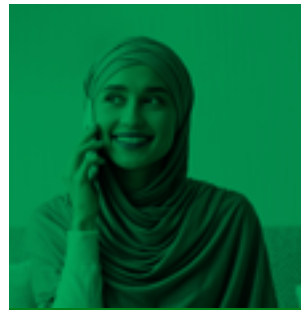


Tax Ombud's
**INCWAJANA
 NGAMALUNGELO,
 OKUSELUNGELWENI
 KANYE
 NEZIBOPHEZELO
 ZABAKHOKHINTELA
 YANGOWEZI
 2022**



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ISINGENISO

Isikhundla se-Tax Ombud sasisungulelwe “...ukuthi kube nokuzinza phakathi kwamandla nemisebenzi kaSARS kanye nezibophezelo, izisombululo kanye namalungelo abakhokhintela”.¹ Ngokuhambisana nalenhloso, le dokhumenti ihlose ukuhlinzeka ulwazi kubakhokhintela mayelana nokuthi ayini amalungelo abo, yikuphi okuselungelweni labo, nokuthi yiziphi izibophezelo zabo uma kuza ezindabeni zentela noma bexhumana noPhiko Lwemisebenzi Yemalingeniso Eqoqwayo LwaseNingizimu Afrika (SARS) kanye ne-Office of the Tax Ombud.

Lona akuwona “Umqulu Wamalungelo” ozosebenza ngokomthetho kodwa yimigomo ehlanganisiwe equkethwe amadokhumenti ehlukehluke, kubandakanya uMthethosisekelo, umthetho-nqubo wentela kanye namanye amadokhumenti kahulumeni. Namaphi amalungelo nalokho okusemalungelweni okukhulunywa ngakho lapha kungase kube nalapho kungangeni khona kanti futhi kungase kube nemikhawulo ethile ngokuvunyelwa umthetho.

Le dokhumenti ifake nokungabhekwa ezigabeni ezithile zoMthetho Wokuphathwa Kwentela, 28 wezi-2011 (i-TAA) kanye Nemithetho² enikalawamalungelo nokusemalungelweni kubakhokhintela, kanjalo nokufingqiwe ngokuthi yimaphi lawa malungelo.³ Izigaba ezifanele zichaziwe kumanothi angezansi ukuze ukwazi ukuzibheka kalula. Sicela uqaphele ukuthi lokhu akuhlosiwe ukuba kube uhlu oludidiyele konke kodwa indlela yokubheka ngokushesha ezigabeni okuyizona ezisemqoka kakhulu ngokubona kwe-OTO.

Le dokhumenti ayingeni endaweni, ayikho ngaphezulu noma

1. Imemorandamu echazayo i-Explanatory Memorandum ku-Taxation Laws Amendment Bill, 2011, eyakhishwa yi-National Treasury mhla zingama-27 kuMasingana 2012.
2. I-Dispute Resolution Rules ebusa inqubo ngaphambi kwebhodi lentela i-Tax Board noma inkantolo yentela emiswe ngaphansi kwesigaba 103 se-TAA, GN550 ku-GG37819 wangomhla ziyi-11 kuNtulikazi 2014.
3. Isigaba 2 se-TAA.

ayibhukuqi namuphi umthetho-nqubo, imigomo yomthetho-mvama noma izinqubo ezihambisana nokuphathwa kwentela kanti abakhokhintela bayelulekwa ukuba bafune usizo kulabo abanesipiliyoni uma befisa ukuphoqelela ukusebenzisa amalungelo abo. Kuyaziwa ukuthi isikhathi esiningi ukuphoqelelwa kokusetshenziswa kwamalungelo omuntu kudinga ukuthi kuze kuyiwe enkantolo nokumba eqolo ukwenza lokho.

