



# SAPA CONFERENCE

*“The power of the Tax Ombud in promoting fairness”*

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Specialist: Systemic Investigation

# MANDATE OF TAX OMBUD

s16.



any complaint by a taxpayer regarding a



Matter arising from the application of the provisions of a tax Act.

(Tax Act – All Acts administered by the Commissioner)

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# MANDATE OF TAX OMBUD

s16(2)(f)



Systemic or emerging issues related to service matters or the application of provisions of this Act or procedural or administrative provisions of Tax Act that impact negatively on taxpayers.

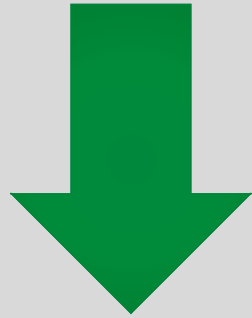
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# LIMITATIONS ON AUTHORITY

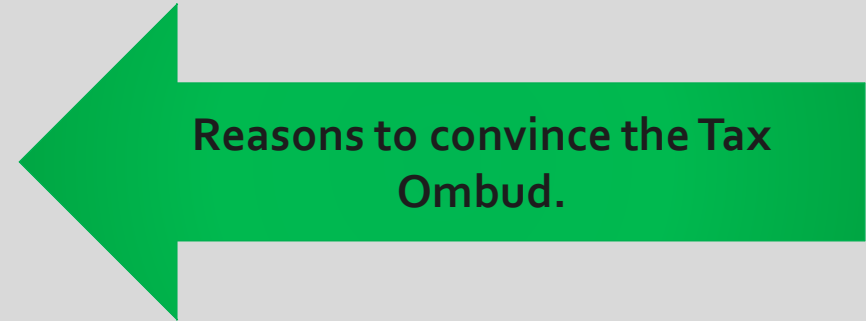
1. Legislation or tax policy
  2. SARS Policy or practice generally prevailing, other than issues that fall within mandate.
  3. Matter subject to objection and appeal, except for an administrative matter relating to such objection and appeal.
  4. A decision of, proceeding in or matter before the tax court.
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# PROCESS

18(4) Exhaust the SARS internal process (unless if you have compelling circumstances )



Then complain to the Tax Ombud



# COMPELLING CIRCUMSTANCES

It is provided in terms of Section 18(5) of the TAA , that the Tax Ombud may entertain a request for a complaint without exhausting SARS internal complaints procedures **(Call centre , Complaint Management Office (CMO) and others)** where the matter

- a) raises systemic issues or
  - b) exhausting the complaints resolution mechanism will cause undue hardship to the taxpayer, or
  - c) exhausting the SARS procedures is unlikely to produce a result within a period of time, which the Tax Ombud considers reasonable.
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# OTO ROLE IN ENSURING FAIRNESS

The complaint related to the delay by SARS in finalising the Notices of Objection (**ADR1's**) for **11/1999** and **05/2000** VAT periods, that was submitted on **09 January 2008** and the application for permanent write off submitted on **29 July 2016**.



Complaint submitted to OTO on 15  
March 2018

Furthermore, the complaint related to an amount of **R 500,000** that was allegedly withdrawn from the taxpayer's personal bank account to settle the liability on VAT account.

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# OTO ROLE IN ENSURING FAIRNESS (OTO Findings)

- SARS failed to issue the outcome of the ADR 1's for period 11/1999 and 05/2000 and VAT period that was submitted on 09 January 2008.
- The Complaints that were reported to SARS Complaint Management Office (CMO) were not adequately resolved as SARS failed to address all issues raised by the complainant.
- Furthermore we established that SARS issued a defective letter of final demand dated 16 February 2017 which failed to comply with the requirements of for section 179(5) of the Tax Administration Act.



*Must set out the recovery steps that SARS may take if the debt not paid*



# OTO ROLE IN ENSURING FAIRNESS (OTO Recommendation)

We recommended that SARS finalise the ADR1's that were submitted on 09 January 2008 for the 11/1999 and 05/2000 VAT periods and, to respond to the application for a permanent write off that was submitted 02 August 2016 and communicate the outcome to the vendor. Furthermore we have recommended that SARS withdraw the defective letter of final demand and repay the money that was recovered in the absence of a valid letter of final demand.



**SARS implemented our recommendations**

# SYSTEMIC ISSUES

A Systemic issue is an underlying issue that negatively impacts taxpayers in general or a class of taxpayers.

- Section 16(2)(f) obliges the Tax Ombud to investigate these systemic issues that arise from complaints submitted by taxpayers.
- Section 16(1)(b) allows the Tax Ombud to initiate investigations into any systemic issues that come to his attention regardless of whether or not complaints were lodged.

