



## TAXPAYERS' RIGHTS KNOW THEM AND USE THEM

Welcome to our second quarter issue of Fair Play!

We are excited about this issue because the Office of the Tax Ombud's educational campaign continues to provide insights on promoting Taxpayers' rights during the SARS's Tax Season. The OTO's #TaxpayersRightsMatter campaign aims to educate taxpayers about their rights, what they mean, and when they should be exercised.

Although we promote awareness about these rights, taxpayers must also know and comply with their responsibilities. In this issue, we also create awareness about myths and facts about who we are, what we do and our processes.

We strive to be accessible and reach out to taxpayers through our social media platforms, website, presentations, and radio. We broadcast on our platforms to remind taxpayers that the OTO is always here to help, and our services are free of charge for the taxpayer.

We remind you all to read more about taxpayers' rights on [www.taxombud.gov.za](http://www.taxombud.gov.za).



**Pearl Seopela**  
Senior Manager:  
Communications and  
Stakeholder Relations

### INSIGHT INTO THE OTO'S INTERNAL PROCESSES:

How the OTO evaluates and processes complaints, and simplified answers to common taxpayer questions.

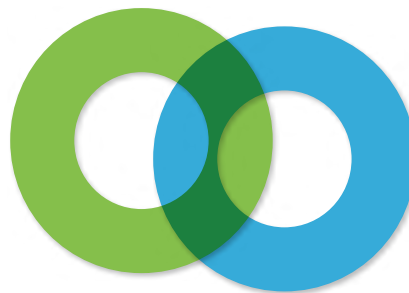
Page 4.



### OTO INTERVENTION REDUCES SYSTEMIC ISSUES

More than a dozen common taxpayer problems that taxpayers usually face have been eradicated since 2018 due to the Office of the Tax Ombud's intervention.

Page 6.



# #TaxpayersRightsMatter

# Tax Ombud's Corner

*Judge Bernard  
Makgabo Ngoepe*  
Tax Ombud



The annual Tax Filing Season is upon us, having begun on 1 July 2022. We anticipate an increase in demand for our services in the next few months as taxpayers file tax returns and the South African Revenue Service (SARS) collects taxes due. It is likely to be a challenging time for the Office of the Tax Ombud (OTO) as the financial pressures facing both the taxpayers and the government could cause some taxpayers to employ unscrupulous measures to avoid paying what they should. SARS too might find itself going overboard in an attempt to collect as much money as possible. We hope that this tension will not arise; however, we are confident of dealing fairly with any issues that may arise. It is important to remind all role players that we are neither for SARS nor taxpayers; we look at the facts and make fair and independent recommendations, sometimes in favour of a taxpayer or SARS.

Our annual awareness campaign, **#TaxpayersRightsMatter**, kickstarted on 1 July 2022 and serves to empower the public with knowledge about taxpayer rights. The campaign is being aired on numerous communication platforms, including social media, tv dramas and online. We want to ensure that taxpayers know where to go when they have tax complaints against SARS and that the tax complaints process has been simplified. Lodging a tax complaint has never been easier than it is now. We have embraced digitisation, enabling taxpayers to lodge complaints online and through mobile devices, without having to print and sign forms. More innovations are in the pipeline to promote customer-centricity, and we are confident of meeting taxpayer demands for our services.

I am grateful for the opportunity given to me by the government to lay down the foundation of the institution and, together with a committed staff, build it to be exemplary in service delivery. Some might wonder what will happen when my term in office ends in September this year. That question will be addressed in due course. Although I have been able to implement my vision for the organisation and am confident that it will continue to serve taxpayers diligently, there is still unfinished work. One of my goals was to secure structural independence for the OTO before leaving. However, that is yet to happen, not through our fault but as a result of powers that be and disruption caused by the COVID-19 pandemic. We continue to engage on the subject, and on 6 June 2022, together with my senior leadership, we appeared before the Parliamentary Select Committees on Finance. We briefed them on tax administration issues raised by stakeholders during the 2022 budget process, one of which was the lack of structural independence of the OTO from SARS. We are encouraged by the support we continue to receive from Parliamentarians on the issue and feel that sooner rather than later, our wishes and those of many South Africans will come true.

I encourage participation by active citizenry as we continue to contribute towards improving the country's tax administration system. Collected taxes should be treated with respect and used to benefit all people who call South Africa home; otherwise we would kill tax morale.

