



OFFICE OF THE  
**TAX OMBUD**  
*Ensuring fairness*

# **TAX OMBUD ANNUAL REPORT 2017/18**

ITO SECTION 19 OF THE TAX ADMINISTRATION ACT 28 OF 2011  
AND THE PUBLIC FINANCE MANAGEMENT ACT (ACT 1 OF 1999)



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# HIGHLIGHTS FOR THE 2017/18 FINANCIAL YEAR



**17 920**  
CONTACTS RECEIVED



**1 404**  
FINALISED COMPLAINTS



**99.79%**  
RECOMMENDATIONS  
IMPLEMENTED BY SARS



**0.21%**  
RECOMMENDATIONS NOT  
IMPLEMENTED BY SARS



**3 652**  
COMPLAINTS RECEIVED

## TOP 10 REFUNDS PAID TO TAXPAYERS

Tax type	Refunds paid to taxpayers
VAT	R158 286 298.15
VAT	R90 973 572.17
VAT	R65 645 769.06
VAT	R45 976 915.15
VAT	R28 764 683.94
VAT	R20 735 422.45
VAT	R13 186 693.10
CIT	R13 064 621.52
CIT	R5 138 131.94
CIT	R4 321 400.12

## TOP 5 CATEGORIES OF COMPLAINTS ACCEPTED

Category	Occurrence	Proportion
Refunds	816	34.69%
Dispute resolution	702	29.85%
Assessments	240	10.20%
Debt management	126	5.36%
Verification	108	4.59%



**11**

TELEVISION INTERVIEWS



**68**

DIGITAL MEDIA ITEMS



**64**

RADIO INTERVIEWS



**28**

STAKEHOLDERS  
PRESENTATIONS



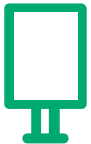
**29**

PRINT MEDIA ITEMS



**9**

COMMUNITY OUTREACH  
EVENTS



**4**

OUTDOOR STREET  
POLE ADS



**1 444**

NEW TWITTER  
FOLLOWERS



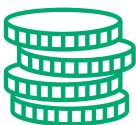
**10**

EXHIBITIONS



**35 331**

NEW WEBSITE USERS



**R59 412 322.55**

AD VALUE RECEIVED



# PART A

## GENERAL INFORMATION

# 1. GENERAL INFORMATION

## 1. INTRODUCTION

The Tax Ombud's 2017/18 Annual Report complies with the Public Finance Management Act (PFMA), giving effect to the legislative framework for the regulation of finances in national and provincial government. The Accounting Authority presents the annual report in line with Section 19 of the Tax Administration Act (TAA), Section 55 of the PFMA and Section 6.2 of the protocol governing the relationship between the Minister of Finance and the Tax Ombud. In terms of Section 19 (3) of the TAA, the Minister must table this report in the National Assembly.

## 2. ANNUAL REPORTING PERIOD

The reporting cycle of the Office of the Tax Ombud (OTO) is annual, ending 31 March, as prescribed by the National Treasury. Quarterly reports are compiled and submitted to the National Treasury as per the provisions of the PFMA and Treasury Regulations. This report records the organisational and financial performance for the period 1 April 2017 to 31 March 2018.

## 3. SCOPE OF THE REPORT

The report incorporates financial and performance information based on the approved 2017/18 Annual Performance Plan (APP), which was tabled before Parliament in March 2017. The annual report provides performance information and governance reports, and incorporates financial information relating to the OTO.

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# 1. ABBREVIATIONS/ ACRONYMS

<b>ADR</b>	Alternative Dispute Resolution
<b>APP</b>	Annual Performance Plan
<b>BUSA</b>	Business Unity South Africa
<b>CEO</b>	Chief Executive Officer
<b>CFO</b>	Chief Financial Officer
<b>CGT</b>	Capital Gains Tax
<b>CIT</b>	Corporate Income Tax
<b>CMO</b>	Complaints Management Office
<b>COGTA</b>	Department Of Cooperative Governance and Traditional Affairs
<b>EE</b>	Employment Equity
<b>FEED</b>	Finance, Economy and Enterprise Development
<b>GEPF</b>	Government Employees Pension Fund
<b>GTAC</b>	Government Technical Advisory Centre
<b>IEC</b>	Independent Electoral Commission
<b>IPID</b>	Independent Police investigative Directorate
<b>IT</b>	Income Tax
<b>IT</b>	Information Technology
<b>ITR12</b>	Personal Income Tax Return
<b>JSC</b>	Judicial Service Commission
<b>MIOSA</b>	Motor Industry Ombudsman of South Africa
<b>MOU</b>	Memorandum of Understanding
<b>MTEF</b>	Medium Term Expenditure Framework
<b>NDP</b>	National Development Plan
<b>NEMISA</b>	National Electronic Media Institute of South Africa
<b>OHSA</b>	Occupational Health and Safety Act
<b>OSHA</b>	Occupational Safety And Health Administration
<b>OTO</b>	Office of the Tax Ombud
<b>PAYE</b>	Pay as You Earn



<b>PFMA</b>	Public Finance Management Act
<b>PIT</b>	Personal Income Tax
<b>PR</b>	Tax Practitioner Number
<b>PSA</b>	Public Servants Association
<b>RAF</b>	Retirement Annuity Fund
<b>SAAFF</b>	South African Association of Freight Forwarders
<b>SADTU</b>	South African Democratic Teachers Union
<b>SAICA</b>	South African Institute of Chartered Accountants
<b>SAIPA</b>	South African Institute of Professional Accountants
<b>SAIT</b>	South African Institute of Tax Professionals
<b>SALGA</b>	South African Local Government Association
<b>SAPOA</b>	South African Property Owners Association
<b>SARS</b>	South African Revenue Service
<b>SASSA</b>	South African Social Security Agency
<b>SC</b>	Senior Counsel
<b>SCOF</b>	Standing Committee on Finance
<b>SLA</b>	Service Level Agreement
<b>SME</b>	Small and Medium Enterprises
<b>SMME</b>	Small, Medium and Micro Enterprises
<b>SOP</b>	Standard Operating Procedure
<b>STEP</b>	Society of Trust and Estate Practitioners
<b>TAA</b>	Tax Administration Act
<b>TCC</b>	Tax Clearance Certificate
<b>TCS</b>	Tax Compliance System/Status
<b>TPA</b>	Third Party Appointment
<b>VAT</b>	Value Added Tax



# **MINISTER OF FINANCE**

## **HONOURABLE**

### **NHLANHLA MUSA NENE**



## 2. MESSAGE BY THE MINISTER OF FINANCE

I am pleased that this year in October the Office of the Tax Ombud (OTO) will be celebrating its fifth anniversary: five years of fairness for taxpayers. Just over two years ago, I expressed great pleasure at what this Office had achieved during its establishment phase in just 18 months, and vowed that the Ministry of Finance would provide full support to ensure the organisation would fulfill its mandate as well as achieve the strategic vision captured in its five-year plan. The evidence is there for all to see what has been accomplished in just four years, and we can agree that the Tax Ombud has led by example in promoting and protecting the rights of taxpayers.

During the reporting period, the OTO not only continued to play an important role in helping maintain a healthy balance between the South African Revenue Service's (SARS) powers and duties, on the one hand, and taxpayers' rights and obligations on the other, but also in taking upon itself the responsibility to promote awareness about these rights and in calling for a Taxpayers Rights to be published. It is also worth noting that the OTO has made valuable inputs into the country's Tax Administration Act (TAA) through the amendments that the Ombud spearheaded, and immediately tested. In September 2017, the country's first ever systemic investigative report into delays in the payments of tax refunds was released, painting a rather unflattering image of SARS and holding the revenue collector accountable for the shortcomings. When the OTO was established in October 2013, it was meant to help improve taxpayers' trust in the tax administration system. It is well known that it has faced many challenges in recent times, and it is uplifting to realise that there is a government institution, in the form of this Office, that provides free, fair and impartial services to taxpayers and is committed to helping restore the trust of South African citizens in tax administration.

The OTO is still a young organisation and it will require unreserved support from all stakeholders, mainly our government, to ensure that it fulfils its mandate as set

by Parliament and thereby restore trust in the tax system. In order to take the organisation to the next level of efficiency – service excellence – and become fully independent, our government, through the Government Technical Advisory Centre (GTAC), is assisting in developing a business case for a cost-effective and independent organisational model.

We all know that the country is experiencing serious financial challenges, with tax avoidance exacerbating the problems and limiting the government's ability to provide services to the public. Taxpayers in particular, and the populace in general, need to know that an institution of government mandated to collect taxes on behalf of the state does so diligently yet without trampling on their rights, and the OTO has an important role to play in assisting the revenue collector to be efficient, effective and the best as far as service excellence is concerned.

In his maiden State of the Nation Address, President Cyril Ramaphosa indicated that several steps would be taken to remedy some of the challenges facing SARS, including launching a Commission of Inquiry into Tax Administration and Governance of SARS. It is expected that the OTO will play an important role in this inquiry, and I will provide all support required to ensure its participation is fruitful. It is important to state that many stakeholders, including taxpayers, tax practitioners, and Parliamentarians, have called for more powers to be bestowed on the Tax Ombud and for its mandate to be strengthened.

This was supported by the Davis Tax Committee, which, in addition, also called for the Tax Ombud to represent taxpayers in court in their disputes with SARS. As government, we have undertaken to respond to the Davis Committee's report and the recommendations made to strengthen the Office of the Tax Ombud.

Our government will continue to provide the Tax Ombud and his team with the necessary support to ensure that this institution serves the country with thoroughness

and commitment. We will also seek to provide an environment that will enable the institution to pursue excellence in fulfilling the mandate set for it.

I am grateful for the support that the OTO has received from my predecessors and I am committed to doing my part to ensure that the institution fulfils its mandate. To the Tax Ombud and his team, thank you for a job well done.

We all have to lend a hand!



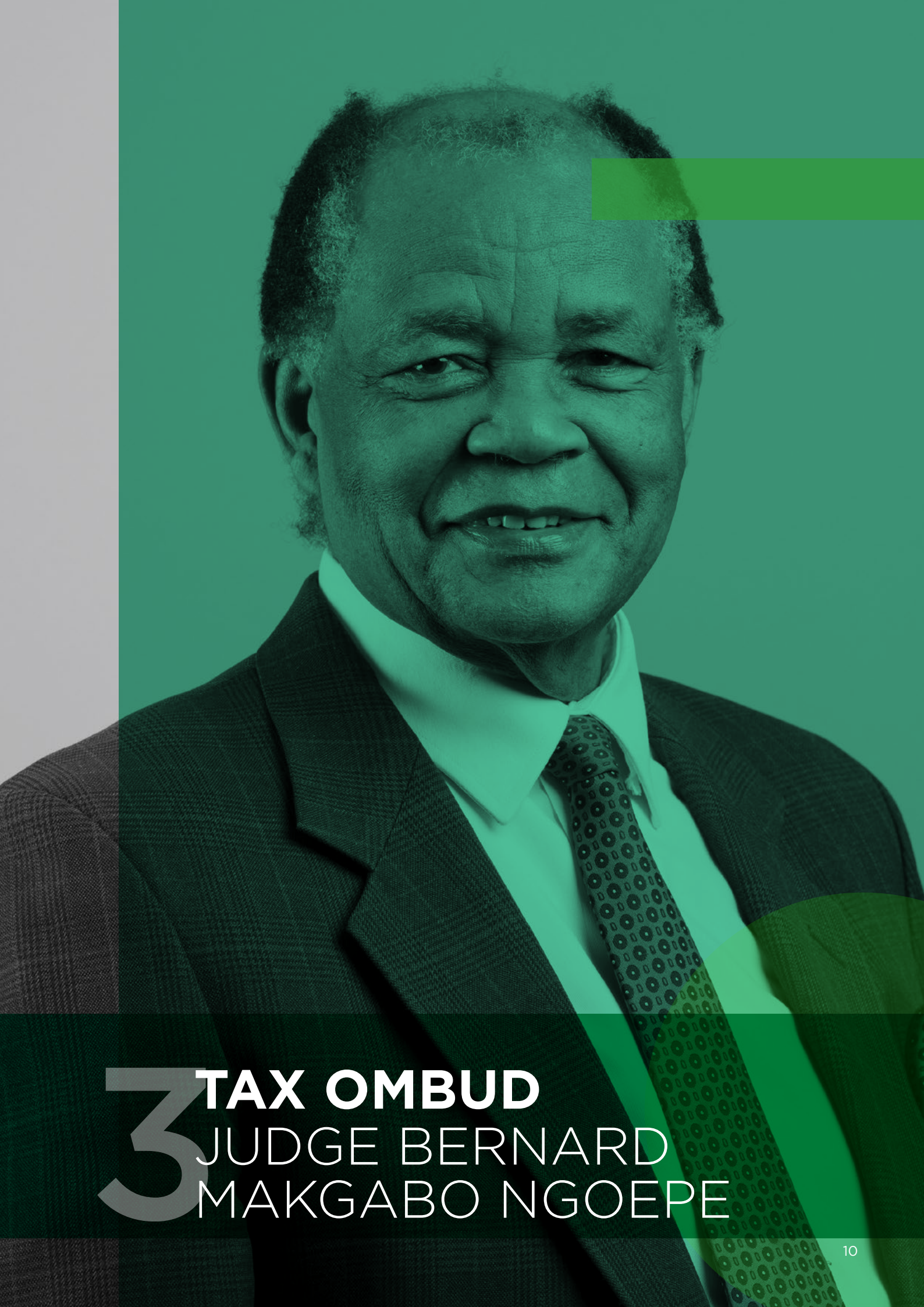
**Honourable Nhlanhla Musa Nene**  
MINISTER OF FINANCE

“

**It is important to state that many stakeholders, including taxpayers, tax practitioners, and Parliamentarians, have called for more powers to be bestowed on the Tax Ombud and for its mandate to be strengthened.**

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# 3 **TAX OMBUD** JUDGE BERNARD MAKGABO NGOEPE

# 3. TAX OMBUD'S FOREWORD

It seems like just the other day that two assistants and I took on the challenge of inviting the taxpayers of South Africa to come to us for help with their complaints against the South African Revenue Service (SARS). Before we knew it, almost five years had passed, our numbers had grown from two to over 35 and we had helped resolve literally thousands of taxpayer complaints. At this point in the life of the Tax Ombud of South Africa, I look back with satisfaction – and one or two regrets – at those first years.

It has been an eventful period, with more ups than downs, but there are two milestones that stand out most memorably for me. The first was the very act of establishing this institution. Remember, there was no Tax Ombud before then and yet people felt they had many legitimate questions about SARS and that an independent office was needed to assist them in regard to their complaints. After some years of delay, the Office of the Tax Ombud was finally established on 1 October 2013 and this in itself was an important milestone. The other important aspect was educating people about the existence of the Office and about their rights.

Many people in this country do not know their rights, even those under the Constitution; so, in establishing an office like this, it is critical to educate them about their rights as taxpayers. As we all know, SARS has some very drastic powers – perhaps with some justification, it must be said – but those drastic powers need to be exercised properly and within the limits of the law. Therein lies the importance of having an independent mechanism outside SARS and of educating people about their rights.

**The other important aspect was educating people about the existence of the Office and about their rights.**

Over the past five years, this Office has created some confidence in taxpayers as to the fairness they can expect to receive from the tax administration system.

When people start to feel they will be treated fairly and given the protection they might need, they begin to have confidence in the system – and that is vital for the tax system to work.

Being treated fairly means a taxpayer must have the comfort of knowing that if SARS does not treat them well, there is somewhere else they can go to complain. In this way, the Office helps nurture a culture of compliance among taxpayers, which is important because when there is such a culture, more tax would be collected.

If I could turn back the clock, however, there are some things that I think could have been done differently.

**Over the past five years, this Office has created some confidence in taxpayers as to the fairness they can expect to receive from the tax administration system.**

## Doing things differently

The main one is the way the Office of the Tax Ombud was structured and its mandate as described in the Act establishing it. As the Tax Administration Act of 2013 stood when we opened our doors, the Office lacked financial independence and could not even recruit its own staff directly; they first had to be employed by SARS and then seconded to this office in consultation with the Commissioner of SARS. This was odd, given that the Tax Ombud was supposed to exercise some kind of oversight over SARS. How do you do that if you depend on the very institution over which you are supposed to exercise some oversight? I think the



Office should have been structured differently, in more ways than one.

