



FAIR PLAY



OFFICE OF THE
TAX OMBUD

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MAKING

TAXPAYERS' RIGHTS



MATTER

#TaxpayersRightsMatter

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Editor's Note



Welcome to Women's Month, where we acknowledge and celebrate women's incredible contributions in the tax sphere. The timing could not be better to welcome our new Tax Ombud, Ms Yanga Mputa. We look forward to her tenure as head of this important institution.

As a further tribute to *Imbokodo* in the tax sphere, we also feature tips from two women tax experts, Sandiswa Mntwini, founder of Tax Shelter (a boutique tax consulting company), and Lebo Motsumi-Nkoloti, a Senior Associate at Bowmans South Africa. They unpack what taxpayers need to know when lodging a tax complaint with the OTO and SARS.

We proudly announce that the OTO's educational campaign, themed "Making Taxpayers' Rights Matter", was launched today, 1 August 2023. We outline some of the details of the campaign, which is being rolled out on numerous digital, broadcast, print and social media platforms, reiterating and reinforcing our commitment to customer centricity and continued dedication to promoting taxpayer rights.

Thank you for your consistent support and engagement with Fair Play.

Pearl Seopela

Senior Manager: Communications and Stakeholder Relations



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- **Fairness for all:** case studies published monthly.
- **Fair Play:** a quarterly round-up of tax news and opinions.

As well as general news and announcements!

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Tax Ombud's Corner



Ms Yanga Mputa
Tax Ombud

Greetings to our readers and stakeholders. As the new Tax Ombud, it is an honour and a privilege for me to take up this position. I am particularly pleased that my first engagement with our readers is in Women's Month, when we celebrate women's critical role in every aspect of our lives, families, places of employment and communities.

I am honoured that our government saw fit to bestow this important position on me and I am committed to leading this great institution to the best of my ability as we work towards further improving the country's tax administration system and promoting and protecting taxpayer rights. Many have attested to the importance of this institution and how it has helped the South African Revenue Service (SARS) improve its services and treat taxpayers fairly and consistently.

I am joining an institution built on a solid foundation focused on serving our people. My contribution will be to provide support and lend the experience and skills I have garnered in approximately 25 years at SARS and National Treasury towards helping the OTO become exemplary in service delivery.

I look forward to getting to know more of our stakeholders and having fruitful engagements with taxpayers and institutions integral to the country's tax administration system. It is also crucial that we continue to cultivate our relationship with SARS to serve taxpayers who require solutions to their litany of tax problems.

We know the vital role that our employees play in the success of this organisation, and I urge them to continue pursuing excellence in serving taxpayers.

Similarly, we are aware of the important role our government plays in the success of institutions like ours, and part of my responsibilities will be to nurture that partnership, all to benefit the thousands of taxpayers who knock on our door seeking assistance with their complaints against SARS.

Lastly, we are ready to roll out our educational campaign "Making Taxpayers' Rights Matter". I look forward to personally engaging with stakeholders on many platforms and in person in the coming months, promoting awareness about taxpayer rights.

Ms Yanga Mputa
Tax Ombud

MAKING TAXPAYERS' RIGHTS MATTER

The Office of the Tax Ombud's educational campaign themed "Making Taxpayers' Rights Matter" is going live today, 1 August 2023. The campaign, which runs in parallel with the ongoing South African Revenue Service (SARS) Tax Season, encourages and reassures taxpayers of the Office's continued efforts to promote and protect their rights and to embrace customer-centricity when resolving their tax complaints against SARS.

The campaign is the OTO's strategic approach to raising awareness about taxpayer rights and is being implemented on numerous platforms, including digital, broadcast, print, out-of-home, mall activations, exhibitions and direct engagements with stakeholders. It has a unique, bold and vibrant "look and feel" featuring ordinary people to highlight the OTO's people-orientated approach to helping resolve tax complaints, which is reassuring to many taxpayers.

In the 10 years since the OTO's establishment, the Office has championed taxpayer rights through numerous initiatives, with the latest, "Making Taxpayers' Rights Matter", showing the organisation's unwavering commitment to helping improve the country's tax administration system, protect taxpayer rights and promote tax compliance.

A roadside billboard highlights the Office's latest campaign.



Taxpayers' Tips from a Tax Practitioner

Sandiswa Mntwini is the founder of Tax Shelter, a boutique tax consulting company with over a decade of experience in the financial sector, and holds a BCom Accounting and a General Tax Practitioner (SA) qualification. She shares some interesting tips for all taxpayers to note about their taxes.



