

FAIR PLAY

Keeping you up to date with the latest news ISSUE 11 - 2019



OFFICE OF THE
TAX OMBUD

Ensuring fairness

5 YEARS
OF FAIRNESS
2013 - 2018



TAX OMBUD HOLDING SARS ACCOUNTABLE

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TAX OMBUD'S CORNER

We will be judged by what we do here and now...and not necessarily by what we ought to have done. Actions count more than words. With that message, I would like to greet all our stakeholders at the start of 2019 and express the unswerving commitment of this institution to continue working together to bring about tangible changes in the country's tax administration system.



We will be judged by what we do here and now...and not necessarily by what we ought to have done. Actions count more than words.



A few months ago, October 2018 to be precise, we celebrated our fifth anniversary, an important milestone in the relatively young life of our institution. April 2019, which is just around the corner, marks the beginning of yet another financial year (2019/20) as we strive to consolidate and improve on the first five years of our pursuit for fairness in tax administration.

This new period marks renewed efforts to better serve taxpayers and South Africa as a whole. The past year has seen significant changes in the country's political, social and economic climate. We hope all these will take our country forward.

As the OTO, we have already made certain valuable contributions to help regain some level of public trust in the South African tax administration system. The 2019/20 financial year and the next five years provide us with ample opportunity to continue doing so.



JUDGE BERNARD MAKGABO NGOEPE
TAX OMBUD

A survey to gauge the level of awareness and perceptions about the OTO among taxpayers and tax practitioners was conducted in the third quarter of the 2018/19 financial year. The findings have been extremely useful, enabling us to put in place measures to help raise awareness and improve perceptions, and thus add value to the overall experience stakeholders have of our organisation.

Let us embrace excellence, pursue our individual and collective goals, and be the best version of ourselves. Thank you.

TAX OMBUD
Judge Bernard Makgabo Ngoepe



KNOW YOUR RIGHTS AND RESPONSIBILITIES

CHRISTEL VAN WYK,
OFFICE OF THE TAX OMBUD, MANAGER: OPERATIONS

Understanding what the next procedural step is when encountering a problem in dealing with SARS or in managing a tax dispute will go a long way towards achieving the best and quickest resolution. Go through the SARS complaints process first – unless there are compelling circumstances.

The Office of the Tax Ombud (OTO) may assist if the taxpayer lodges a complaint after first exhausting the available SARS complaints resolution mechanisms, which entails approaching the SARS Complaint Management Office (the CMO). If there are compelling circumstances, however, a taxpayer may approach the OTO directly without first lodging a complaint at the CMO. An example of such circumstances is where the complaint raises a systemic issue.

The OTO publishes a list of identified systemic issues on its website (<http://www.taxombud.gov.za/Documents/Systemic%20Issues%20OTO.pdf>) and this is regularly updated.

An example of an identified systemic issue for which a taxpayer may approach the OTO directly is where SARS requests information during the course of an audit and takes a decision without taking into account the information submitted by the taxpayer.

DOES THE COMPLAINT FALL WITHIN THE OTO MANDATE?

When a taxpayer lodges a complaint at the OTO, a key step is to establish whether the OTO is mandated to deal with the matter. There are several instances where the OTO may not review a complaint, for example where the specific limitations to the OTO mandate apply. Having the OTO reject a complaint could be discouraging to the taxpayer, but it is important to understand what the OTO is mandated to do and what it may not do.

COMMON MISUNDERSTANDINGS ABOUT OUR MANDATE

One example where taxpayers sometimes misunderstand the mandate is where SARS has issued an assessment, and the taxpayer then complains to the OTO about the assessment. The OTO cannot review the complaint in this instance because the taxpayer must follow the next procedural step. In this case, this is either to request reasons from SARS for the assessment, or if the taxpayer is in a position to formulate his or her grounds of objection, to lodge an objection. Once the objection is lodged, SARS has a prescribed timeframe for notifying the taxpayer about its decision. If SARS fails to abide by that timeframe, the taxpayer may lodge a complaint with the OTO. On the other hand, if the taxpayer lodges a complaint with the OTO before the prescribed period has elapsed, the OTO will not be able to review the complaint, as the taxpayer must allow SARS the available timeframe.



