

# FAIR PLAY

KEEPING YOU UP TO DATE WITH THE LATEST NEWS

December 2022 / Issue 27



OFFICE OF THE  
**TAX OMBUD**

*Ensuring fairness*



# HAPPY FESTIVE SEASON

The year has ended and many of us are finalising plans for the approaching festive season. Before we go our separate ways and close for the holidays, we, as the Office of the Tax Ombud, express gratitude for your continued support throughout the year, during which we celebrated nine years of **Ensuring Fairness** and making a difference in the lives of taxpayers. This milestone would not have been possible without your support.



Safe travels for those travelling to spend quality time with friends and loved ones. We wish all our stakeholders a wonderful festive season and a Happy New Year; all the best to you in 2023!

**Prof Thabo Legwaila**  
Acting Tax Ombud

**Farewell, and  
thank you**

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**Systemic issues**  
are still a problem  
for taxpayers

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**#TaxpayersRightsMatter**

# EDITOR'S NOTE

**It is the festive season and soon we will welcome 2023. We wish everyone success, happiness and prosperity for the new year.**

We are grateful for the support received since the OTO's inception nine years ago. Our achievements can be attributed to the mutually beneficial partnerships we have cultivated with our stakeholders. Thank you sincerely for that.

As this is the last issue of Fair Play for 2022, the editorial team has made sure it is a worthwhile read, with insights on important subjects in the tax recourse sphere, including delays in the payment of tax refunds and a new systemic issue. We also feature a farewell message from former Tax Ombud Judge Bernard Ngoepe, whose term as the head of the institution ended on 31 October 2022 after nine years of excellent service and exemplary leadership.

We trust the Fair Play newsletters have contributed to your knowledge about important developments in our organisation and the tax sphere in general, and welcome any feedback you might have about topics you would like us to cover.

Happy reading, and we look forward to sharing more OTO news and views with you in the new year.

## **Pearl Seopela**

Senior Manager: Communications  
& Stakeholder Relations



**The Tax Ombud's offices  
will close at 12:00 on  
22 December 2022 and  
reopen on 4 January 2023.**

# Farewell, and thank you



**Just over two months ago, I bade farewell to the Office of the Tax Ombud as its Tax Ombud, marking the end of a nine year of working with some of the greatest and most talented people in the tax sphere. Saying goodbye is difficult, especially after forming important and mutually beneficial relationships with stakeholders, including taxpayers, the South African Revenue Service (SARS), National Treasury, academia, the media and Recognised Controlling Bodies.**

Our stakeholders played a vital role in not only helping to establish this essential institution but also in nurturing it and supporting it over the past nine years to become a respected institution that is now making a positive contribution towards improving South Africa's tax administration system.

With the support of stakeholders, we have made an enormous difference in taxpayers' lives, ensuring they have a free, fair and competent avenue to help resolve their tax complaints against SARS. With your support and encouragement, we have been able to save businesses, and homes, by ensuring that taxpayers received the refunds due to them. We have insisted that taxpayers pay only what it is due and not a cent less or more, and that they are treated fairly and

with dignity. Thank you, in particular, for providing the platforms for us to engage taxpayers and promote taxpayer rights and tax education in general.

I am grateful for the inputs over the years on our many endeavours, including proposed amendments to the Tax Administration Act to strengthen our institution and better serve taxpayers, as well as your support in seeking structural independence for the OTO. Although the latter never became a reality in my time as the Tax Ombud, I hope you will continue supporting the Office in the years to come to achieve that. The OTO is what it is today because of your collective efforts and I am grateful for the encouragement, good memories and important partnerships formed over the years.

For the future, I wish you every success and strength to ensure that South Africa realises its great potential and becomes a country that serves its people, embraces democracy and its values and is a place we can all be proud to call home.

Thank you.

**Judge Bernard Makgabo Ngoepe**

# SYSTEMIC ISSUES ARE STILL A PROBLEM FOR TAXPAYERS



**Over the past three years, the Office of the Tax Ombud, in partnership with the South African Revenue Service, has worked hard to eliminate systemic issues.**

However, a number of systemic issues remain, including delays in the payment of refunds. The OTO reminds taxpayers and tax practitioners that when a complaint has to do with a systemic issue, they can lodge their complaints directly with the OTO without first having to exhaust the SARS internal complaints mechanism (as is usually required).

