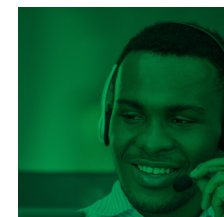


Tax Ombud's

# Compilation of Taxpayers' Rights, Entitlements and Obligations





## MOTTO

Our motto is “Ensuring Fairness”.



## MISSION

The Tax Ombud is committed to being an efficient, independent, impartial and fair redress channel for taxpayers.



## VISION

The vision of the Tax Ombud is to strengthen taxpayers' confidence in tax administration.

## OUR VALUES



### ACCOUNTABILITY

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



### INDEPENDENCE

In dealing with taxpayer complaints, the Tax Ombud operates independently of the South African Revenue Service (SARS).



### EFFICIENCY

The Tax Ombud ensures that all taxpayer complaints are resolved promptly and efficiently.



### FAIRNESS

The Tax Ombud acts in fairness at all times.



### CONFIDENTIALITY

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



### IMPARTIALITY

The Tax Ombud will review taxpayers' complaints fairly.



### INTEGRITY

The OTO will consistently uphold ethical standards by acting honestly, ensuring transparency in all processes, and fostering trust through dependable and principled conduct in addressing taxpayer complaints.

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# INTRODUCTION

The position of the Tax Ombud was created to “...achieve a balance between SARS’s powers and duties and taxpayer obligations, remedies and rights.”<sup>1</sup> In line with this purpose, this document seeks to provide information to taxpayers about what their rights, entitlements, and obligations are in relation to their tax affairs and engagements with the South African Revenue Services (SARS) and the Office of the Tax Ombud.

This is not an enforceable “Bill of Rights” but merely a compilation of principles that are contained in various documents, including the Constitution, tax legislation and other government documents. Any of the rights and entitlements referred to herein may be subject to exceptions and may be limited to the extent allowed by law.

This document includes references to specific sections of the Tax Administration Act, 28 of 2011 (TAA) and the Rules<sup>2</sup> that confer these rights and entitlements on taxpayers, as well as a summary of what these rights are<sup>3</sup>. The relevant sections are specified in the footnotes for ease of reference. Please note this is not intended to be an all-inclusive list but rather a quick reference to the sections that are the most important based on the experiences of the OTO.

This document does not replace, supersede or overrule any legislation, common law principles or procedures relating to tax administration and taxpayers are advised to seek experienced assistance to assist them should they seek to enforce their rights. It is acknowledged that very often the enforcement of one’s rights requires expensive court action.

1. Explanatory Memorandum on the Taxation Laws Amendment Bill, 2011, issued by National Treasury on 27 January 2012.
2. The Dispute Resolution Rules governing the procedure before the Tax Board or the Tax Court Promulgated under s103 of the TAA, GN550 in GG37819 of 11 July 2014.
3. Section 2 of the TAA.



# A. RIGHTS AND ENTITLEMENTS

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## 1. You have the right of access to information

- You have the right to know what you need to do to comply with the tax laws.
- You are entitled to obtain information in SARS's possession that relates to your tax affairs, bearing in mind some requests for information require an application under the Promotion of Access to Information Act and SARS may decline a request if it relates to SARS confidential information.<sup>4</sup>
- You have the right to be informed of SARS's decisions and to receive clear explanations for these decisions or outcomes bearing in mind that any issue relating to decisions by SARS may require applications under the Promotion of Administrative Justice Act.<sup>5</sup>
- You are entitled to receive full and accurate information about the services rendered by SARS and the Tax Ombud which are made available through various sources including the respective websites, branch offices and contact centres.<sup>6</sup>
- You are entitled to be told what the level and quality of these services should be.<sup>7</sup>

4. Section 7 of the Constitution of the Republic of South Africa; Sections 25(1), 42(1), 42, 48, 60(2), 61(1) & (4), 65, 73, 96, 106(5), 131, 162, 163(5), 164(6), 165, 172(1), 214(1) of the TAA; as well as Rule 6 and Rule 7.
5. Sections 68 and 73 of the TAA and the Promotion of Access to Information Act 2 of 2000.
6. Section 33 of the Constitution read with the Promotion of Administrative Justice Act 3 of 2000.
7. The fifth principle of Batho Pele as contained in the White Paper on Transforming Public Service Delivery GG 18340, GN 1459 of 1997; Service Charter – [sars.gov.za](http://sars.gov.za)

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## 2. You are entitled to receive quality and timely service from SARS<sup>8</sup>

You are entitled to receive prompt, courteous and professional assistance in your dealings with SARS, to be spoken to in a way you can easily understand, to receive clear and easily understandable communications from SARS, and to report inadequate service.

Some practical examples include, for instance, that taxpayers should be:

- Notified when they are selected for an audit or verification;
- Kept up to date of the progress of such an audit;
- Notified of the outcome of an objection within 60 days after delivery of a valid objection to SARS; and
- Notified within 30 days after lodging a valid appeal if the dispute is suitable for alternative dispute resolution.

