**SUBMISSION TO THE PORTFOLIO COMMITTEE ON FINANCE**

**Tax Ombud:**

The office of the Tax Ombud was established in terms of the Tax Administration Act 28 of 2011.

Its mandate is

*“****S16 To review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS****.”*

This places the office of the Tax Ombud in some kind of a watch-dog relationship with SARS regarding “*a* ***service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS***”.

Given this kind of relationship between OTO and SARS it is anomalous and undesirable to make the OTO dependent on SARS for its execution of the mandate.

1. **Funding:**

S15(4) provides

“***The expenditure connected with the functions of the Office of the Tax Ombud is paid out of the funds of SARS***”.

The OTO does not therefore have its own purse.

Paragraph 48 of the draft bill – provides

“***15(4) – The expenditure connected with the functions of the office of the Tax Ombud is paid out of the funds of SARS, in accordance with the budget approved by the Minister for that office***.”

The agreed purpose behind the Draft Amendment was to clarify the following.

First that it is the Minister who determines the budget of the office of the Tax Ombud or how much it should get.

Secondly, that as the OTO has no bank account these funds will be held by SARS on its behalf but be “***ring-fenced***”.

The draft is not clear. The preposition “***of***” in the phrase “***funds of SARS***” denotes ownership of the funds by SARS and therefore control of the funds by it.

A clear separation is still not achieved between the funds owned and thus controlled by SARS on the one hand, and those for use and controlled by the OTO on the other hand; yet before there can be any “***ring-fencing***”, these must first be such a separation as otherwise these would surely be nothing to “***ring-fence***”.

The ring-fenced OTO funds cannot be at the same time be said to be the “**funds of SARS**”. It is therefore strongly argued that Draft section 15(4) be redrafted to read as follows:

“**(4) The expenditure connected with the functions of the Tax Ombud is paid out of the funds held by SARS for the office, in accordance with the budget approved by the Minister for that office**. “

**2. Ombud’s lack of power to initiate investigations.**

As matters stand, the ombud lacks even the power to initiate investigations into any apparent systemic issue no matter how important. Yet the need to do so was time and again highlighted during various stakeholder’s over the past 2 years. In fact other jurisdictions the Ombuds have these powers, eg. USA, Canada and Australia.

Paragraph 40 of the Draft re Draft section 16(1)(b) is a new introduction. Apparently it is meant to be in response to our proposal that the Ombud be empowered to initiate investigations on his/her own. The draft reads as follows:

***“(b) review, at the request of the Minister, any systemic and emerging issue related to a service matter or the application of this Act or procedural or administrative provisions of a tax Act****”*.

Firstly, if what is drafted is the result of the puzzling fear that the Tax Ombud’s powers may be abused, there were other mechanisms to deal with that. For example, we suggest, without abandoning our position, that such initiative to investigate may be made subject to the Minister’s prior approval. But the truth is that the proposed draft, as it reads, adds nothing new: In terms of section 14(5) the Tax Ombud is “accountable” to the Minister and, in terms of section 19(1)(a), must “report directly to the Minister”. As matters stand right now, once the Minister receives a report, and because the Tax Ombud is accountable to him, the Minister has, inter alia, the power to request the Ombud to investigate anything the Minister picks up from the report; that must surely be one of the purposes for reporting to the Minister. Draft Section 16(1)(b) therefore brings in nothing which is not already there and is thus redundant. We would have no objection against it though, as it does no harm; but we strongly argue that if it is meant to counter any possible abuse, it be redrafted as proposed below (proposed additions in bold) to allow for initiative investigation by the Ombud, while at the same time guarding against the apparently feared possible abuse.

*“(b) review, at the request of the Minister,* ***or on its own initiative with prior approval by the Minister****, any systemic and emerging issue related to a service matter or the application of the provisions of this Act or procedural or administrative provisions of a Act”.*

The above would not be ideal, but it removes any fear of abuse, as the Minister would surely not allow same.

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**CEO: Office of the Tax Ombud**

12 September 2016