**i** NB: 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 have to do with the way specific SARS' systems function, how SARS drafts and implements policies, practices or procedures, or how it applies or disregards legislative provisions.

Currently, there are 11 systemic issues, listed below, about which taxpayers and tax practitioners can complain directly to the OTO. One of the new issues, consistency check cases which SARS uses when it is concerned about the declarations and claims made in returns submitted by taxpayers or VAT vendors, is contributing to an increase in delays in the payment of tax refunds.

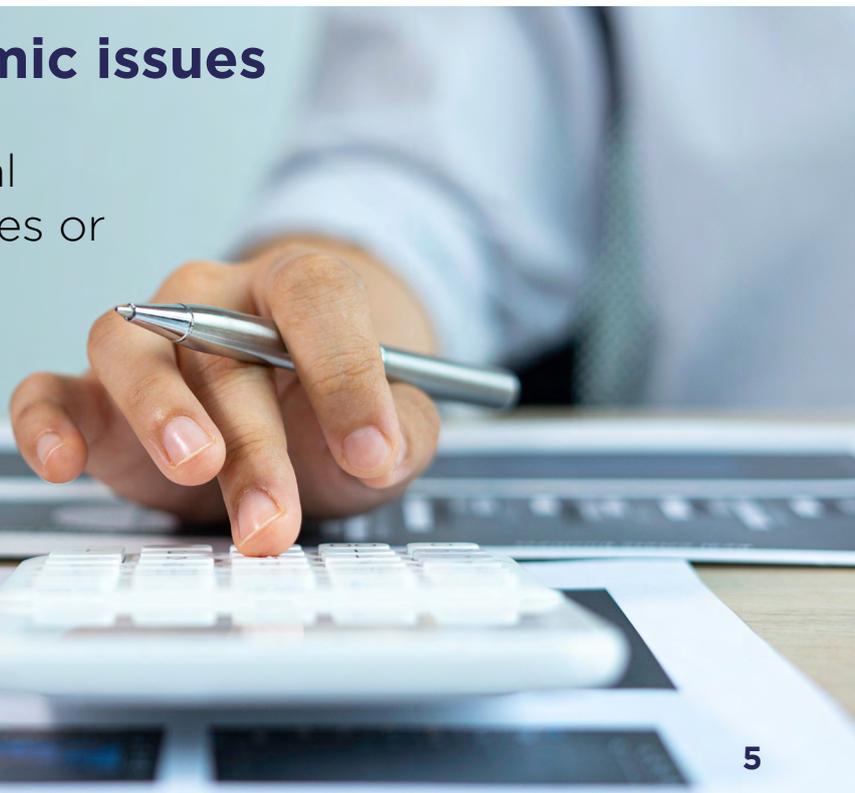
NO	ISSUE	SUMMARY OF ISSUE
1	Delays in payment of refunds	<p>1.1. Delays in the lifting of stoppers and the lack of timeframes for doing so (not finalising a single-period submission verification within the turnaround time of 21 days and submissions for multiple years within 90 business days);</p> <p>1.2. VAT and diesel refunds are declared on the same return, which gives a nett amount payable by or refundable to the taxpayer. At SARS, however, they are reflected on two different systems and manual set-offs need to be done to obtain the same nett result as reflected on the return. Where this is delayed, the set-off refunds are delayed. Furthermore, where the diesel portion is being verified/audited, the VAT portion shows as a liability and SARS takes collection steps even though the taxpayer complied with the nett result shown on the return; and</p> <p>1.3. Debt set-off and recovery steps are taken notwithstanding a request for suspension of payment being submitted to SARS.</p>

