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EDITOR'S NOTE

As we prepare for the new Tax Season, this edition of Fair Play covers various issues of interest to taxpayers and tax practitioners, especially when they believe they are not receiving fair treatment from the South African Revenue Service (SARS).

This edition features easy-to-read articles on lodging a complaint with the Office of the Tax Ombud (OTO) and what to look for when completing a complaint form. More useful information on ensuring fair and equitable tax treatment can be found in the article by Theo Burrows from PCMS Accountants, based on a recent Tax Faculty webinar titled "Ensuring fair and equitable taxation: a conversation with the OTO".

We also present an overview of the Tax Ombud's Annual Performance Plan for 2023/24 and an update on systemic and emerging tax issues. Finally, we feature some photographs from the farewell we held for our former Tax Ombud Judge Bernard Ngoepe.

We hope that you will find this publication informative.

Pearl Seopela

Senior Manager: Communications & Stakeholder Relations



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TAX OMBUD'S CORNER

Prof. Thabo Legwaila,
Acting Tax Ombud

The Tax Season is upon us, and as the Office of the Tax Ombud, we continue promoting #TaxpayersRightsMatter, which will be featured on numerous platforms highlighting taxpayer rights awareness and tax compliance.

Also noteworthy is that the Tax Ombud Annual Performance Plan (APP) 2023/24 was recently tabled in Parliament. It details our objectives for the new financial year and how we intend achieving them. The APP feeds into the Office's 2020 - 2025 Strategic Plan, and we are confident that, come 2025, we will have achieved all the set objectives.

Some of the progressive developments we envisage:

- We need to re-engineer the Office's path, impact and significance to the taxpayers of South Africa. The OTO is no longer a new organisation but a maturing one that needs to shift into higher gear to meet the demands of the changing South African and global tax environment.
- Artificial intelligence (AI) applications could make it quicker and easier to determine whether a taxpayer's issue falls within our mandate. Therefore, we plan to digitalise the initial point of contact the taxpayer makes with the OTO. Comparable organisations within and outside South Africa are using similar applications, and we look forward to using AI for the taxpayer's initial contact and for addressing routine queries and complaints.

- We are exploring working methodologies to make the OTO more flexible and agile and to build an engaged and inspired workforce equipped to provide the best possible service and outcomes with the available resources. By intensifying efforts to improve the employee experience, the Office seeks to provide a better taxpayer experience.
- One of the significant negative impact points of the Covid-19 pandemic was that it further inhibited the physical reach of the OTO. In reaching out to taxpayers, we will resume physical roadshows to supplement the current virtual methods.

I am excited about the OTO's path and its ambitions, which bode well for the country, taxpayers and the South African tax administration system.

As we enter the Tax Season this coming month, we urge taxpayers to familiarise themselves with their tax rights and responsibilities, which include the right to be treated fairly by the revenue collector and the responsibility to be tax compliant. We remain committed to promoting a healthy balance between SARS's powers and duties on the one hand, and taxpayer rights and obligations on the other. The goal is to continue contributing to improvements in the South African tax administration system.

Prof. Thabo Legwaila,
Acting Tax Ombud

UNDERSTANDING COMPLAINTS RESOLUTION

In preparation for the tax filing season, we highlight the importance of understanding the OTO's complaints process.

Once the OTO receives your complaint form, we will capture the complaint and issue a letter of acknowledgement. The OTO will then decide how to handle it or recommend alternative remedies to you.

- First, we evaluate your complaint to determine if it falls within our mandate.
- After evaluating the complaint to confirm that it is within mandate and that the taxpayer has exhausted the SARS internal complaints resolution mechanisms, or that there is compelling circumstances applicable to the case, and that no limitations apply, the complaint will be reviewed. If accepted after review, we issue a recommendation to SARS on how the complaint can be resolved.
- After receipt of SARS close out report, we evaluate it against our recommendations to determine if they have been implemented and if satisfied, we finalise and close the complaint case on the system. If the recommendations have not been implemented, we reject the close out report and send it back to SARS with reasons for rejection.
- Finally we send you the letter of finalisation which includes the summary of your complaint, what we recommended to SARS and how SARS resolved the complaint.

TIPS FOR SUBMITTING A COMPLAINT FORM

Before you start filling out the form, note the following:

 **Tip 1** The factual situation of your complaint should be documented in chronological order, including the period you're complaining about. You should include all SARS case numbers relevant to the complaint and attach all supporting documents.

