

**FEEDBACK SUMMARY – OFFICE OF THE TAX OMBUD: SEEKING STRUCTURAL INDEPENDENCE**  
**[4 February 2020]**

SAICA's Pieter Faber and Sharon Smulders were invited to participate in the forum on "Seeking structural independence of the Office of the Tax Ombud" held at Webber Wentzel in Sandton on 4 February 2020. Sharon Smulders was the facilitator of the event and Pieter Faber was one of the panel members providing insight into the issues surrounding this area of debate.



**Advocate Lucia Hlongwane**  
Walena Africa Capital

Advocate Lucia Hlongwane is the Founder and Managing Director of Walena Africa Capital (Pty) Ltd. She was previously the Africa Tax Leader at EY and a member of the Africa and South Africa executive committees. She is an admitted advocate of the High Court of South Africa and a well-regarded tax professional who has emerged as a new generation thought leader. She was the Tax Lead Advisor during the disposal of Shell African entities to Vivo Energy. Lucia spent several years with SARS in different roles, including litigation of tax cases and Senior Tax Specialist on various SARS projects. She was the Deputy Chairperson of the first Employment Equity Committee at SARS. With more than 20 years working experience, Lucia has a solid background of leading teams of cross-country experts across the continent, including senior leaders, where she was accountable for the overall performance of the tax function, tax policy, governance and risk, and strategic direction. Her expertise includes managing tax risk, negotiations and settlement, cross-border restructuring and refinancing, mergers and acquisitions, tax planning and transfer pricing. Lucia is a board member and vice president of the South African Institute of Tax Professionals (SAIT). She is a registered Master Tax Practitioner. Lucia holds a BProc and an LLB from the Witwatersrand University; an LLM in Taxation Law from the University of Pretoria; a Mining Taxation Diploma from UNISA; and an Insolvency Law Diploma from AIPSA. She completed the Wits Business School Program in Executive Leadership Development in collaboration with Shell Oil Products.



**Mr Wayne Duvenage**  
OUTA


Much of Wayne's working life was spent in the Transport and Tourism Industries, where he served as the Chief Executive at Avis from 2007 to 2012. He also occupied board member positions at the SA Vehicle Renting and Leasing Association (SAVRALA) and the Tourism Business Council of SA (TBCSA). Wayne chaired OUTA during its inception period from 2012 to 2015 whilst it tackled the South African Government's introduction of Gauteng's irrational e-Toll scheme as a three person team. In 2016 he became the CEO of the organisation expanded to a 50 person team by 2020 under a broader mandate as the Organisation Undoing Tax Abuse. Today, OUTA is regarded as a leading civil activist organisation in challenging the abuse of authority within the public sector. Wayne schooled in KwaZulu-Natal and is a BSc graduate of the University of Natal. Wayne describes himself as an entrepreneur, activist, writer, speaker and family man all harbored in one restless soul. His favourite quote is by Tyree Scott who once said: "It's generally unwise to leave those who created the problem, in charge of finding the solution."



**Pieter Faber**  
SAICA

Pieter is the executive of the tax department at the South African Institute of Chartered Accountants (SAICA) with more than 16 years' experience in tax law and policy. His is responsible for managing the tax function in relation to SAICA's more than 46 000 members for both tax advocacy, tax professional development and tax operational support. The tax advocacy function is conducted on behalf of the profession, in collaboration with the SAICA National Tax Committee, and includes engagement with various stakeholders such as the media, the Tax Ombud, SARS, National Treasury and Parliament.


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

**Seeking structural independence  
of the Office of the Tax Ombud**

**PROGRAMME**



Judge  
Bernard Makgabo Ngoepe  
Tax Ombud



In association with the Office of the Tax Ombud

# PROGRAMME

09h00 to 09h30	<b>Guest registration and welcome drinks</b>
09h30	<b>Facilitator</b> Dr. Sharon Smulders — South African Institute of Chartered Accounts
09h35	<b>Welcome</b> Hoosain Karjieker — Chief Executive Mail & Guardian
09h40	<b>Keynote address:</b> Judge Bernard Makgabo Ngoepe
10h10	<b>Panel discussion</b> Q&A with audience
11h10	<b>Breakout sessions</b> Facilitators: Nirvasha Singh and Joon Chong from Webber Wentzel
11h45	<b>Breakout sessions feedback</b> Summation of discussions
12h25	<b>Vote of Thanks</b> Gert van Heerdeen — Acting Chief Executive Officer Office of the Tax Ombud
12h30	<b>Lunch is served</b>

