



OFFICE OF THE  
**TAX OMBUD**

***TAX OMBUD***

# **COMPLAINTS GUIDE**



***WHAT YOU NEED TO KNOW***

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TaxOmbudSA



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Office of the Tax Ombud

#TaxpayersRightsMatter



## **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.



# WHO ARE WE?



## *Inspiring taxpayer confidence*

The OTO was established in October 2013 to enhance the tax administration system in South Africa. Until then, there was no independent redress channel for taxpayers who had exhausted the normal SARS complaints mechanisms and were still not assisted. As a redress channel for taxpayers, we strive to ensure that taxpayers receive the professional service and fair treatment they are entitled to from SARS and the OTO.

## WHAT ARE OUR SERVICES?

The mandate of the Tax Ombud is to review and address any complaint by a taxpayer about a service, procedural or administrative matter arising from the application of the provisions of a tax Act by SARS. In addition, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, we review any systemic and emerging issues related to a service matter or the application of the provisions of the Tax Administration Act or procedural or administrative provisions of a tax Act.

## WHY USE OUR SERVICES?

- They are offered at no cost to you as a taxpayer. The service is free - mahala!
- We are impartial.
- We have access to the SARS tax system to verify facts and information independently.

# SYSTEMIC ISSUES: WHAT YOU NEED TO KNOW

A systemic issue is a particular matter that can be regarded as the underlying cause of a complaint that affects or will affect many taxpayers in the tax system. Systemic issues may arise due to how specific SARS systems function, how SARS drafts and implements policies, practices or procedures, or how SARS applies or even disregards legislative provisions.

## HOW DO WE IDENTIFY SERIOUS SYSTEMIC AND EMERGING ISSUES?

When identifying and evaluating various issues that taxpayers encounter, the OTO considers factors such as:

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

We then issue a formal recommendation setting out the factors leading to our decision to identify the issue as a systemic or emerging issue.

Read more about the current systemic issues on the [Tax Ombud's website](#).



# WHEN DO YOU LODGE A COMPLAINT?

Before approaching the Tax Ombud, taxpayers should ensure that they have exhausted SARS's internal complaint resolution mechanisms unless there are **compelling circumstances** for not doing so.

To direct a complaint to SARS, a taxpayer needs to approach the SARS Complaints Management Office (CMO) at **0860 121 216** or on eFiling. If you are still dissatisfied with how SARS has handled your complaint, or if the SARS CMO has not finalised your complaint after 21 business days from the date you lodged it, you may approach the Office of the Tax Ombud.

If your complaint falls within our mandate, we will accept it, investigate it and give our recommendations to SARS on how to resolve the complaint.

## WHAT ARE COMPELLING CIRCUMSTANCES?

The Tax Administration Act sets out the following factors that the Tax Ombud shall consider when determining if a circumstance may be "compelling":

- the request raises systemic issues;
- exhausting the complaints resolution mechanisms will cause undue hardship to the requester; or
- exhausting the complaints resolution mechanisms is unlikely to produce a result within a period that the Tax Ombud considers reasonable.

The Tax Ombud must inform the complainant as to what action will be taken, if any.

# WHAT THE TAX OMBUD CAN'T DO

The Tax Ombud shall not review:

- legislation or tax policy;
- SARS policy or generally prevailing practice;
- a matter subject to objection and appeal under a tax Act, except for an administrative matter relating to an objection and appeal; and
- a tax matter before a tax court or a decision made in court.



Taxpayer Question:

**My tax matter is already in court but I need the OTO to help me in court with my battle with SARS.**

Tax Ombud's Response:

**Sorry, the Tax Ombud is unable to intervene in a matter before a court of law.**



# HOW DO WE WORK?



*We endeavour to resolve your complaints speedily.*

Our complaint resolution efforts entail the following:

- Evaluate and review your complaint to determine if it falls within our mandate and prepare a preliminary assessment of your complaint.
- If it does not fall within the mandate or is prematurely lodged, an outcome of evaluation letter will be sent to the taxpayer.
- If it falls within the mandate and the Tax Ombud is convinced that SARS has failed the taxpayer procedurally, administratively or did not meet its service promises, recommendations on how to resolve it will be sent to SARS.
- SARS will respond with a close-out report on how they have resolved the complaint, which the Tax Ombud would evaluate and then send a letter of finalisation to the taxpayer indicating how the complaint was resolved.

The Tax Ombud may determine how a review is to be conducted. This may include recommending that a complaint be resolved through mediation or conciliation if necessary.

## TAX OMBUD'S RECOMMENDATIONS TO SARS

Our recommendations are not binding on SARS or a taxpayer. Even so, if you do not accept our recommendations, you are free to send your reasons for this to the Tax Ombud within **30 days** of receiving our recommendations. The Tax Ombud may include the reasons given in a report to the Minister or the Commissioner under section 19 of the Tax Administration Act.

# HOW DO WE COMMIT TO CONFIDENTIALITY?

The Office of the Tax Ombud is legally obliged to protect confidential taxpayer information, and all our staff sign an Oath of Secrecy.

These confidentiality requirements are set out in Section 21(2) of the Tax Administration Act. The Tax Ombud and any person acting on the Ombud's behalf may not disclose any information to SARS if it was obtained by or on behalf of the Tax Ombud, or prepared from information obtained by or on behalf of the Tax Ombud, except to the extent required to perform its functions and duties under the Act.

The Act states that SARS must allow the Tax Ombud access to information that relates to the Tax Ombud's powers and duties.