 **Tip 2** Make sure to use the relevant tax reference number.

 **Tip 3** Indicate the desired outcome of your complaint.

Please note the following:

- If using a representative, the complainant must submit a signed power of attorney form and certified ID copies from the complainant and the representative.

The power of attorney form is downloadable from the [OTO's website](#).

- Both the taxpayer and the representative should sign the power of attorney form and it should be completed in full.



WHAT HAPPENS WHEN YOU SUBMIT A TAX COMPLAINT TO THE OTO?

- 1. Acknowledging the complaint:** The OTO undertakes to acknowledge receipt of a complaint within two working days of receiving it.
- 2. Evaluating and reviewing the complaint:** The Office undertakes to complete an evaluation and review of a complaint within eight days from the date of acknowledging receipt.
- 3. Assigning recommendations to SARS** and/or sending the outcome to the taxpayer
 - For accepted complaints, the Office assigns recommendations to SARS for consideration and notifies the complainant accordingly.
 - For rejected and terminated complaints, the Office provides an outcome of the evaluation to the complainant.
- 4. Receiving the close-out report:** SARS considers the Tax Ombud's recommendations and responds with a close-out report. This process step is not within our control, and the timescales may vary.
- 5. Actioning the close-out report:** Within four days of receiving the close-out report, the OTO verifies whether the report aligns with our recommendations and communicates the outcome to the complainant.



Auto Assessment

Diarise the Filing Season dates for 2023

7 July - 23 October 2023: For Individual taxpayers (non-provisional) and Trusts who are required to file personal income tax returns.

7 July - 24 January 2024: Provisional Tax taxpayers are required to file tax returns.

For more information about the Filing Season 2023, please visit our website.

EXPERT'S CORNER:

From complaints to compliance:

How the Office of the Tax Ombud ensures fair and equitable treatment



Theo Burrows is a Tax Faculty Technical Advisor and a practising Independent Tax Practitioner with three decades of tax experience. He is also the Secretary General of the South African Tax Practitioners Union (SATPU), which advocates for a fair and equitable working environment for Independent Tax Practitioners.

OTO ensures that taxpayers are treated fairly and equitably by SARS. The OTO can only act within the legal framework and deals with complaints relating to how SARS applies legislation, the administrative processes they follow, and the services they render. The OTO does not deal with the merits of disputes but engages with SARS on how the procedures used to deal with these disputes affect the taxpayer.

Taxpayers need first to exhaust the SARS internal complaints mechanism. SARS has a specific Complaints Management Office (CMO), and taxpayers are legally obligated to follow the CMO process before the OTO can become involved, unless there are compelling circumstances for not lodging complaints with SARS CMO first as per section 18(4) of the TAA. According to Gert van Heerden, Acting CEO of the OTO, over 90% of the complaints that the OTO rejects are due to the taxpayer engaging the OTO prematurely. Knowing the turnaround times, escalation process and CMO process will reduce this type of rejection.

'Query loop'

Tax practitioners tend to fall foul of what Gert calls the "query loop" triggered when they lodge a follow-up query after the initial

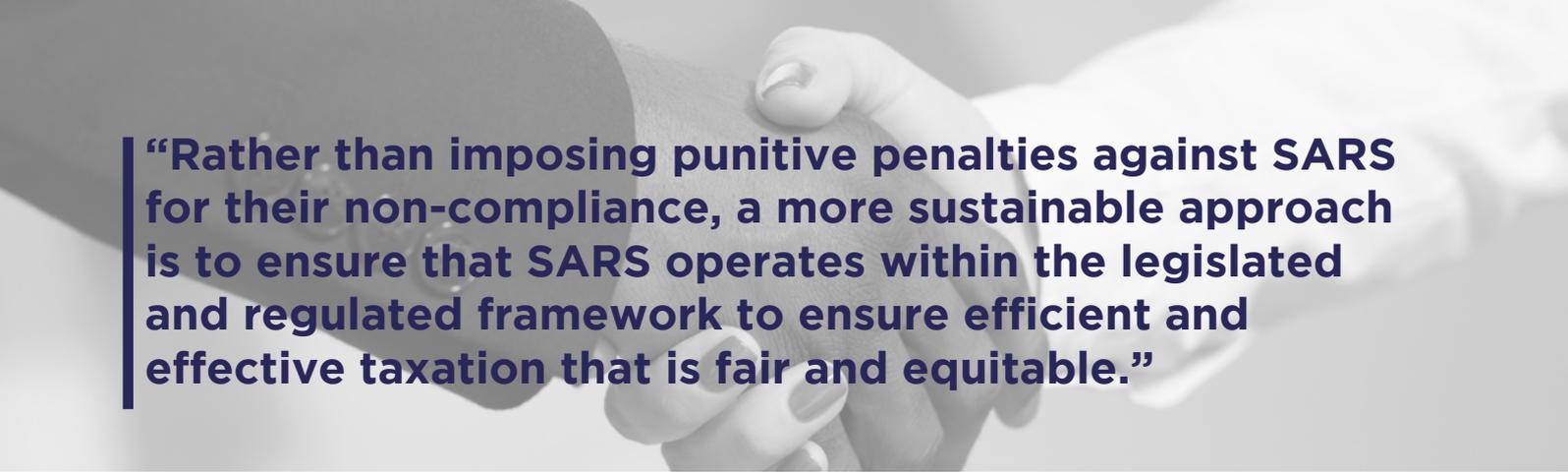
21-day turnaround time. What happens within SARS is that the question activates another 21 days for SARS to resolve the query.