CHRISTELLE VAN WYK
OTO MANAGER: OPERATIONS

Where a taxpayer misses a procedural deadline altogether, this may also prevent the OTO from resolving the matter. An example is where an income tax assessment is issued and more than three years have passed since the date of issue of the assessment. The taxpayer now lodges an objection after this three-year term has elapsed, and provides grounds in support of a request for condonation for lateness of the objection. SARS does not respond to the objection and the taxpayer lodges a complaint with the OTO. In this case, the OTO cannot review the complaint and cannot make any recommendations to SARS, as legally SARS has no discretion to extend the three-year term. In this example, the tax liability may be challenged in terms of section 93(1)(d), read with section 99(2)(d)(iii) of the Act if it is a readily apparent, undisputed error that SARS was aware of before the expiry of the assessment.

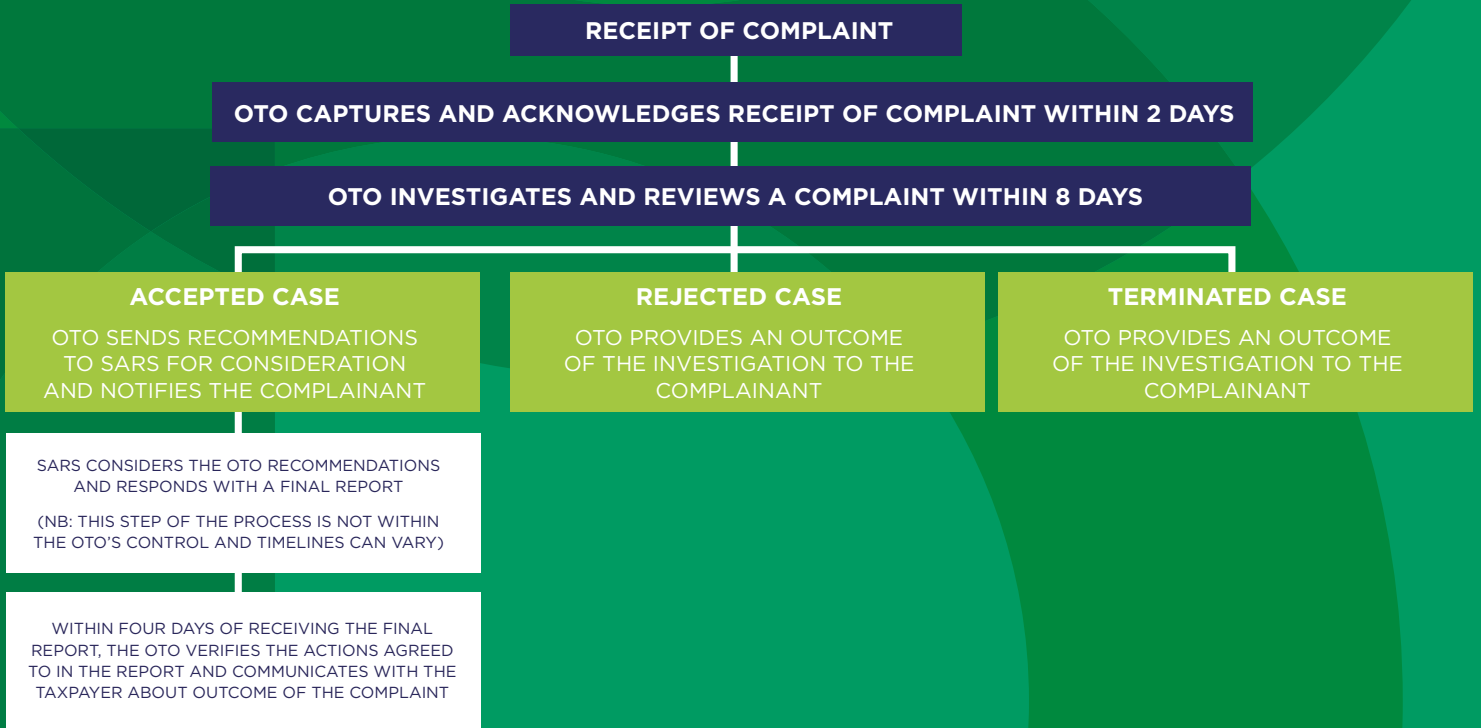
A NUMBER OF IMPORTANT PROCEDURAL ASPECTS MUST ALWAYS BE CONSIDERED:

- If SARS exceeds the turnaround time committed to in its Service Charter, and a complaint to the CMO did not yield any result (where no compelling circumstances exist), the taxpayer may approach the OTO for relief;
- If a taxpayer lodges an objection, he or she must allow SARS to take the prescribed timeframe of 60 business days to notify the taxpayer of its decision;
- It is only when SARS exceeds the statutory timeframe for an objection or appeal that the taxpayer may lodge a complaint with the OTO for exceeding such timeframe; and
- Taxpayers must take care to calculate the timeframes accurately, calculating business days only. This means Saturdays, Sundays and public holidays are excluded. The period from 16 December up to and including 15 January of each year is excluded only when the matter is subject to objection and appeal.