## BRIEF BIOGRAPHY OF THE SPEAKERS



**Judge Bernard M Ngoepe**  
Tax Ombud

Judge Ngoepe is a former Judge President of the North and South Gauteng High Courts, where he heard a number of cases, including business and tax matters, and was responsible for assigning judges to the Tax Courts. He also acted as a Judge of the Constitutional Court and also as a Judge of the Supreme Court of Appeal. He was a Judge of the African Union's African Court on Human and People's Rights, Tanzania, from 2006 to 2014, and was Vice-President of the Court when he left. Judge Ngoepe has received many honours and awards which include three (3) Honorary Doctor of Law degrees and an Honorary Doctorate in Education; being made Honorary Captain of the SA Navy and Honorary Professor of Law. He has also received many leadership and human rights awards, including the Duma Nokwe award.

### Facilitator



**Dr. Sharon Smulders**  
SAICA

Sharon is the Project Director: Tax Advocacy at SAICA where she is primarily responsible for liaising with various stakeholders such as National Treasury, SARS, Parliament and international organisations on various tax matters. Previously, she was an Associate Professor in the Financial Intelligence Department at UNISA and before that she was the Head of Tax Technical & Research at the SA Institute of Tax Professionals (SAIT) where she was also primarily responsible to liaise with SARS, National Treasury, Parliament and international organisations on tax policy matters. Prior to joining SAIT, she was an Associate Professor in Taxation at the University of Pretoria where she lectured taxation on under/post-graduate levels. Her research interest lies with small businesses and entrepreneurship and she has published various accredited research articles on this topic. She was appointed by the World Bank and SARS to assist with quantitative research on the tax compliance burden for small businesses which lead to tax legislation amendments in 2008. Her PhD research findings featured in the 2014 Davis Tax Committee's Report on small business taxation in South Africa. Prior to joining academia, Sharon was a manager in the taxation department of Deloitte in Pretoria.

### Panelists:



**Professor Deborah Tickle**  
University of Cape Town

Deborah Tickle (Chartered Accountant SA) is an adjunct associate professor at the University of Cape Town where she currently lectures the Tax Masters course. As managing partner of the tax department at KPMG (Cape Town), she led the tax team there for ten of the 31 years she spent consulting to large, listed and global clients of the firm. She serves on the Davis Tax Committee, formed by the Minister of Finance to establish whether South African tax policy aligns and supports overall government policy. She has also served on the national tax committee of the SA Institute of Chartered Accountants (one year as deputy chair) and continues to serve on the South Region tax Committee.

The Tax Ombud, Judge Ngoepe, provided context to the Office of the Tax Ombud's (OTO) need for structural independence by highlighting some of the practical problems currently faced by the OTO due to its lack of structural independence. These problems included control by SARS of the OTO's finances, payment by SARS of the OTO's staff as well SARS' control over the OTO's staff disciplinary and dismissal procedures and the fact that the OTO's staff are subject to SARS' policies. Even the name of the lease for the OTO's premises is in the name of SARS. Despite all of these concerns, he said that his request for independence had fallen on deaf ears at the Ministerial level. This is even after obtaining a research report prepared by GTAC on the possible options available to the OTO to ensure structural independence.

To ensure that broader consultation on the independence of the OTO, this event was held and the following topics were considered during the panel discussion:

- whether the public perceived the OTO to be independent or not;
- the possible benefits for taxpayers & revenue collection should the OTO obtain structural independence;
- the legislative framework currently dealing with the OTO's formation and possible changes that might be required;
- international comparisons of the independence of Ombud offices that might provide insight into improving the independence of the OTO;
- the possible risk that taxpayer confidentiality might be compromised if independence is obtained; and
- the potential cost of establishing a totally independent OTO and how this will be funded.

The detailed discussions around these issues can be found [here](#). The outcome of these discussions will be documented in a report that will be presented to the OTO.

Pieter Faber, Senior Executive: Tax was also asked to appear on Newzroom Afrika to discuss the issues surrounding the independence of the OTO.