Some time later, another query is initiated, and SARS resets the 21-day clock. This is often the main cause of taxpayer issues remaining unresolved for extended periods of six months or longer.

Gert advises that once the initial 21-day turnaround period has expired, the tax practitioner should escalate the matter and then, after 21 days, make use of the CMO complaints process. Should the matter remain unresolved, now that 42 days have lapsed, a complaint should be lodged with the OTO. The change in dealing with tax issues can positively affect the taxpayer's experience when issues need to be resolved.

Impartial and independent

The OTO's role is to achieve a balance between SARS's powers and taxpayers' rights, but the OTO is not a taxpayer representative. The OTO ensures that taxpayers are treated fairly and that SARS applies the law fairly and equitably. The OTO does not differentiate in terms of the Rand value of taxpayer disputes, and the focus is on principles. The OTO places equity above equality when it approaches its work and considers the taxpayer's circumstances



“Rather than imposing punitive penalties against SARS for their non-compliance, a more sustainable approach is to ensure that SARS operates within the legislated and regulated framework to ensure efficient and effective taxation that is fair and equitable.”

when dealing with complaints as far as it must positively discriminate to ensure that the taxpayer is treated fairly.

When the OTO requires SARS to follow the rules, it may be accused of impeding revenue collection when SARS must repay amounts to taxpayers. Still, fairness and equity are crucial and tied to SARS obligations. At the same time, when tax practitioners and taxpayers are not following the processes to complain or when SARS has correctly taxed the taxpayer, the OTO will equally decide in SARS’s favour.

Taxpayers are not disadvantaged in their engagement with the OTO when tax practitioners support them. However, as Gert states, tax practitioners are professionals and paid by the taxpayer for service; therefore, it is implied that they should know the rules and be able to act within its framework. As with other professionals, tax practitioners should refer matters outside their scope of expertise to a tax specialist. Therefore, the OTO does regard it as equitable to hold complaints received from tax practitioners to a higher standard, especially when it comes to the application of procedural rules for complaints.

However, as it regards tax practitioners as valuable stakeholders and an essential link between the taxpayer and its organisation and SARS, the OTO adopts a developmental approach when dealing with tax practitioner shortcomings. The OTO will engage the tax practitioner directly as needed. Still, it also gives feedback to the Recognised Controlling Bodies (RCBs) and tax training organisations such as The Tax Faculty so that they can address shortcomings with their continuous development and training programmes.

Cooperative compliance

Gert believes a tax environment should exist where there is cooperative compliance between SARS and the taxpayer. Rather than imposing punitive penalties against SARS for their non-compliance, a more sustainable approach is to ensure that SARS operates within the legislated and regulated framework to ensure efficient and effective taxation that is fair and equitable. The OTO uses its legislated mandate supported by its resources to achieve just that.

As with SARS, the OTO is embarking upon a modernisation drive, with the emphasis on using technological improvements and advances to offer taxpayers easier access to its services. Improvements are being made to the online complaints submission process and enabling taxpayers to use digital platforms to access OTO employees who will offer needed assistance.