## SYSTEMIC ISSUES ARE STILL A PROBLEM FOR TAXPAYERS (continued)

NO	ISSUE	SUMMARY OF ISSUE
2	Non-adherence to dispute resolution timeframes and related issues	<p>This includes:</p> <ol style="list-style-type: none"> <li>2.1. The SARS system not calculating the dates for dispute resolution correctly and incorrectly referring a case for condonation;</li> <li>2.2. The Notice of Invalidation of Appeal incorrectly stating that "A new NOA may be submitted within the prescribed period, and if late, a request for late submission must be submitted by you", in cases where more than 75 days have elapsed since a decision was taken on the objection;</li> <li>2.3. Non-adherence to timeframes for the objection process; and</li> <li>2.4. Non-adherence to timeframes relating to the appeal process.</li> </ol>
3	<p>Inability on the part of SARS to confirm correspondence was sent.</p> <p>(This applies to both manual correspondence and "eFiler view" correspondence.)</p>	<p>Where taxpayers allege that they did not receive correspondence from SARS, SARS simply responds by providing them with a copy of the letter but fails to provide proof that the correspondence was indeed sent to them on the specified date. It should be noted that the concern raised was previously only applicable to manual correspondence issued.</p> <p>The recent High Court judgment on <a href="#">SIP Project Managers (Pty) Ltd v The Commissioner for the South African Revenue Service</a> highlighted the importance of the delivery of the letter of demand to the taxpayer, via an electronic platform or to the last known address of the taxpayer. A notice generated by the eFiling system does not satisfy the requirement of delivery unless such notice is uploaded on the taxpayer's profile. Finally, and very importantly for this Office, we cannot rely on the eFiler view in Service Manager to determine whether or not a taxpayer received correspondence.</p> <p>The systemic issue is therefore expanded to not only include manual correspondence but also correspondence that should be reflecting on a taxpayer's eFiler view. This will include, for example, a letter of final demand, the outcome of an objection/appeal, a notice of assessment, etc.</p>
4	Tax Compliance System (TCS)	<p>There are certain challenges causing undue hardship to various taxpayers due to the manner in which the Tax Compliance System was designed.</p> <p>This has included cases:</p> <ol style="list-style-type: none"> <li>1. where there was an outstanding liability of R1;</li> <li>2. taxpayers are still within time to submit a specific return and make payment, but the system already reflects this as outstanding;</li> <li>3. where a debt emanates from fraudulent activities conducted by current or former SARS officials; and</li> <li>4. where the system is unable to reflect compliance when payment arrangements are in place, including approved suspension of any debt in question.</li> </ol>

## Submitting new systemic issues

Should you require additional information on systemic issues or wish to add new issues you believe are systemic, kindly contact us [here](#).



## SYSTEMIC ISSUES ARE STILL A PROBLEM FOR TAXPAYERS (continued)

NO	ISSUE	SUMMARY OF ISSUE
5	Raising assessments prematurely	The notification of verification, as well as the request for additional information, allows the taxpayer 21 days to submit the relevant information. In some instances, SARS issues additional assessments without affording the taxpayer 21 days.
6	Failure to respond to a request for a deferred payment arrangement within the prescribed turnaround time (21 days)	This relates to complaints where SARS fails to respond to a request for a deferred payment arrangement. This negatively affects taxpayers who are attempting to become compliant, as well as SARS, as it is then delaying the collection of revenue for the fiscus.
7	Failure to respond to a request for a compromise within the prescribed turnaround time (90 days)	This relates to complaints where SARS fails to respond to a request for a compromise. This negatively affects taxpayers who are attempting to become compliant and also results in delays by SARS in collecting revenue for the fiscus.
8	Failure to respond to a request for a suspension of payment within the prescribed turnaround time (30 business days)	This relates to complaints where SARS fails to respond to a request for suspension of payment. This negatively affects taxpayers who are attempting to become compliant, and also has an adverse impact on SARS, in that it is delaying the collection of revenue for the fiscus.
9	SARS delays in coding the taxpayer's profile as a deceased estate and updating the executors' contact details (formal recommendations issued to SARS on 24 February 2022)	SARS not coding the profile as a deceased estate and failing to update the executors' contact details within 21 working days.
10	SARS repeat verification cases	Verification cases were created for two reasons which we believe are not appropriate: <ol style="list-style-type: none"> <li>1. when verification cases are created as a result of SARS issuing a reduced assessment to give effect to the outcome of a dispute; and</li> <li>2. when repeat verification is done in cases with the same risk and the same supporting documentation.</li> </ol>
11	SARS creates a "consistency check" case on a VAT period to conduct a verification	SARS creates a "consistency check" case on a VAT period, for the purpose of conducting a verification outside of the normal verification process and without a legal basis. This further results in a taxpayer's tax compliance status being negatively impacted as the return reflects as outstanding while the "consistency check" case is open.

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](mailto:PSeopela@taxombud.gov.za) or [Communications@taxombud.gov.za](mailto:Communications@taxombud.gov.za).

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