## DID YOU KNOW?



# TAXPAYERS SHOULD FIRST LODGE COMPLAINTS WITH SARS BEFORE SEEKING HELP FROM THE TAX OMBUD?

# CEO's Note: Taxpayers' Rights Matter



**Prof. Thabo Legwaila**  
Chief Executive Officer

The Tax season is here, and on 1 July 2022, the OTO intensified its educational campaign, #TaxpayersRightsMatter, calling on taxpayers to continue to take advantage of the free and fair assistance it provides. The campaign, which coincided with the SARS Tax filing season, also aims to reassure taxpayers that they are the central focus of the OTO's service philosophy and that their rights as taxpayers will not be overlooked.

In addition, the campaign empowers and educates taxpayers through promoting the document "Compilation of Taxpayers' Rights, Entitlements and Obligations", published in April 2022. The document contains taxpayer rights detailed in the country's Constitution and other legislation. We are confident that the ongoing campaign will help elevate the level of engagement with taxpayers and other stakeholders, improve taxpayer access to our services, and improve customer-centricity.

## Digitisation and increasing accessibility

Through our continuous engagements on digital platforms, it is evident that taxpayers are becoming increasingly comfortable with engaging electronically via multiple channels. This has created opportunities for the OTO to extend access to its services via eChannels. In addition, the OTO is improving customer-centricity and simplifying the process of lodging tax complaints. The digital communications platforms we are embracing as an institution will further assist taxpayers in engaging in real-time, which could not have been reached through traditional media. Taxpayers can now easily and quickly lodge SARS tax complaints through an interactive form. The online and mobile-enabled form allows taxpayers to

lodge tax complaints with the Tax Ombud through the click of a button and without having to print and sign forms, thus further simplifying the already easy complaint lodging process.

Digital transformation is an inevitable journey that the OTO continues to embrace because of its impact on reaching out to taxpayers. It is a journey that begins by evaluating the way the OTO works, communicates, engages, connects, and collaborates with taxpayers. The rapid evolution in technology has also necessitated that organisations adapt and embrace the digitisation of almost every aspect of human lives, most importantly, those utilised to engage taxpayers. We are excited to be keeping up with the times regarding digitisation and taxpayer needs.

As taxpayers file tax returns, we want to remind them that the OTO has capable teams to help resolve their tax complaints against SARS and protect their rights and tax obligations.

## Engagement with taxpayers

To improve customer experience, we will be running a survey to help us better understand our taxpayer needs and preferences. We believe that taxpayers play an essential role in improving our services so that we can improve their interactions with our employees.

## Conclusion

We are thankful that taxpayers continue to utilise our free services, thus enabling Team OTO to meet obligations aligned to our Annual Performance Plan and ensure that taxpayers receive excellent services from our office.

## DID YOU KNOW?



# THAT THE TAX OMBUD CANNOT HELP YOU AVOID YOUR TAX OBLIGATIONS AND NOT PAY TAXES DUE?

# UNDERSTANDING THE OTO's **INTERNAL COMPLAINT EVALUATION PROCESS**



The OTO continues to promote awareness about its mandate and the free and independent services it provides to taxpayers who have tax complaints against SARS. In this issue, Fair Play provides taxpayers with insight into the OTO's internal processes, including how it evaluates and processes complaints, and offers simplified answers to common questions that taxpayers generally have.

**1**

## **ACKNOWLEDGE**

Once a complaint is lodged with the OTO, the Office undertakes to acknowledge tax complaints within **two business days**.

**2**

## **REVIEW**

The OTO undertakes to review a complaint **within eight days**, investigating the merits of a complaint by, amongst others, independently verifying information submitted by taxpayers or their representatives and that it is in the possession of the South African Revenue Service.

**3**

## **RECOMMEND**

Upon investigating a matter, the OTO will send a recommendation to SARS informing the revenue collector how the complaint should be resolved or communicate an outcome to the taxpayer. It depends on whether the complaint was accepted and investigated or rejected and thus not investigated. The latter could be for various reasons, including that it falls outside the OTO's mandate or was prematurely lodged with the Tax Ombud without SARS internal processes being first exhausted.

