



OFFICE OF THE
TAX OMBUD

Ensuring fairness



Tax Ombud's
**COMPENDIUM OF
TAXPAYERS' RIGHTS,
ENTITLEMENTS AND
OBLIGATIONS**

Draft / 2022



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INTRODUCTION

The purpose of this document is to provide information to taxpayers about their rights, entitlements, and obligations 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.

This compendium includes a schedule of the specific sections of the Tax Administration Act, 28 of 2011 (TAA) and the Rules¹ that confer these rights and entitlements on taxpayers, as well as a summary of what exactly these rights are.² 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 will be updated annually in line with any amendments to the TAA.

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1. 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.
2. Section 2 of the TAA.

A. YOUR RIGHTS AND ENTITLEMENTS AS A TAXPAYER

1. You have the right of access to information³

- You have the right to know what you need to do to comply with the tax laws.
- You are entitled to obtain any information in SARS's possession that relates to your tax affairs.⁴
- You have the right to be informed of SARS's decisions and to receive clear explanations for these decisions or outcomes.⁵
- You are entitled to receive full and accurate information about the services rendered by SARS and the Tax Ombud.⁶
- You are entitled to be told what the level and quality of these services should be.⁷

3. 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.

4. Section 73 of the TAA.

5. Section 33 of the Constitution.

6. 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 – South African Revenue Service \(sars.gov.za\)](http://sars.gov.za)

7. The second principle of Batho Pele as contained in the *White Paper on Transforming Public Service Delivery* GG 18340, Notice 1459 of 1997.

2. You are entitled to receive quality and timely service from SARS⁸

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.

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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.

3. You have the right to a fair, unbiased and just tax system⁹

- 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.

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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.

4. You do not have to pay any more than the correct amount of tax due to SARS¹⁰

- 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.¹¹

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

11. Section 164(6) of the TAA.

5. Your right to privacy and confidentiality¹²

- 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 respect all due process rights, including search-and-seizure protections.
- 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.
- 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.

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12. 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.

6. The right to retain representation¹³

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

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

7. You are entitled to finality¹⁴

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

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

8. You are entitled to make certain requests / proposals / applications to SARS¹⁵

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.

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15. 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.

9. You are entitled to complain without fear of victimisation¹⁶

- 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.

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16. 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 assessments / decisions¹⁷

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.

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

B. YOUR OBLIGATIONS AS A TAXPAYER¹⁸

- Every South African citizen has the duty to work to the best of their ability and to pay the taxes imposed by law in the interest of society.¹⁹
- You must register as a taxpayer as and when you are liable to do so.
- You must always be honest and accurate in your engagements with SARS and the Tax Ombud.
- You must comply with all prescribed tax processes and timeframes.
- You must notify SARS of any change to your registered details or banking particulars within 21 days.
- 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.
- 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.
- You must take responsibility for your tax affairs and you are not absolved from your obligations if you appoint a tax practitioner.

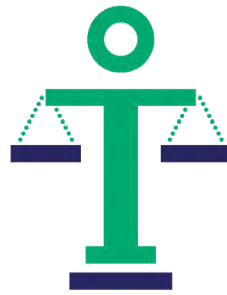
18. Extracts from the SARS Service Charter.

19. 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.

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 Compendium 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.





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NOTE: Taxpayers and other stakeholders are requested to send their inputs on the draft Compendium of Taxpayer Rights and Entitlements to the OTO employees below:

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