

**FEEDBACK SUMMARY  
8 APRIL 2021**

**GENERAL**

SAICA attends various discussions and meetings on behalf of members with National Treasury (“NT”), South African Revenue Service (“SARS”), the Office of the Tax Ombud (the OTO) and other stakeholders (internal and external). These meetings represent an opportunity for stakeholders to obtain further information on any tax matter from the public and discussions and views expressed do not represent policy or decisions. Furthermore, these discussions do not represent an undertaking by SARS, NT or other stakeholders, but merely statements of their understanding or how they perceive or anticipate a particular matter to be addressed.

The below Feedback Summary should be seen in the above context as merely attempts to inform SAICA members of the discussions and of any proposals that were made during such discussions.

**TAX OMBUD/RCB FORUM QUARTERLY ENGAGEMENT  
30 MARCH 2021**

The Recognised Controlling Body (RCB) Forum met with the Office on the Tax Ombud (the OTO) on 30 March to discuss matters that are of importance to both RCBs and the OTO, including an update by the OTO on strategic matters.

**Address by Judge Ngoepe**

We are grateful to Judge Ngoepe for availing himself for the engagement which he noted as being imperative to continuing the effective collaboration between RCBs and the OTO in advancing taxpayer rights. The Judge opened the meeting with assurances that despite the recent remote working situation as a result of the COVID-19 pandemic, the level of productivity has been impressive and the OTO staff have demonstrated a strong commitment to achieving the objectives

of the OTO. The Judge noted that given the financial year end of SARS, it had noted an increase in complaints from taxpayers and tax practitioners regarding what they perceived to be unfair collection procedures by SARS. The OTO has been on a media campaign to make the public aware that it is available to balance the scales between SARS and taxpayers and to reassure the public that it is ready to assist with respect to SARS service matters, or a procedural or administrative matter arising from the application of the provisions of a Tax Act by SARS.

Judge Ngoepe also noted that its recent review of the SARS Service Charter has found it to be wanting in some respects and has made suggestions, whilst still being impartial. The OTO is hopeful that its contribution will assist SARS in creating an instrument that will be fair to all stakeholders.

Regarding recommendations made by the OTO on systemic investigations and specific matters, it was noted that SARS have been trying to speed up implementation of at least some recommendations made, but there is room for improvement and the OTO will be working closely with SARS to ensure that deficiencies are addressed.

The OTO is still working on strengthening its national footprint, but its plans to expand offices to other regions may be delayed due to current financial constraints on government. Despite this, the OTO will continue with its campaigns to reach more taxpayers and tax practitioners.

From a continuity perspective, there is an ongoing focus on ensuring that the OTO builds an office that is strong and effective, regardless of the people leading it. For this reason, the strategic goal of achieving structural independence is with the view to building an institution that will out-live the team that started it all, especially given that the Judge's term as the Tax Ombud ends in 2022. Concerns were raised regarding the practice of certain politicians to undermine the standing, status and integrity of institutions that are there to help the South African public and the OTO believes that this is all the more reason to persevere in its efforts to achieve structural independence.

As a parting remark, the Judge raised a specific concern about those individuals who are masquerading as tax advisors, but are not adequately qualified or registered as such. The recent media engagements have revealed many cases of taxpayers receiving ill advice from such 'advisors' with no recourse to the unfortunate taxpayers who have paid heed to the advice and are now left to resolve issues with SARS as a result of implementing such advice.

### **Address by the CEO, Thabo Legwaila**

Mr Legwaila referred members to the OTO's strategic plan, publicly available on the website. The main goals of the OTO remain that of achieving accountability, independence, efficiency, fairness, confidentiality and impartiality.