Then, from the point of view of the Office itself, I think there were times when we and our people could have performed better. But looking back, I am proud of our staff and what they did. We had committed skilled staff, and they did their best under the circumstances. The Office would probably have done better had it been structured differently, and I still lament the absence of structural independence from SARS. It was a big challenge.

Another major challenge was that while we were new, we were supposed to be a national office, and people knew nothing about us. So, the challenge was to tell people about our existence, and then to educate them about our mandate as the mandate of the Tax Ombud is circumscribed. People had never heard of us before or about what we did, and the result was that we also received complaints which, regrettably, fell completely outside our mandate. But how would people have known? They genuinely did not know and we had to do our best in terms of radio interviews, pamphlets, billboards and television appearances to educate the people about the existence of our office and our mandate.

## Progress and priorities

I am glad to say that we have made major progress with these challenges. In terms of financial independence, the situation has improved somewhat since the early days when our finances were embedded in SARS's budget and virtually controlled by them. Today, our budget is identified by direction of the Minister of Finance, and ringfenced within SARS. Progress has also been made with regard to the recruitment of staff so that we can employ staff directly and not via SARS.

Yet while there has been some progress, our biggest priority as we move forward is to achieve total independence from SARS, especially in terms of finances. In this respect, there is a process that we have initiated and discussed with National Treasury about the future corporate status of this Office. We have had consultations with the Treasury's consulting service GTAC about what format this Office should adopt. One of the biggest priorities is for the OTO to acquire an appropriate status as a body. We have written to the

Minister about this for some engagement with him.

Apart from the issue of independence, which is crucial and fundamental, one of our ambitions is to have provincial footprints. Currently, we only have one office, in Pretoria, for the entire country. We need to be accessible and that means going out to various provinces so that people can reach us. We hope to achieve this in due course.

Another priority is to continue attracting and retaining committed and skilled staff. By its very nature, this is a specialised office. It is about tax, about going toe to toe with SARS people and querying them about whether what they have done is correct or wrong. This means the OTO must have experts in tax; otherwise we will not be able to raise queries with SARS. It is essential that we continue to maintain that level of expertise.

Also, as an office serving the public, we have a responsibility to make sure we deal with taxpayers' problems expeditiously. One of the complaints people have in this country is about poor service – public offices not responding timeously or at all to complaints by the public. This simply demoralises the public. I would hope that our Office continues to deal with the public's complaints as expeditiously as possible. That does not mean we guarantee every complaint will be resolved in favour of the complainant, because not every complaint is justified. What is important is for the public to feel their complaints are being addressed expeditiously.

## Citizens exercising their rights

As the Tax Ombud, I feel encouraged by two things at this five-year juncture. One is that taxpayers, individually or through professional bodies, have come forward to this Office with what they regard as complaints against SARS. I believe it is the right thing for people to do because they have rights as citizens. I am pleased that taxpayers have made use of this Office. As they continue to do so, my hope is that they and their representatives will continue to "wisen us up" by telling us how we as the OTO could serve them even better.

What also encourages me is the kind of relationship this office has with SARS. There is a mutual respect between the two offices. Irrespective of who in the future becomes the Commissioner of SARS or who in the future becomes the Tax Ombud in my place, I would hope that

the kind of mutual respect and collaboration we have will continue. That mutual respect and collaboration must be based on a common understanding between the two offices that we have a common objective; namely, to facilitate maximum collection of tax – but in a fair manner.

I am also thankful for the Minister's support, the good relationship between this Office and the Ministry of Finance, Treasury, as well as with the professional bodies, recognised controlling bodies, our academic partners,

media and other stakeholders who have assisted in spreading the word about the OTO and in bringing pressing matters in the tax sphere to our attention. To the CEO of the Office, Advocate Eric Mkhawane, who has been with the OTO almost from the start, I thank you for your knowledge and unfailing support. I further thank the senior management team and employees of the OTO for your commitment, skills and can-do attitude. It has been a pleasure to work with you over the years.



**Judge Bernard Makgabo Ngoepe**  
TAX OMBUD





# **CHIEF EXECUTIVE OFFICER**

ADVOCATE HANYANA  
ERIC MKHAWANE

# 4. CHIEF EXECUTIVE OFFICER'S OVERVIEW

## FIVE REMARKABLE YEARS OF EXISTENCE

This year in October we will be celebrating five remarkable years of existence. The Office of the Tax Ombud has come a long way since the early days as a brand-new organisation that nobody had heard of. Although we still have a long way to go before all South Africans are aware of us and what we do, we have made a good start in helping to bring some much-needed balance into the relationship between taxpayers and the revenue authority. The ongoing growth in the volumes of queries and complaints coming in about SARS is testimony to the incremental growth in levels of awareness among South African taxpayers about the existence and mandate of the OTO.

### How we started

The first complaint against SARS arrived on 1 October 2013, the same day that the Tax Ombud, Judge Bernard Makgabo Ngoepe, took office. Six months later, when the Office was officially launched on 7 April 2014, the number of complaints received had inched up to 156 and the total number of contacts (as we refer to queries or requests) to 670. Bear in mind that the OTO was a complete newcomer to the tax sphere and most people were unaware of the organisation's existence, not to mention its mandate.

### Spreading the message

From the moment the OTO opened its doors in October 2013, one of our top priorities has been to make South Africans in general and taxpayers in particular aware of our existence as a free, fair and impartial complaint resolution avenue.

Just as important as raising awareness, however, is ensuring that our stakeholders know what we can and cannot do on their behalf. In the early years, the main focus of our communication and outreach activities was on reaching professional industry bodies and recognised

controlling bodies, and on raising our profile in the media. These platforms continue to be vital elements of our communication and brand positioning strategy but have since been considerably augmented, expanded and enhanced so that we can reach many more people, not only in the tax industry but in the economy at large, and not just in the main metropolitan areas of South Africa but beyond. Similarly, the OTO has been reaching out to employers and employees in local, provincial and national government and in the private sector. Criss-crossing the country, we have reached out to the members of industry bodies such as the South African Institute of Professional Accountants (SAIPA), the South African Institute of Chartered Accountants (SAICA) and the South African Institute of Tax Professionals (SAIT). Reaching out to taxpayers has provided us with insight into the issues affecting them and listening to their frustrations with SARS has been overwhelming.

From the outset, in addition to outreach, we made use of many other opportunities to alert taxpayers to the existence and purpose of the OTO, such as speaking engagements at conferences, webinars, our social media presence, billboards and even appearances in popular television programmes such as *Isidingo*, *Real Talk* and *Yilungelo lakho*. We also became regular participants at the annual Tax Indaba, visited shopping malls and held exhibitions to meet taxpayers, met with media houses and were interviewed on radio, television and in the print and online media. The result was increased through the visibility of our Office and the understanding taxpayers have on our mandate.



**Reaching out to taxpayers has provided us with insight into the issues affecting them and listening to their frustrations with SARS has been overwhelming.**



## Growing from the ground up

As a new organisation, the Office needed an approved structure, budget, staff, computers, connectivity, accommodation, a logo, a website and complaints forms and guides (in the 11 official languages), among a myriad of other essentials for a properly functioning operation. All of this had to be put in place from scratch and while following all due processes, including obtaining approval for the OTO's organisational structure from the Minister of Finance and liaising with SARS as to the working processes required.

These processes with SARS were two-fold. For one, the Office and SARS needed to establish a *modus operandi* for investigating taxpayers' complaints against SARS, which included ensuring that the OTO has access to the revenue authority's systems. For another, we had to agree on processes whereby the OTO could make use of SARS's services for the purposes of recruitment, procurement, IT systems, financial management, and the like. The reason was that the Office found itself in the unfortunate position of being legally dependent on SARS for these services. This was a direct result of the way the structure and functioning of the OTO was framed in our founding legislation, the Tax Administration Act of 2013.

This reliance on SARS was compromising both the effectiveness and the independence of the Office, since the revenue service was in full control of our budget, including the amount made available to us for our business and operations. Furthermore, the Office could not even recruit staff, who had to be appointed in consultation with the Commissioner of SARS and then seconded to the Office.

## Quick fixes in the short term, full independence in the longer term

It was clear that the impediments to the OTO's independence could not be removed overnight – but we realised there was action we could take to try to minimise their impact. Thus, we decided to aim for some short-term changes – “quick fixes”, as it were – while also keeping an eye on the longer term changes that would be necessary to achieve full independence for the Tax Ombud.

The short-term solution was initiated in January 2016, when we made proposals to the Minister of Finance to amend the Tax Administration Act. In June that year, a draft amendment bill was tabled in Parliament. Six months later, in January 2017, the amended Act came into effect.

As a result, the term of office of the Tax Ombud was increased from three to five years, our mandate was adjusted (more details below) and the Office received some much-needed relief in terms of recruiting our own staff and controlling our own finances. We no longer need to consult the Commissioner before appointing staff and instead of having SARS determine our annual budget, the Minister of Finance does so. The fact remains, however, that although the OTO's budget allocation is ringfenced within SARS, available for the exclusive use of the Office, SARS is still effectively managing our financial affairs. Since the OTO still has no legal status, we cannot open a bank account or sign a contract.

Only structural independence can give the Office the full independence we need to do justice to our mandate of ensuring fair treatment of all taxpayers and the expeditious handling of their complaints against SARS. This is why we are investing so much time and energy in the project with the National Treasury's GTAC, which Judge Ngoepe has referred to in his foreword. That said, the change in the OTO's mandate that was brought about through the legislative amendments of January 2017 was a significant step forward for taxpayers and the fairness of the tax administration system.

## Revised mandate means fairer treatment for taxpayers

Before the Tax Ombud's mandate was amended in January 2017, the Office was limited to investigating specific complaints from individuals or entities and could not go beyond this. For example, if we detected a pattern in terms of certain kinds of complaints becoming more and more prevalent, we could not initiate an investigation into the underlying causes of this systemic or emerging trend. That constraint was removed when the Tax Administration Act was amended, allowing the Office to initiate so-called systemic investigations – with the approval of the Minister of Finance.



## Ground-breaking achievements

In March 2017, the Tax Ombud requested the Minister for permission to conduct a review in respect of hundreds of complaints from taxpayers that SARS was unduly delaying the payment of refunds. Within a week, the Minister approved our request and we began the investigation as a matter of urgency. As is by now widely known, we identified no fewer than 12 different obstacles that SARS had put in place that were causing delays in the payment of verified refunds, some running into millions of Rands and affecting all types of taxpayers and tax categories. There was no legal basis for these practices, which in certain cases had resulted in the near collapse of some businesses and in others, the loss of jobs.

Understandably, our investigation generated huge interest among taxpayers and the media, and culminated in the preparation in July 2017 of a provisional report into alleged delays in the payment of refunds. SARS was given the opportunity to respond, after which we finalised and released the report to the public. We are now in the process of ensuring that SARS develops and implements an action plan that addresses the issues we have raised.

This investigation was a major milestone for the Office and for taxpayers, and demonstrated how critical it is to have an independent, objective body charged with oversight of SARS. Bear in mind that in the almost five years in which we have been in operation, in excess of 80% of complaints lodged by taxpayers have been resolved in favour of taxpayers.

## Systemic investigations and review

The January 2017 amendments, which gave the Tax Ombud the power to initiate a review on any systemic and emerging issues, led to the appointment of two specialist systemic investigators in the 2017/18 financial year. Their expertise lies in identifying tax issues with the potential to have an adverse impact on a large number of taxpayers or class of taxpayer. The two systemic investigators have already put in place the necessary processes and procedures, from identifying systemic issues to conducting the actual investigations and then doing monitoring to ascertain whether or not the issues identified are still occurring.

Informing the public about systemic complaints that have been identified is an important part of the team's work. They make sure that each new issue is included on the Office's register of systemic issues and posted on the OTO's website, and also hold seminars and presentations for stakeholder and professional bodies, among other activities.

Our systemic investigators have also instituted sound monitoring and record-keeping processes. As far as monitoring is concerned, the team has two methods of testing whether identified systemic issues have abated. One is to monitor the complaints coming in to the Office to see if there has been a reduction in that type; the other is to conduct taxpayer surveys. The first such survey was launched towards the end of the 2017/18 financial year among a number of taxpayers including major corporates.

## Promoting efficiency and compliance

The OTO wants taxpayers and tax professionals to have an excellent experience when interacting with the organisation and its people. Thus we ensure that we essentially create a conducive, stress-free, professional environment for visitors and staff alike. For example, our support staff make sure that all equipment and technology is in good working order and that all the bills have been paid, leaving our complaints resolution specialists free to do what they do best – assist taxpayers with their complaints.

In this era of high-technology, it might seem surprising that the OTO encourages walk-in visitors, who can arrive without an appointment if they wish. The fact is that some people do not have cellphones or internet, or simply do not wish to deal with something as important to them as their tax affairs over the phone or online. During the 2017/18 financial year alone, we welcomed 127 walk-in visitors, highlighting the value that some stakeholders place on face-to-face contact. This is one of the reasons why we are so convinced that a provincial footprint down the line is essential for the Office.

With this in mind, we commenced the Office's footprint project in 2018/19, which entails compiling a business case around which provincial locations the OTO should have a presence in for the future. As mentioned earlier, we are also working with GTAC on exploring options for

an optimal corporate status for the Office. The latter project commenced in December 2017 and should culminate in a business case in mid-2018. This is a long-term project, however, and will have to go through a comprehensive public comment and parliamentary process before any changes can be made.

Two other major business projects are being led is the employee satisfaction survey, conducted in March 2018 to gauge employees' levels of engagement, and the complaints time-and-motion study under way to evaluate the time aspects of investigating taxpayer complaints. The aim is to understand how long it takes to perform each task of the process and to set standards for measuring performance. The ultimate aim is to improve the efficiency and effectiveness of the Office and in this way contribute further towards improving the South African tax administration system.

## Legal adherence

Everything we do at the Office of the Tax Ombud is based on the law. This starts with our mandate, including what complaints we may and may not accept, and extends to the Office's governance structures, financial affairs and every other aspect of our operations. The fact that the law governs the Office does not necessarily mean that the legalities of all our business actions and interactions are cut and dried. Often, the legal position of a given complaint comes down to interpretation and there is sometimes a fine line between whether or not a complaint falls within or outside our mandate.

Both the taxpaying public and SARS are entitled to the assurance that the OTO is dealing with taxpayers' complaints correctly, expeditiously and without bias. For this reason, the Office does not place responsibility for decisions about complaints in the hands of one person or division. Instead, we have a Review Committee that sits each and every working day, sometimes for much of the day, objectively considering each and every complaint that comes in and debating whether or not it should be accepted or rejected in terms of our mandate. Legal Services chairs the Review Committee, whose other representatives are tax experts from Complaints Resolution and Systemic Investigations. Together, we decide how best an accepted complaint should be resolved and, once an investigation has been completed, what recommendation about it should be made to SARS.

Legal Services also plays a role in a myriad of other activities that are central to the Office's work as a fair, impartial complaints-resolution mechanism for taxpayers. Among others, our team of legal specialists attend to corporate, governance and compliance issues and give general legal opinions on complaints-related matters that crop up constantly as a result of the complex tax law environment in South Africa. A relatively new role that Legal Services has embraced enthusiastically is taking part in public presentations intended to educate and inform taxpayers, practitioners and professional bodies about the work of the OTO and especially what complaints we can and cannot accept.

Presentations of this kind are extremely useful as they have contributed to a decrease in complaints that the Office is forced to reject as being outside our mandate. For example, more and more taxpayers are becoming aware that the OTO cannot assist them if they have not complained to SARS first (unless there are compelling reasons otherwise). Similarly, there is greater understanding among taxpayers that the OTO is not allowed to investigate complaints related to matters such as tax assessments.

There are times when complaints come in about the Office itself. These complaints typically have to do with the way complaints have been handled, perhaps because the taxpayers concerned feel we have taken too long to respond or not given satisfactory feedback. Currently, we are exploring possible mechanisms for ensuring that complaints about the OTO are investigated and resolved as objectively as possible.

The OTO considers a Taxpayer Bill of Rights to be of cardinal importance. For this reason, we took the initiative in 2015 to compile a draft Bill of Rights, consisting of 10 rights accorded to taxpayers under the Constitution and the country's tax legislation. This draft was sent to SARS and the Davis Tax Commission, and the latter subsequently came up with a similar document. However, the proposed Bill of Rights has not yet been taken further and we eagerly await news of progress.