A. AMALUNGELO

NOKUSELUNGELWENI LAKHO

NJENGOMKHOKHINTELA

1. Unelungelo lokuthola ulwazi

- Unelungelo lokwazi lokhu okumele ukwenze ukuze uthobele imithetho yentela.
- Kuselungelweni lakho ukuthola ulwazi abanalo kwaSARS olumayelana nezindaba zakho zentela, ukhumbule ukuthi ezinye izicelo zokuthola ulwazi zidinga ukuba ufake isicelo ngaphansi koMthetho Wokukhuthaza Ukutholakala Kolwazi kanti noSARS ungase usichithe leso sicelo uma kungukuthi sithinta ulwazi oluyimfihlo kwaSARS.⁴
- Unelungelo lokwaziswa ngezinqumo zakwaSARS kanye nokuthola incazelo ecacile ngalezo zinqumo noma imiphumela kodwa ukhumbule ukuthi naluphi udaba mayelana nezinqumo ezenziwe uSARS zingase zidinge ufake izicelo ngaphansi koMthetho Wokukhuthaza Ubulungiswa Kwezokuphatha.⁵
- Kuselungelweni lakho ukuthola ulwazi oluphelele nokuyilo ngosizo olutholakala kwaSARS nasehhovisi le-Tax Ombud olutholakala ngemithombo eyahlukahlukene kubandakanya nezizindalwazi zabo, amahhovisi angamagatsha azo kanye nezikhungo zokuxhumana.⁶
- Kuselungelweni lakho ukutshelwa ukuthi amazinga kanye nekhwalithi yalolu sizo kumele kube njani.⁷

4. Isigaba 7 soMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika; Izigaba 25(1), 42(1), 42, 48, 60(2), 61(1) & (4), 65, 73, 96, 106(5), 131, 162, 163(5), 164(6), 165, 172(1), 214(1) ze-TAA; kanjalo Nomthetho kanye Nomthetho 7.

5. Izigaba 68 no-73 ze-TAA kanye noMthetho Wokukhuthaza Ukutholakala Kolwazi 2 wezi-2000.

6. Isigaba 33 soMthethosisekelo sifundwa ndawonye noMthetho Wokukhuthaza Ubulungiswa Kwezokuphatha 3 wezi-2000.

7. Umgomo wesihlanu weBatho Pele njengoba uqukethwe ku-White Paper ngokuguquka ukuhanjiswa kwezidingongqangi kubantu i-Transforming Public Service Delivery GG 18340, GN 1459 of 1997; Umqulu Wemigomo Yezinsizakalo (Service Charter - sars.gov.za)

2. Kuselungelweni lakho ukuthola usizo olusezingeni elifanele futhi uluthole ngesikhathi kwabakwaSARS⁸

Kuselungelweni lakho ukuthola usizo olusheshayo, olunesizotha futhi olunobuchwepheshe uma usebenzisana noSARS, ukukhulunyiswanga ndlela ozoyiqondangokushesha, ukuthola ukuxhumana okuvela kwaSARS okucacile futhi okulula ukukuqonda, nokubika uma uthola usizo olusezingeni elingagculisi.

Ezinye zezibonelo zalokhu zibandakanya, isibonelo, ukuthi abakhokhintela kumele:

- Baziswe uma bekhethelwe ukuba kwenziwe ucwaningomabhuku noma ukuqinisekisa kubo;
- Baziswe njalo ngenqubekela phambili ngalolu cwaningomabhuku;
- Baziswe ngomphumela wokuphikisa ezinsukwini ezingama-60 emva kokuthunyelwa kwesicelo sokuphikisa esisemthethweni siya kwaSARS; futhi
- Baziswe ezinsukwini ezingama-30 emva kokufaka isicelo sokudlulisa icala uma udaba lolo lufanelekile ukuba luxazululwe ngenye indlela yokusombulula amacala.