8. Section 195(1)(d) of the Constitution, sections 22, 23, 25(5), 114, 115(1), 131, 166, 187(1), 256(2) of the TAA, Rule 9, Rule 13(1), as well as the fourth and seventh principles of Batho Pele as contained in the *White Paper on Transforming Public Service Delivery* GG 18340, Notice 1459 of 1997.

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### **3. You have the right to a fair, unbiased and just tax system<sup>9</sup>**

- It is your right to have the provisions of tax legislation applied consistently, fairly and objectively. Any limitation to a taxpayer's rights, as contained in this document, may only be permitted if specific legislative provisions allow for that. A SARS official making decisions on your tax affairs must do so without a conflict of interest that may result in bias.
- You are entitled to access a court or other forum with the appropriate jurisdiction to enforce your rights and entitlements.
- Taxpayers are for instance entitled to:
  - Take any administrative action by SARS, that adversely affects their rights, on review in terms of the provisions set out in the Promotion of Administrative Justice Act.
  - Make applications to the Tax Court to compel SARS to comply with the Dispute Resolution Rules.

9. Sections 33, 34 and 38 of the Constitution; Sections 2(b), 7, 8(3), 10, 11, 41(3), 44, 45(2), 47, 49(3), 55, 59, 60, 61, 62, 63, 64, 65, 66, 101-150, 163(2)(a) & (b), 164(2), 164(6), 167, 168, 172, 174, 176, 177(3), 179-184, 179(2), 185, 186, 187(1), 188-189, 191(2), 200-205, 210, 211, 212, 213, 215(2), 218, 222, 223(1), 229, 232, 236, 237, 240, 256(2) of the TAA and the Dispute Resolution Rules in totality.



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## **4. You do not have to pay any more than the correct amount of tax due to SARS<sup>10</sup>**

- You have the right to pay only the amount of tax legally due, including interest and penalties. Any amount overpaid by you or recovered by way of SARS's collection steps must be refunded.
- The South African tax system works on a “pay now argue later principle” meaning that, even if you are disputing the assessment that created the debt, you must first pay it. You are entitled however, to request SARS to suspend your obligation to pay the debt until the dispute resolution procedure is finalised. SARS is not allowed to take any collection steps from the date on which you submitted such a request, until ten days after it notified you that either the request has been declined, or that a previously approved request has been withdrawn.<sup>11</sup>
- You are entitled to be notified of a tax debt and SARS's intention to obtain a civil judgement or third-party appointment to collect the debt.<sup>12</sup>
- You are entitled to apply to SARS for an arrangement to pay your tax debt in instalments, or to apply for a compromise to pay a lesser amount than what is due.<sup>13</sup>

10. Sections 93, 98, 164, 166, 169, 177, 179-184, 187(1), 190(1), 191(2), 210, 211, 211, 222, 223(1) of the TAA.

11. Section 164(6) of the TAA.

12. Sections 172 and 179 of the TAA.

13. Sections 167-168; and sections 200-207 of the TAA.

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## 5. Your right to privacy and confidentiality<sup>14</sup>

- Taxpayers have the right to expect that any SARS inquiry, investigation or enforcement action will comply with the law. Such action should be no more intrusive than necessary and should be procedurally fair.
- You have the right to expect that any information you provide to SARS and the Tax Ombud will not be disclosed unless authorised by yourself or allowed by law.
- Please be aware that SARS is allowed to obtain information relating to your tax affairs from third parties such as banks and employers<sup>15</sup>.
- You are entitled to file a criminal complaint against any SARS or Tax Ombud employee, or anyone else who wrongfully uses or discloses your information in contravention of the TAA.

14. Sections 21, 40-66, 67-72, 115(2)124(1), 132, 236 of the TAA and the *Protection of Personal Information Act 4 of 2013*.

15. Section 46 of the TAA.

## 6. The right to retain representation<sup>16</sup>

You have the right to obtain services of a representative to assist you with your tax affairs and dealings with SARS.

It must be noted that in the case of a Tax Board hearing, a taxpayer must request permission from the chairperson to be represented.<sup>17</sup>

16. Sections 25(3), 52(3), 103, 113(8) of the TAA.

17. Section 113(8) of the TAA.

## 7. You are entitled to finality<sup>18</sup>

You are entitled to have an audit, investigation, dispute and debt collection steps brought to finality within a reasonable period.

18. Sections 29(3), 32, 93, 98, 99, 100, 148, 171, 176(3), 197, 198, 232 of the TAA.

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## **8. You are entitled to make certain requests/proposals/applications to SARS<sup>19</sup>**

The provisions of tax legislation that afford certain remedies to taxpayers do not apply automatically. In these instances, you are entitled to request that a particular remedy be applied to your case.

