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**FEEDBACK**



# EDITOR'S NOTE

Ten years has a special ring to it, and for the Office of the Tax Ombud (OTO), it represents commitment and achievement. We are excited to be celebrating the 10th anniversary of the OTO, which by now has a substantial track record in serving as a free, fair recourse mechanism for South Africa's taxpayers.

In this issue of Fair Play, the OTO shares insights on tax matters such as our turnaround times for dealing with complaints, and where to go for assistance when an employer does not pay the tax it deducts from an employee over to the South African Revenue Service (SARS).

In a letter to the editor, the writer, LMG Zunga, talks about the economic consequences when SARS issues assessments that place businesses in insolvency.

Finally, we invite you, the OTO's stakeholders, to participate in a customer experience survey, the findings of which will be used to further improve our service.

Enjoy the read, and please remember that the Fair Play team welcomes feedback and suggestions on topics you would like to read about.



**Pearl Seopela**

Senior Manager: Communications & Stakeholder Relations

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# TAX OMBUD'S CORNER



**Prof. Thabo Legwaila,**  
Acting Tax Ombud



Welcome to the first edition of **Fair Play for 2023**, which marks the 10th anniversary of the OTO. We plan to celebrate the anniversary through numerous activities involving our stakeholders and will communicate these on multiple platforms leading up to the main celebration in **October 2023**.

In a few short weeks, the 2023/24 financial year will commence. The OTO has been undertaking a comprehensive strategy-making and planning process and will share our plans and goals with stakeholders as soon as the Annual Performance Plan and Strategic Plan are tabled in Parliament.

Later in the year, when we release our annual report for 2022/23, we will again account to you, our stakeholders, for our performance. As the year proceeds, we call on our stakeholders to continue supporting the OTO but also to challenge and question us whenever you feel we are not aligning with the mandate of the Office or the overall aspirations of the country.

***“The OTO remains as committed as ever to promoting taxpayer rights, using ongoing awareness campaigns to urge taxpayers to utilise the free and impartial services available to those with tax complaints against SARS.”***

We also invite stakeholders to participate in the OTO’s customer experience feedback survey which can be accessed on our website and social media platforms. The responses will hopefully assist the OTO to gauge the quality of service the Office provides and to assess whether our efforts to listen to customers are working. Please assist us in reaching as many potential respondents as possible by sharing the survey on the communication platforms at your disposal.

The OTO remains as committed as ever to promoting taxpayer rights, using ongoing awareness campaigns to urge taxpayers to utilise the free and impartial services available to those with tax complaints against SARS. Thank you for your support in helping to spread the message.

# HAVE YOUR SAY!



## CUSTOMER EXPERIENCE FEEDBACK

The OTO is committed to delivering a quality experience by continuously listening to customers' feedback and incorporating it, where possible, into our complaints resolution processes. Please help us understand and improve the quality of your experience by completing the survey.

Your response will remain entirely confidential to the OTO, and the appointed project specialists, Prof Adré Schreuder as Project Leader at Enterprises University of Pretoria (Pty) Ltd, will ensure that personal information included in the survey will be protected in accordance with the Code of Conduct of the South African Market Research Association (SAMRA) and related legislation. This includes destroying all data after the specified period allowed for record holding.

We have estimated and time-tested the survey to be 10 minutes at maximum. We kindly request your assistance by clicking on [this link](#).

The closing date for completion of the survey is **15 March 2023**. We thank you in advance for your willingness to participate in this survey.

### Customer Experience Survey

The word "FEEDBACK" is written in large, bold, colorful letters. Each letter is held up by a hand of a different skin tone, symbolizing diverse customer feedback. The letters are in shades of green and blue.

## TURNAROUND TIMES: WHAT TO EXPECT FROM THE OTO

The OTO strives to deal with taxpayer complaints concerning SARS as quickly as possible, bearing in mind the various steps in the process of investigating and resolving complaints.



To avoid disappointment, taxpayers should note the turnaround times for dealing with complaints. We aim to:

- acknowledge complaints within two business days;
- evaluate and review a complaint within eight days; and
- when a complaint is accepted and the OTO has issued recommendations to SARS, the OTO endeavours to finalise the complaint within 15 days from issuing recommendations to SARS. If we are unable to do so for whatever reason, the OTO will inform the taxpayer accordingly.

What timelines are essential for taxpayers to know when dealing with SARS?

- Finalisation of a single-period verification is 21 business days from the date the taxpayer submitted the complete and correct supporting documents.
- 90 business days are allowed for multiple-period verifications.
- 60 business days are permitted for finalising an objection.