# HOW DO YOU LODGE A COMPLAINT?

## STEP 1: OBTAIN A COMPLAINT FORM

- Online at [www.taxombud.gov.za](http://www.taxombud.gov.za)
- In person from the OTO at Menlyn Corner, 2nd Floor, 87 Frikkie de Beer Street, Menlyn, Pretoria
- Telephonically at **0800 662 837**
- Email [complaints@taxombud.gov.za](mailto:complaints@taxombud.gov.za)

## STEP 2: COMPLETE THE FORM IN FULL

The following information must be in the complaints form:

- Full name
- Identity number and passport number
- Tax reference number
- Company/CC/Trust - registration name
- Company/CC/Trust - registration number
- Contact details:
  - Home telephone number
  - Cell number
  - Fax number
  - Business telephone number
  - Email address
  - Physical address
  - Postal address
- Complaint details:
  - Tax type
  - Nature of complaints
  - Tax year-period
- Document the factual situation of your complaint in chronological order, including all case numbers relevant to the complaint from SARS, and attach all supporting documents.
- Be sure to use the relevant tax reference number.
- Indicate the desired outcome of your complaint.

Once we have received your complaint form, the OTO will capture the complaint and issue a letter of acknowledgement.

### STEP 3: SIGN AND DATE ALL FORMS

If you are using a representative, you must submit a power of attorney and certified copies of your and your representative's IDs.

You may download the [Power of Attorney Form](#) from the OTO website under **Complaints**.

Remember that both the tax complainant and taxpayer representative should sign the forms.

**PLEASE NOTE:** If you provide insufficient evidence to back up your complaint, the OTO may be forced to terminate the matter. Alternatively, you might be given another opportunity to provide the necessary evidence.

### WHAT HAPPENS AFTER A COMPLAINT IS LODGED?

- The OTO will evaluate the matter and establish whether the complaint falls within our mandate and the complainant has exhausted the SARS complaints mechanism. If the SARS mechanisms have not been pursued first, we will look at whether you as the complainant have provided compelling circumstances for not doing so, or if the Tax Ombud can identify compelling circumstances for you not to first exhaust the SARS complaints mechanism. The OTO will also verify whether any limitations apply and check that the complaint is valid.
- Whether the complaints are within the OTO's mandate (meaning that there is a service, procedural or administrative failure from SARS), the OTO would then recommend to SARS how to remedy the situation. We will also send a letter of acceptance to you, the taxpayer.
- If the case is rejected, a letter of outcome will be sent to you with the reasons for rejection.

**Ensure that you fill in all relevant fields and attach supporting documents.**

A smartphone is shown at an angle, displaying a web form titled 'Taxpayer Complaint Form'. The form is from the 'TAX OMBUD' and includes several input fields: 'Taxpayer', 'SARS Complaint', 'SARS ID Number', 'Nature of', 'Contact Details', 'Cellphone', and 'Home phone'. The phone's status bar at the top shows '9:45' and '100%' battery.

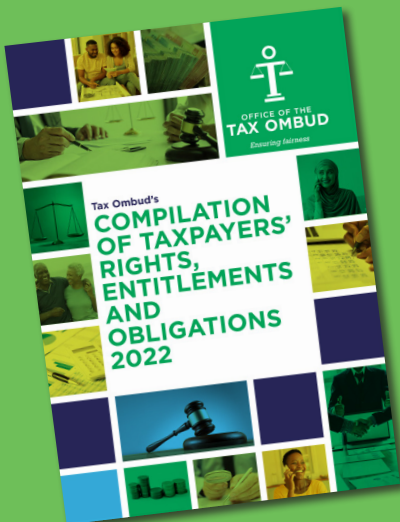
# KNOW YOUR RIGHTS

The OTO continuously seeks to promote a healthy balance between SARS's powers and duties and taxpayer obligations, remedies and rights. We have produced a **Compilation of Taxpayers' Rights, Entitlements and Obligations** with information about taxpayers' rights, entitlements and obligations concerning their tax affairs and engagements with SARS and the OTO.

This Compilation is not an enforceable "Bill of Rights" but a compilation of principles contained in various documents, including the Constitution, tax legislation and other government documents.

Any of the rights and entitlements referred to in the Compilation may be subject to exceptions and be limited to the extent allowed by law. The Compilation does not replace, supersede or overrule any legislation, common law principles or procedures relating to tax administration.

Taxpayers are advised to seek experienced assistance should they seek to enforce their rights. It is acknowledged that enforcing one's rights often requires expensive court action.



**The Compilation of Taxpayers' Rights Entitlements and Obligations is available on the Tax Ombud's website.**





## SERVICE FEEDBACK

The Office of the Tax Ombud is keen to hear from you about the services we provide or how we can better serve you. If you have a compliment about a positive experience, a complaint about an unsatisfactory service, or have a suggestion on how we can improve our service, please contact us at [communications@taxombud.gov.za](mailto:communications@taxombud.gov.za).

We may contact you as part of our review process.

Menlyn Corner, 2nd floor, 87 Frikkie De Beer Street, Pretoria, 0181

Contact Centre **0800 662 837** | Email [complaints@taxombud.gov.za](mailto:complaints@taxombud.gov.za)

[www.taxombud.gov.za](http://www.taxombud.gov.za)

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**NB: The information does not supersede any legislation. Readers who doubt any aspect of the information contained in the guide should refer to the relevant legislation or seek a formal opinion from a suitably qualified individual.**