fax Number
Business Telephone Number
Email Address

Physical Address:

Unit Number Complex (if applicable)
Street Number
Street or Name of farm
Suburb/District
City/Town
Postal Code
Country Code (ZA – For South Africa)

Postal Address Details:

Mark with an 'X' if same as above
or complete your Postal Address, Postal Agency
or Other Sub-unit (if applicable) (e.g. Postnet Suite ID)
Post Office
PO Box or Private Bag
Other PO Special Service (specify) Number
Country Code
Postal Code

Complaint Details:

Tax Type:
Personal Income Tax; Corporate Income Tax; VAT; Estate;
PAYE/SDL/UIF; Trust; Customs/Excise or Other
Nature of Complaint:
Conduct/Attitude; Service; Administrative; Procedural or Other

Please go to www.taxombud.gov.za/make-a-complaint.html
to download the form or send us an email to
complaints@taxombud.gov.za or visit us at our offices.

HOW DOES THE TAX OMBUD REVIEW A COMPLAINT?

The Tax Ombud may determine how a review is to be conducted, but whilst discharging his duties, must review a complaint and if necessary, resolve it through mediation or conciliation. The Tax Ombud must also act independently and follow informal, fair and cost-effective procedures in resolving a complaint.

WHAT IF I AM NOT SATISFIED WITH THE OUTCOME?

If a taxpayer is not satisfied with the outcome of the process undertaken by the Tax Ombud, the taxpayer may pursue any other avenue that is available to them.

WHAT IF THE TAXPAYER OR SARS DOES NOT ACCEPT A TAX OMBUD RECOMMENDATION?

The Tax Ombud's recommendations are not binding on a taxpayer or SARS, but if not accepted by a taxpayer or SARS, reasons for such decision must be provided to the Tax Ombud within 30 days of notification of the recommendations and may be included by the Tax Ombud in a report to the Minister or the Commissioner under section 19. The report to the Minister must be tabled in the National Assembly to which SARS is accountable.

FREQUENTLY ASKED QUESTIONS

WHAT IS AN OMBUD?

An Ombud is an independent and impartial officer who deals with complaints against an organisation or an agency.

WHAT IS A TAX OMBUD?

A Tax Ombud is an independent and impartial officer who deals with taxpayers' complaints against the South African Revenue Service.

WHAT IS THE OFFICE OF THE TAX OMBUD?

The Office of the Tax Ombud is the institution supporting the Tax Ombud in fulfilling the mandate.

WHO RUNS THE OFFICE?

The Tax Ombud is retired Judge Bernard Ngoepe, who was appointed by the Minister of Finance for a three-year term from 1 October 2013, extended for another three years in October 2016.

OUR CONNECTION WITH SARS

Our Office is independent and operates separately from SARS.

1. What can the Tax Ombud do in executing his mandate?

The Tax Administration Act authorises the Tax Ombud to:

- Review a complaint and, if necessary, resolve it through mediation or conciliation
- Act independently in resolving a complaint
- Provide information to a taxpayer about the mandate of the Tax Ombud and the procedures to pursue a complaint
- Follow informal, fair and cost-effective procedures in resolving a complaint
- Facilitate access by taxpayers to complaint resolution mechanisms within SARS to address complaints
- Identify and review systemic and emerging issues related to service matters or the application of the provisions of this Act or procedural or administrative provisions of a tax Act that impact negatively on taxpayers.
- Make a recommendation to SARS on how a complaint should be resolved.

These matters could be about SARS' service or procedural or administrative provisions of a Tax Act.

The Tax Ombud has the authority to determine, independently of SARS, how a review should be conducted and whether a review should be terminated before it is completed.

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

To exhaust the available complaints mechanism, a taxpayer must have lodged a complaint with the SARS Complaints Management Office.





2. What are these compelling circumstances?

Section 18(5) of the Tax Administration Act sets out the following factors the Tax Ombud shall consider when determining if a circumstance may be “compelling”:

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

The Tax Ombud must inform the requester of the results of the review or any action taken in response to the request, at a time and in the manner chosen by the Tax Ombud.



3. Are there any limitations to what the Tax Ombud can deal with?

Yes, there are clear limitations on the types of complaints the Tax Ombud may and may not review.

The Tax Ombud may not review:

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

Note that there is a time limit for looking into complaints. The Tax Ombud may not review a matter that arose more than one year before the day on which the first Tax Ombud was appointed, unless the Minister requests the Tax Ombud to do so. As the current Tax Ombud took office on 1 October 2013, this means the Tax Ombud may not consider matters that arose before 1 October 2012 (unless requested by the Minister). However the Minister of Finance has granted the Tax Ombud approval to review matters that arose prior to this date.

HOW TO APPROACH US: YOUR CONVENIENCE COUNTS

A taxpayer can contact the Office of the Tax Ombud directly or through a tax practitioner or other representative. Taxpayer representatives must confirm their authority to act on behalf of their clients through a fully completed power of attorney.

A taxpayer can access the services of the Office of the Tax Ombud through the following contact methods:

PLEASE CONTACT US

Physical address

Menlyn Corner,
2nd Floor, 87 Frikkie de Beer Street
Menlyn, Pretoria
0181

Tel: 0800 662 837 or +27 12 431 9105

Fax: +27 12 452 5013

Email address: complaints@taxombud.gov.za

www.taxombud.gov.za

Postal address

PO Box 12314
Hatfield
0028

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This booklet is for information purposes only and is not considered to be a legal reference. The use of this information by any person shall be entirely at that person's discretion.

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NB: The information does not supersede any legislation and readers who are in doubt regarding any aspect of the information displayed in the guide should refer to the relevant legislation, or seek a formal opinion from a suitably qualified individual.



Tel: 0800 662 837 or +27 12 431-9105

Fax: +27 12 452 5013

Email: complaints@taxombud.gov.za

www.taxombud.gov.za