The OTO is very active in education and uses the full spectrum of media channels. Gert emphasises the valuable role tax practitioners play as they have direct access to the taxpayer and are often the first to know of the issues that taxpayers encounter that create a sense of unfair taxation. Therefore, the OTO welcomes engagement with tax practitioners through complaints and by informing the OTO of concerns, issues and trends they encounter. This transparent and open sharing of information, the OTO believes, can assist the OTO in becoming aware of emerging issues and assist them in their work to ensure fair and equitable treatment of taxpayers.

Disclaimer: The analysis above was contributed by an external stakeholder without affiliation with the OTO. The insight does not necessarily reflect the views of the Office.

HELP US HELP SCORES OF TAXPAYERS AND SARS



Do you know of any underlying tax problems that affect or will affect many taxpayers, referred to as systemic issues?

If you do, you could be of great assistance and help the Tax Ombud identify these underlying issues so that we can recommend to SARS how best to resolve them.

Systemic issues include matters that:

- always affect multiple taxpayers; and
- have to do with the functioning of SARS systems, the way SARS drafts and implements policies, practices and procedures, or how fairly SARS applies legislative provisions, or even disregards them.

How does the Tax Ombud identify the most serious systemic and emerging issues?

The OTO considers various factors when deciding whether issues that taxpayers encounter are systemic. These factors are:

- the impact on taxpayer rights;
- the negative impact on taxpayers; and
- the number of taxpayers affected.

How can taxpayers report these underlying tax complaints that affect or will affect many taxpayers?

It's simple: [click on the form here](#).

- You will be requested to provide your name and surname, and describe the issue or issues. You can also include documentation (maximum 10 MB) you think is essential to the matter.
- You do not have to include personal taxpayer information such as your ID or tax number.
- You will only be contacted about your submission if we need to clarify something or ask you for additional details. We will also contact you if using the information in our advocacy efforts could help other taxpayers.



Systemic investigations are critical in identifying shortcomings and non-adherence to SARS processes, legislation and turnaround times, that negatively impact taxpayers.

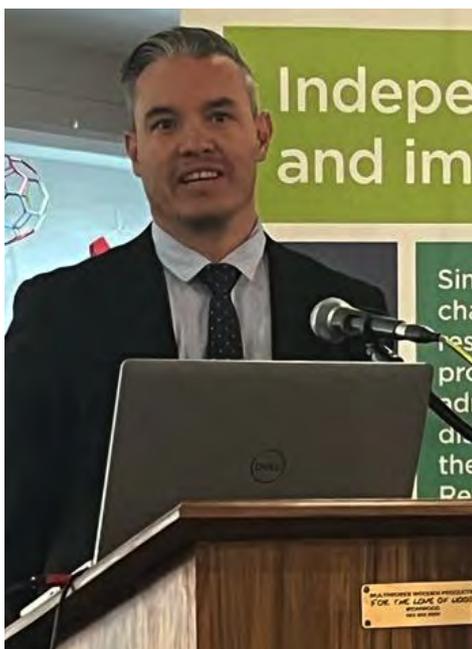
After finalising systemic investigations, the OTO makes recommendations to SARS on remedies that can address the root causes of these issues. This assists both SARS and taxpayers as SARS processes improve. Furthermore, once the OTO has identified a systemic issue and made SARS aware of this, taxpayers no longer have to follow the normal SARS complaints resolution process before lodging a complaint with the OTO. Instead, a complaint may be lodged directly to the OTO.

OUT AND ABOUT

The OTO continues to build important partnerships with stakeholders and uses numerous platforms to promote awareness about its services to taxpayers.



Above: The OTO participated and exhibited at the Proudly SA Buy Local event held at the Sandton Convention Centre on 27 and 28 March 2023. The exhibition enabled the OTO to engage with stakeholders, particularly the business community, about its services.



Above: On Friday, 26 May, the Office, in partnership with the South African Tax Practitioners Union (SATPU), the South African Institute of Chartered Accountants (SAICA), the South African Institute of Professional Accountants (SAIPA) and the George Museum, hosted a fruitful discussion titled “Unpacking the tax dispute resolution process: changes and enhancements”, at the George Museum in George, Western Cape. On the same day, the OTO presented and had an exhibition stand at the Mossel Bay Municipality’s SMME Business Expo at the D’Almeida Community Centre.