## Complaints resolution

Complaints resolution is the heartbeat of the OTO as this is where complaints are received, investigated and resolved through recommendations made to SARS. The unit has grown in leaps and bounds since its inception – not so much in staff numbers, which remain modest, but in the sophistication and scope of its working methods. For the first three years of the Office's existence, complaints were handled almost entirely manually. It was only in 2016 that an electronic complaints management system was introduced.

Despite teething problems and a temporary return to manual processes while design flaws were being ironed out, the new system was a major step forward in the way we process complaints. One of its best features is that it is tamper-proof: every entry made is permanently recorded and cannot be cancelled unless a formal request is made. Even then, the original entry remains on the system, ensuring that every step of the complaints-handling process is traceable and transparent.

The service manager system continues to undergo enhancements to improve our efficiency and responsiveness. In the 2019/20 financial year, taxpayers lodging complaints online will no longer need to complete a manual complaints form, scan it and email it to the OTO. Rather, using a new smart application, complainants will be able to lodge complaints and check on the status and progress of these.

Another small but critical improvement already in place is that when we reject a taxpayer's complaint as being beyond our mandate, we send a letter explaining as clearly as possible why this happened and what the taxpayer can do to seek recourse. Giving reasons for what we do is an important part of our drive to be accountable and efficient.

The complexity and variety of complaints we receive has changed substantially since the OTO opened its doors in October 2013. Initially, for instance, we received very few Customs-related complaints. Realising this we directed our outreach initiatives to this industry. Complaints in this arena are often about delays from

SARS in responding to taxpayer applications for tariff codes or about cargo being held at border posts. We are also starting to see more tax complaints from major companies, including multinationals, which are highly complex in nature.

## Forging ahead for the next five years

With our fifth anniversary just ahead of us, we prepare to enter the next five years with a clear strategy and plan of action: to ensure this Office has the capacity and capability to deal efficiently and effectively with increasing volumes of complaints, to make our existence and mandate known to more and more taxpaying South Africans, to be accessible to taxpayers everywhere in our country, and to be truly and fully independent.

After all, when a nation has a skilled, committed and independent tax ombud office, everyone benefits.

In conclusion, I would like to extend my sincere gratitude to the Tax Ombud Judge Bernard Makgabo Ngoepe for his leadership, the employees for their commitment and stakeholders who continue to support and trust us.



**Advocate Hanyana Eric Mkhawane**  
CHIEF EXECUTIVE OFFICER





5

# STATEMENT OF RESPONSIBILITY

# 5. STATEMENT OF RESPONSIBILITY AND CONFIRMATION OF ACCURACY OF THE ANNUAL REPORT

## To the best of our knowledge and belief, we confirm the following:

The Annual Report is complete, accurate and free from any omissions.

The Annual Report has been prepared in accordance with the guidelines on the annual report as issued by National Treasury.

The Tax Ombud is responsible for the preparation of the performance information and for the judgements made in this information.

The Tax Ombud is responsible for establishing and implementing a system of internal controls designed to provide reasonable assurance as to the integrity and reliability of the performance information, the human resources information and the annual financial information.

In our opinion, the annual report fairly reflects the operations, the performance information, the human resources information and the financial affairs of the OTO for the financial year ended 31 March 2018.

Yours faithfully



**JUDGE BERNARD MAKGABO NGOEPE**  
TAX OMBUD



**ADVOCATE HANYANA ERIC MKHAWANE**  
CHIEF EXECUTIVE OFFICER



# 6. STRATEGIC OVERVIEW

The Office of the Tax Ombud strives to be exemplary as a fair, impartial and expeditious avenue for taxpayers seeking to resolve complaints relating to SARS. The organisation's vision, mission and values guide the Office's conduct and interaction with taxpayers, SARS and other stakeholders.

## 6.1. Vision

To strengthen taxpayers' trust and confidence in tax administration.

## 6.2. Mission

To be an efficient, independent, impartial and fair redress channel for taxpayers.

## 6.3. Values

In executing its mandate, the Office's conduct and interactions are based on a set of values that guide all staff at all levels:



### ACCOUNTABILITY

Taxpayers are entitled to a rational and fair reason for decisions and actions taken.



### INDEPENDENCE

In dealing with taxpayers' complaints, the Tax Ombud operates independently of SARS.



### EFFICIENCY

The Office of the Tax Ombud ensures that all taxpayers' complaints are resolved promptly and efficiently.



### FAIRNESS

The Tax Ombud acts in fairness at all times.



### CONFIDENTIALITY

The Office of the Tax Ombud holds all communications with taxpayers in strict confidence unless authorised by the taxpayer.

# 7. LEGISLATIVE AND OTHER MANDATES

The OTO complies with the legislative mandates of the Constitution of the Republic of South Africa, and the Tax Administration Act (TAA).

## **CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA, ACT 108 OF 1996:**

In terms of Section 195 of the Constitution of the Republic Act, 108 of 1996, public administration must be governed by the democratic values and principles enshrined in the Constitution, including a high standard of professional ethics; efficient, economic and effective use of resources; provision of impartial, fair and equitable service; transparency and accountability. As an agent of public administration, the South African Revenue Service, the subject of the OTO's oversight, is bound by this Constitutional Mandate. The Office of the Tax Ombud is equally bound by the Constitutional Mandate.

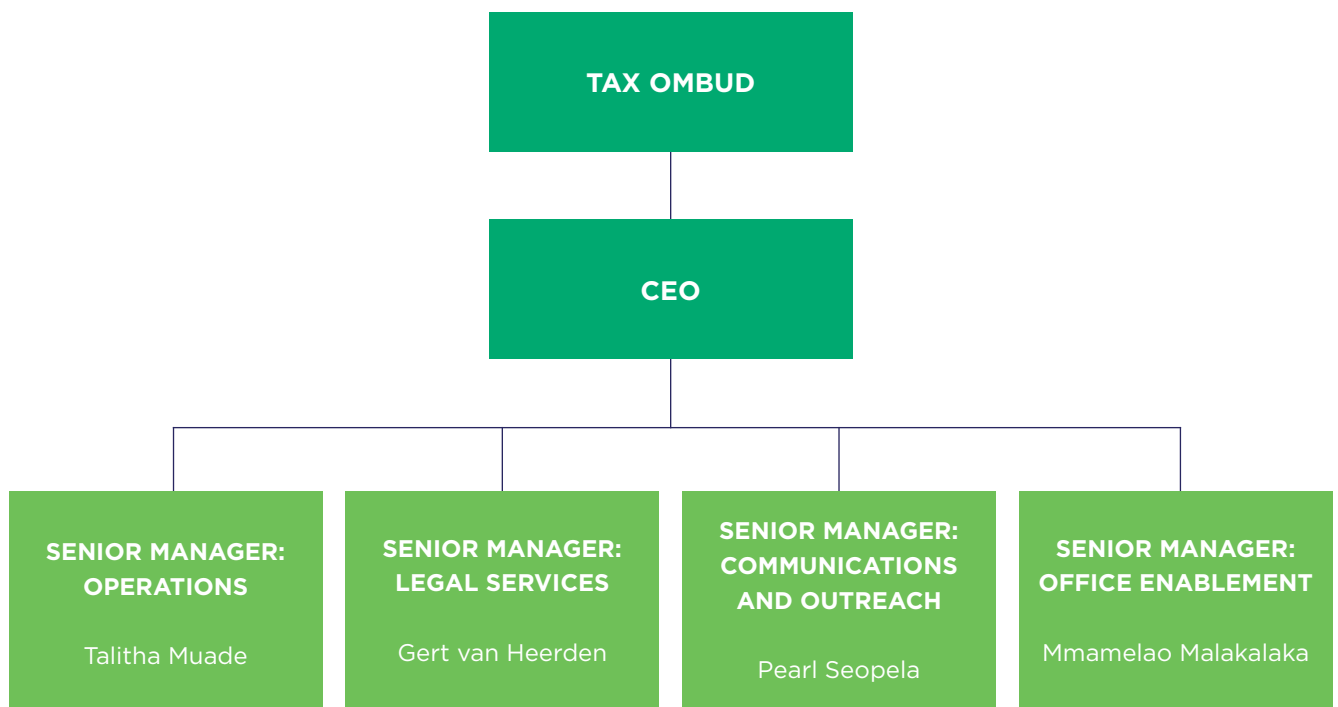
## **TAX ADMINISTRATION ACT, 28 OF 2011:**

The mandate of the Tax Ombud is to –

- a) 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; and
- b) 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.

# 8. ORGANISATIONAL STRUCTURE

The Office of the Tax Ombud is led by the Tax Ombud who is supported by the Chief Executive Officer. The Office consists of the following business units: Operations, Office Enablement, Legal Services and Communications and Outreach as depicted below.



# LEADERSHIP OF THE OFFICE OF THE TAX OMBUD



## TAX OMBUD JUDGE BERNARD MAKGABO NGOEPE

BJuRis, LLB, LLD, (h/c) LLD, (h/c) LLD, (h/c), D.Ed (h/c)

**Judge Ngoepe** is a former Judge President of the North and South Gauteng High Courts, where he heard and decided seminal cases, including business and tax matters, and was responsible for assigning judges to the Tax Courts. He also acted for a term as a Constitutional Court Judge and as Judge of the Supreme Court of Appeal. He was a Judge of the African Union's African Court on Human and Peoples' Rights from 2006 to 2014, and was Vice-President of the Court when he left.

Before assuming his role on the Bench, Judge Ngoepe practised as an attorney from 1976 until 1983 when he was admitted as an advocate of the Supreme Court of South Africa. In 1994, he was appointed Senior Counsel (SC).

Judge Ngoepe has been a member of many democracy-building fora such as the Amnesty Committee of the Truth and Reconciliation Commission, the Court of Military Appeals (Chairperson), the Magistrates Commission (Chairperson), and the Judicial Service Commission. He is presently Chairperson of the Appeals Panel of the Press Council of South Africa since February 2013, Chairperson of the Appeals Board of the South African Council of Medical Schemes since 2012, Chairperson of the Final Appeals Committee of the Advertising Standards Authority since 2014, and Head of the Cricket SA Investigative Unit since 2016.

His numerous accolades include being made an Honorary Captain of the South African Navy and Honorary Professor of Law. He has received four (4) Honorary degrees: three (3) Honorary Doctor of Law degrees and an Honorary Doctorate in Education. He has also received many leadership and human rights awards including the Duma Nokwe award.



## CHIEF EXECUTIVE OFFICER ADVOCATE HANYANA ERIC MKHAWANE

BProc, LLB, LLM Tax Law, HDip Company Law, HDip Labour Law, SMDP

**Adv Mkhawane** practised as an attorney until 1998 when he joined the South African Revenue Service (SARS) as a Manager in the legal division. He was later appointed as a Regional Manager for Enforcement from 2005 until 2010 when he was admitted as an advocate of the High Court (Johannesburg Bar). He practised as an advocate until the end of 2013 when he joined the Office of the Tax Ombud.

Adv Mkhawane's areas of expertise include tax, contracts, company law, commercial law, insolvency, personal injury, insurance, labour and administrative law.



## SENIOR MANAGER: OPERATIONS TALITHA MUADE

BCom, MDP, MBA

**Ms Muade** has over 15 years' experience in management at government departments and chapter 9 institutions, and also has experience in the private sector.

She has fulfilled many varied roles in sectors such as financial services (ABSA), petroleum industry (BP SA), Deputy Manager Finance and Administration at the Independent Electoral Commission (IEC): North West, Head of the Local Office at the South African Social Security Agency (SASSA) Madibeng, and Branch Manager at the Doringkloof and Pretoria North branches of SARS.



## SENIOR MANAGER: LEGAL SERVICES GERT VAN HEERDEN

BCom, LLB, LLM

After completing his articles and being admitted as an attorney in 2008, **Mr van Heerden** joined SARS as a legal advisor in the Legal Delivery and Support department for the Gauteng Central Region.

In 2010 he was appointed as the dedicated legal specialist for the High Complex Debt Team based at Megawatt Park in Sunninghill. In May 2012, Mr van Heerden was appointed as manager of the Legal Delivery and Support Department in Gauteng Central.

In 2014, he joined the legal department of Afrocentric Health (Pty) Ltd, where he was senior manager until he joined the Office of the Tax Ombud in May 2015.



## **SENIOR MANAGER: COMMUNICATIONS & OUTREACH PEARL SEOPELA**

BA, BCom Honours, MCom, MDP

**Ms Seopela's** career has encompassed a range of sectors, including medical schemes, telecommunications, public sector auditing and pension fund administration, focusing on public relations, corporate communication and reputation management.

During her time in government pensions, Ms Seopela did pioneering work in the area of communications engagement with stakeholders such as organised labour, government departments and members of the Government Employees Pension Fund (GEPF). As a result, the GEPF received the Institute of Retirement Funds' award for Best Communication Strategy in 2009, the special award for pioneering communication engagement with Organised Labour, also in 2009, and the 2008 award for Best Publication in Stakeholder Communication.



## **SENIOR MANAGER: OFFICE ENABLEMENT MMAMELAO MOIRA MALAKALAKA**

BCompt, Professional Accountant (SA)

**Ms Malakalaka** has over 10 years' experience in finance and administration at government institutions. She completed her articles with the Auditor-General South Africa. She then went on to work as Head of Finance at the National Electronic Media Institute of South Africa (NEMISA), where she was later promoted to Chief Financial Officer (CFO), responsible for finance, risk management, procurement and corporate support services such as facilities, IT and human resources.

As CFO of NEMISA and Head of Finance, Ms Malakalaka achieved eight consecutive unqualified audit reports. She was also an audit committee member of the Independent Police Investigative Directorate (IPID).





# **PART B**

## PERFORMANCE INFORMATION

# 1. SITUATIONAL ANALYSIS

## 1.1. SERVICE DELIVERY ENVIRONMENT

Demand for the OTO's services has grown exponentially since inception, placing pressure on the OTO's complaints-handling capacity. Adding to the pressure on existing capacity is a lack of awareness and understanding among taxpayers about SARS's internal complaints process and procedures, leading to taxpayers submitting complaints prematurely to the Office of the Tax Ombud. This creates significant unnecessary work for the OTO, delaying the resolution of valid complaints, and often results in taxpayer frustration and the perception of an unresponsive Tax Ombud.

The Office's ongoing reliance on SARS for financial management, IT and procurement services, among others, is seen as a significant strategic risk, as it conflicts with the notion of independence and reduces the likelihood of building trust and confidence in the tax administration system. Perceived and alleged corruption in the public sector, as well as the misuse of public funds, may adversely affect taxpayer confidence and compliance. This may lead to more aggressive tax collection measures by SARS and an increase in the number of complaints to the Office of the Tax Ombud.

Perennial delays by SARS in finalising taxpayer complaints to the OTO within a stipulated timeframe may also materially diminish taxpayers' confidence in the tax administration system.

## 1.2. ORGANISATIONAL ENVIRONMENT

The Office of the Tax Ombud takes cognisance of the ever-increasing need for its services among taxpayers and other stakeholders, as well as the priorities set in the National Development Plan (NDP) 2030. The intention is to ensure that the Office contributes to the fulfilment of the NDP and takes a systematic, well-thought-out approach towards its future as a sustainable, independent institution. For this purpose, the OTO is currently developing a business case for a cost-effective and independent organisational model with the assistance of the Government Technical Advisory Centre (GTAC).

## Accessibility, awareness and stakeholder engagement

The OTO's services are free to taxpayers and designed to be easy to access without taxpayers having to visit the Office. Taxpayers can complain directly to the OTO or appoint tax practitioners to lodge complaints on their behalf. Complaints can be lodged by email, post and fax or in person at the OTO offices. As it is important to reach taxpayers throughout the country and across economic sectors, the Office runs stakeholder engagements and awareness campaigns, often in collaboration with recognised controlling bodies, government entities and private sector fora. Other platforms used to reach and engage stakeholders are joint events, regionally based fora, exhibitions, media, the OTO's website and social media accounts and its quarterly external newsletter, Fair Play.

## Human resources

The OTO places a high premium on establishing resilient complaints-resolution processes and engaging highly skilled employees. Seven new positions were created during the financial year under review, including two positions for Systemic Investigators. This followed the extension of the Office's mandate to include the ability to systemic investigations and emerging issues at the request of the Minister or on the Tax Ombud's initiative with the approval of the Minister of Finance.

