



OFFICE OF THE
TAX OMBUD
Ensuring fairness

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**PROPOSAL FOR THE AMENDMENT OF S16(1)(b) OF THE TAX ADMINISTRATION
ACT 28 OF 2011**

Section 16(1)(b) of the Tax Administrative Act 28 of 2011 reads: “*The mandate of the Tax Ombud is to—... review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of 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 tax Act*” (own underlying). As matters therefore stand, the Tax Ombud (“TO”) cannot launch a review at his or her own initiative; he or she must first get prior “*approval of the Minister*” even if such matters fall squarely within the TO’s mandate. This was a compromise provision introduced in January 2017, following the proposal by the TO for a provision to enable the TO to launch a review on the TO’s own initiative. The initial proposal by the TO did not have the words “*with the approval of the Minister*”. As we say, their inclusion, apparently on SARS’s instance, was a compromise to what the TO had initially proposed. For reasons that it never articulated, SARS was seemingly not comfortable with the TO’s proposal, presumable for the unfounded fear that the Ombud’s powers would be abused. We are still of the view, and therefore propose, that the words “*with the approval of the Minister*” be deleted from section 16(1)(b).

We say so for the following reasons, amongst others:

1. In terms of section 14(5) of the TAA, the TO is accountable to the Minister and in terms of section 19(1)(a), must report directly to the Minister. The Minister does therefore have inherent powers to query any possible abuse of mandate by the TO.



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2. When we began establishing this office in 2013, we made a comparative study of other similar institutions internationally on which we benchmarked the office, and from which we learnt best practices. In comparable jurisdictions, the Ombuds/Taxpayer Advocates have similar competencies to initiate a review:
 - 2.1 In Canada, The Ombudsman may review any issue within his/her mandate on the Ombudsman's own initiative (or on receipt of a request from a taxpayer or their representative).
 - 2.2 In Australia, the Inspector-General (their equivalent of our Tax Ombud) may conduct an investigation on his/her own initiative, including once a systemic issue has been drawn to his or her attention by taxpayers, tax practitioners, the Auditor-General, etc.
 - 2.3 In this country, we have a large number of people who are not aware of some of their basic rights; moreover, tax is a proverbial "*Greek*" to even more.
 - 2.4 Finally, the proposed amendment will nature a sense of fairness amongst taxpayers, given the (justified) drastic powers SARS has.


Judge B M Ngoepe
Tax Ombud

Date: 14 August 2018