8. Isigaba 195(1)(d) soMthethosisekelo, izigaba 22, 23, 25(5), 114, 115(1), 131, 166, 187(1), 256(2) ze-TAA, Umthetho 9, Umthetho 13(1), kanjalo nemigomo yesine nowesikhombisa yeBatho Pele njengoba iqukethwe ku-White Paper ngokuguqula ukuhanjiswa kwezidingongqangi kubantu i-Transforming Public Service Delivery GG 18340, Isaziso 1459 sowezi-1997.

3. Unelungelo lohlelo lwentela olunobulungiswa, olungachemile nolulungile⁹

- Kuyilungelo lakho ukuthi lokhu okuhlinzekelwa imithetho-nqubo yentela kusetshenziswe ngendlela efanayo njalo njalo, kusetshenziswe ngendlela enobulungiswa nangokwemigomo. Nakuphi lapho lingasebenzi khona ilungelo lomkhokhintela, njengoba kuqukethwe kule dokhumenti, kungase kuvunyelwe kuphela uma umthetho-nqubo othile ukuvumela lokho. Isisebenzi sakwaSARS esithatha izinqumo ngezindaba zakho zentela kumele sikwenze lokhu ngaphandle kokuthi kube khona ukushayisana okungaholela ekutheni sicheme.
- Kuselungelweni lakho ukuthola inkantolo noma isithangami esinamandla negunya elifanele ngokomthetho ukuze uphoqebele ukusebenza kwamalungelo akho nalokho okuselungelweni lakho.
- Okusemalungelweni abakhokhintela kungaba yilokhu:
 - oUkubuyekeza isinqumo esithathwe uSARS esingase sithikameze amalungelo abo, ngokuhambisana nokuhlinzekelwa okubhalwe kuMthetho Wokukhuthaza Ubulungiswa Kwezokuphatha.
 - oUkufaka isicelo eNkantolo Yentela ukuphoqa uSARSukubaathobeleImithethoYokusombulula Izingxabano i-Dispute Resolution Rules.

9. Izigaba 33, 34 no-38 zoMthethosisekelo; Izigaba 2(b), 7, 8(3), 10, 11, 41(3), 44, 45(2), 47, 49(3), 55, 59, 60, 61, 62, 63, 64, 65, 66, 101-150, 163(2)(a) & (b), 164(2), 164(6), 167, 168, 172, 174, 176, 177(3), 179-184, 179(2), 185, 186, 187(1), 188-189, 191(2), 200-205, 210, 211, 212, 213, 215(2), 218, 222, 223(1), 229, 232, 236, 237, 240, 256(2) ze-TAA neMithetho Yokusombulula Izingxabano ngokuphelele.

4. Asikho isidingo sokuthi ukhokhe okungaphezulu kwenani elifanele lentela okumele liye kwaSARS¹⁰

- Unelungelo lokukhokha inani okumele ulikhokhe ngokomthetho, kubandakanya inzalo nezinhlawulo. Naliphi inani olikhokhe wena leva noma elithathwe uSARS noma ingayiphi indlela yezinyathelo zabo zokuqoqa imali kumele zibuyiselwe kuwe.
- Uhlelo lwentela lwaseNingizimu Afrika lusebenza ngomgomo othi “khokha manje bese ukhalaza kamuva” okusho ukuthi, yize noma uphikisana nohlolo olukubangele isikweletu, kumele uqale ngokusikhokha lesi sikweletu. Kodwa-ke, kuselungelweni lakho ukucela uSARS amise isibophezelo sakho sokukhokha isikweletu kuze kube ukuthi inqubo yokusombulula udaba iyaphothulwa. USARS akavumelekile ukuthatha naziphi izinyathelo zokugqogqa isikweletu kusukela ngosuku othumele ngalo isicelo, kuze kube sezinsukwini eziyishumi emva kokuba bekwazisile ukuthi basichithile isicelo sakho, noma isicelo ebesemukelwe kuqala sesihoxisiwe.¹¹
- Kuselungelweni lakho ukwaziswa ngesikweletu sentela kanye nenhloso kaSARS yokuthola isinqumo senkantolo noma sokuqoka umuntu oseceleni ukuba kube nguyeqoqa isikweletu.¹²
- Kuselungelweni lakho ukufaka isicelo kwaSARS sokwenza izinhlelo zokukhokha isikweletu ngezikhawu, noma ukuphakamisa ukukhokha inani elingaphansi kwaleli ebelibizwe yibo.¹³