On this basis the Tax Ombud embarked on an investigation into the causes of delayed refunds not only based on complaints received but also based on allegations made by the media, political parties, taxpayers and tax practitioners without the need to request them to submit specific complaints.

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# SYSTEMIC ISSUES

The OTO conducted a systemic investigation based on high number of complaints received relating to delayed refund by SARS.



# SYSTEMIC ISSUES

SARS incorrectly allocating payments made by taxpayers.

## PAYE ACCOUNT SEARCH

### Client Details

Client Name:	A. EMPLOYER
Trading As:	A. EMPLOYER
Registration Number:	1234567890
Tax Reference:	1234567890

Please select your desired search option below

### Payments Search

- I would like to Allocate all UNALLOCATED payments.
- I would like to Reallocate payments.
- I would like to view ALL payments.

Once you have completed your selection, please click on the button below.

Request LHM

# SYSTEMIC ISSUES

Employer failed to reconcile .

Taxpayer is not be able to file.

The image shows a screenshot of the SARS (South African Revenue Service) Employer Reconciliation Declaration form. The form is titled "Employer Reconciliation Declaration" and includes a reference number "EMP1001". It is divided into several sections:

- Business Information:** Includes fields for company name, tax number, and other identifying information.
- Employer Information:** Includes fields for the employer's name and address.
- Monthly Income:** A table with columns for "Month" and "Income". The "Income" column has a red border around it, indicating a potential issue or error.
- Employment Tax Incentives (ETI):** A section for reporting incentives, with a red border around the "ETI" column.
- Declaration:** A section for the employer to declare the accuracy of the information provided.

The form is presented in a grid-like layout with various input fields and checkboxes. The red borders around the "Income" and "ETI" columns suggest that these areas are the focus of the systemic issues mentioned in the text above.

No	Issue	Summary
4	<p>Inconsistency by SARS in providing taxpayers timelines for finalisation of audits/verifications</p> <p>SARS not adhering to verification time frames.</p>	<p>Taxpayers are given different turnaround times for completion of an audit/verification when phoning the SARS contact centre. The turnaround times are extended every time the taxpayer follows up after expiry of the initial turnaround time.</p>
5	<p>SARS' failure to take in-formation at its disposal into account</p>	<p>In some of the complaints lodged with the OTO, SARS requests information during verification / objection procedures and takes decisions without taking the information submitted by the taxpayer into account.</p>

No	Issue	Summary
6	<p>SARS escalations and complaint management procedures confusing Taxpayers and SARS staff failing to inform taxpayers of the correct procedure to lodge complaints. (also called “Numerous follow ups”) This systemic issue excludes situations where taxpayers are represented by tax professions.</p>	<p>From the complaints that were lodged with the OTO, taxpayers had followed up numerous times with SARS and were not advised of the escalation process when their queries were not resolved. SARS therefore fails to advise taxpayers of the correct procedures to follow when they want to lodge a complaint.</p>
7	<p>Incorrectly correspondence relating to condonation of late filing of objection provided</p>	<p>In many instances, SARS makes decisions not to grant condonation, however, when communicating its decision to the taxpayer, they respond as if the taxpayer did not furnish reasons for the late filing. Thus, it deems the objection invalid.</p>

No	Issue	Summary
8	<p>SARS escalations and complaint management procedures confusing Taxpayers and SARS staff failing to inform taxpayers of the correct procedure to lodge complaints. (also called “Numerous follow ups”) This systemic issue excludes situations where taxpayers are represented by tax professions.</p>	<p>From the complaints that were lodged with the OTO, taxpayers had followed up numerous times with SARS and were not advised of the escalation process when their queries were not resolved. SARS therefore fails to advise taxpayers of the correct procedures to follow when they want to lodge a complaint.</p>



No	Issue	Summary
9	Inability by SARS to confirm correspondence was sent	Where taxpayers alleged that they did not receive correspondence from SARS, SARS simply responds by providing them with a copy of the letter but failing to provide proof that the correspondence was indeed sent to them on the specific date.

# SYSTEMIC ISSUES

Victims of identity theft held liable for Tax debt.



# SYSTEMIC ISSUES

Appeal  
90 days

Objection 30  
days

SARS non adherence to dispute resolution timeframes.