The total headcount of the OTO as at 31 March 2018 was 35 employees, compared to 29 in the previous financial year.

## Processes for resolving taxpayer complaints

Taxpayer complaints lodged with the OTO must relate to a service, procedural or administrative matter arising from the application of the provisions of a tax Act by SARS. A complaint is accepted if it falls within the mandate of the OTO in terms of section 16 of the Tax



Administration Act. The proviso, however, is that the taxpayer first needs to exhaust SARS's internal resolution mechanism. If these mechanisms have not been exhausted, the Tax Ombud may determine if there are compelling circumstances, based on section 18(5), to review the complaint.

The complaints-resolution process includes acknowledging each taxpayer complaint; determining if it falls within the OTO mandate; investigating the complaint and then reviewing it and making a recommendation to SARS on how to resolve the matter; giving the taxpayer regular

feedback on the progress of the complaint until it is finalised, and compiling a finalisation report once the complaint has been resolved.

## Contacts received

During the reporting period, the OTO received 17 920 contacts: 14 268 were queries and 3 652 were complaints. Previously complaints not yet captured were misstated as 462 instead of 164.

The preferred mode of contact by taxpayers is email (95.37%) followed by fax, post and walk-in visits.

## Categories of users who lodged complaints

Most users who contacted the OTO in the 2017/18 financial year were individual taxpayers, who accounted for 53.77% of users. Tax representatives accounted for 46.23% of users. See the table below for details.

**Table 1: Categories of users**

Categories of users	Number	%
Taxpayer	2 010	53.77%
Taxpayers' representatives	1 728	46.23%
<b>Grand total</b>	<b>3 738*</b>	<b>100%</b>

\* Total captured complaints

## Geographical spread of complainants

The geographical spread is based on where the taxpayer is registered. The majority of taxpayers whose complaints were captured reside in Gauteng (65.65%), followed by the Western Cape (14.15%). The table below provides a detailed breakdown.

**Table 2: Geographical spread of captured complainants**

Region	Number	%
Gauteng	2 454	65.65%
Western Cape	529	14.15%
KwaZulu-Natal	375	10.03%
Eastern Cape	199	5.32%
Free State	173	4.63%
Limpopo	4	0.11%
London	2	0.05%
New Jersey	1	0.03%
Zimbabwe	1	0.03%
<b>Grand total</b>	<b>3 738*</b>	<b>100%</b>

\* Total captured complaints

## Analysis of complaints processed and validated

The Office began the financial year with 212 complaints that were yet to be validated. Total complaints validated for the period under review came to 3 637, of which 1 945 were accepted as falling within the Office's mandate, 446 were later terminated and 1 692 were rejected. The latter either did not fall within the mandate of the Office or were prematurely lodged by taxpayers.

## Categories of accepted complaints

The majority of the complaints reviewed by the OTO related to refunds (34.69%), followed by dispute resolution (29.85%), and assessments (10.20%). The table below depicts these categories.

**Table 3: Categories of accepted complaints by occurrence**

Category	Occurrence	Proportion
Refunds	816	34.69%
Dispute resolution	702	29.85%
Assessments	240	10.20%
Debt management	126	5.36%
Verification	108	4.59%
General enquiry	103	4.38%
Account maintenance	75	3.19%
Interest & penalties	47	2.00%
Fraud	46	1.96%
Audit	33	1.40%
System problems	25	1.06%
Tax compliance status	13	0.55%
Tax directives	12	0.51%
Customs	4	0.17%
Transfer duties	2	0.09%

**Table 4: Analysis of accepted complaints**

Description	Complaints
Opening balance brought forward	711*
Accepted	1 479
Less complaints finalised	(1 404)
Complaints carried over to 2018/19 financial year as not finalised	786

\*Previously reported as 897. The overstatement was due to cancelled/terminated/rejected complaints, under-reporting of accepted complaints and finalised complaints.

At the end of the reporting period, 786 accepted complaints were carried forward to the 2018/19 financial year. The number of unresolved cases carried forward from previous periods remains a concern and is due to delays by SARS in considering the recommendations of the Tax Ombud.

## Resolved complaints age analysis

The table below shows the time it took for SARS to finalise recommendations from the OTO.

**Table 5: Resolved complaints age analysis**

Number of days it took SARS to finalise complaints	Total number finalised
1 - 15 days	1
16 - 31 days	34
32 - 60 days	226
61 - 90 days	193
Over 91 days	950
<b>Total complaints finalised</b>	<b>1 404</b>

## Value of refunds to taxpayers

In relation to refunds paid as a result of the OTO's intervention, the table below shows the top 10 amounts that were paid in 2017/18, bringing much-needed relief to the entities concerned.

**Table 6 : Top 10 refunds paid to taxpayers**

Tax type	Refunds paid to taxpayers
VAT	R158 286 298.15
VAT	R90 973 572.17
VAT	R65 645 769.06
VAT	R45 976 915.15
VAT	R28 764 683.94
VAT	R20 735 422.45
VAT	R13 186 693.10
CIT	R13 064 621.52
CIT	R5 138 131.94
CIT	R4 321 400.12

## Recommendations sent to SARS

99.79% of recommendations made were implemented by SARS, whilst 0.21% were not implemented.

## 1.3. KEY POLICY DEVELOPMENTS AND LEGISLATIVE CHANGES

There were no changes in the period under review.

## 2. REPORT IN TERMS OF SECTION 19 OF THE TAX ADMINISTRATION ACT

In terms of section 19(1)(b), the Tax Ombud is required to submit an annual report to the Minister within five months of the end of SARS's financial year. The report must contain, in terms of section 19(2), a summary of at least 10 of the most serious issues encountered by taxpayers and identified systemic and emerging issues. It must also contain the inventory made of such issues and recommendations, including the administrative action appropriate to resolve the problems encountered by taxpayers.

Part 1 contains a summary of the most serious issues and identified systemic and emerging issues. Part 2 contains a summary of formal recommendations made to SARS. Part 3 contains systemic issues and investigations.





# **PART 1**

## **SERIOUS ISSUES AND IDENTIFIED SYSTEMIC AND EMERGING ISSUES**





## SUMMARY OF THE MOST SERIOUS ISSUES EXPERIENCED BY TAXPAYERS, AND IDENTIFIED SYSTEMIC AND EMERGING ISSUES

No	Issue	Summary	Category (serious/systemic/emerging)	Action taken/recommendation by the OTO
1	Delay in payment of refunds	<p>1.1. Failure to link submitted documentation requested by SARS to the main file;</p> <p>1.2. Unwarranted placing of special stoppers;</p> <p>1.3. Using the filing of new returns as an excuse to block refunds;</p> <p>1.4. Delay in the lifting of stoppers and lack of timeframe for doing so;</p> <p>1.5. Refunds for one period being withheld while an audit/verification is in progress for another period;</p> <p>1.6. Using historical returns to delay the payment of refunds;</p> <p>1.7. Raising assessments to clear unallocated credits;</p> <p>1.8. Requesting further information which was previously requested and submitted during audit;</p> <p>1.9. Assessments successfully disputed, but refund still not paid out;</p> <p>1.10. Diesel refunds;</p> <p>1.11. Raising assessments prematurely;</p> <p>1.12. Debt set-off notwithstanding a request for suspension of payment.</p>	Serious/systemic	<p>1.1. When the requested documents are uploaded at SARS's office, they should be linked to the request.</p> <p>1.2. Banking details given by taxpayer must be duly recorded and verified timeously to avoid the delay in the payment of refunds.</p> <p>1.3. There is no legal basis for SARS to withhold refunds on this basis and SARS must ensure that the remedy it put in place to solve the problem is effective.</p> <p>1.4. The stoppers must be removed as soon as possible once the cause thereof has been resolved.</p> <p>1.5. The provisions of the TAA must be adhered to and this practice should cease.</p> <p>1.6. The use of historical returns to delay the payment of verified refunds is wrong and should cease.</p> <p>1.7. The practice should cease altogether.</p> <p>1.8. Where an auditor failed to ask for all documents at once, and the refund is consequently delayed, SARS should pay interest on the delayed refund.</p> <p>1.9. SARS should set reasonable timeframes for revising a successfully disputed assessment and within which to pay the refund.</p> <p>1.10. It was suggested that the returns be split.</p> <p>1.11. Taxpayers need to be educated and encouraged to furnish all the required documents or information at once. After the report was issued SARS was made aware of instances where assessments were raised prematurely due to its fault and not the taxpayers' and a further response was requested in terms of this report.</p> <p>1.12. SARS's systems must be updated to ensure that they comply with the provisions of the TAA. Whenever legislation changes, any automated actions performed must be changed to comply with legislation.</p>



Action taken by SARS	Period in OTO's inventory	Results
<p>On 7 February 2018 SARS responded on each issue:</p> <ol style="list-style-type: none"> <li>1.1. Procedures would be reaffirmed internally to SARS staff; upload size for documents would be increased from 2mb to 5mb; and SARS was exploring system improvements i.e. allowing taxpayers to re-open a case to submit further documents.</li> <li>1.2. SARS undertook to finalise 80% of all "special stoppers" within 21 days and "banking detail stoppers" within 5 days.</li> <li>1.3. SARS implemented system changes to stop this practice for VAT; however it seemed not to be effective and SARS implemented a manual solution for income tax pending the system being fixed. The fix will be rolled out for other tax types in future.</li> <li>1.4. Same as 1.2 above.</li> <li>1.5. Same as 1.3 above.</li> <li>1.6. SARS would align its systems to ensure consistency and consider basing compliance status on a limited historical period.</li> <li>1.7. SARS will ensure strict compliance with the TAA and develop new procedures to deal with unallocated credits in line therewith.</li> <li>1.8. Officials will be reminded to comply with existing procedures when requesting relevant information.</li> <li>1.9. SARS was considering internally adopting a shorter period than the 45 days allowed by legislation to ensure timeous revision.</li> <li>1.10. SARS noted that the intention to split the returns was already included in the 2018/19 budget review.</li> <li>1.11. Educational material would be reviewed and standard verification letters will be updated to be more specific where possible. No response was given on the subsequently identified matters.</li> <li>1.12. The process for applying for suspension of payment has been automated since May 2017.</li> </ol>	52 months	<p>Various engagements have taken place between the OTO and SARS. In the last engagement the OTO requested SARS to provide specifics on the implementation of each of the OTO's recommendations to enable it to monitor the effectiveness efficiently. SARS is yet to respond.</p>

No	Issue	Summary	Category (serious/systemic/emerging)	Action taken/recommendation by the OTO
2	Incorrect allocation by SARS of payments made by taxpayers.	Payments made by taxpayers are incorrectly allocated, resulting in a debt on SARS's systems. On many occasions SARS institutes collection steps to recover this incorrect debt.	Serious/systemic	Recommendation made for SARS to ensure that payments made to SARS are allocated correctly and timeously.
3	Taxpayers being affected by employers' non-compliance with legislation relating to IRP5s.	While employers have a legal obligation to submit reconciliations, issue IRP5s and correct incorrect IRPs, there is no mechanism to enforce this. This results in SARS sending these taxpayers to the employers and the employers sending taxpayers back to SARS. Furthermore, SARS branches are not consistent in attending to these matters.	Serious/systemic	Recommendation made for SARS to enforce the legislation to ensure that employers reconcile their Pay as You Earn (PAYE) and hold them accountable for non-compliance. The development of a standard operating procedure is recommended to ensure uniformity on how this issue is addressed across all SARS branches. This will assist those employees whose employers have not submitted IRP5 reconciliation and those who do not have IRP5 certificates, due to these issues.
4	Inconsistency by SARS in giving taxpayers timelines for finalisation of audits/verifications	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.	Serious/systemic	Recommendation made for SARS to ensure that auditors adhere to similar turnaround times and for these turnaround times to be published on the SARS website for taxpayers to be aware of them.
5	Victims of identity theft being held liable for tax debts.	SARS holds taxpayers who were victims of identity theft liable for the tax debt even in instances where SARS was investigating or aware of the alleged fraud.	Serious/systemic	Recommendation made for SARS to investigate and assist taxpayers who have proved to be victims of identity fraud.
6	Non-adherence by SARS to dispute resolution turnaround times.	On many occasions SARS does not adhere to the dispute resolution turnaround timeframes as envisaged in chapter 9 and under the rules for Dispute Resolution as promulgated under section 103 of the TAA.	Serious/systemic	Recommendation made for SARS to strictly adhere to the ADR rules at all times and provide taxpayers with reasons for non-adherence. The outcome of each objection and appeal must be implemented correctly and timeously.

Action taken by SARS	Period in OTO's inventory	Results
In the specific cases referred to SARS, its staff have corrected the allocations and apologised; however, SARS has indicated that in future it will do correct allocations and taxpayers need to use the correct PR number in order to avoid misallocations.	24 months	The OTO is monitoring this issue.
SARS maintains that the responsibility for issuing correct IRP5 certificates remains with the employer as a person that is responsible for the submission of the PAYE reconciliation. In cases where employees has not received an IRP5, there is an alternative process at SARS to assist in this regard.	32 months	The OTO is monitoring this issue.
Turnaround times for the completion of audits cannot be pre-determined as this depends on the nature of the case. SARS said it is not possible for contact centre agents to provide possible turnaround times for audits being conducted.	24 months	The OTO is monitoring this issue.
SARS has put processes in place to assist taxpayers who are victims of identity fraud.	45 months	The OTO is monitoring this issue.
SARS is in the process of automating its objection and appeal processes for the different tax types. By April 2016 these were limited to companies and individuals but SARS has since included this automation for all tax types except for Secondary Tax on Companies (STC), PAYE and tax on trusts.	24 months	The OTO is monitoring this issue.

No	Issue	Summary	Category (serious/systemic/emerging)	Action taken/recommendation by the OTO
7	SARS's failure to take information at its disposal into account.	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.	Serious/systemic	Recommendation made for SARS to ensure that assessments are corrected in accordance with the supporting documents submitted.
8	SARS taking collection steps when legally barred from doing so.	In many cases where taxpayers have submitted requests for suspension of payment, SARS takes recovery steps before a decision is taken on the request regardless of an express prohibition to do so in terms of section 164(6).	Serious/systemic	Recommendation made for SARS to ensure adherence to the legislative provisions relating to requests for suspension of payment.
9	Delay in eFiling profile transfer between tax practitioners due to system error. (Tax practitioners were advised by SARS that they are waiting for the system developer to do the fix on the system).	The eFiling system has delays in transferring the taxpayer's profile from one tax practitioner to another or even to the taxpayer.	Systemic	Recommendation made to SARS to fix eFiling profile transfer.
10	Non-adherence to legislative requirements in respect of Final Demand/ Third Party Appointment (TPA) in terms of section 179 (5) of the TAA.	Final demand letters issued by SARS do not comply with the legislative requirements. The letters do not contain the prescribed information. This means that letters issued by SARS are defective and may be set aside if challenged.	Serious/systemic	A formal recommendation was sent to SARS that letters of final demand preceding the issuing of a third party appointment must contain the prescribed information.
11	Incorrect correspondence relating to condonation of late filing of objection provided	In many instances, SARS makes decisions not to grant condonation; however, when communicating its decision to the taxpayer, SARS responds as if the taxpayer did not furnish reasons for the late filing. Thus, it deems the objection invalid.	Serious/systemic	Recommendations made for SARS to ensure that the Alternative Dispute Resolution (ADR) rules are applied consistently.

Action taken by SARS	Period in OTO's inventory	Results
In reported cases where supporting documents were already submitted, SARS finalised the complaints and notified the taxpayer accordingly.	24 months	The OTO is monitoring this issue.
SARS indicated that suspension of payment requests have been dealt with manually. SARS is in the process of rolling out suspension requests on eFiling. This is limited to income tax but will in future include all tax types to ensure they are attended to on SARS's systems.	24 months	The OTO is monitoring this issue.
SARS stated that the query is receiving attention. As the issue raised is an exception to the rule, the change to allow the exception does take time. The case is currently with SARS system development partners and feedback will be provided once a decision is made.	15 months	The OTO is monitoring this issue.
A response was received on 28 February 2017 wherein SARS acknowledged that there are deficiencies in the letters, and that active measures were being taken to review the letters.	15 months	The issue is being monitored to ensure that same is resolved before it is removed from the register.
SARS indicated that the system changes launched in May 2017 would introduce a request for reasons for late filing of a dispute. Further, the objection against a decision not to condone late filing will also be a standalone process to avoid confusion.	18 months	The changes were indeed introduced by SARS and so the OTO is monitoring the effectiveness thereof.