## EMPLOYERS **DEDUCTING TAX** BUT NOT PAYING SARS

A concerned taxpayer wrote to the OTO as follows:

***“I am a South African citizen; I, too, pay tax. My worries are on behalf of the employer who doesn’t submit his taxes while he taxes my salary. What should I do to pursue him by action to pay full responsibility because when I log in into my e-filing, I find that I owe SARS a lot.”***

The taxpayer’s concern was how to compel the employer to take full responsibility for the non-payment of taxes, instead of the employee owing SARS taxes already deducted from his salary.

Below, Fair Play seeks to provide some clarity on the issue:

### **WHAT TO DO?**

The most important thing to do is to establish exactly why there is a tax liability on the taxpayer’s account. This can be due to various reasons including an under deduction of PAYE by the employer due to a calculation error or a person having more

than one source of income for instance. If you do not have the ability to make this determination it is highly recommended to obtain the services of a registered tax practitioner to assist you, especially if the assessment should be disputed.

### **WHERE TO GET HELP WITH A NON-COMPLIANT EMPLOYER**

While the OTO cannot take complaints against employers, taxpayers facing the problem above are urged to report the issue to the SARS Anti-corruption hotline at **0800 00 2870** or [click here to complete an online report form on suspicious activity](#).



# LETTER TO THE EDITOR

**LMD Zunga**, an accountant with 25 years of experience, who offers technical advice on how assessments that place businesses in insolvency should be dealt with.



## ASSESSMENTS WHICH PLACE THE BUSINESS IN **AN INSOLVENCY POSITION**

Assessments which place a business in an insolvency position must be reviewed in a special light. We submit that such assessments should be suspended until the matter is resolved because any effort to run the business becomes impossible. The Insolvency Act 24(1936) or business rescue in terms of the Companies Act 71(2008), hangs over the business. Workers, banks, directors and SARS all lose. The moment the accountant informs SARS that the business is insolvent because of the assessment, a new path must be followed because it is no longer business as usual.

The accountant cannot continue attending to SARS demands as they cannot be paid from a position of insolvency.

Where an objection is lodged to such assessment, the burden of proof should be on SARS.

Many of these assessments are challengeable. However, SARS often delays resolving the objection and does not recognise that the business is not operating.

Finally, the business cannot tender or borrow, banks withdraw facilities, and the business cannot seek new work or cannot get paid for work already done where a tax clearance certificate is demanded.

***“The accountant cannot continue attending to SARS demands as they cannot be paid from a position of insolvency.”***

SARS should not appoint two different auditors from different offices simultaneously. We have cases where one auditor from one office audited the director, and another auditor from a separate office audited the business at the same time but finished at different times. The objection depended on the outcome of the other assessment on PAYE. Despite being informed of the dual appointment, SARS continued, and there were problems with overlapping/duplicate assessments, with each auditor claiming to be correct.

## Other problems are that:

- The business offices are forced to close, often by a landlord, as payments are no longer forthcoming. The documents responding to some of the SARS demands become difficult to assemble and the objections cannot be sustained.
- Workers lose their jobs, and the attendant labour conciliations burden a frail business situation.
- Bank accounts are closed, and the owner is permanently disabled.
- First-time taxpayers' experience is terrifying with SARS coming hard on them that they never wish to try again or go underground. After that, SARS experiences a large number of Nil returns the following year as the business is no longer operating.

The number of formal businesses should reach about 5% of the population – as in the case of the United Kingdom, United States, Germany etc. – where unemployment is low. At 60 million people, South Africa should have approximately three million formal businesses but it only had 600 526 in 2011 and 780 480 in 2018, which is about 1,3% of the population. This is the reason for high unemployment. There are not enough employers.

Efforts to increase the number of formal businesses are hampered by a high start-up/business failure rate of 72% at the end of year one. Compliance issues are often among the causes of start-up failures. SARS is a significant contributor to business failure but is oblivious to this.

**“At 60 million people, South Africa should have approximately three million formal businesses but it only had 600 526 in 2011 and 780 480 in 2018, which is about 1,3% of the population.”**

There must be a platform in SARS where professionals can send their recommendations to the top SARS structure so that the revenue authority can hear from practitioners who experience some of the harsh realities. Most SARS officials have never run a business, and there is a lot they miss, even when a questionnaire is circulated.

## Can the Tax Ombud study these matters and develop a suitable recommendation for SARS?

**Disclaimer: The above letter was contributed by an external stakeholder who does not have any affiliation with the OTO. The letter does not necessarily reflect the views of the Office.**

## EDITOR'S RESPONSE

1. The OTO does not have enough factual information to investigate issues raised in this opinion piece, but invites the author to provide detailed facts and research to substantiate the claims.

2. There are already platforms in place where professionals are able to raise their issues with the top structures of SARS through their respective Recognised Controlling Bodies.

Follow the OTO on the following social media channels and be part of an important dialogue in the country on tax matters:



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

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