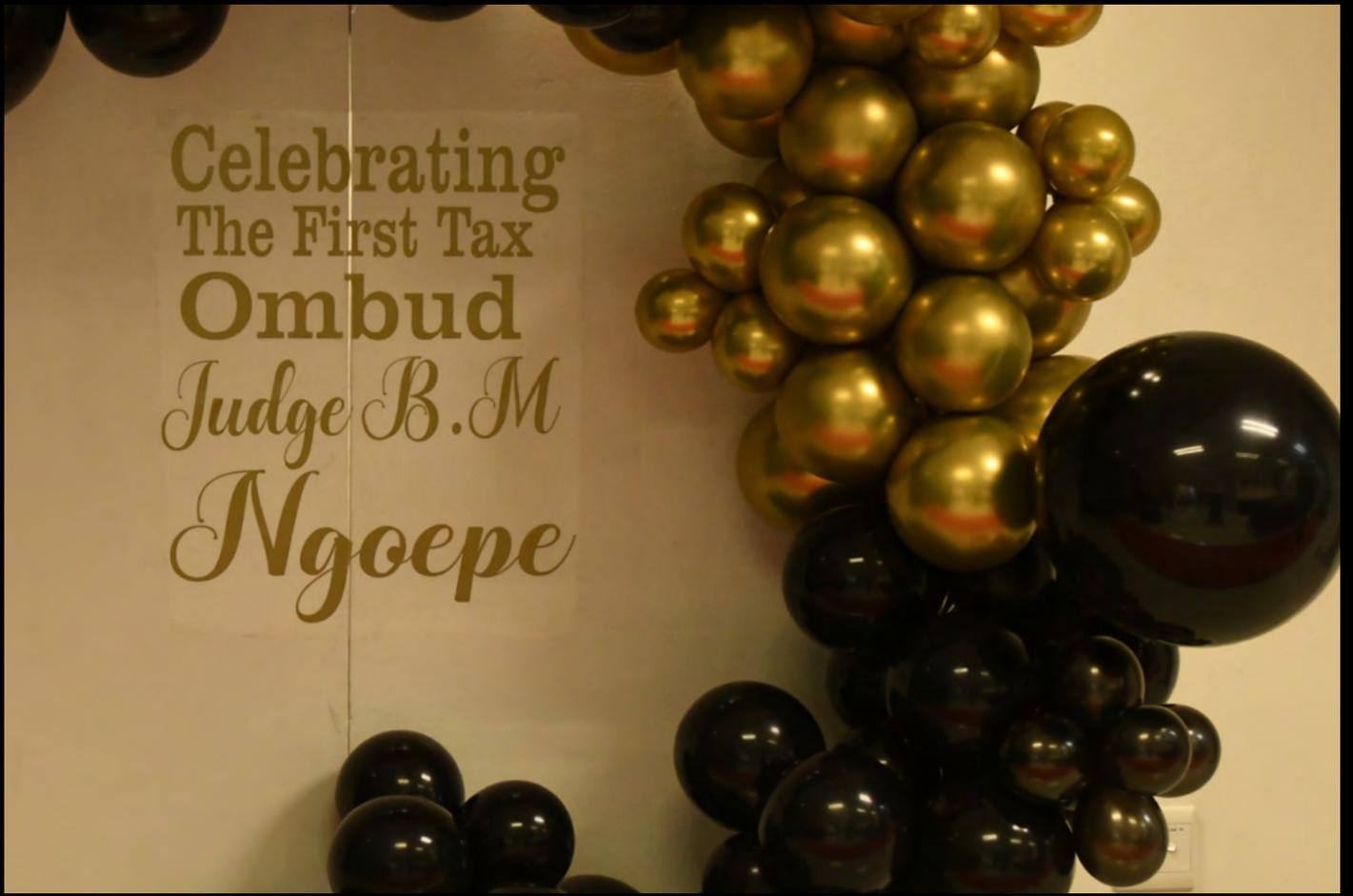
FITTING FAREWELL FOR **JUDGE NGOEPE**

The Office of the Tax Ombud rolled the red carpet and hosted a five-star event to bid farewell to the former Tax Ombud Judge Bernard Ngoepe.