No	Issue	Summary	Category (serious/systemic/emerging)	Action taken/recommendation by the OTO
12	SARS escalations and complaint management procedures are confusing to taxpayers and SARS staff are 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 professionals.	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 complaints.	Systemic	Recommendation made for SARS to educate taxpayers on the correct procedure to lodge complaints. A criterion was established for the OTO to accept complaints under these circumstances where the internal SARS complaints mechanism was not exhausted under s18 (5).
13	Inability by SARS to confirm correspondence was sent	Where taxpayers allege that they did not receive correspondence from SARS, the revenue collector 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 specified date.	Systemic	A formal recommendation was sent to SARS, wherein it was recommended that SARS: <ol style="list-style-type: none"> <li>1. Ensures that it keeps records of all communication sent to taxpayers. The said records should contain the method of transmission, date of transmission and confirmation that it was in fact sent.</li> <li>2. SARS to consider putting a policy or procedure in place to ensure the proper application of section 253 (2) and (3).</li> </ol>
14	Tax compliance status/system (TCS)	From the complaints that were lodged with OTO, various trends were noticed which result in a negative impact that is caused by the manner in which the current TCS is designed.	Systemic	A formal recommendation was sent to SARS on 19 December 2017 pertaining to this issue. Essentially, the system is designed to be live, thus meaning immediately anything is outstanding, meaning that as soon as anything is outstanding it will reflect as red (non-compliant). There are various factors that could lead to the taxpayer's compliance being red instead of green. These include (i) outstanding debt, even when it is R1 outstanding; (ii) Outstanding returns; (iii) Non-submission of certain relevant material requested by SARS and; (iv) any transgression that is deemed to be non-compliance by SARS. As much as the OTO applaud and support SARS with the introduction of the TCS, there are, however, certain challenges that are causing undue hardship on taxpayers due to the manner in which the system was designed.

Action taken by SARS	Period in OTO's inventory	Results
SARS undertook to provide taxpayer education.	48 months	The OTO is monitoring this issue.
SARS responded on 15 March 2017 stating that they have realised that manual letters created outside Service Manager caused some challenges with audit trail processes. As a result, SARS was exploring all possibilities to enhance this by ensuring that letters are sent to taxpayers via email and are also attached to a created case. This will enable SARS to be in a position to prove that the correspondence was indeed sent.	18 months	The OTO is monitoring this issue.
SARS responded in March 2018 on issues raised wherein an undertaking was made to ensure that matters relating to TCS challenges are resolved speedily. In addition, SARS has raised a concern that when the taxpayers lodge their disputes, it is mostly at the last minute for the purpose of applying for a submission of Tax Clearance Certificate (TCC).	3 months	The OTO is monitoring this issue.





# **PART 2**

## **FORMAL RECOMMENDATIONS**

# FORMAL RECOMMENDATIONS

The OTO made one formal recommendation to SARS, with a view to assisting SARS to prevent certain complaints from arising. This is in the interests of ensuring efficiency and fair service to taxpayers. The recommendation made was as a result of the vast number of taxpayers who were affected by the manner in which the current Tax Compliance System is designed.

## 1. TAX COMPLIANCE SYSTEM (TCS)

### 1.1. Background

SARS discovered various cases pertaining to fraudulent tax clearance certificates which were illegally produced and submitted for various purposes. Its response was to introduce a TCS to replace the old TCC system and processes. The full TCS solution has now been implemented. Since the old system has been discontinued, all the TCC functions are now being performed on the new TCS system. This includes applying for all the TCS types (i.e. Good Standing, Tender, Foreign Investment Allowance and Emigration). The result can be printed in the old TCC format or an electronic access pin can be utilised as opposed to a printed TCC. As with the certificate, the taxpayer can share the pin with a third party to verify the tax compliance status electronically via eFiling. Taxpayers are encouraged to utilise the new pin solution for its improved security and ease of use. The new TCS system works like a live system, which means that any changes pertaining to the taxpayer's tax compliance will also change the tax system compliance status.

### 1.2. Discussion of the issue

At present, various taxpayers are being affected by the manner in which the existing tax compliance system is designed. The system is designed to be live, which means as soon as there is anything outstanding, it will reflect as red (non-compliance). Various factors may lead to the taxpayer's compliance being red instead of green. These include: (i) outstanding debts, even when it is R1 outstanding; (ii) Outstanding returns; (iii) Non-submission of certain relevant materials requested by SARS and; (iv) any transgression that is deemed to be

non-compliance by SARS. While the Office applauds and supports SARS for introducing the TCS, it has brought certain challenges that are having an adverse impact on taxpayers. These challenges, listed below, come from complaints received from taxpayers:

- Some government departments are using the TCS pin as part of their payment process, and upon discovering that there is non-compliance, are withholding payments.
- The pin provided may indicate that the taxpayer is non-compliant even when there is a R1 debt. This becomes a huge challenge to taxpayers that are VAT vendors or both VAT vendors and PAYE taxpayers as their returns are submitted on a monthly basis.
- The pin provided may also indicate non-compliance even when there is an outstanding return or payment but the due date has not lapsed, or an acceptable arrangement has been made with SARS for the submission of the return.
- Cases where a debt emanates from fraudulent activities conducted by SARS or former SARS officials also contribute to taxpayers being non-compliant and unable to obtain a tax clearance certificate.
- The system is unable to reflect a taxpayer as compliant in cases wherein a payment arrangement is in place, including approved suspension of any debt in question.
- Some taxpayers have even lost possible contracts due to the tender awarder using the pin as verification for non-tax compliance status, despite the availability of a printed clearance certificate that reflects the tax clearance to be valid for a year.

## 1.2.1 Illustrative cases

Complaint	Impact of the matter
The complaint related to fraud committed by a SARS employee on the taxpayer's VAT account which left the vendor with a huge debt that cannot be corrected by SARS.	As a result of the fraud that was committed, the taxpayer could potentially lose business opportunities because the TCS reflects the taxpayer as non-compliant. Every time the taxpayer requires a tax clearance certificate, the taxpayer has to approach SARS. However, this arrangement does not assist the taxpayer as most suppliers/tender awarders are using the pin for verification. Verifying this taxpayer using the pin will always reflect that the taxpayer is non-compliant, notwithstanding the fact that this matter is known to SARS.
The complaint related to SARS system not reflecting the correct compliance status.	The vendor submitted the VAT returns as required by law on the 25th of every month and the payment due date being the end of the month; however, the TCS will change the status immediately after submission of a return, or reflect the status as non-compliant even though the due date is the end of the month. This has resulted in the vendor losing or not being considered for various government tenders. Most government departments use the TCS pin to verify the tax compliance status of vendors. As soon as there is non-compliance related to the above, they will disqualify the company from the tender process or even hold back their payment. Such action puts businesses in financial hardship.
The taxpayer's status on SARS's side is incorrectly reflecting as non-compliant, because of a SARS system error. The taxpayer has had to have interim "manual overrides" for about a year now, and each time there is a major crisis because the taxpayer supplies life-saving medication to the Department of Health. In January 2017 this was temporarily resolved due to the intervention of the OTO, but SARS was unable to arrange for a permanent resolution in the two months that followed, and the taxpayer is back in the incredibly urgent position again. They still have a printed version of TCC; however the pin indicates non-compliance.	The taxpayer is currently non-compliant, meaning that it cannot interact with the Department of Health. Apart from the financial implications to the taxpayer, including loss of business and financial hardship, there is also the matter that the taxpayer supplies life-saving medication to the Department of Health. This is then literally a life and death matter.

## SARS's response

The TCS system is not designed to categorise debt *per* cause of fraudulent activity. This would be an exception for which the taxpayer could challenge the status. If SARS agrees, the status can then be changed to “compliant” for a user-defined period. (This period would be set for the time needed to correct the accounting errors.)

SARS also became aware of the system defect pertaining to due dates and this was rectified in October 2017. With regard to the arrangements being made for return submission, as far as SARS is aware no arrangements can be made. If these are made between the taxpayer and the investigator or auditor, then these arrangements would be exceptions and the mechanism designed to cater for exceptions in the TCS system is the challenge status functionality. This would allow the SARS user to override the system status to be compliant for a user-defined period (this period could be set to correspond with the arrangement made).

The current printed version of the TCC is very clear in that it indicates that the validity thereof must be verified in order to confirm that it is still compliant and valid at the point where it is received or where the status of the taxpayer is required to be checked. The dates printed are irrelevant and this was widely communicated. The printed TCC was implemented to serve during the transitional period to the new TCS online system. It has always been SARS's intent to completely do away with the printed TCC (old format) at the appropriate time. The PIN and the TCC verification would yield the same result if checked/ verified online on the TCS eFiling solution. It should be recalled that taxpayers prior to TCS could be non-compliant for a number of months while they have printed high number of TCC to attach for tender purposes. The TCS and Pin relate to actual real-time status fortunately.

## 1.3. Recommendations

The Office of the Tax Ombud made the following recommendations:

- SARS should enhance the current system in order to be in a position to address some of the aforementioned problems. This recommendation is based on the negative impact that the current inflexibility of the system has when it comes to revenue and the business growth of the affected parties. The Office of the Tax Ombud is of the view that the proposed enhancement of the current system will circumvent high levels of stress and frustration that most taxpayers experience as a result of the challenges.
- In addition, the Office of the Tax Ombud believes that the submission of this formal recommendation will assist SARS in noting areas that require an improvement as far as the current system is concerned.
- Lastly, as much as there is a dispute process for any non-compliance that a taxpayer may be aggrieved about, this process provides SARS with 21 days to resolve it, which may be longer when it comes to urgent matters, thus not resolving some of the challenges pinpointed.

SARS has responded to the issues raised and the OTO is still considering the responses provided.

### 1.3.1. Important note

The Office of the Tax Ombud's recommendations are not intended to imply that SARS does not have a right to change the taxpayer's compliance status whenever it is necessary. The provisions of the Tax Administration Act do allow SARS to do so under certain circumstances except in respect of the tax debt contemplated in section 167 or 204 or tax debt that has been suspended under section 164 or that does not exceed the amount referred to in section 169(4). Lastly, the Office of the Tax Ombud does believe that there is a need for SARS to educate government departments about the danger of only relying on the use of the pin to verify the tax compliance status of their potential suppliers without correctly following Treasury instructions related to tax compliance.







# **PART 3**

## SYSTEMIC ISSUES AND INVESTIGATIONS

# 3. SYSTEMIC ISSUES AND INVESTIGATIONS

## 3.1. Systemic issues

A systemic issue is regarded as the underlying cause of a complaint, which may impact a large number of taxpayers. A systemic review therefore arises when an issue is identified that may affect a large number of taxpayers or a segment of the population. The Office conducts reviews of the individual service complaints and telephone calls received, with the goal of identifying possible trends. The OTO engages recognised controlling bodies, tax professionals, academia and communities, and continuously scans and receives media queries to assist in identifying systemic issues.

## 3.2. Investigating systemic issues

In terms of section 16(2)(f) of the TAA, the Tax Ombud must identify and review systemic and emerging issues related to service matters or the application of the provisions of this Act or procedural or administrative provisions of a tax Act that impact negatively on taxpayers. In line with the Tax Ombud's mandate, certain systemic matters have been identified and relevant recommendations forwarded to SARS for implementation. In addition, following complaints received from various taxpayers, a systemic investigation into undue delays in the payment of refunds was conducted and relevant findings with recommendations were released to the public on 5 September 2017.

## 3.3. Methodology for identifying serious systemic and emerging issues

The Office of the Tax Ombud considers a number of factors when identifying and evaluating various issues that taxpayers encounter, culminating in a formal recommendation being made on the basis of:

- The impact on taxpayer rights;
- The negative impact on SARS;
- The seriousness of the issue; and
- The number of taxpayers affected.

## 3.4. Preliminary research survey of systemic issues

During the 2017/18 financial year, the systemic investigators conducted a preliminary research survey to solicit information about various issues brought to the OTO's attention through complaints submitted to the Office. Some of the information and complaints were raised during outreach activities, by media and recognised controlling bodies, taxpayers, tax practitioners and the business community.

As part of the OTO monitoring processes of the systemic matters identified, the OTO embarked on an information-gathering drive where taxpayers and taxpayer representatives were requested to complete a short questionnaire. The questionnaire was distributed to the South African Institute of Chartered Accountants (SAICA), the South African Institute of Professional Accountants (SAIPA), South African Institute of Tax Professionals (SAIT) and various other industry bodies and taxpayers in general.

## Desired outcomes of the preliminary research

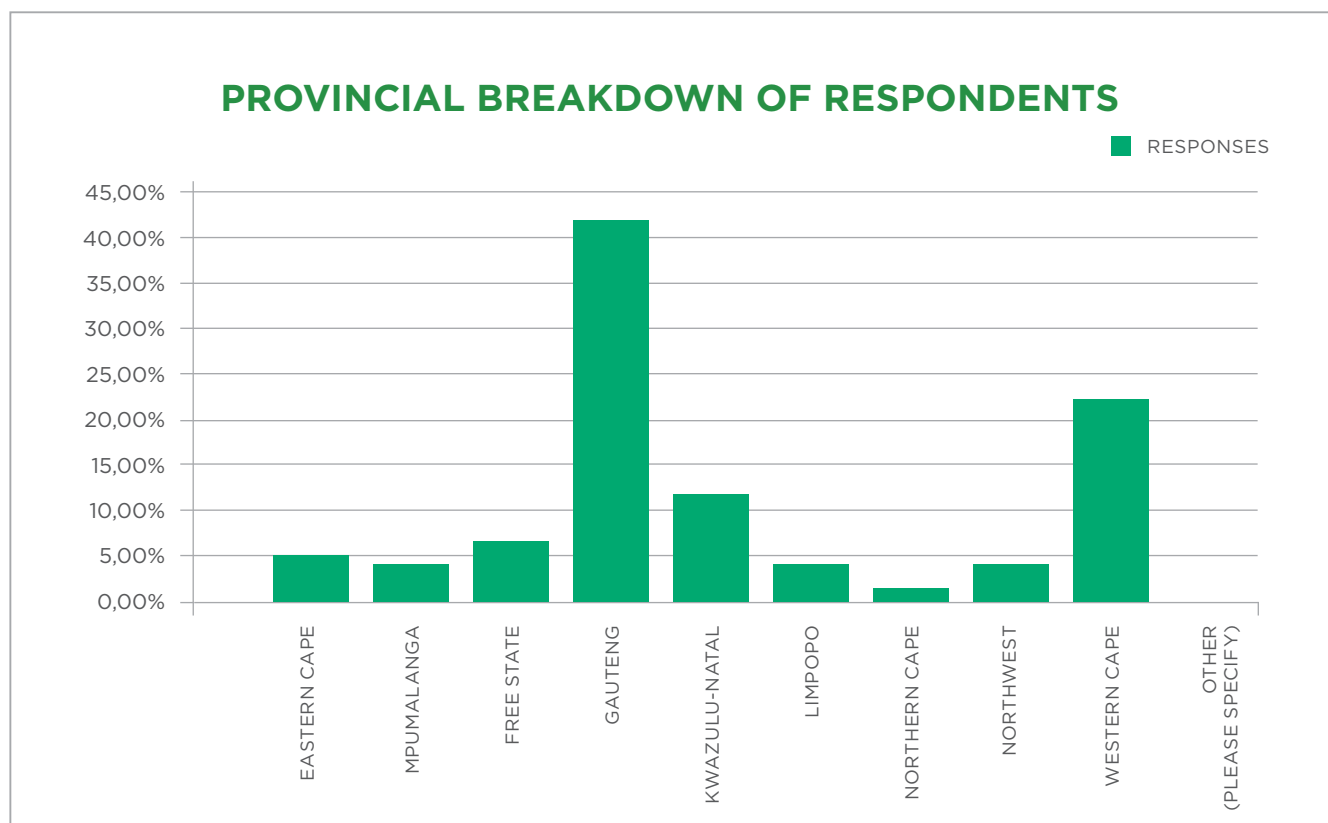
The desired outcome was to ascertain the following:

- The level of understanding by taxpayers and taxpayer representatives of the term systemic issue;
- Whether taxpayers and tax practitioners were still experiencing any of the systemic challenges;
- Whether the systemic issues raised were still being experienced and if the control measures put in place to prevent their occurrence were effectively implemented by SARS or needed to be reconsidered and adjusted and;
- Gain a better understanding of issues experienced by the taxpayers.