Mr Legwaila noted the below specific aspects of the strategic plan which includes, *inter alia*, to:

- Improve taxpayer services;
- Improve and strengthen the relationship between the OTO and RCBs;
- Strongly pursue the structural independence agenda;
- Champion taxpayer rights which gave rise to the current campaign, i.e. #TaxpayerRightsMatter
- Implement a five year digital communications framework to improve taxpayer service and customer centricity, with integration of the 'human element', with the idea of improving accessibility to the OTO;

- Provide clear messages to each taxpayer that approaches the OTO and improving communication as to services that are available, using media extensively to make taxpayers aware of OTO;
- With respect to stakeholder engagements, ensuring effective communication which is at the heart of service excellence and will work towards achieving a culture of transparency and openness between the OTO and its stakeholders. To this end, there will be an increased focus on building trust between stakeholders and the OTO;
- Increase engagement with tax practitioners to ensure that this group of professionals understands the OTO mandate and can better serve their clients;

The OTO will aim to review 98% of complaints within 8 working days of it being captured and communicate feedback within 4 business days of response from SARS. It was also noted that at the time of making recommendations to SARS, the same correspondence will be furnished to taxpayers or tax practitioners as this has been a specific request from SAICA members.

### **Update on recommendations in relation to the OTO 2020 Systemic Investigations**

SAICA requested an update on the recommendations made by the OTO to SARS in its 2020 Systemic Investigation report which provided insight into the findings of the investigation into the complaints regarding the Fluidity of the PAYE statements of account as well as SARS non-compliance with dispute timelines.

#### **Fluidity of PAYE statements of account**

The outcome of this investigation revealed that in many instances, the unexplained journals on the taxpayer's PAYE statements of account was as a result of taxpayers not understanding SARS' payment allocation process. One of the recommendations was for SARS to engage in taxpayer education to address this.

SAICA specifically requested feedback on this aspect as we are still receiving complaints from some members that this practice is recurring. The OTO noted that it has not seen specific progress in this regard, but will address this in its upcoming meetings with SARS.

Members who have been unable to resolve such issues with SARS, must log this on SAICA's Member Portal under the SARS Operational category and include case reference number/s as evidence of initial engagement with SARS.

#### **SARS non-compliance with dispute timelines**

The dispute timelines investigation highlighted that the majority (90%) of requests for condonation are allowed on appeal resulting in a recommendation to increase the time to lodge an objection to 3 years. SAICA questioned whether SARS has been engaged further on this matter as well as feedback in general on this aspect of the report.

The OTO team indicated that there was some progress related to the issue of non-compliance with timelines, in general. SARS has provided the OTO with updates as to how it has dealt with certain timelines and specific matters not resolved. It was highlighted that there are 14 000 appeals which are still in progress and SARS has prioritised addressing this including expanding capacity on this area. There was a concern that, even though there are significant delays in

finalising appeals, 90% of appeals are eventually allowed. SARS is therefore specifically investigating why such assessments were raised in the first place.

Regarding the proposal to allow up to 3 years for the lodging of objections (in normal circumstances), there is no specific feedback at this stage.

*Delayed tax refunds by SARS and finalisation of audits*

In terms of delayed refunds, these are being resolved on a case-by-case basis. Recalled refunds were also noted as an issue again, in respect of which recommendations were made in 2017, as part of the findings of the OTOs systemic investigations in that year. Unfortunately, it appears that SARS has not adhered to some of those commitments in relation to those recommendations. However, closer to SARS' financial year end, it seems that a lot of outstanding cases are being finalised.

In terms of older cases which also include refunds, SARS Complaints Management Office (CMO) has created a task team to investigate all these cases which are updated on a weekly basis and the CEO of the OTO is included in this communication. The task team is being chaired by Mark Kingon and there is ongoing putting pressure on the relevant divisions to finalise complaints. The team leader of the project has also noted that they are working very hard with business units which have had to sign MOUs with the CMO regarding timelines for dealing with OTO complaints referred. The agreed timeline is for a maximum of 15 days to lapse between receipt of a complaint from the OTO until SARS responds to the OTO. At the time that the matter is referred to the SARS CMO, the taxpayer is informed as well. We understand that this will be included in relevant staff scorecards within each division and we agree that this is a step in the right direction.

7 April 2021