The thought of filing a complaint with the Tax Ombudsman can be intimidating if you have never done so before. How, for instance, can you tell if you have a legitimate dispute, how does the process work and what are the odds of it being resolved in your favour? The list of questions can seem endless, but the good news is that there is help at hand to make interacting with the Ombud’s office easy and painless, should you find yourself in that position.

The Tax Ombudsman - under the auspices of the Tax Administration Act – aims to integrate and streamline the administrative processes concerning tax laws to reduce the burden and costs of compliance that have previously beset the taxpayer and South African Revenue Service (SARS). The office of the Tax Ombudsman is completely independent and reports directly to the Minister of Finance. What’s more, it's aligned with the Office of the Public Protector to act as an effective ‘check’ on government and its agencies – the focus of the Tax Ombud being SARS.

Its mandate is deceptively simple: to review and address any complaint made by a taxpayer or tax practitioner concerning either a service matter or an administrative or procedural matter relating to the application of any of the provisions of the Tax Administration Act by SARS.

Under the Tax Administration Act, the Tax Ombudsman serves to make the relationship between the taxpayer and SARS more equitable, transparent and fair by balancing the duties and powers of the revenue service with the rights and obligations of taxpayers. Disputes between taxpayers and SARS typically fall into two categories: disagreement on the interpretation of tax law, and on the administration of law. According to CEO Advocate Eric Mkhawane, within these categories,
The most common complaints the Office of the Tax Ombudsman has to mediate on are delayed refunds by SARS; SARS failing to adhere to turnaround times for objections and appeals; SARS taking too long to finalise applications for tax clearance certificates; SARS holding employees responsible for employers not submitting PAYE tax documentation; incorrect and inconsistent advice being given to taxpayers by a SARS branch and call centre staff; SARS withholding refunds and failing to communicate the reasons for doing so to taxpayers; and, in a few cases, SARS collecting debt where it was not supposed to be collected.

In the event of a dispute, says Mkhawane, the taxpayer or practitioner needs to have followed the proper channels with SARS first. “The complainants need to lodge a complaint with SARS and allow SARS a reasonable time to resolve the matter,” he explains. SARS provides the individual with a complaint number, which is used to track the progress of the matter, as well as inform the complainant of the time frame it will take to resolve the dispute. “If the given time frame lapses and the taxpayer’s complaint is not resolved, they can then lodge a complaint with the Office of the Tax Ombud.” The Tax Ombud needs the complaint number from SARS to proceed.

However, Mkhawane reports, there are also situations where taxpayers or practitioners can bypass having to lodge a dispute with SARS first. “The complainants need to lodge a complaint with SARS and allow SARS a reasonable time to resolve the matter,” he explains. SARS provides the individual with a complaint number, which is used to track the progress of the matter, as well as inform the complainant of the time frame it will take to resolve the dispute. “If the given time frame lapses and the taxpayer’s complaint is not resolved, they can then lodge a complaint with the Office of the Tax Ombud.” The Tax Ombud needs the complaint number from SARS to proceed.

In cases where a tax practitioner is representing a taxpayer, there must be a fully completed Power of Attorney attached to the complaint form.

Once that has been done, the Tax Ombud’s office will need to assess the complaint. “First we check if it falls within our mandate and, if so, then we investigate the nature of the complaint, determine if it is a service issue, procedural and/or administrative matter, and make recommendations based on that to SARS,” Mkhawane reports. “If, however, it does not fall within the Office of the Tax Ombud’s mandate, we will reject the complaint and advise the taxpayer on the process to follow.” Should the complaint fall under the Tax Ombud’s mandate and be taken up for mediation, it takes an average of 15 days to get resolved, following the Ombudsman’s office submitting its recommendations to SARS – and according to Mkhawane, 78% of disputes have been ruled in favour of taxpayers between April and September this year. Based on the Tax Ombud’s records, he reports, 2,280 queries were filed with the office between April and September: of these, 424 were rejected for not falling within the office’s mandate, 644 were accepted and only 22% went in favour of SARS.

While it appears that the Office of the Tax Ombudsman predominantly finds in favour of the taxpayer, it’s no guarantee of a successful resolution. There are also a number of important factors to bear in mind when filing a complaint. “Taxpayers or practitioners should not wait too long before lodging a complaint with the Office of the Tax Ombud directly, but only in compelling circumstances. According to Mkhawane, compelling circumstances include: the request raising systemic issues; exhausting the complaints resolution mechanism causing undue hardship to the requester, and exhausting the complaints resolution mechanism being unlikely to produce a result within a period of time that the tax ombudsman office considers reasonable.

Either way, the taxpayer or practitioner then has to complete a complaints form in full and send it to the Office of the Tax Ombudsman by email, fax, post or, alternatively, hand delivered to their offices in Pretoria. In cases where a tax practitioner is representing a taxpayer, there must be a fully completed Power of Attorney attached to the complaint form.

Ultimately, Mkhawane states, taxpayers or practitioners need to understand that the Tax Ombud’s recommendations are not binding to both SARS and themselves. Therefore, if complainants are dissatisfied with the Tax Ombud’s recommendation and handling of the matter – after exhausting SARS’ internal complaints process and the Tax Ombud complaints resolution mechanism – then it is possible to pursue further action outside the ambit of the Tax Ombudsman. “Depending on the nature of the complaint, they can lodge with the Public Protector, Tax Board or Tax Court,” he concludes.

“Its mandate is deceptively simple: to review and address any complaint made by a taxpayer or tax practitioner concerning either a service matter or an administrative or procedural matter relating to the application of any of the provisions of the Tax Administration Act by SARS.”