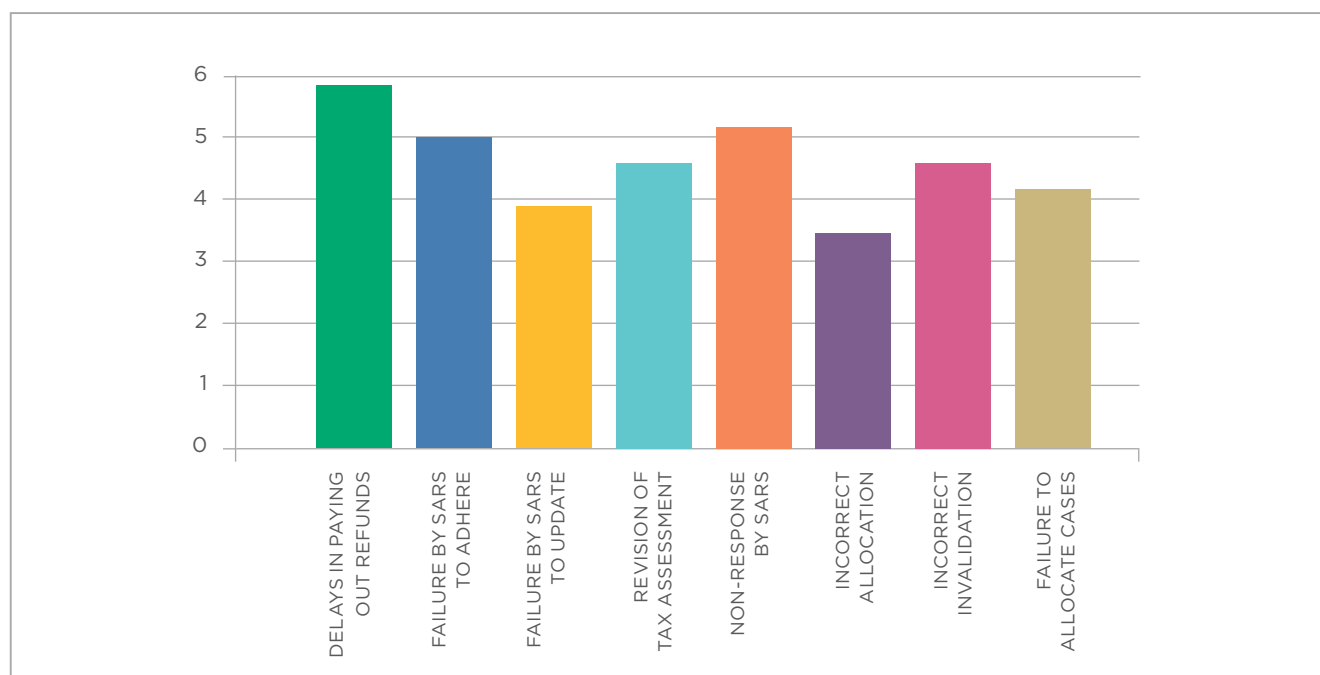
The OTO received overwhelming support from all the stakeholders concerned. Well over 1 500 responses were received during the reporting period.

## Demographics of respondents

The majority of survey respondents resided in and were registered in Gauteng.



## Description of systemic issues researched



## Description of systemic issues researched

Description	Colour code
Delays in paying out refunds	Green
Failure by SARS to adhere to dispute resolution timelines	Blue
Failure by SARS to update taxpayer banking details	Yellow
Revision of tax assessment without informing the taxpayer	Light Blue
Non-response by SARS on taxpayer requests/queries/correspondence	Orange
Incorrect allocation of payments by SARS, resulting in a debt on its systems. (In many occasions SARS still proceeds with collection steps to recover this incorrect debt.)	Purple
Incorrect invalidation of objections	Red
Failure to allocate cases referred for audit to auditors within the turnaround time	Dark Blue

## Conclusion

During the preliminary investigation, certain trends were noted in respect of problems that taxpayers experience. The initial observation clearly reflects that most of the systemic issues already raised by the OTO are still experienced by taxpayers. In conclusion, delays in the payment of refunds are still the main systemic issue for most participants in the survey. The OTO is in the process of finalising the report on the findings and a session will be scheduled with SARS to address the issues raised and to determine the best way to address the various issues.





# 3 STRATEGIC OUTCOME-ORIENTED GOALS



# 3. STRATEGIC OUTCOME-ORIENTED GOALS

The vision of the Office of the Tax Ombud is to strengthen taxpayers' trust and confidence in tax administration by providing an impartial mechanism for dispute resolution. To achieve that four strategic goals have been identified.

Strategic outcome- oriented goals	Goal statement
<b>ACCOUNTABILITY</b>  Rational and fair application of the tax administration process	It is important to continuously provide rational and fair reasons for recommendations and action taken, while also ensuring that complainants understand the rationale and feel that the process has provided sufficient opportunity for their case to be considered fairly and impartially.
<b>INDEPENDENCE</b>  Structurally independent Office of the Tax Ombud	By becoming truly independent, structurally and operationally, it will be possible to limit the risk of perceived bias.
<b>EFFICACY</b>  Prompt and efficient resolution of complaints	<p>The objective is to become truly taxpayer-centric by providing a consistently high-quality service at no cost to the taxpayer, with specific attention to:</p> <ul style="list-style-type: none"> <li>• Consistently achieving a taxpayer service promise;</li> <li>• Meeting the specific needs of taxpayer segments (practitioners, individuals, businesses, corporates);</li> <li>• Enabling taxpayers to access services through the channel of their choice;</li> <li>• Engaging taxpayers through easy-to-understand, simple, transparent and quick processes;</li> <li>• Ensuring all complainants (whether their complaints are valid or not) trust the tax administration system;</li> <li>• Ensuring staff are customer-oriented, technically proficient and professional; and</li> <li>• Adopting technologies that make processes easy and convenient for taxpayers and staff.</li> </ul>
<b>SECURITY AND CONFIDENTIALITY</b>  All information is secure and treated in strict confidence	It is vital to continuously address the evolving threats associated with ensuring information and communication remain confidential.





# 4 PERFORMANCE INFORMATION

# 4. PERFORMANCE INFORMATION BY PROGRAMME

## 4.1. PROGRAMME 1: ACCESSIBILITY AND OPERATIONS

### Programme purpose

In support of strategic objectives, the OTO will provide a high-quality, taxpayer-centric service so that taxpayers understand the rationale for all recommendations, which in turn are impartial and executed in a manner that is highly efficient.

### Strategic objectives

- Ensure all recommendations are perceived as fair and impartial and complainants understand the rationale behind the recommendations made.
- Create an agile organisation able to efficiently scale to meet demand.

### Highlights

During the reporting period, intensive efforts, through outreach programmes, were implemented to ensure that taxpayers became aware of our mandate.

The Office continued to ensure efficient and effective resolution of complaints; in the year under review 90% of these recommendations were sent to SARS within three days of reviewing a complaint.





# ACCESSIBILITY AND OPERATIONS

## KEY PERFORMANCE INDICATORS, PLANNED TARGETS AND ACTUAL ACHIEVEMENTS

### Programme: Accessibility and Operations

Strategic objectives	Performance indicator	Actual achievement 2014/15	Actual achievement 2015/16
Ensure all recommendations are perceived as fair and impartial and complainants understand the rationale behind the recommendations made.	% of complainants understanding the recommendations made.	Target was not planned	Target was not planned
Create an agile organisation able to efficiently scale to meet demand.	% of cases evaluated and reviewed within agreed turnaround time of 5 days after capturing.	Target was not planned	74.25%
	% of recommendations sent to SARS within 3 days of reviewing a complaint.	Target was not planned	55.26%
	Average cost reduction <i>per</i> complaint, year on year.	Target was not planned	Target was not planned



Actual achievement 2016/17	Planned target 2017/18	Actual achievement 2017/18	Indicator status	Deviation from planned target to actual achievement for 2017/18	Comment on deviations
Target was not planned	60%	0%	Not achieved	-60%	A measurement tool was still to be developed.
69%	50%	17%	Not achieved	-33%	An investigation to be conducted to determine adequate resources required. Implementation will take place in the new financial year to acquire a system to address the challenge.
71%	50%	90%	Achieved	40%	The current year target was revised downwards due to the prior year's low achievement and the high volume of total cases that needed to be approved. Approvers have put in extra hours to exceed the target.
Target was not planned	0%	-100%	Not achieved	-100%	Capacity management and activity based costing studies to be conducted to determine adequate resource requirements. Implementation will take place in the new financial year to acquire a system to address the challenge.

## STRATEGY TO OVERCOME AREAS OF UNDERPERFORMANCE

Underperforming indicators	Strategies to address underperformance
% of complainants understanding the recommendations made.	Connection survey to be conducted in the new financial year for complaints dealt with. The sourcing of the system will begin in the new financial year.
% of cases evaluated and reviewed within the agreed turnaround time of 5 days after capturing.	Capacity management studies to be conducted to determine adequate resource requirements and performance management issues.  Time and motion studies had resumed towards the end of the fourth quarter to determine the time taken <i>per</i> step in the complaints review process; the outcome will enable management to make decisions based on the set timeframes.
Average cost reduction <i>per</i> complaint, year on year.	Activity based costing studies to be conducted to determine adequate resources required.

### Strategic intent

In the next financial year, the focus will be on the following:

- A survey questionnaire to check whether taxpayers who complained understand the recommendations made by the OTO and perceive the process as fair and impartial.
- A time and motion study will be conducted to determine the time taken *per* step in the complaints review process. The results will enable management to make decisions based on the set timeframes. In addition, a capacity management study will be conducted to determine adequate resource requirements when dealing with complaints. This will also assist in creating an adaptive organisation that is able to efficiently meet taxpayer demands.
- Furthermore, a business case will be developed to enhance the current system to ensure the accuracy of data management and improve the monitoring and reporting process.

In conclusion, as part of improving the customer experience, the OTO will implement a customer satisfaction survey to determine taxpayers' perceptions of the quality of the OTO's services. The Office will continue to conduct investigations into taxpayers' complaints in pursuit of achieving the vision of strengthening taxpayers' trust and confidence in tax administration. In performing investigations, the Office will strive to adhere to the prescripts that govern its roles and responsibilities as an impartial and independent institution.



# AWARENESS AND EDUCATION



## 4.2. PROGRAMME 2: AWARENESS AND EDUCATION

### PROGRAMME PURPOSE

In support of the strategic objectives, the OTO will promote awareness and education through marketing, communication and public relations services, which will be measured according to the level of awareness within the taxpayer population, perceived level of the OTO's independence, understanding of the complaints procedure and brand recognition.

### STRATEGIC OBJECTIVES

- a) Improve taxpayers' awareness of the services of the OTO
- b) Positive brand recognition

### HIGHLIGHTS

The Office takes great pride in the fact that in the reporting period the Office managed to reach out to the community in various provinces within government and the business community, using presentations and exhibitions to inform taxpayers about their rights and the role of the Tax Ombud. These platforms made an impact among various stakeholders by clarifying how the Office deals with complaints against SARS and what complaints fall within the OTO mandate.

The following highlights were achieved in the year under review:

- Extensive use of social media platforms to communicate about OTO service throughout the year resulted in an increase in social media followers.
- Increased media coverage of the OTO and its leadership, and growth in stature and influence.
- Identified and nurtured stakeholder collaborations, which led to more engagements and presentations to government entities and private sector businesses.
- 176 items of media coverage were received in print, broadcast and digital platforms.

### COMMUNICATIONS AND OUTREACH

The Office reached out to taxpayers throughout the greater part of South Africa and held engagement sessions with some government officials, media, business and community support organisations, while also participating in conferences and trade shows and making use of speaking opportunities. Apart from nurturing existing partnerships with numerous media houses (print, broadcast and digital), Communications and Outreach also established new partnerships by venturing into community print and broadcast, thus reaching citizens often not within the reach of mainstream media houses.

A strong effort was made to position the OTO leadership, including the Tax Ombud, CEO and senior managers, as experts in the tax recourse sphere. This, coupled with extensive engagement with journalists, resulted in the organisation receiving free publicity, sphere and more importantly, extended the Office's reach to new stakeholders.

## PLATFORMS WHERE THE OTO RECEIVED COVERAGE IN 2017/18

Print



### Television interviews

Soweto TV	SABC 1 Yilungelo Lakho & Daily Thetha	ENCA Money line show
DSTV Chanel 404	CNBC Africa Open Exchange Show	SABC1, 2 and 3 news

### Radio

SAFM	Radio Sonder Grense	Phalaborwa FM	Radio 702	Alex FM	MassivMetro
Touch HD	Zibonele FM	Radio 2000	Cape Talk	Metro FM	Ligwalagwala FM
Tru FM	Motsweding FM	Mix FM	YFM	Unisa radio	Classic FM
Kaya FM	Power FM	Thobela FM	Lesedi FM	The 1873 FM	Turf FM and Africa Business Radio

## Online

SABC Online	Times Live	Business Day	Fin24
Business Live	Daily Maverick	City Vision	Netwerk24
The Citizen Online	Moneyweb	IOL	Politicsweb
EWN	Mail & Guardian	City Press	Unisa Enews
Biz-Community	CNBC Africa.com	Infosurhoy	

## ADVERTISING CAMPAIGNS

The campaigns, which focused on targeted taxpayer groups, tax practitioners, the general public and their preferred media for consuming information, were featured on the following platforms:

### Print

A paid advertising campaign in the form of an advertisement unpacking the Tax Ombud's Annual Report 2016/17 was run in the following print media:

- The Mercury
- The Star
- Pretoria News
- Cape Times

### Commercial radio

Paid educational campaigns about the OTO's services and the launch of the Tax Ombud's Annual Report 2016/17 were flighted in the form of interviews on the following stations:

- RSG FM
- Kaya FM
- Motsweding FM
- Munghana Lonene FM

### Digital radio

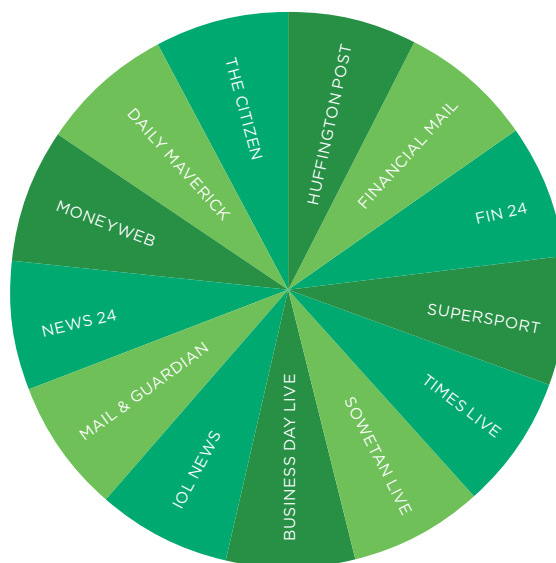
The partnership entailed OTO leadership being interviewed by popular Touch HD presenters and engaging with listeners. The campaign ran for four months, from August until November 2017, and included #taxtuesdays interviews, live read adverts, a social media campaign and a live broadcast during the launch of the Tax Ombud's Annual Report 2016/17.

### Out-of-home

A paid outdoor advertising campaign was flighted on Garsfontein Road in Pretoria with directional signage used to direct taxpayers to the OTO offices in Menlyn. This signage was necessitated by repeated calls from taxpayers for clear directions to the Office, owing to difficulties some had in finding the entrance to the Office.

## Social media and digital

A paid digital advertising campaign was implemented in the form of online mainstream advertising on different media websites, as well as on social media platforms (LinkedIn, Facebook and Instagram). On the right is the list of media websites where the campaign was featured.



## WEBINARS

Webinars have proved to be a very useful tool for creating awareness and discussing important matters and developments in the tax recourse sphere. The OTO held such sessions in collaboration with SAIT and SAIPA.