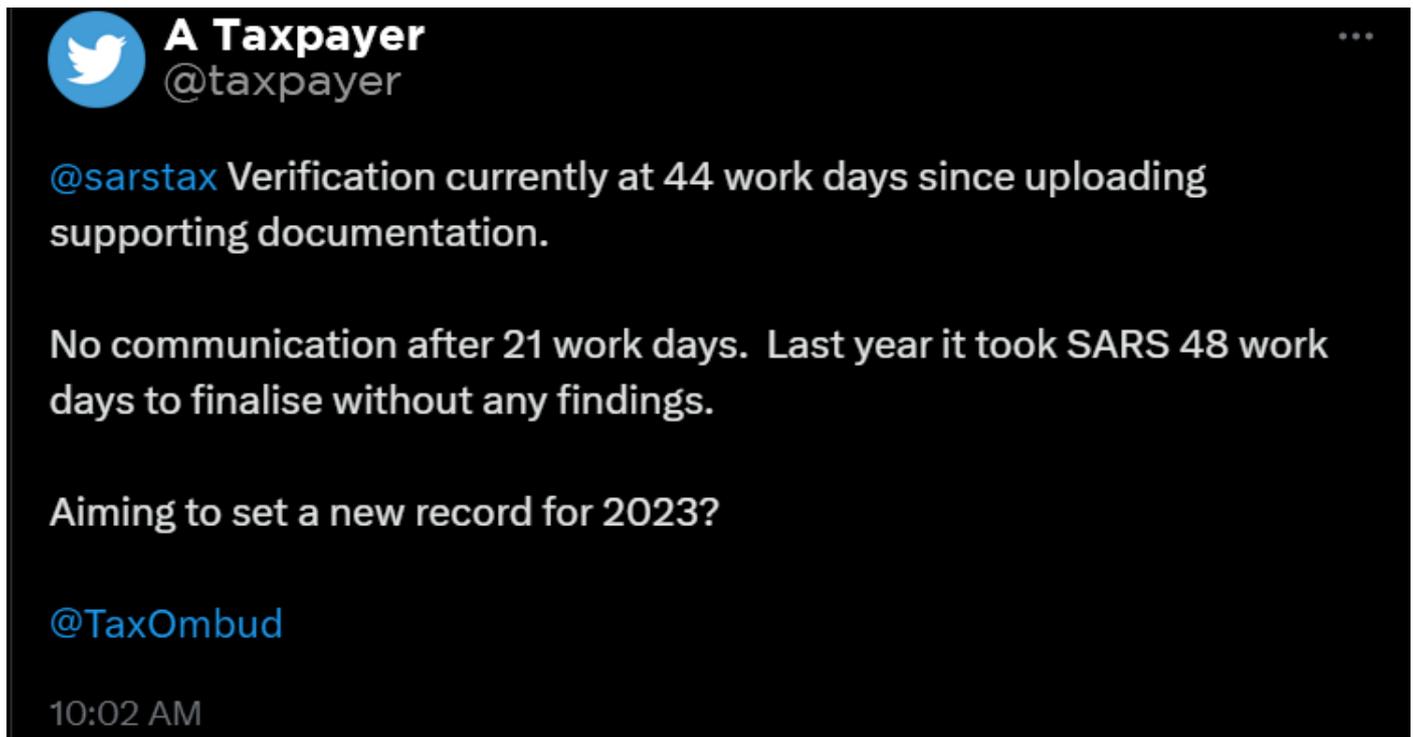
The glittering farewell, hosted at the Office on 17 May 2023, was also attended by external stakeholders, including current South African Revenue Service (SARS) Commissioner, Edward Kieswetter, SARS Head of Stakeholder Relations Integrity and Anti-Corruption, Mark Kingon, former OTO CEO Advocate Eric Mkhawane, SARS's Lead: People Management Stefne Bosch, and OTO employees.

Judge Ngoepe expressed gratitude for the valedictory function and the gift of the coffee table picture book chronicling his 9-year stay in the Office.





TAXPAYER QUESTION ON TWITTER



How the Tax Ombud responded

SARS will usually take between two and 21 business days to verify your supporting documents. If you have not heard from them after 21 business days, log in to eFiling to check if there is any update, for example, if your documents have been rejected, or if more information is required.

If there is no update, contact the SARS Complaints Management Office (CMO) on **0860 12 12 16**. You must allow an additional 21 business days for the CMO to resolve your complaint.

If you still do not have a resolution after all that, the Tax Ombud can help. Contact us on **0800 662 837** or complaints@taxombud.gov.za for assistance.

The taxpayer above had their complaint resolved three days after posting the tweet.

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 PSeopela@taxombud.gov.za or Communications@taxombud.gov.za.

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