**4**

## **CLOSEOUT REPORT**

Upon receiving OTO recommendations, SARS may accept or not accept the OTO recommendations and if they don't accept the recommendations, they **MUST** provide reasons for such. When they have accepted the commendations, SARS will provide a close out report indicating how they resolved the complaint

**5**

## **ACTION**

Within four business days of receiving the closeout report from SARS, the OTO checks if it is in line with its recommendations and communicates with the complainant. If not, the OTO seeks reasons from SARS on why recommendations were not implemented.



**Critical timelines:** Remember the **42-day rule** - 21 days turnaround for the SARS complaints department to resolve an issue, and then another 21 days turnaround for the CMO to resolve the issue if there are no compelling circumstances for this Office to consider and accept the complaint.

Continued on pg 5 

# Some taxpayers are still uncertain as to how the OTO deals with taxpayer complaints, this page provides answers to commonly asked questions.



**Talitha Muade**

Senior Manager: Operations  
Office of the Tax Ombud

## 1. Is the complaint within the OTO Mandate?

- 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 arising from the application of a tax Act?

If the answer to any of these questions is No, the matter is not within our mandate, and we cannot review the complaint, and it will be rejected. If the answer to all of these questions is Yes, the complaint is within our 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 turnaround time elapsed without the complaint being resolved?

If YES, the matter is within the mandate and the taxpayer has exhausted the SARS complaint's 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 the complaints mechanisms? 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 that the Tax Ombud considers appropriate.

## 3. What can the OTO not investigate?

There are limits to when the Tax Ombud can get involved.

- If the taxpayer is asking the Tax Ombud to review legislation or tax policy;
- If the taxpayer is asking the Tax Ombud to review SARS's practice generally prevailing;
- If the taxpayer is asking the OTO to review a matter subject to objection or appeal; or
- If the taxpayer is 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 against SARS, and the taxpayer has exhausted SARS processes or compelling circumstances exist, but any of the 4 limitations apply: the complaint will be rejected.

## 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 Tax Ombud will investigate the complaint.

The first step is to objectively 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 Tax Ombud determines the best way to facilitate resolution and refers the matter to SARS with a recommendation.

## 5. What happens next?

- The Tax Ombud will after considering the complaint, accept, partially accept, reject or terminate the complaint.
- When a complaint is accepted by the Office, a recommendation will be sent to SARS and the Taxpayer on the steps to be taken to resolve the issues in dispute.

The OTO endeavours to finalise complaints within the following timeframes:

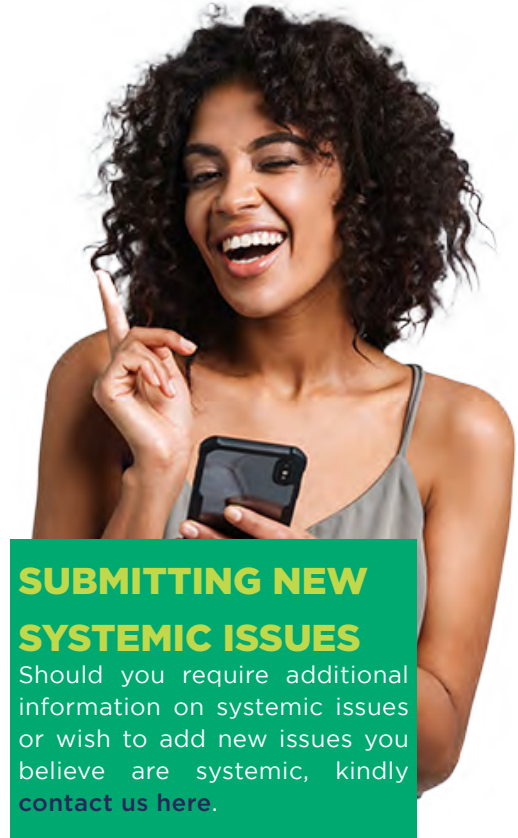
- SARS has 15 business days to implement the OTO's recommendation as per the MOU between SARS and the OTO or provide valid reasons for not implementing the OTO's recommendations within 30 days as per section 20(2) of the TAA.
- Once SARS has considered the OTO's recommendations, it responds with a close out Report which is sent to our Office.
- Finally, within four business days of receiving the close out report, the OTO verifies whether the report is aligned with our recommendations and communicates the outcome to the complainant.