LODGING A COMPLAINT FROM START TO END

Many stakeholders are still unaware of how the Office of the Tax Ombud (OTO) deals with taxpayers' complaints against the South African Revenue Service (SARS), and particularly why their cases are rejected. The illustration below provides an overview of the process flow followed when a complaint is lodged with the OTO.



Steps taken when dealing with a complaint



HAVE YOUR SAY

Tell us what you think about the processes for lodging tax complaints with our Office. Are they easy, complicated, too long...and what can we do to make the process more user-friendly to taxpayers?

Send your comments to communications@taxombud.gov.za

DID YOU KNOW?

That the Office of the Tax Ombud strives to resolve complaints within 15 business days of accepting them, and will let taxpayers know if a complaint cannot be resolved within this period?

EXPERT'S CORNER

ELLE-SARAH ROSSATO

PWC, LEAD: TAX CONTROVERSY & DISPUTE RESOLUTION

PWC ONLINE SURVEY ANALYSES PUBLIC PERCEPTIONS OF SARS

The tension between taxpayer and tax collector is inevitable. On the one hand, the South African Revenue Service (SARS) is armed with legislation that grants it wide powers to investigate and obtain information concerning returns filed by taxpayers. On the other hand, our Constitution enshrines the right to administrative action that is reasonable and procedurally fair. PwC recently surveyed tax managers in an online survey to gather information concerning the experience of commercial enterprises in dealing with SARS.

Of the 285 companies which responded to the survey, 35% of respondents were providers of financial services, 9% were involved in the engineering and construction industry, 6% were manufacturers and 4% were mining companies.

The survey investigated taxpayer experience in dealing with SARS, specifically with respect to verification and audit, objections and appeals, refunds, voluntary disclosure and complaints.

It is not possible to list all of the survey findings. This article summarises and highlights those issues where strong opinions were shared by a large proportion of respondents.

VERIFICATION AND AUDIT

INCOME TAX

The main feedback received with respect to income tax was as follows:

- A staggering 85% of respondents expect to receive a notice of verification following the submission of an income tax return;
- 49% of respondents believe that time limits imposed by SARS for the submission of information are seldom if ever, extended on request;
- Although almost 75% of respondents found that SARS completed verification within six months, 16% had experienced verifications that lasted more than a year.
- Respondents expressed dissatisfaction with the conduct and wrap-up of audits;
- 84% of audits took more than six months to complete, with 24% lasting more than one year;
- Although the Tax Administration Act, 28 of 2011, compels SARS to keep taxpayers informed during the audit by issuing progress reports, only 2% of respondents reported that they were kept properly informed of progress and 38% stated that they had never received a progress report from SARS;
- On conclusion of an audit, SARS will issue a Letter of Findings setting out the amounts that it proposes to assess and inviting representations from the taxpayer;
- 78% of respondents considered that their representations were not taken into account, as they were not referred to in the Letter of Assessment that was issued, sometimes in an inordinately short space of time after they had filed representations; and
- 68% of respondents reported that the Letters of Assessment that they had received following an audit did not set out the basis for assessment.



ELLE-SARAH RASSATO

PWC, Lead: Tax Controversy & Dispute Resolution

- The Constitutional Court has clearly explained what constitutes adequate reasons for an administrative decision and there should be no reason for non-observance. A statement of reasons issued by SARS should set out the facts relied upon, the relevant law and the manner in which the law has been applied to those facts.
- Fewer than 2% of respondents felt that they always received adequate reasons for an assessment.

VAT

As a transactional tax, Value-Added Tax (VAT) is more susceptible to verification.

- 26% of respondents advised that their VAT returns are verified every time, while 32% stated that they receive a verification request every time that they are due for a refund;
- In general, verification is efficient, with 37% of respondents stating that requests are verified within 21 days of submission of information;
- The point of major conflict related to the payment of a refund. While 25% of respondents had always received refunds within the prescribed 21-day period, 62% reported that they occasionally or never received refunds within this period. 69% of respondents had been compelled to escalate a refund request in order to expedite refunds of VAT.

PAYE

The Pay-As-You-Earn (PAYE) system is another area of frustration for taxpayers.