10. Izigaba 93, 98, 164, 166, 169, 177, 179-184, 187(1), 190(1), 191(2), 210, 211, 211, 222, 223(1) ze-TAA.

11. Isigaba 164(6) se-TAA.

12. Izigaba 172 no-179 ze-TAA.

13. Izigaba 167-168; kanye nezigaba 200-207 ze-TAA.

5. Ilungelo lakho lemfiho nobumfiho¹⁴

- Abakhokhintela banelungelo lokulindela ukuthi namuphi umbuzo, uphenyo noma isenzo sokuphoqelela umthetho okwenziwa uSARS kuhambisana nomthetho. Isenzo esinjalo akumele sibe ngesiphazamisa ngokungaphezulu kokudingekayo futhi kumele kube ukuthi kwenziwa ngenqubo enobulungiswa.
- Unelungelo lokulindela ukuthi naluphi ulwazi olunika uSARS kanye nehhovisi le-Tax Ombud angeke ludalulwe ngaphandle uma kugunyazwe nguwe noma kuvunyelwa umthetho.
- Sicela uqaphele ukuthi uSARS uvumelekile ukuba athole ulwazi olumayelana nezindaba zakho zentela kumuntu oseceleni okungaba amabhange kanye nabaqashi.¹⁵
- Kuselungelweni lakho ukufaka isikhalazo sobugebengu besisebenzi sakwaSARS noma sehhovisi le-Tax Ombud, noma namuphi umuntu osebenzisa ngendlela okungeyiyo noma odalula ulwazi lwakho ngokuphambana ne-TAA.

14. Izigaba 21, 40-66, 67-72, 115(2)124(1), 132, 236 ze-TAA kanye noMthetho Wokuvikelwa Kolwazi Lomuntu 4 wezi-2013.

15. Isigaba 46 se-TAA.

6. Ilungelo lokugcina ukumeleleka¹⁶

Unelungelo lokuthola usizo kozokumelelela akusize ngezindaba zakho zentela kanjalo nokukhulumisana noSARS.

Kumele uqaphele ukuthi uma kwenzeka kuba nomhlangano neBhodi Lentela i-Tax Board, umkhokhintela kumele acele imvume yokumeleleka kusihlalo womhlangano.¹⁷

16. Izigaba 25(3), 52(3), 103, 113(8) ze-TAA.

17. Isigaba 113(8) se-TAA.

7. Kuselungelweni lakho ukuthi udaba luphothulwe¹⁸

Kuselungelweni lakho ukuthi ucwaningomabhuku, uphenyo, izinyathelo zecala nokuqoqwa kwesikweletu kuphothulwe ngesikhathi esifanele.

18. Izigaba 29(3), 32, 93, 98, 99, 100, 148, 171, 176(3), 197, 198, 232 ze-TAA.

8. Kuselungelweni lakho ukwenza izicelo/ iziphakamiso/ukufaka izicelo ezithile¹⁹

Okunye okuhlinzekelwa umthetho-nqubo wentela okunikana ithuba lokuthola izisombululo ezithile kubakhokhintela akuzenzakaleli. Kulezi zimo ezinjalo, kuselungelweni lakho ukucela ukuthi isisombululo esithile sisetshenziswe odabeni lwakho.