KEEP CONTACT DETAILS UP TO DATE

Updating contact details ensures that taxpayers get communication from SARS on time. The Tax Administration Act has stipulated periods for all disputes and queries with SARS; incorrect contact details often lead to delays in communication and, in some instances, a complete communication breakdown between SARS and the taxpayer. This, unfortunately, always results in dire consequences for the taxpayer.

ENSURE PERSONAL DETAILS ARE CORRECT

One of the most common mistakes taxpayers make is not updating their banking details. This leads to delays in payment of refunds and, in some cases, opens the door to scammers. Outdated banking details also delay the registration of tax types such as VAT. This, again, normally leads to much frustration for the taxpayer and SARS. The revenue collector usually requires additional information when a taxpayer is married in community of property, but people often neglect to disclose their marital status. It may come across as misleading information. Misleading SARS on an income tax return can have serious consequences for the taxpayer.

TAXPAYERS NEED TO FAMILIARISE THEMSELVES WITH THE BASICS OF TAX MATTERS

Regrettably, we have witnessed some influential people get into serious trouble with SARS, and they normally all echo the same sentiments as to why they find themselves in that position: they all trusted their accountants or tax professionals who unfortunately dropped the ball at some point.

Although this is a valid point, the taxpayer still has a responsibility, unfortunately, to ensure that their tax return is accurately submitted, which is why I encourage all taxpayers to familiarise themselves with the basics of tax.



TAKE NOTE OF DEADLINES

SARS has deadlines for submissions of returns and payments of accounts; a day late in submission or payment can mean thousands of rands in penalties, depending on a taxpayer's income. Taxpayers must take note of deadlines if they want to remain compliant. Unfortunately, SARS does not recognise ignorance as a valid reason for late submissions and payments.

LEARN TO ASK FOR HELP

South African tax is constantly evolving; it is, therefore, understandable that taxpayers will not always have the most up-to-date information when it comes to tax. This, however, cannot be used as an excuse for non-compliance. Should taxpayers need clarification about a "tax situation", they must seek help immediately. In recent years, SARS has implemented some commendable means for taxpayers to reach consultants at the branches and call centres. For more complex matters, registered tax professionals should be consulted.