# OTO INTERVENTION REDUCES SYSTEMIC ISSUES

More than a dozen common taxpayer problems that taxpayers usually face have been eradicated since 2018 due to the Office of the Tax Ombud's (OTO's) intervention which helped reduce the number of open systemic issues.

At its peak, the OTO identified 23 Systemic Issues (tax matters that can be regarded as the underlying cause for a complaint that affects or will affect many taxpayers in the tax system), but through its intervention, they were **reduced to eight before two more were added**. The OTO has advised SARS on how best to resolve the ten open systemic issues and is monitoring the effectiveness of implemented measures.

Taxpayers are reminded that they may lodge a complaint with the OTO without exhausting the SARS internal complaints processes if their complaints clearly concern the below open systemic issues.



**SUBMITTING NEW SYSTEMIC ISSUES**  
Should you require additional information on systemic issues or wish to add new issues you believe are systemic, kindly [contact us here](#).

NO	ISSUE	SUMMARY OF ISSUE
1	Delay in payment of refunds.	<p>1.1. Delay in the lifting of stoppers and lack of timeframe for doing so; (not finalising a single period submission verification within the TAT of 21 business days and multiple years within 90 business days).</p> <p>1.2. VAT and diesel refunds are declared on the same return, giving a nett amount payable or refundable to the taxpayer. At SARS, however, they are reflected on two different systems, and manual set-offs need to be done to obtain the same nett result reflected on the return. Where there is a delay in this, set-off refunds are delayed. Furthermore, where the diesel portion is being verified/audited, the VAT portion shows as a liability, and SARS takes collection steps even though the taxpayer complied with the nett result shown on the return.</p> <p>1.3. Debt set-off and recovery steps taken notwithstanding a request for suspension of payment being submitted to SARS.</p>
2	Nonadherence to dispute resolution time frames and related issues	<p>This includes:</p> <p>2.1. The SARS system not calculating the dates for dispute resolution correctly and incorrectly referring a case for condonation.</p> <p>2.2. The Notice of Invalidation of Appeal (NOA) incorrectly stating: "A new NOA may be submitted within the prescribed period, and if late, a request for late submission must be submitted by you" in cases where more than 75 business days have lapsed since a decision was taken on the objection.</p> <p>2.3. Nonadherence to time frames relating to the objection process.</p> <p>2.4. Nonadherence to time frames relating to the appeal process.</p>

NO	ISSUE	SUMMARY OF ISSUE
3	Inability on the part of SARS to confirm correspondence was sent. (manual correspondence as well as “eFiler view” correspondence)	<p>Where taxpayers allege that they did not receive correspondence from SARS, the revenue collector simply responds by providing them with a copy of the letter but fails to provide proof that the correspondence was indeed sent to them on the specified date. It should be noted that the concern raised was previously only applicable to manual correspondence issued.</p> <p>In the recent high court judgment of <i>SIP Project Managers (Pty) Ltd v The Commissioner for the South African Revenue Service</i> the importance of the delivery of the letter of demand to the taxpayer, via an electronic platform or to the last known address of the taxpayer was highlighted. A notice generated by the eFiling system does not satisfy the requirement of delivery unless such notice is uploaded on the taxpayer’s profile. Finally, and very importantly for this Office, we cannot rely on the “eFiler view” in Service manager to determine whether or not a taxpayer received correspondence.</p> <p>The systemic issue is therefore expanded to not only include manual correspondence but also correspondence that should be reflecting on a taxpayer’s “eFiler view”. This will include, for example, the final letter of demand, the outcome of an objection/appeal, notice of assessment, etc.</p>
4	Tax Compliance System (TCS).	<p>There are certain challenges causing undue hardship to various taxpayers due to the manner in which the Tax Compliance System was designed. This includes cases:</p> <ol style="list-style-type: none"> <li>1. Where there is an outstanding liability of R1.</li> <li>2. Taxpayers are still within time to submit a specific return and make payment, but the system already reflects this as outstanding.</li> <li>3. Cases wherein a debt emanates from fraudulent activities conducted by SARS or ex SARS officials.</li> <li>4. The system being unable to reflect compliance in cases where payment arrangements are in place, including approved suspension of any debt in question.</li> </ol>
5	Raising assessments prematurely.	The notification of verification as well as the request for additional information allows the taxpayer 21 business days to submit the relevant information. In some instances, SARS issues additional assessments without affording the taxpayer 21 business days.
6	Failure to respond to the request for a <b>deferred payment arrangement</b> within the prescribed turnaround time (21 business days).	This relates to complaints where SARS fails to respond to the request for a deferred payment arrangement. This negatively affects taxpayers who are attempting to become compliant, as well as SARS, which is delaying collecting revenue for the fiscus.
7	Failure to respond to the request for a <b>Compromise</b> within the prescribed turnaround time (90 business days).	This relates to complaints where SARS fails to respond to the request for a compromise. This negatively affects taxpayers who are attempting to become compliant as well as SARS who is delaying collecting revenue for the fiscus.
8	Failure to respond to the request for a <b>Suspension of payment</b> within the prescribed turnaround time (30 business days).	This relates to complaints where SARS fails to respond to the request for suspension of payment. This negatively affects taxpayers who are attempting to become compliant as well as SARS who is delaying collecting revenue for the fiscus.
9	SARS delays to code the taxpayer’s profile as deceased estate and to update the executor’s contact details (formal recommendations issued to SARS on 24 February 2022).	SARS not coding the profile as a deceased estate and updating the executor’s contact details within 21 business days.
10	SARS repeat verification cases (approved 19 April 2022, formal recommendations issued to SARS on 20 April 2022).	<p>Verification cases created due to two reasons which we believe is inappropriate:</p> <ol style="list-style-type: none"> <li>1. Verification case created as a result of SARS issuing of a reduced assessment to give effect to the outcome of a dispute; and</li> <li>2. Repeat verification cases with the same risk and the same requested supporting documentation.</li> </ol>