## REQUEST TO FILE DISPUTE

No dispute items could be found

### REQUEST TO FILE DISPUTE

No dispute items could be found

#### Request to file a Dispute

Tax Type:

Reference Number:

Period:

Dispute Type:

#### Request to file a Dispute

Tax Type:

Reference Number:

Period:

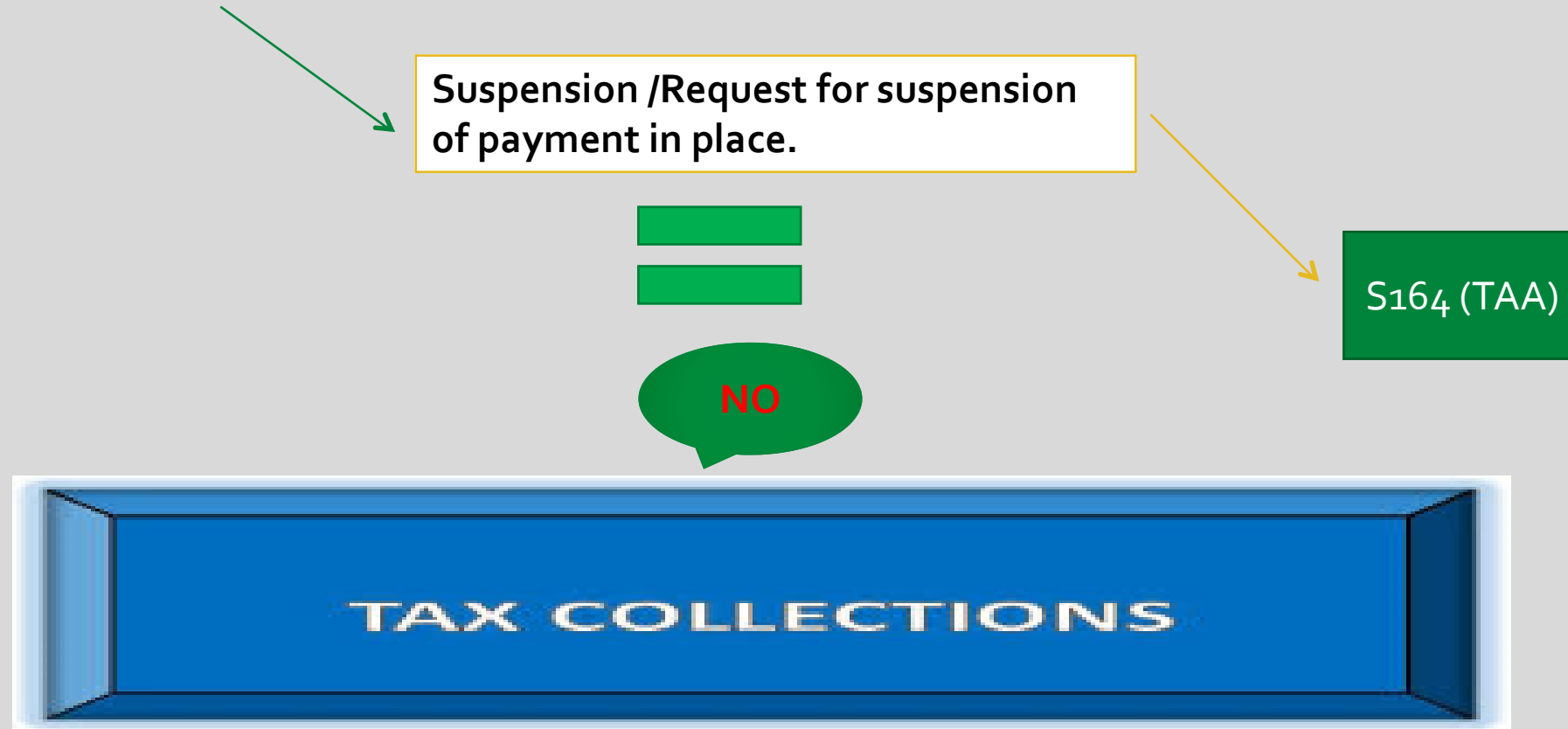
Dispute Type:

Next

Next

# SYSTEMIC ISSUES

SARS taking collection steps when legally barred to do so.



# SYSTEMIC ISSUES

Non adherence to legislative requirements i.t.o Final Demand /Third Party Appointment in terms of S179(5) of the Tax Administration Act.



**FINAL  
DEMAND**



*Must set out the recovery steps that SARS may take if the debt not paid*

# SYSTEMIC ISSUES

From the complaints that were lodged with OTO, various trends were noticed which results to a negative impact that is caused by the manner in which the current Tax Compliance System (TCS) is designed.



# SYSTEMIC ISSUES

Confusion information reflecting on the PAYE statement of account. SARS not able to give explanations for the adjustments and journals done.

## Request Historic Issued Assessment Notices and Statement of Account

### TaxPayer Details

TaxPayer Name: E Robinson  
TaxPayer Reference: 53715016

### Step 1

Please choose one of the following options below:

- I want to request a historic Notice of Assessment
- I want to request a Statement of Account

Next



# OUR CONTACT DETAILS

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