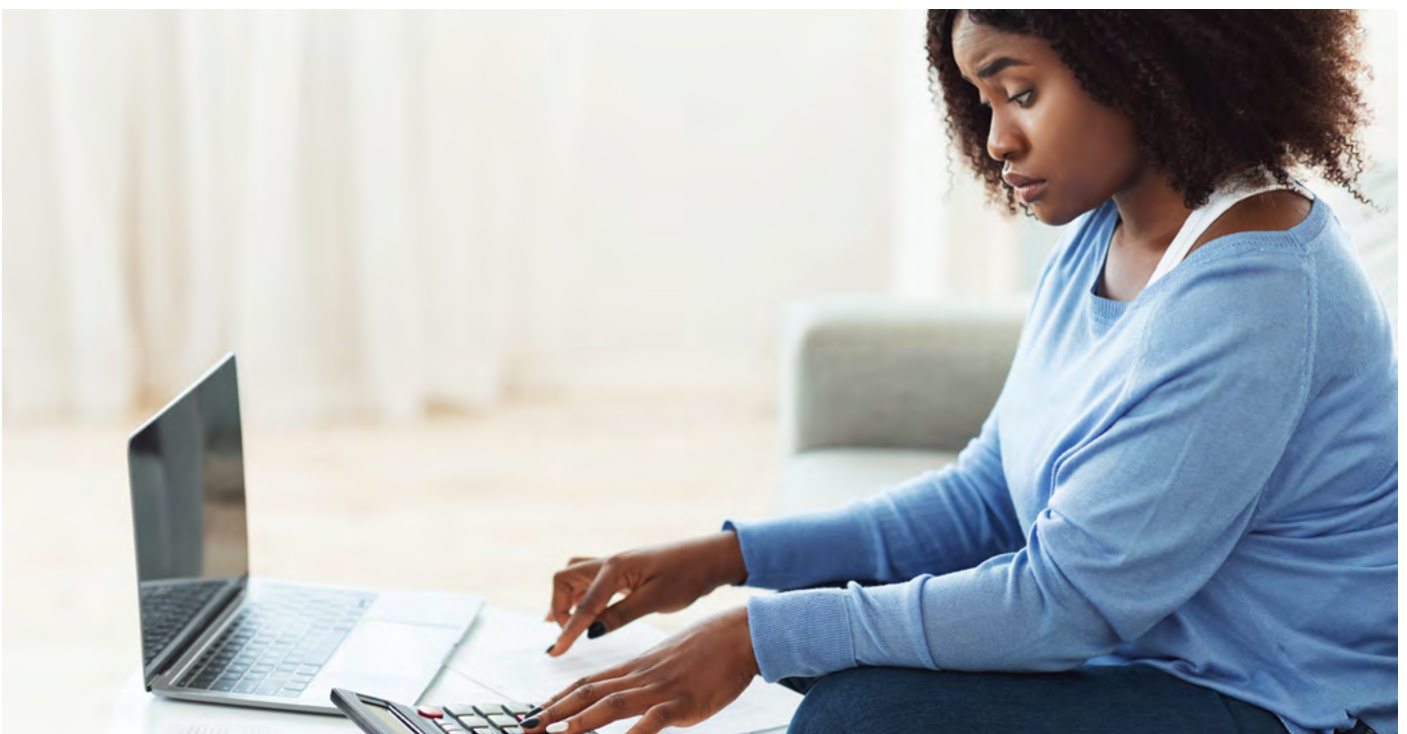
WHEN APPROACHING THE TAX OMBUD - ONLY TWO CIRCUMSTANCES

When a taxpayer has exhausted all the complaints processes at SARS and is still dissatisfied with the outcome, there are two occasions when the taxpayer may approach the Tax Ombud:

- when the taxpayer has compelling circumstances not to follow the SARS complaints process; and
- when there is a systemic issue.

Taxpayers are encouraged to visit the Tax Ombud's website, www.taxombud.gov.za, to learn more about what circumstances may be regarded as compelling and to find out more about the work of the Tax Ombud in ensuring a better tax experience for all taxpayers.

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



EXPERT'S CORNER:

TAX TIPS FOR TAXPAYERS WHEN THEY DEAL WITH SARS – HOW TO ENSURE A FAIR PROCESS

Lebo Motsumi-Nkoloti is a Senior Associate at Bowmans South Africa. She holds BA and LLB degrees from Rhodes University; an LLM in Commercial Law from the University of Cape Town; a Postgraduate Diploma in International Tax from the University of Johannesburg, and an MCom in South African and International Tax from the University of Johannesburg.



The South African Revenue Service (SARS) has vast information-gathering powers under the Tax Administration Act, 2011 (TAA). Broadly, SARS can:

- send a taxpayer a request for relevant material;
- require a taxpayer to produce relevant material in person during an interview at a SARS office;
- conduct a field audit or investigation at the taxpayer's premises,
- authorise a formal enquiry before a presiding officer into the tax affairs of a taxpayer; or
- conduct a search-and-seizure operation at premises where the relevant material is being kept.

Taxpayers are often unsure how to deal with SARS. Corresponding with SARS can be nerve-racking even to the most law-abiding taxpayer. Below are some tips to guide taxpayers in their discussions with SARS:

Know your rights

While SARS's information-gathering powers are vast, taxpayers have rights in the Tax Administration Act (TAA) which are meant to "counterbalance" SARS's powers. These include, for example, the right to be kept informed of the stage of completion of an audit; the right to be given a letter of findings within 21 business days of an audit being finalised; the right to assert legal privilege over privileged information contained in documents requested by SARS; and the right not to have admissions to offences that are made in the course of information gathering by SARS be used in criminal proceedings against them unless a court orders such information as admissible.

Know your risks

Taxpayers must regularly assess tax positions adopted, and where a tax position could be contentious, engage the services of a registered tax practitioner to review the tax treatment and, if possible, provide a tax opinion that may guard against SARS levying understatement penalties.



Timeously respond to SARS

Taxpayers must always aim to respond to SARS's requests for information and documents within the period specified in SARS's request. Where it is impossible to respond within the time stipulated, they should apply to SARS (well before the expiry of the original deadline) for a request for an extension of time, providing the grounds for such a request.

Best evidence rule

Taxpayers should ideally not give their interpretation of a document that contains information sought by SARS. Where something is apparent from the documentation itself (and there is no risk of waiving privilege), it is best not to summarise or explain what is in the document but to provide that document to SARS.

Oral evidence

Where oral evidence is required, for example, during a meeting with SARS, taxpayers should properly consider, ahead of time, who would be the best person to provide that evidence. Ideally, only a person with personal knowledge and experience should provide oral evidence to SARS. If required, the person should be able to commission an affidavit attesting to the facts relating to such information.

Audit assistance

Taxpayers should always consider whether there are other factors/documents that SARS has not requested but which they have reason to believe would help resolve the matter, and volunteer to provide this information to SARS if they believe that this would provide SARS with the type of information it is looking for.