Ezinye zezibonelo zezicelo/izicelo zokufaka isicelo ezingenziwa abakhokhintela kwaSARS kungaba ngezalokhu:

- Ukwelulelwa isikhathi sokuthumela amadokhumenti acelwe uSARS;
- ukucaciswa kwezinhlelo zokutheliswa noma imibono engenasibophezelo;
- Izizathu zohlolo;
- Ukuthi isicelo esenziwe uSARS ongeke ukwazi ukufaka kuso isiphikiso nesicelo sokudlulisa icala sihoxiswe;
- Ukuthi uhlobo luncishiswe;
- Ukwelulwa kwesikhathi sokuthumela iziphikiso noma izicelo zokudlulisa amacala;
- Ukwenza isiphakamiso ekuqedweni kwengxabano ekhona;
- Ukuhoxa kukasihlalo webhodi lentela; kanye
- Nokusulwa kwezinye izinhlawulo kanye nenzalo.

19. Izigaba 46(5), 75-90, 93, 95, 98, 104(5), 107(2), 111(7), 113(8), 113(11), 118, 122(2), 130, 142- 150, 164(2), 165, 167, 187(6) & (7)200, 215(1), 223(3), 226, 256(1) ze-TAA Nomthetho 6.

9. Kuselungelweni lakho ukukhalaza ngaphandle ngokwesaba ukhlukumezeka²⁰

- Kuselungelweni lakho ukukhalaza.
 - Angeke usatshiswe kuthiwe ungasifaki isikhalazo noma kuthiwe hoxisa isikhalazo.
 - Angeke uhlukunyezwe ukufaka isikhalazo ehhovisi lakaSARS elilawula izikhalazo zangaphakathi noma ihhovisi le-Tax Ombud.
 - Abakhokhintela banelungelo lokuthi izikhalazo zabo zibhaliswe futhi zisonjululwe ngokushesha yiHhovisi lakaSARS Elilawula Izikhalazo Zangaphakathi i-Complaints Management Office (CMO) ezinsukwini ezingama-21 zokusebenza kusukela sifakiwe isikhalazo, ngokuthi bashayele i-SARS CMO kule nombolo **0860 12 12 16**. Uma kwenzeka abakhokhintela benganeliseki ngomphumela wakwaSARS, abakhokhintela bangalandela inqubo yezikhalazo yehhovisi le-Tax Ombud ngokucela ifomu lokukhalaza, ongalidawuniloda kusizindalwazi www.taxombud.gov.za.
- Ifomu ungakwazi ukulicela ngokuthumela i-imeyili ku complaints@taxombud.gov.za noma ngokushaya ucingo kule nombolo **0800 662 837**.

20. Izigaba 16-18 ze-TAA kanjalo nomgomo wesikhombisa weBatho Pele njengoba uqukethwe ku-White Paper ngokuguqula ukuhanjiswa kwezidingongqangi kubantu i-Transforming Public Service Delivery GG 18340, Isaziso 1459 sowezi-1997.

10. Unelungelo lokuphikisa/uphonsa inselelo kuhlolo/izinqumo²¹

Unelungelo lokuphikisa naluphi uhlolo noma isinqumo esingafakelwa isiphikiso kanye nesokudlulisa icala, ngaphansi kokuhlinzekelwa okubekiwe kanye nemithetho yenqubo yokusonjululwa kwamacala.

Unelungelo lokuthatha nasiphi isinyathelo sokuphatha esithikameza amalungelo akho siyobuyekezwa, ngokuhambisana nokuhlinzekelwa okubhalwe kuMthetho Wokukhuthaza Ubulungiswa Kwezokuphatha.