- 82% of respondents noted that they experienced difficulty reconciling PAYE statements of account, with 47% noting that this occurred half of the time or more frequently; and
- Considerable dissatisfaction arose in relation to the EMP501 and Employment Tax Incentive (ETI) forms. In particular, the respondents stated that EMP501 forms were pre-populated with ETI journals that were incorrect and could not be amended.

VOLUNTARY DISCLOSURE PROGRAMME

- The Voluntary Disclosure Programme (VDP) is intended to encourage taxpayers to come forward and disclose past omissions and thereby enable SARS to collect taxes without having to invest significant resources;
- 36% of respondents have applied for VDP relief;

- 46% of respondents reported that their applications were finalised by SARS within 12 months;
- Not all applications were accepted by SARS. The principal reason for rejection was that the application was not “voluntary” in 38% of cases. In 84% of these rejected applications, SARS alleged that the taxpayer was subject to an impending audit, verification or investigation. This assertion was found to be incorrect 74% of the time; and
- The other main cause of rejection was that the applicant had sought similar relief within the previous five years.

Nevertheless, 57% of respondents reported that the VDP process had assisted them with ensuring compliance by correcting past errors and omissions and mitigating penalties.

SERVICE ISSUES

The era of e-filing has changed the way in which taxpayers communicate with SARS. Instead of communicating with an assessor, taxpayers now communicate with the SARS call centre. Perceptions of this experience were mixed.

- While 21% of respondents felt that the call centre consultants were well-informed and helpful, almost three times that number was of the view that there were serious deficiencies in the service received through the call centre.
- 65% of respondents had escalated inquiries that had been initiated in the SARS call centre to the SARS Complaints Management Office (CMO).
- Notwithstanding the escalation, it was reported that 55% of respondents who had referred matters to the CMO had not obtained resolution and that matters required further escalation.
- Only 25% of respondents were satisfied that their matters had been resolved by the CMO.
- More than 70% of respondents expressed the view that SARS did not respond to taxpayer inquiries or complaints, including complaints lodged with the CMO, within acceptable time periods.
- 49% of respondents had found it necessary to report issues to the Office of the Tax Ombud (Tax Ombud).

Finally, respondents considered that the tax administration processes are complex and 71% place reliance on consultants to assist them in navigating the system. On a proactive note, they considered that the following remedial actions would improve the SARS service quality:

- Enhancing staff skills (30%);
- Employing more personnel (19%);
- Improving e-filing (19%); and
- Reviving the Large Business Centre (18%).

SARS SERVICE CHARTER

The SARS Service Charter (Service Charter) was published in July 2018. At the same time, the Minister of Finance mandated the Tax Ombud to investigate and report on certain systemic problems within the tax administration system.

The Service Charter seeks to address public concerns on SARS’ service delivery. For the public, the major concern is whether there will be buy-in on the part of SARS’ staff. It is one thing for an institution to publish a document and quite another for its employees to live and breathe its spirit. There is no indication of how SARS measures adherence to the Service Charter and, until there is, the public will remain sceptical.

The vast majority of respondents felt that the publication of the Service Charter would do little to change their perceptions. Only 8% of respondents felt that the Service Charter will contribute to improved service.

The reason for public scepticism is that, when it comes to service timeframes, the Service Charter makes no firm commitments. SARS states that it will “endeavour” to respond or act within specified times. Even where the law prescribes time limitations within which SARS must execute certain actions, SARS does not undertake to meet these deadlines.

THE IMPACT OF THE TAX OMBUD

On the whole, the Tax Ombud has proven to be a force for driving change. The Minister of Finance has approved requests by the Tax Ombud to investigate and report on systemic issues relating to SARS’ service delivery. A report by the Tax Ombud into inordinate delays in the processing of refunds did not reflect well on SARS. However, it has had a positive effect in that refunds are now being processed and paid more expeditiously.

Currently, the Tax Ombud is investigating complaints in relation to PAYE statements of account and non-adherence to dispute resolution timeframes. The responses to PwC’s online survey in relation to these matters also indicated that these processes are not functioning as they should. Despite its limited sample size, the survey provides a picture of the state of the relationship between SARS and the tax-paying public which appears to be widely shared.

Comments on this article should be communicated to Elle-Sarah Rossato, PwC, Lead: Tax Controversy & Dispute Resolution on Tel **(011) 798 4938** or Email: elle-sarah.rossato@pwc.com.