Let SARS do their audit

It is essential that taxpayers allow SARS to do their audit and not, without just cause, obstruct a SARS official from carrying out the audit or investigation or refuse to give access or assistance as may lawfully be required by SARS.

When in doubt, let a suitably qualified and registered tax practitioner consider and guide your interactions with SARS. Whilst it may not always be necessary to do so in the early stages of the discussions with SARS, involving your trusted advisor in the matter sooner rather than later may be vital in ensuring your rights are protected.

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.

COMMONLY ASKED TAXPAYER QUESTIONS

Answers from **Talitha Muade**,
Senior Manager: Operations

During the Filing Season, the Office of the Tax Ombud receives queries and engages stakeholders on numerous tax matters, and provides insight into issues both complex and simple in the tax sphere.

Below are some of the questions received from taxpayers and the OTO's responses.

Taxpayer: Last year, I was auto-assessed. Nothing has changed in my employment contract, and I guess I will be auto-assessed again this filing season. What tips do you have for me?

OTO: All taxpayers, irrespective of whether they are being auto-assessed or not, must be in control of their tax affairs. This means they must compile all supporting documents relating to the tax period to be submitted. Supporting documents could be an IRP5/IT3(a) from employers, medical certificates, retirement annuity certificates, and certificates from banks or investment institutions for interest earned. If one earns rental or any income on top of one's full-time employment earnings (such as from a side hustle), compile proof of that and the related expenses.

Taxpayer: What do I do if I disagree with the auto-assessment outcome?

OTO: Taxpayers who are auto-assessed have until 23 October 2023 from the notice of assessment to request an amendment by filing a return with all the information that might have been missed. If an auto-assessment is issued after 23 October 2023, the 40 business days will start on the date of the notice of the assessment.

Taxpayer: Suppose I miss the deadline for a request to correct my assessment. Can I apply for an extension beyond the given timeframe?

OTO: Yes, you may apply for an extension; however, the request for an extension must be made before the expiry date of 23 October 2023. You must also provide SARS with reasonable grounds for the request, such as a taxpayer's prolonged admission to a hospital or being out of the country for work purposes, but remember, SARS will require proof of this. Important to note is that the request for an extension does not waive the administrative penalties for filing the tax return late.



Taxpayer: Our employer has introduced a hybrid working model for us, which entails working two days from home and the other three days from the office. Do I qualify for a home office deduction?

OTO: Section 23(b) of the Income Tax Act states that a tax deduction for home office expenses will only be considered:

1. If the room is regularly and exclusively used for the purposes of your trade, e.g., employment; and is specifically equipped for that purpose. The home office must therefore be set up solely for the purposes of your trade; and
2. If your remuneration consists only of a salary and similar remuneration, your duties must be mainly performed in this part of the home. Therefore, it means you must perform more than 50% of your duties in your home office; or
3. If more than 50% of your remuneration consists of commission or variable payments based on your work performance, more than 50% of those duties must be performed otherwise than in an office provided by your employer.

Taxpayer: I lodged a complaint with the OTO after lodging a complaint with the SARS Complaints Management Office (CMO), yet the OTO rejected my complaint; I need clarification.

OTO: The SARS CMO has 21 business days to resolve your complaint. If you lodge a complaint with the OTO before the 21 business days have elapsed, your complaint with the OTO will be rejected because you need to allow SARS an opportunity to resolve your complaint. Secondly, the complaint you lodged with the SARS CMO must relate to the one you have lodged with the OTO and the case number provided to the OTO must be correct.

Taxpayer: What if the taxpayer's employer/former employer has failed to provide them with an IRP5 certificate?

OTO: There are alternative ways that SARS can use to verify your information. The taxpayer must approach SARS for assistance by making an e-booking appointment. The following documentation will be required:

- all payslips issued by the employer for the year of assessment in question;
- bank statements to show the movement of salary into your account from the employer, and if applicable, a copy of a service contract;
- name and contact details of the employer; and
- the physical address of the employer.