Since its establishment almost nine years ago, many myths have been told about the Office of the Tax Ombud (OTO). Although the Office has gone the extra mile to address many such false statements, many have remained. **Fair Play** seeks to address



# Myths VS Facts



The Office of the Tax Ombud is the same as SARS.

The Office of the Tax Ombud is operationally independent of SARS. It deals with taxpayers who have not been treated fairly by SARS but works with the revenue collector to help resolve taxpayer complaints.



The Tax Ombud Judge, Bernard Ngoepe, reports directly to the SARS Commissioner.

Tax Ombud Judge, Bernard Ngoepe, does not report to SARS but to the Finance Minister.



The OTO does not act independently when they deal with SARS tax complaints.

Since the establishment of the Office of the Tax Ombud, more than 80% of complaints investigated annually have been ruled in favour of taxpayers.



The OTO does not have information to assist taxpayers with complaints.

That is incorrect. The OTO has access to the SARS system and thus can independently verify the information and make sound judgements based on available facts.

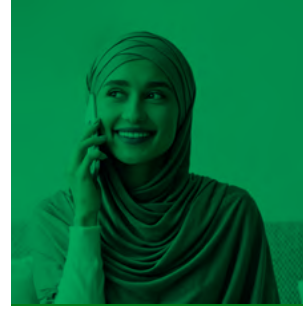


The OTO helps taxpayers even if they do not comply with SARS.

The OTO is neither for SARS nor taxpayers but seeks to maintain a fair balance between SARS powers and duties on the one hand and taxpayer rights and obligations on the other. The OTO seeks to ensure taxpayers pay what is due, not a cent less or more.

















# TAXPAYERS' RIGHTS KNOW THEM AND USE THEM

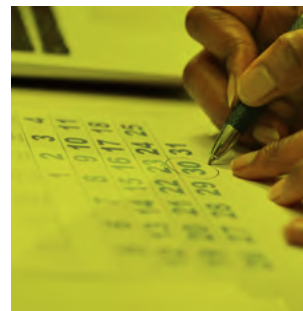
Fair Play reminds taxpayers about their rights protected by the Constitution and listed in the Compilation of Taxpayers' Rights, Entitlement and Obligations.

Taxpayer rights and entitlements include:

-  The **right of access** to information;
-  Receiving **quality and timely service** from SARS;
-  The right to a **fair, unbiased and just tax system**;
-  Paying no more than the **correct amount of tax due** to SARS;
-  Privacy and **confidentiality**;
-  The right to **retain representation**;
-  **Finality** on a tax matter;
-  The **right to make certain requests**, proposals and applications to SARS;
-  Complaining **without fear of victimisation**; and
-  The **right to dispute/challenge assessments/decisions**.



Click here to learn more about taxpayer rights, entitlements and obligations.



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

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