## COMMUNITY OUTREACH AND PRESENTATIONS

The OTO's campaign to travel the length and breadth of the country and take its services to the doorsteps of communities was intensified with the main focus being in the health sector. The OTO visited nine hospitals (as listed below) where stakeholders were informed about the organisation, as well as how and when to lodge a tax complaint:

Name of Hospitals visited
Pholosong Hospital
Chris Hani Baragwanath Hospital
Mankweng Hospital
Sekororo Hospital
Lebowakgomo Hospital
Kgapane Hospital
Dr CN Phatudi Hospital
Letaba Hospital
Van Velden Hospital

## Presentations

The following presentations were made to stakeholders and their affiliates:

- South African Association of Freight Forwarders (SAAFF), Johannesburg, Durban, Cape Town, Port Elizabeth
- KPMG in Durban
- Motale Family Property Management in Cape Town
- South African Local Government Association (SALGA) in East London
- The Department of Finance, Economy and Enterprise Development (FEED) in Mafikeng
- Cooperative Governance and Traditional Affairs (COGTA) in Cape Town
- Public Servants Association (PSA) in Pretoria
- The Cape Town Chamber of Commerce and Industry
- South African Institute of Professional Accounts (SAIPA) in Johannesburg
- The Society of Trust and Estate Practitioners (STEP) South African in Johannesburg
- Eastern Cape Economic, Development and Economic Affairs and Tourism in East London
- Discovery brokers in Sandton
- Business Unity South Africa's (BUSA) Tax Subcommittee in Sandton

## Exhibitions

The Office had a presence at the following exhibitions:

- Rand Show in Johannesburg
- South African Property Owners Association (SAPOA) in Cape Town
- The Money Expo in Sandton
- South African Democratic Teachers Union (SADTU) in Kempton Park
- Government Communicators Forum in Pretoria
- Tax Indaba in Sandton
- Finance Indaba in Sandton
- The Motor Industry Ombudsman of South Africa (MIOSA) in Pretoria
- Business Day TV SMME Summit in Parktown
- Annual Proudly South African Buy Local Summit and Expo in Sandton

## Publications

The OTO used the internal newsletter (Perspective) and external newsletter (Fair Play) to engage stakeholders by featuring articles on important tax-related issues and events.

During the reporting period, three issues of Fair Play were published and each issue was distributed to more than 1 000 stakeholders *per* quarter. OTO employees were kept informed of important developments in the organisation through the publication of 19 issues of Perspective.





## Programme 2: Awareness and Education

Strategic objectives	Performance indicator	Actual achievement 2014/15	Actual achievement 2015/16	Actual achievement 2016/17
Improve taxpayers' awareness of the services of the OTO	Number of communications and outreach activities	Target was not planned	70	139
	Number of engagements and collaborations with key stakeholders	Target was not planned	53	33
Positive brand recognition	Taxpayers' brand awareness survey - positive recognition	Target was not planned	Target was not planned	Target was not planned

Planned target 2017/18	Actual achievement 2017/18	Indicator status	Deviation from planned target to actual achievement for 2017/18	Comment on deviations
20	194	Achieved	174	<p>The overachievement is due to increased media interest, interviews and coverage as a result of:</p> <ul style="list-style-type: none"> <li>• Approval by the Finance Minister for the OTO to investigate delays in the payment of tax refunds;</li> <li>• An update on the investigation. The interim and final reports on the matter;</li> <li>• The launch of the Tax Ombud 2016/17 Annual Report; and</li> <li>• Public Relations engagements.</li> </ul>
20	47	Achieved	27	<p>The OTO requested and obtained numerous engagement and collaboration opportunities with both government and the private sector that resulted in more awareness created about services offered.</p>
1	0	Not achieved	-1	<p>Budgetary constraints led to the late appointment of a suitable service provider. The service provider was only appointed in the fourth quarter.</p>

## Strategy to overcome areas of underperformance

Underperforming indicators	Strategies to address underperformance
Taxpayers' brand awareness survey – positive brand recognition	A service provider has been appointed to conduct a taxpayers' brand awareness survey, and the survey and results are set to be concluded in the next financial year.

## STRATEGIC INTENT

### Promoting awareness through communications and outreach

The OTO will continue to promote taxpayer awareness and education through outreach campaigns and advertising, as well as using public relations services to further build and strengthen relationships with stakeholders. The Office endeavours to continue building relationships through stakeholder engagements, collaboration and exhibitions. The main focus will be on building and nurturing new stakeholder partnerships (without neglecting existing ones) and taking the OTO to the doorsteps of communities throughout the country, directly engaging communities, government departments and entities as well as the private sector in all provinces. The goal is not only to create awareness about the existence of the institution and the services it offers, but also to promote the utilisation of those services.

## TAXPAYER SURVEY

In the last quarter of the 2017/18 financial year, the organisation began preparing for the first-ever OTO Taxpayer Survey by appointing a research company to conduct the study. The survey, which is set to be finalised in the next financial year, will seek to determine the levels of awareness and perceptions about the OTO among South African taxpayers and tax practitioners. In addition, it will also seek to establish the brand *persona* of the Tax Ombud, referring to how approachable the organisation is seen to be, the positioning of the Tax Ombud's brand within the minds of the public and specific brand associations. The study will contribute to determining the service experience taxpayers have with the Office of the Tax Ombud, in order to design strategies that will enable the Office to understand how consumers perceive the brand and then develop a successful brand strategy.



# LEGAL & SUPPORT SERVICES

## 4.3. PROGRAMME 3: LEGAL AND SUPPORT SERVICES

The Office of the Tax Ombud is strategically supported by the sub-programmes, Legal Services and Office Enablement.

### PROGRAMME PURPOSE

In support of the strategic goals, legal and support services will ensure the highest level of corporate governance, including financial management, while striving for the relevant legislative and structural changes for the Office's independence, ensuring performance management throughout the organisation and building a culture of professionalism and excellence.

### STRATEGIC OBJECTIVES

- a) Ensure the highest levels of corporate governance.
- b) Ensure performance management throughout the organisation.
- c) Ensure that a Memorandum of Understanding (MOU) exists between the OTO and SARS to formalise the relationship.
- d) Build a culture of professionalism and excellence.

### HIGHLIGHTS

#### Legal

Legal Services had six matters carried over from the previous financial year. A total of 448 legal referrals were received during 2017/18, representing a 1.3% reduction from the previous financial year. The major contributor to this decrease is the implementation of significant changes to internal procedures in order to strengthen governance when it comes to decision making within the OTO, in which Legal Support is actively involved.

Of the 454 legal referrals at hand, 452 were finalised, bringing the total number of matters pending at the end of the financial year to only two. A total of 446 referrals (98,67%) were finalised within 14 business days; thus is within the standard turnaround time.

Based on its performance for the annual period, Legal Services exceeded the target of 80% set in the strategic objectives of the OTO.

#### Performance management

In order to create a conducive work environment and to facilitate employee excellence, all employees were assessed against performance measures.

The Office conducted a survey for the first time to obtain an understanding of employee perceptions and expectations on the overall work environment, individual performance recognition of employee perceptions and expectations of management engagement, performance management, employee communication, training opportunities, and other issues considered important for optimum output and therefore good service delivery.







## Key performance indicators, planned targets and actual achievements

### PROGRAMME 3: LEGAL AND SUPPORT SERVICES

Strategic objectives	Performance indicator	Actual achievement 2014/15	Actual achievement 2015/16	Actual achievement 2016/17
Ensure the highest levels of corporate governance	Zero governance audit findings	Target was not planned	Target was not planned	Target was not planned
Ensure performance management throughout the organisation	% of staff assessed against performance measures	Target was not planned	Target was not planned	Target was not planned
Ensure that an MOU exists between the OTO and SARS to formalise the relationship	MOU signed off by both parties	Target was not planned	Target was not planned	Target was not planned
	Number of deviations from the MOU	Target was not planned	Target was not planned	Target was not planned
Build a culture of professionalism and excellence	Employee Culture Survey – score benchmarked	Target was not planned	Target was not planned	Target was not planned

Planned target 2017/18	Actual achievement 2017/18	Indicator status	Deviation from planned target to actual achievement for 2017/18	Comment on deviations
100%	0%	Not achieved	-100%	OTO was not independently audited in the current financial year as the Office's structure does not yet include all the auditable components required. The Office is audited as part of SARS regulatory audits. The GTAC is assisting the Office to develop a business case for a cost-effective and independent organisational model.
100%	100%	Achieved	0%	The Office achieved 100%; all employees were assessed against performance measures as <i>per</i> their scorecards by 30 April 2018.
1 MOU	0	Not achieved	-1	The MOU has not yet been finalised as certain related processes are still being finalised.
100%	0%	Not achieved	-100%	The MOU has not yet been finalised as certain related processes are still being finalised.
Top quartile	Third quartile	Not achieved	N/A	The Office's performance was in the third quartile, with the overall employee satisfaction level at 5.6 (in the third quartile).

## STRATEGY TO OVERCOME AREAS OF UNDERPERFORMANCE

Underperforming indicators	Strategies to address underperformance
MOU signed off by both parties	Negotiations between SARS and the OTO have been renewed and both parties have undertaken to finalise this process as soon as possible.
Employee Culture Survey – score benchmarked	A human resources strategy and value proposition will be developed to address the concerns that were raised.

## STRATEGIC INTENT

The Office will in the next financial year continue to ensure that the following are in place:

- Measures and controls to ensure that governance and risk activities are delivered as mandated by relevant prescripts. These measures will include the development and reviews of policies and/or frameworks that govern the execution of governance and risks within the Office. The Office will continue to ensure the highest levels of corporate governance.
- Ensure that an MOU exists between the OTO and SARS to formalise the relationship.
- The Office plays an important role in maintaining and improving employee engagement, among others. In the 2018/19 financial year, the Office will focus on addressing the concerns employees raised in the employee engagement survey conducted in 2017/18.



# PART C

## GOVERNANCE

## 1. INTRODUCTION

Corporate governance embodies processes and systems by which public entities are directed, controlled and held to account. In addition to legislative requirements based on the Tax Administration Act 28 of 2011 (founding legislation), corporate governance with regard to the OTO is applied through the precepts of the PFMA and run concurrently with the principles contained in the King Report on Corporate Governance, as well as the protocol governing the relationship between the Minister of Finance and the Tax Ombud. The OTO continues to comply with this protocol, and has submitted all required reports and strategic documents such as Annual Performance Plans and Strategic Plans.

## 2. PORTFOLIO COMMITTEES

The Office of the Tax Ombud was invited by the Standing Committee on Finance (SCOF) to present its annual report for the 2016/17 financial year. The Office also addressed the committee on the issues of tax refunds.

## 3. EXECUTIVE AUTHORITY

The Minister of Finance is the Executive Authority of the OTO. The Minister and the Tax Ombud have agreed on a protocol governing their working relationship. Four quarterly reports were submitted to the Executive Authority in line with the protocol and Treasury Regulations. The reports are meant to keep the Executive Authority informed about developments at the OTO, and to help the Minister monitor the performance of the organisation against its Annual Performance Plans.

## 4. THE ACCOUNTING AUTHORITY

The Tax Ombud is the Accounting Authority in terms of section 49 of the PFMA, and is responsible for all duties and responsibilities described in section 50 and 51 of the PFMA.

The role and responsibilities of the Tax Ombud include:

- Absolute responsibility for organisational performance in line with the OTO's mandate;
- Ensuring full and effective control over the organisation;
- Ensuring compliance with applicable laws, regulations and government policy;
- Ensuring the preparation of reports and financial statements;
- Formulating, monitoring and reviewing the corporate strategy, major plans of action, budgets and plans;
- Ensuring an adequate and effective risk management framework; and
- Developing a clear definition of materiality.

## 5. RISK MANAGEMENT

The Office of the Tax Ombud made a decision to consider risk management as an important tool of governance, which will help in ensuring the continued sustainability of the OTO and the achievement of its strategic objectives. The OTO continued to use its risk governance infrastructure frameworks, policies and procedures to ensure that it mitigates the challenges it faces. The strategic risk register was updated.

The risk management policy and strategy will be finalised once the overall governance framework of the organisation has been developed and approved.

## 6. INTERNAL CONTROL UNIT

The Office of the Tax Ombud has put a number of internal control measures in place to strengthen governance, and to ensure that the quality of its work is of the desired standard.

## 7. CODE OF CONDUCT

The staff of the Office of the Tax Ombud is employed in terms of the SARS Act as *per* section 15 of the Tax Administration Act. As such the OTO has adopted the SARS code of conduct regulating employment matters.

## 8. HEALTH, SAFETY AND ENVIRONMENTAL ISSUES

The Office of the Tax Ombud is committed to fulfilling the requirements stipulated in the Occupational Health and OHSA Safety Act (OHSA) of 1993. The Health and Safety Committee functioned well during the year under review, and held three meetings.

Two new volunteers joined the Health and Safety Committee as Fire Marshall and Evacuation Warder respectively. All volunteers underwent the necessary training in 2017/18, and a new training plan was prepared for refresher courses in 2018, as well as for basic training for the new members.

A planned evacuation drill took place on 7 June 2017. This exercise was important to ensure emergency preparedness, and also to comply with legislative requirements of the OHSA. An evacuation assessment report (with observations and corrective actions), was submitted to the Health and Safety Committee.

Quarterly health and safety inspection lists were submitted for the periods January, April, July and October 2017. A health and safety compliance assessment was conducted to identify gaps in issues such as emergency and evacuation processes, evacuation route plans, first aid equipment, disability facilities, etc.

## 9. FACILITIES AND ADMINISTRATION MANAGEMENT

Facilities and Administration Management attends to the repairs and maintenance of building, equipment, tools and physical capital assets. The repairs and maintenance function is dependent on existing service level agreements (SLAs) and standard operating procedures (SOPs), to ensure adherence to turnaround times.

A comprehensive building assessment was conducted in September 2017, and a report submitted to Property Management (Corporate Real Estate) on the condition of the building.

An assets verification process was concluded in December 2017 to ensure that all assets are traceable and placed in the correct locations. All employees complied accordingly by submitting assets inventory sheets to assist in reconciling and updating the Asset Master Register.

## 10. SOCIAL RESPONSIBILITY

OTO is committed to its social responsibility obligation for the benefit of society at large. In the year under review the OTO participated in various government and private sector initiatives.

The OTO does not have a budget ringfenced for its corporate social responsibility activities, but employees continue to contribute towards initiatives aimed at making a difference in the lives of the less fortunate and in need. During the 2017/18 financial year, the organisation participated in the following activities:



- **Cell C Take a Girl Child to Work Day:** On 30 May 2017, the OTO hosted 15 female matric learners from Nellmapius Secondary School. The annual event is the initiative of mobile service provider Cell C and is supported by the South African government. It seeks to deepen the thinking of young girls and expose them to diverse careers available in both government and the private sector. It does this by allowing the girls to spend a few hours being exposed to a real work environment. The learners were addressed on how to deal with the many challenges young girls face when they start their post-matric studies at institutions of higher learning.
- **Nelson Mandela International Day:** In July 2017, the OTO conducted two main events in honour of former President Nelson Mandela. On 18 July Team OTO, led by Tax Ombud Judge Bernard Makgabo Ngoepe and Chief Executive Officer Advocate Eric Mkhawane, visited Child Welfare Tshwane in Atteridgeville outside Pretoria where they donated clothes and food parcels, and served soup to the children; thanks to the generosity of the staff as a whole. On 25 July, Advocate Mkhawane and OTO employees presented a “career day” presentation at Nellmapius Secondary School outside Pretoria where they spoke to more than 100 matric learners about different careers available.

## 11. AUDIT COMMITTEE AND INTERNAL AUDIT REPORT

An audit committee and internal audit function are yet to be established. The governance status of the OTO with regard to internal audit and an audit committee is still to be formally clarified.



# **PART D**

## HUMAN RESOURCE MANAGEMENT

## 1. INTRODUCTION

### 1.1. Overview

Human Resource management ensures optimal performance is achieved, assesses any skills gaps and prepares a comprehensive human resources development strategy to ensure a capable, committed and ethical workforce for current and future needs.

Tax complaints resolution requires expert, professional staff. These skills are relatively scarce and, as a result, the main driver of costs is employee costs. The employee cost on average over the Medium Term Expenditure Framework (MTEF) represents 80% of the total budget. As it is important that staff remain up to date in their field and their competencies are enhanced, a portion of the budget every year is allocated towards training and development. Niche education and training interventions are often required given the complexity of tax complaint resolution. These interventions can be relatively costly and the Office is required to ensure that appropriate resources are set aside every year for the necessary training and development. The Office requires additional employees in relation to the demand for services. As *per* the approved organisational structure, the Office will require seven additional staff members in the 2019/20 financial year.

