



Excerpt



THE TAX ADMINISTRATION ACT
Act 28 of 2011

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Office of theTax Ombud

Office of the Tax Ombud



Our Motto

Ensuring Fairness



Vision

To strengthen taxpayers' trust and confidence in tax administration.



Mission

To be an efficient, independent, impartial and fair redress channel for taxpayers.

Values



Accountability

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



Independence

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



Fairness

The Tax Ombud acts in fairness at all times.



Efficiency

The Office of the Tax Ombud ensures that all taxpayers' complaints are resolved promptly and efficiently.



Confidentiality

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



Impartiality

The Tax Ombud will review taxpayers' complaints fairly.



INTRODUCTION



The information in this excerpt is from the Tax Administration Act (TAA). It provides a concise yet comprehensive framework of the OTO as an instrument of government that works closely with, but is independent of, the South African Revenue Service (SARS), to resolve taxpayers' complaints against the revenue authority.

The document quotes the provisions of the TAA that relate to the mandate of the Tax Ombud, limitations on its authority, its relationship with SARS, how taxpayers' complaints are addressed, the rules of engagement for the relationship with the Minister of Finance, and the powers that the Minister exercises over the institution.



THE FOLLOWING ARE THE RELEVANT SECTIONS FROM THE TAA RELATING TO THE OFFICE OF THE TAX OMBUD

CHAPTER 2: PART E

Appointment of the Tax Ombud

POWER OF THE MINISTER TO APPOINT THE TAX OMBUD.

- 14.** (1) The Minister must appoint a person as Tax Ombud -
- (a) for a term of five years, which term may be renewed; and
 - (b) under such conditions regarding remuneration and allowances as the Minister may determine.
- (2) The person appointed under subsection (1) or (3) may be removed by the Minister for misconduct, incapacity or incompetence.
- (3) During a vacancy in the Office of Tax Ombud, the Minister may designate a person in the Office to act as Tax Ombud.
- (4) No person may be designated in terms of subsection (3) as acting Tax Ombud for a period longer than 90 days at a time.
- (5) A person appointed as Tax Ombud -
- (a) is accountable to the Minister;
 - (b) must have a good background in customer service and tax law; and
 - (c) may not at any time during the preceding five years have been convicted (whether in the Republic or elsewhere) of -
 - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004); or
 - (ii) any other offence involving dishonesty, for which the person has been sentenced to a period of imprisonment exceeding two years without the option of a fine or to a fine exceeding the amount prescribed in the Adjustment of Fines Act, 1991 (Act 101 of 1991).

CHAPTER 2: PART F

Powers and duties of the Tax Ombud

- 15.**
- (1) The Tax Ombud must appoint the staff of the Office of the Tax Ombud, who must be employed in terms of the SARS Act.
 - (2) When the Tax Ombud is absent or otherwise unable to perform the functions of the office, the Tax Ombud may designate another person in the Office of the Tax Ombud as acting Tax Ombud.
 - (3) No person may be designated in terms of subsection (2), above, as acting Tax Ombud for a period longer than 90 days at a time.
 - (4) The expenditure connected with the functions of the Office of the Tax Ombud is paid in accordance with a budget approved by the Minister for the Office.



Mandate of the Tax Ombud

- 16.** (1) The mandate of the Tax Ombud is to -
- (a) 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
 - (b) 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 issue related to a service matter or the application of the provisions of this Act or procedural or administrative provisions of a tax Act;
- (2) In discharging his or her mandate, the Tax Ombud must -
- (a) review a complaint and, if necessary, resolve it through mediation or conciliation;
 - (b) act independently in resolving a complaint;
 - (c) follow informal, fair and cost-effective procedures in resolving a complaint;
 - (d) provide information to a taxpayer about the mandate of the Tax Ombud and the procedures to pursue a complaint.
 - (e) facilitate access by taxpayers to complaint resolution mechanisms within SARS to address complaints; and
 - (f) 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



Limitations on authority

- 17.** The Tax Ombud may not review -
- (a) legislation or tax policy;
 - (b) 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;
 - (c) a matter subject to objection and appeal under a tax Act, except for an administrative matter relating to such objection and appeal; or
 - (d) a decision of, proceeding in or matter before the tax court.

Review of complaint

- 18.**
- (1) The Tax Ombud may review any issue within the Tax Ombud's mandate on receipt of a request from a taxpayer.
 - (2) The Tax Ombud may determine -
 - (a) how a review is to be conducted; and
 - (b) whether a review should be terminated before completion.
 - (3) In exercising the discretion set out in subsection (2), above, the Tax Ombud must consider factors such as -
 - (a) the age of the request or issue;
 - (b) the amount of time that has elapsed since the requester became aware of the issue;
 - (c) the nature and seriousness of the issue;
 - (d) the question of whether the request was made in good faith; and
 - (e) the findings of other redress mechanisms with respect to the request.
 - (4) The Tax Ombud may only review a request if the requester has exhausted the available complaint resolution mechanisms in SARS, unless there are compelling circumstances for not doing so.
 - (5) To determine whether there are compelling circumstances, the Tax Ombud must consider factors such as whether -
 - (a) the request raises systemic issues;
 - (b) exhausting the complaint resolution mechanisms will cause undue hardship to the requester; or
 - (c) exhausting the complaint resolution mechanisms is unlikely to produce a result within a period of time that the Tax Ombud considers reasonable.
 - (6) The Tax Ombud must inform the requester of the results of the review or any action taken in response to the request, but at the time and in the manner chosen by the Tax Ombud.

Reports by the Tax Ombud

- 19.** (1) The Tax Ombud must -
- (a) report directly to the Minister;
 - (b) submit an annual report to the Minister within five months of the end of SARS's financial year; and
 - (c) submit a report to the Commissioner quarterly or at such other intervals as may be agreed.
- (2) The reports must -
- (a) contain a summary of at least 10 of the most serious issues encountered by taxpayers and identified systemic and emerging issues referred to in section 16(2)(f), including a description of the nature of the issues;
 - (b) contain an inventory of the issues described in subparagraph (a) for which -
 - (i) action has been taken and the result of such action;
 - (ii) action remains to be completed and the period during which each item has remained on the inventory; or
 - (iii) no action has been taken, the period during which each item has remained on the inventory and the reasons for the inaction; and
 - (c) contain recommendations for such administrative action as may be appropriate to resolve problems encountered by taxpayers.
- (3) The Minister must table the annual report of the Tax Ombud in the National Assembly.



Resolution and recommendations

- 20.** (1) The Tax Ombud must attempt to resolve all issues within the Tax Ombud's mandate at the level at which they can most efficiently and effectively be resolved and must, in so doing, communicate with SARS officials identified by SARS.
- (2) 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.

Confidentiality

- 21.** (1) The provisions of Chapter 6 apply with the changes required by the context for the purpose of this Part (Part F).
- (2) SARS must allow the Tax Ombud access to information in the possession of SARS that relates to the Tax Ombud's powers and duties under this Act.
- (3) The Tax Ombud and any person acting on the Tax Ombud's 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 for the purpose of the performance of functions and duties under this Part.

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