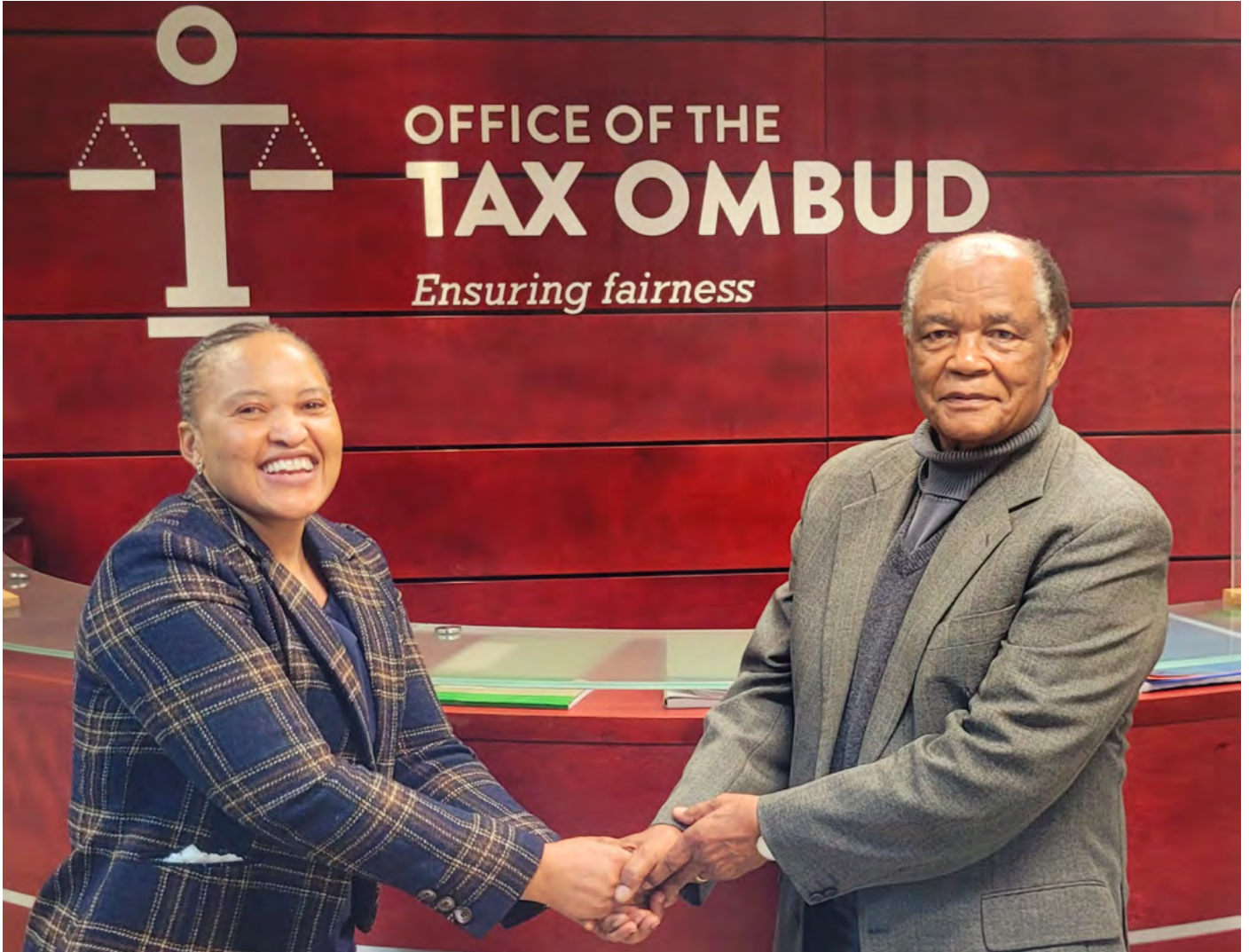
Taxpayer: How much time does a taxpayer have to lodge an objection?

OTO: An objection must be submitted within 80 business days after the assessment outcome or SARS decision date. Where the taxpayer requested reasons for the assessment, the objection must be submitted within 80 business days from the date that SARS responded to the taxpayer.

For more guidance on the complaints process, visit www.taxombud.gov.za.

OUT AND ABOUT

The Tax Ombud, Ms Yanga Mputa, hit the ground running, engaging in numerous activities in her first month with the Office of the Tax Ombud.



Above: The Tax Ombud receiving words of wisdom from former Tax Ombud Judge Bernard Ngoepe, after a fruitful engagement at the Office on 17 July 2023.



Above: Celebrating Nelson Mandela International Day, the Madiba Way, making a difference by donating food and clothes with her team at Meetse a Bophelo Centre in Mamelodi.



Above: Tax Ombud and her senior leadership during a benchmarking engagement with the Tanzanian Tax Ombudsman Service team at the OTO offices on 20 July 2023.



Surviving Taxation in a **NO GROWTH** ENVIRONMENT

The Leonardo | Sandton 11-13 September 2023

South Africa has enacted a variety of tax instruments to either deter certain forms of energy while promoting others. What has been the practical impact of these instruments and what are the best viable opportunities?

REGISTER TO ATTEND

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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