SARS'S COMMENTS ON PWC PUBLIC PERCEPTION SURVEY

BY THOMAS RADZILANI, EXECUTIVE: TAX OPERATIONAL CENTRE OF EXCELLENCE SARS - BUSINESS AND INDIVIDUAL TAX

SARS appreciates the feedback from the PwC public perception study as it relates to the World Bank ease-of-doing-business exercise. We are committed, as a revenue administrator, to instituting effective and efficient services for taxpayers to meet their tax obligations. This commitment is borne out by the fact that to date 79% of complaints lodged with SARS have been resolved where there was service failure. The relationship between SARS and Office of Tax Ombud has improved where regular engagements take place at strategic and operational level. This has provided a faster escalation process where there is a burden to taxpayers.

In the last year we have achieved a few key milestones that we believe will move us forward in the journey towards achieving fiscal citizenship. After much anticipation, SARS published its Service Charter wherein we committed to improved service standards and increased communication with taxpayers. We piloted the auto-assessment project, which allows SARS to assess returns below a certain threshold based on available third-party data without the need for the taxpayer to visit a branch. We also instituted a service monitoring and tracking system that measures these elements and will use this data as part of our continuous improvement project. Auto-assessment will be rolled out this year and this will significantly improve the taxpayers' service experience.

As part of the ongoing improvements, SARS is currently issuing specific personal income tax audit letters on the outcome of verification revised assessments statements where there is an indication of what is not allowed. These should equip taxpayers when engaging SARS with the required information to ensure a positive service experience. This process will be further supported by our Enhanced Case Communication project, which aims at increasing the frequency of updates to taxpayers on the progress in their tax matter.

Significant process and system enhancements are planned for July 2019 with a specific focus on easing the administrative burden both on the taxpayer and SARS. These include re-writing the E-filing platform, making it user-friendly and customising it to taxpayers' requirements. Improving both taxpayer compliance and service delivery remains SARS's priorities and we are aligning systems, policies and personnel to achieve this objective. SARS acknowledges that a key aspect in improving ease of doing business is through fostering strong relationships with all stakeholders, as well as improving internal efficiencies. This is a journey SARS is strongly pursuing.

We welcome independent surveys and embrace the feedback we receive as it provides a platform that feeds into our continuous improvement initiatives.

CALLING THE OFFICE OF THE TAX OMBUD



Taxpayers calling the Office of the Tax Ombud will get through to a voice response system that gives them the following options:

CALL CENTRE:

If you are calling about a new complaint against SARS or are following up on an existing complaint, you will be requested to **press 1**.

A **reference number** for any call received by the Call Centre Agents will be generated.

RECEPTION

If you have general enquiries not related to a tax complaint, you will be requested to **press 2**. This option will take you to the OTO Receptionist. If a caller chooses this option by mistake, the Receptionist will advise you to call again (**by redialling 0800 662 837 or 012 431 9105**), and press **Option 1** when prompted to do so, so that the call can be re-routed directly to the Call Centre.

HAS THE OTO REJECTED YOUR TAX COMPLAINT?

Simplified examples of how the Office of the Tax Ombud deals with complaints lodged by taxpayers can be extremely useful. The case below is an example of a complaint rejected by the Office of the Tax Ombud for various reasons.

CASE BACKGROUND

The taxpayer was complaining about SARS' failure to pay the income tax refund for the 2017 year of assessment, even though the supporting documentation was submitted as requested.

FINDINGS

SARS conducted an income tax return verification which was finalised on 31 January 2018 and an assessment was raised. This resulted in the reduction of the refund. The taxpayer lodged an objection on 31 January 2018 and requested the suspension of payment on the same date. When the complaint reached the OTO's office, SARS was still within the prescribed period of 60 business days from 31 January 2018 for finalising the objection. It was also within the 21-business day period for responding to the suspension of payment. The complaint was therefore rejected in terms of section 17 (c) as the matter was subject to objection and appeal.

RECOMMENDATIONS TO THE TAXPAYER:

The OTO was obliged to reject the complaint and recommended that the taxpayer allow SARS the prescribed 60 business days to finalise the objection and 21 business days to respond to the application for suspension of payment from the date of submission.

LESSON FOR TAXPAYERS

It is important for taxpayers to understand the SARS timeframes.

DID YOU KNOW?

That you can follow up on the status of your accepted tax complaint by contacting the Office of the Tax Ombud Operational Specialist whose contact details (email and phone number) appear on the acceptance letter?



NOTICE

This is a quarterly newsletter that will be 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 InternalCommunications@taxombud.gov.za.

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