The total headcount of the OTO as at 31 March 2018 was 35 employees, excluding two vacancies (for Operational Specialist: Governance and Risk and Operational Specialist: Complaints Resolution, respectively). The staff complement of the Office increased significantly to 35 as compared to 29 in the previous financial year. Seven new posts were created in order to meet the increasing demand for service. Six of them were filled which were appointment/promotions.

### Graduate programme

The Graduate Programme places successful candidates within divisions of the OTO to provide a combination of structured learning and workplace experience. Trainees are given a 24-month contract and receive a monthly stipend. At the end of the contract, trainees who meet the OTO's recruitment requirements and apply for an available vacancy may be placed in a permanent position. To be eligible for the programme, graduate trainees must have attained their university degree.

## 2. HUMAN RESOURCE OVERSIGHT STATISTICS

The personnel expenditure remains the main cost driver, and represented 78% of the total expenditure for the 2017/18 financial year.

**Table: 1: Personnel cost by programme**

Programme	Total expenditure for the entity(R'000)	Personnel expenditure (R'000)	Personnel expenditure as a % of total expenditure	No of employees	Average personnel cost per employee (R'000)
Office of the Tax Ombud	34 039	26 525	78%	35	758

The Office ensures that budget and other resources are set aside every year for appropriate training and development. It is important that the Office provides a high-quality service and has competent and efficient employees.

**Table: 2: Training costs**

Programme	Number of training events	Number of training person days
Office of the CEO	1	1
Office Enablement	8	13
Operations	8	25
Communications and Outreach	4	4
<b>Total</b>	<b>21</b>	<b>43</b>

For the year under review, employees of the OTO spent 43 person days attending 21 different training interventions (table 2). This is all internal training received through the SARS Institute of Learning; hence there is no direct cost to it. The main contributor as indicated in table 2 is the Operations unit, whose staff spent 25 person days attending training.

Currently, OTO has eight employees who are studying through the internal Bursary Programme. An amount of R339 990.00 has been set aside for this, 90% of which is towards postgraduate qualifications.

**Table: 3: Employment and vacancies by programme**

Programme	2016/17 No of employees	2017/18 Approved posts	2017/18 No of employees	2017/18 Vacancies	% of vacancies
CEO's office	3	3	3	0	0%
Office Enablement	4	6	5	1	16.67%
Operations	17	22	21	1	4.55%
Communications	3	4	4	0	0%
Legal	2	2	2	0	0%
<b>Total</b>	<b>29</b>	<b>37</b>	<b>35</b>	<b>2</b>	<b>5.41%</b>

The OTO experienced a positive net staff movement of six employees for the financial year. There were two employee exits (attrition/resignations) and four internal appointments/promotions were made.

**Table: 4: Employment and vacancies by levels**

Levels	2016/17 No of employees	2017/18 Approved posts	2017/18 No of employees	2017/18 Vacancies	% of vacancies
Top Management	2	2	2	0	0%
Senior Management	4	4	4	0	0%
Professional qualified	19	22	20	2	9.09%
Skilled	4	8	8	0	0%
Semi-skilled	0	1	1	0	0%
Unskilled	0	0	0	0	0%
<b>Total</b>	<b>29</b>	<b>37</b>	<b>35</b>	<b>2</b>	<b>5.41%</b>

**Table: 5: Employment changes**

Salary band	Employment at beginning of period	Appointments	Terminations	Employment at end of the period
Top Management	2	0	0	2
Senior Management	4	0	0	4
Professional qualified	19	4	3	20
Skilled	4	4	1	7
Semi-skilled	0	2	0	2
Unskilled	0	0	0	0
<b>Total</b>	<b>29</b>	<b>10</b>	<b>4*</b>	<b>35</b>

\*The four terminations include two employees who resigned from lower level positions and were appointed into higher positions.

**Table: 6: Reasons for staff leaving**

Reason	Number	% of total no of staff leaving
Death	0	0%
Resignation	4**	100%
Dismissal	0	0%
Retirement	0	0%
Ill health	0	0%
Expiry of contract	0	0%
Other	0	0%
<b>Total</b>	<b>4</b>	<b>100%</b>

\*\*The four terminations included promotion of two employees.



**Table: 7: Labour relations: Misconduct and disciplinary action**

Nature of disciplinary action	Number
Verbal warning	0
Written warning	0
Final written warning	0
Dismissal	0

## EQUITY TARGET AND EMPLOYMENT EQUITY STATUS

Representation on both race and gender on management levels is measured as part of the Organisational Health Measures. It is important to note that race in the context of EE categorises employees in terms of black and white employees. Black employees in this context refer to African, Coloured and Indian employees.

The OTO is not required to develop and implement an employment equity plan as *per* the requirement of the EE Act. The OTO uses current vacancies to develop employment equity targets to drive recruitment.

**Table: 8: Employment equity by gender – males**

Levels	MALE							
	African		Coloured		Indian		White	
	Current	Target	Current	Target	Current	Target	Current	Target
Top Management	2	2	0	0	0	0	0	0
Senior Management	0	0	0	0	0	0	1	1
Professional qualified	11	12	0	0	0	0	1	1
Skilled	1	1	0	0	0	0	0	0
Semi-skilled	1	1	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0
<b>Total</b>	<b>15</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>2</b>

**Table: 9: Employment equity by gender – females**

Levels	FEMALE							
	AFRICAN		COLOURED		INDIAN		WHITE	
	Current	Target	Current	Target	Current	Target	Current	Target
Top Management	0	0	0	0	0	0	0	0
Senior Management	3	3	0	0	0	0	0	0
Professional qualified	10	11	0	0	0	0	0	0
Skilled	3	3	0	0	0	0	1	1
Semi-skilled	1	1	0	0	0	0	0	0
Unskilled	0	0	0	0	0	0	0	0
<b>Total</b>	<b>17</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>

**Table: 10: Employment equity by disability**

Levels	DISABLED STAFF			
	Male		Female	
	Current	Target	Current	Target
Top Management	0	0	0	0
Senior Management	0	0	0	0
Professional qualified	0	1	0	1
Skilled	0	0	0	0
Semi-skilled	0	0	0	0
Unskilled	0	0	0	0
<b>Total</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>



# **PART E**

## **FINANCIAL INFORMATION**

## 1. REPORT OF THE EXTERNAL AUDITOR

The Office is currently not being audited as its structure does not yet include all the auditable components required. In particular, some of its administrative functions such as human resources and finances are conducted by SARS. The Minister of Finance allocates a budget to the Ombud and SARS is the custodian of the funds.

## 2. ANNUAL FINANCIAL INFORMATION

### Expenditure relating to the Office of the Tax Ombud

The purpose of the financial report is to provide an overview of the financial expenditure in the OTO for the 2017/18 financial year. The information that is outlined in the tables and graphs shows the expenditure for the year *per* cost element. Comparisons have also been made to show the expenditure growth patterns between the 2016/17 and 2017/18 financial years; under actual versus budgeted expenditure.

The National Treasury approved a total budget of R35 million. National Treasury further approved the retention of the 2016/17 financial year surplus of R1.2 million in terms of section 53(3) of PFMA. The budget increased to R36.2 million. SARS has transferred the overhead costs, amounting to R4.7 million, pertaining to building rental expenses and security services. The budget increased to R40.9 million.

Table 1 indicates expenditure *per* cost element and total expenditure for the year. The total revised budget for the 2017/18 financial year including surplus and transfer from SARS is R40.9 million. The total expenditure is R34 million, resulting in a surplus of R6.8 million. The surplus includes R1.9 million relating to the budget transferred from SARS for building rental and security services. The net surplus relating to OTO budget allocation from National Treasury is R4.9 million.

The run rate at the end of the financial year is 83%. The spending increased by 14% when compared to the previous financial year due to an increase in staff complement from 29 to 35. There is also an expenditure amounting to R2.7 million relating to building rental expenses that was not in 2016/17 expenditure.

**Table 1: Expenditure per cost element and total expenditure**

2017/18					2016/17			
COST ELEMENT	YTD ACTUAL (R'000)	BUDGET (R'000)	VARIANCE (R'000)	% VARIANCE	YTD ACTUAL (R'000)	BUDGET (R'000)	VARIANCE (R'000)	% VARIANCE
Personnel Expenditure	26 525	28 534	2 009	7%	23 698	23 634	-64	0%
Administrative Expenditure	924	1 452	528	36%	991	1 086	95	9%
Inventory and Printing	418	560	142	25%	400	649	249	38%
Professional and Special Services	3 011	5 660	2 649	47%	4 143	4 560	417	9%
Land and Buildings	2 984	4 328	1 344	31%	254	532	278	52%
Capital Expenditure	177	390	213	55%	269	495	226	46%
<b>Total Operating and Capital Expenditure</b>	<b>34 039</b>	<b>40 924</b>	<b>6 885</b>	<b>17%</b>	<b>29 755</b>	<b>30 956</b>	<b>1 201</b>	<b>4%</b>

## COMMENTARY PER COST ELEMENT

### a. Personnel expenditure

Personnel expenditure consists of cost to company, overtime, benefits (including acting allowance and leave gratuities) and other staff costs, which include training and study aid (bursaries). The savings on salaries are as a result of the timing difference pertaining to recruitment process. Costs relating to training and development will be paid to service providers in the new financial year. The total savings are R2 million.

### b. Administrative expenditure

The positive variance of R528,000 is as a result of saving on international travel, accommodation costs, editing and proofreading services and motor travel costs.

### c. Inventory and printing

The variance of R142, 000 on Inventory and printing expenses is as a result of saving on internal and external printing of marketing and promotional materials for outreach and awareness campaigns. The cost increased by 4% from the previous financial year.

### d. Professional and special services

The positive variance of R2, 6 million is as a result of savings on surveys that were conducted to evaluate the internal and external performance of the Office. Procurement experienced difficulties in sourcing the service provider and so the surveys will be finalised in the new financial year. There is also a saving on the creative agency for campaigns during the tax season and revenue drive. The budget included the cost of security services amounting to R680, 000 which was paid centrally by SARS.



## e. Land and buildings

The variance of R1,3 million relates to the overhead cost that was transferred by SARS for building rental expenses, operating cost, rates and taxes and the cleaning contract. The cost of this is paid centrally by SARS; hence a saving on the OTO account.

## f. Capital expenditure

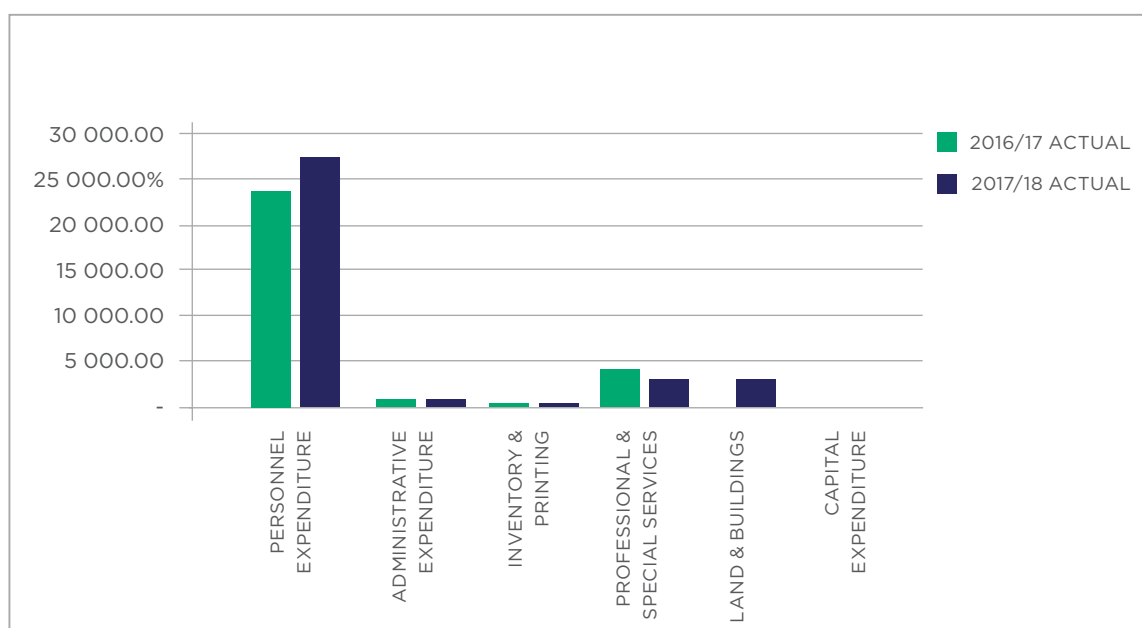
The variance of R213, 000 on capital expenditure is mainly as a result of delays in procurement of desktops for new employees. The desktops were delivered in the new financial year.

**Table 2: Percentage utilisation of the allocated budget**

FINANCIAL YEAR	ACTUAL (R'000)	BUDGET (R'000)	UTILISATION OF THE ALLOCATED BUDGET
2016/17	29 755	30 956	96%
2017/18	34 039	40 924	83%

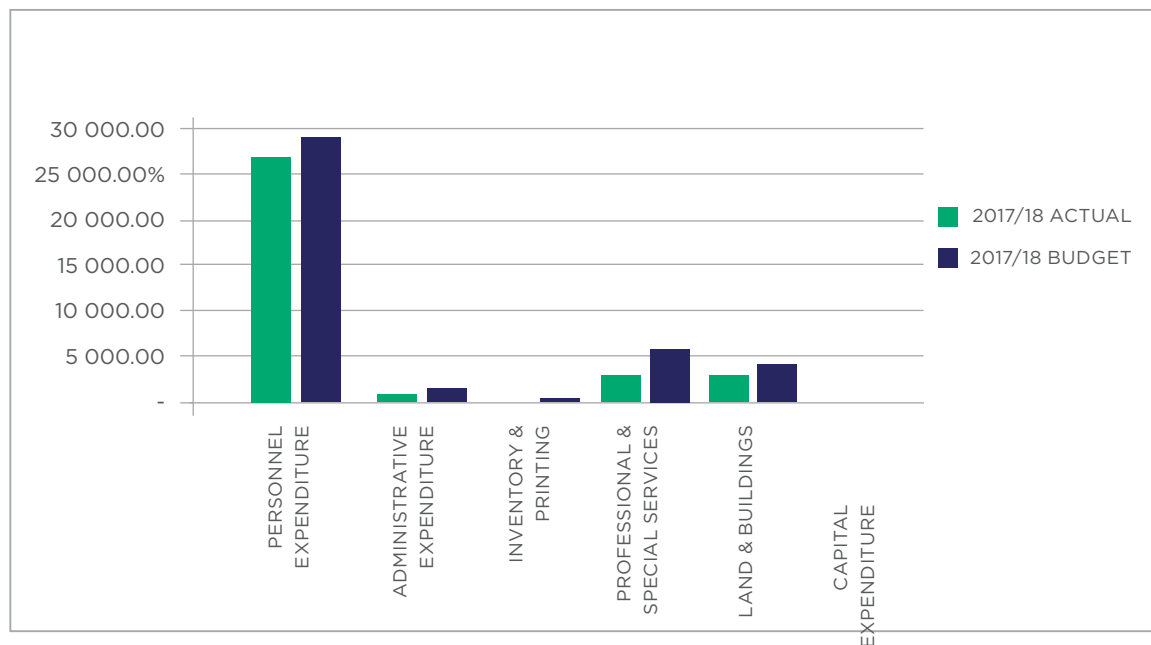
Graph 1 details the comparison of expenditure *per* cost element for the 2016/17 and 2017/18 financial years. The expenditure increased by 14% and is mainly on personnel expenditure due to an increase in headcount. The other cost that increased is the building rental expense amounting to R2.7 million.

**Graph 1: Comparison of expenditure in 2016/17 and 2017/18**



Graph 2 indicates the actual expenditure to budgeted expenditure comparison. 83% of the total budget was utilised; the variance is mainly on the building rental that was transferred from SARS. The capital expenditure had commitments at the end of the financial year as a result of delays in the procurement of desktops.

**Graph 2: 2017/18 Actual to budget comparison**







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