

# Tax bills 2016 - extended powers proposed for the ombud

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Those who have interacted with the office of the tax ombud (OTO) since its inception will be quite pleased about the proposals contained in the 2016 draft Tax Administration Laws Amendment Bill (TALAB), and published for public comment on Friday, 8 July 2016.



It is fair to say that tax specialists were somewhat sceptical of the OTO's effectiveness when the Tax Administration Act was enacted back in 2012, especially when comparisons were made with similar organisations in first world countries. Major concerns included issues of independence and the ability of the OTO to compel the South African Revenue Service (SARS) to remedy complaints received from taxpayers.

The proposed amendments signal another step in the right direction, especially when it assures the tax community and the public at large that these concerns have not fallen on deaf ears, and that faith in the public consultation process has not been in vain.

One of the proposals suggested is an extension to the OTO terms of office from the current three years to five years. This is a favourable proposal, as a longer term will provide more stability to the office and allow the ombud properly to embrace the difficult task of assisting in the development of an efficient and fair tax administration.

## More independence

Secondly, the proposals address one of the major initial reservations relating to the OTO, namely its independence from SARS, as opposed to being perceived as being merely an extension of SARS. The proposals address this in two ways: proposing more independence regarding staff appointments, and more independent finances.

The perceived problem with the current law has been with the limitations imposed on the ombud's hiring practices. At present, OTO employees can only be seconded from SARS after consultation with the SARS commissioner. The ombud has therefore not had the benefit of hiring individuals from any other entity but SARS. This was one of the primary concerns expressed not only by the ombud himself, but by the tax profession as well. The proposed amendment completely eliminates this requirement from the law, ensuring a greater degree of independence from SARS and addressing the practical concern that the ombud should be able to appoint people who can make a significant impact in performing its mandate.

Furthermore, financial resources are always important to any endeavour. Another critical issue which has also influenced the OTO's perceived independence was the manner in which the OTO's budget is allocated. At present, it's in SARS' hands, and in an effort to further improve the ombud's independence, the proposed amendments require that the OTO's budget be approved by the minister of finance, even though the source of its funds will reside with SARS.

## **Extended mandate**

Lastly, the proposals also seek to address the effectiveness of the OTO by extending its mandate, and compel reasons from SARS where remedial actions are not implemented. The ombud's mandate will now be extended to allow the minister of finance to request the OTO to investigate and report on any systemic and emerging issue related to a service, procedural or administrative matter.

Furthermore, whereas the current law theoretically speaking allows SARS completely to ignore any proposed remedial action – which to SARS' credit they have not done – the proposed compulsion to give reasons for instances where it is not done, further enhances the transparency and fairness of the tax system.

All these proposed amendments are most welcome, and their inclusion in the 2016 tax bills by the national treasury and SARS should be applauded, because this moves us closer to balancing fiscal powers with taxpayers' rights in seeking a fair, effective and efficient tax system.

## **ABOUT THE AUTHOR**

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