21. Izigaba 103, 104, 107, 177(3), 190(6), 220, 224 ze-TAA.

B. IZIBOPHEZELO ZAKHO NJENGOMKHOKHINTELA²²

- Wonke umuntu unomsebenzi wokusebenza ngendlela anamandla okukwenza ngayo nazophumelela kuyo kanye nokukhokha izintela ezibizwa ngokomthetho.²³
- Njengomkhokhintela kuwumthwalo wakho ukuqinisekisa ukuthi uyazazi izibophezelo zakho kanti uma ungaqinisekanga kunoma yikuphi noma izindaba zakho zentela ziyinkimbinkimbi, kumele ufune iseluleko esifanele.
- Kumele ubhalise njengomkhokhintela uma sekufike isikhathi sokuthi wenze njalo.²⁴
- Kumele uma ukhuluma nabakwaSARS kanye nehhovisi le-Tax Ombud uthembeke futhi ukhulume okuqondile.
- Kumele uthobele zonke izinqubo ezibekiwe zentela kanye nezikhathi zakhona ezimayelana nezindaba zakho zentela.²⁵
- Ikakhulukazi, kumele uthumele amafomu eminingwane yentela agcwaliswe ngokuphelele nangeqiniso futhi ukhokhe zonke izintela okufanele ukuthi uzikhokhele.²⁶
- Kumele uthumele amadokhumenti acelwe uSARS ngendlela ebekiwe nangesikhathi esibekiwe kuleso sicelo.²⁷

22. Okucashunwe kuMqulu Wemigomo Yezinsizakalo wakwaSARS.

23. Article 29 of the African Charter of Human and People's Rights Eyamukelwa 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), yaqala ukusebenza 21 October 1986 yase iphasiswa yiNingizimu Afrika.

24. Izigaba 22 - 24 ze-TAA.

25. Izahluko 3: Ukubhalisa, 4: Amafomu eminingwane yentela namalekhodi, 5: Ukuqoqa ulwazi, 9: Ukusombulula izikhalazo, 10: Isikweletusibopho nezinkokhelo; no- 11: Ukutholakala kwentela kwe-TAA kubaluleke kakhulu.

26. Isigaba 25 - 28; nesigaba 162 se-TAA.

27. Isigaba 46(4) se-TAA.

-
- Kumele wazise uSARS uma kukhona izinguquko kumininingwane ebhalisiwe noma imininingwane yakho yasebhange ezinsukwini ezingama-21.²⁸
 - Kumele ugcine wonke amadokhumenti namalekhodi amayelana nokudalula kwakho kwentela iminyaka emihlanu ukusukela ngosuku othumele ngalo amafomu akho anemininingwane yentela. Kubalulekile ukuqonda ukuthi isikhathi seminyaka emihlanu siqala ngosuku othumela ngalo amafomu okubuyisa imininingwane yentela.²⁹
 - Umakungadingeki ukuthi uthumele amafomu emininingwane yentela, kumele uwagcine wonke amadokhumenti namalekhodi iminyaka emihlanu kusukela ekupheleni kwesikhathi sentela lawo madokhumenti aqondene naso.³⁰
 - Abakhokhintela bamabhizinisi kumele baqinisekise ukuthi ngaso sonke isikhathi bamelwe isisebenzi sikahulumeni esihlala eNingizimu Afrika.³¹

28. Isigaba 23 se-TAA.

29. Isigaba 29 se-TAA.

30. Isigaba 29 se-TAA.

31. Isigaba 246 se-TAA.

ISIPHETHO

Isisekelo sohlelo lwentela olunobulungiswa neqiniso ukubambisana phakathi kwamandla nemisebenzi yeziphathimandla zokuqoqwa kwemali, ngakolunye uhlangothi, kanye namalungelo nezibophezelo zabakhokhintela kolunye. Le dokhumenti ihlose ukuba negalelo ekulinganeni ngokusiza ngokuba indawo eyodwa lapho umuntu angabheka khona mayelana namalungelo, okuselungelweni kanjalo nezibophezelo zabakhokhintela baseNingizimu Afrika. Iyidokhumenti yokuqala yalolu hlobo eNingizimu Afrika kanti ithembe ukuthi izosiza abantu baseNingizimu Afrika kahle bakwazi ukuba negalelo ekuqoqweni kwemali okukhulu futhi okunobulungiswa.

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