Some examples of requests/applications taxpayer can make to SARS are for:

- Extension to submit documents requested by SARS;
- Advance rulings or non-binding opinions;
- Reasons for an assessment;
- That a decision made by SARS that is not subject to objection and appeal be withdrawn;
- An assessment to be reduced under certain circumstances;
- Extension of the period to submit objections or appeals;
- To make a proposal in settlement of a dispute;
- The recusal of a tax board chairperson; and
- That certain penalties and interest be remitted.

19. Sections 46(5), 75-90, 93, 95, 98, 104(5), 107(2), 111(7), 113(8), 113(11), 118, 122(2), 130, 142-150, 164(2), 165, 167, 187(6) & (7)200, 215(1), 223(3), 226, 256(1) of the TAA and Rule 6.

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## 9. You are entitled to complain without fear of victimisation<sup>20</sup>

- You are entitled to complain.
- You may not be intimidated into not lodging a complaint or into withdrawing a complaint.
- You may not be victimised for lodging a complaint with SARS's internal complaints management office or the Office of the Tax Ombud.
- Taxpayers have the right to have their complaints speedily registered and resolved by SARS's Complaints Management Office (CMO) within a maximum of 21 business days from lodging the complaint, by calling the SARS CMO on **0860 12 12 16**. Should taxpayers still not be satisfied with SARS's outcome, taxpayers may follow the Tax Ombud complaints process by requesting a complaint form, which can be downloaded from **[www.taxombud.gov.za](http://www.taxombud.gov.za)**.

The form can also be requested via email from **[complaints@taxombud.gov.za](mailto:complaints@taxombud.gov.za)** or telephone from **0800 662 837**.

20. Sections 16-18 of the TAA and the seventh principle of Batho Pele as contained in the White Paper on Transforming Public Service Delivery GG 18340, Notice 1459 of 1997.

## 10. You have the right to dispute/challenge assessments/decisions<sup>21</sup>

You have the right to dispute any assessment or decision that is subject to objection and appeal, within the prescribed provisions and rules of the dispute resolution procedure.

You have the right to take any administrative action that adversely affects your rights, on review in terms of the provisions set out in the Promotion of Administrative Justice Act.

21. Sections 103, 104, 107, 177(3), 190(6), 220, 224 of the TAA.



# B. OBLIGATIONS

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## YOUR OBLIGATIONS AS A TAXPAYER<sup>22</sup>

- Every person has the duty to work to the best of their ability and competence and to pay the taxes imposed by law.<sup>23</sup>
- As a taxpayer it is your responsibility to ensure that you are aware of your obligations and if you are uncertain in any respect or if your tax affairs are complex, you should seek appropriate advice.
- You must register as a taxpayer as and when you are liable to do so.<sup>24</sup>
- You must be honest and accurate in your engagements with SARS and the Tax Ombud.
- You must comply with all prescribed tax processes and timeframes related to your tax affairs.<sup>25</sup>
- In particular, you must submit full and true tax returns and make payment of taxes when required to do so.<sup>26</sup>
- You must submit documents requested by SARS in the format at the place and within the period specified in the request.<sup>27</sup>

22. Extracts from the SARS Service Charter.

23. Article 29 of the African Charter of Human and People's Rights Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986 and ratified by South Africa.

24. Sections 22 – 24 of the TAA.

25. Chapters 3: Registration, 4: Returns and Records, 5: Information Gathering, 9: Dispute Resolution, 10: Tax Liability and Payment; and 11: Recovery of Tax of the TAA are of particular importance.

26. Section 25 – 28; and 162 of the TAA.

27. Section 46(4) of the TAA.

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- You must notify SARS of any change to your registered details or banking particulars within 21 days.<sup>28</sup>
  - You must keep all documents and records in relation to your tax declarations for a period of five years from the date you submitted your return. It is important to understand that the five-year period only starts on the day you submit your return.<sup>29</sup>
  - If you are not required to submit a return, you are required to keep all documents and records for five years from the end of the tax period to which those documents and records relate.<sup>30</sup>
  - Corporate Taxpayers must ensure that at all times they are represented by a public officer who resides in South Africa.<sup>31</sup>

- 28. Section 23 of the TAA.
- 29. Section 29 of the TAA.
- 30. Section 29 of the TAA.
- 31. Section 246 of the TAA.

## CONCLUSION

The cornerstone of a fair, just tax administration system is a healthy balance between the powers and duties of the revenue authority, on the one hand, and taxpayer rights and obligations on the other. This document seeks to contribute to that balance by serving as a single, consolidated point of reference about the rights, entitlements and obligations of South African taxpayers. It is the first document of its kind in South Africa and it is hoped that it will serve South Africans well by contributing towards a fair and maximum tax collection.



## OFFICE OF THE **TAX OMBUD**

*Ensuring fairness*

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