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Ombudsman (*noun*); “An official appointed to investigate individuals' complaints against an organisation, especially a public authority” (*Concise Oxford English Dictionary*)

The Tax Administration Act became effective on October 1 2012. Included in this Act is the appointment of a “Tax Ombudsman”.

Certainly, the word “Ombudsman” will give many of us confidence – we think of arbiters who help the ordinary citizen. Many of us have also experienced frustration in dealing with SARS, so is the appointment of a Tax Ombudsman good or bad for the taxpayer?

What is the role of the Tax Ombud?

The Tax Ombud is to “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”.

The Tax Ombud has no authority to deal with tax law, tax policy, SARS practices or SARS policies. If we have a disagreement with SARS over, say, a disallowed deduction, the Tax Ombud cannot help. There are alternative forums to handle matters of law and policy.

The role of the Tax Ombud is thus to ensure taxpayers are treated fairly and get good service.

How independent will the Tax Ombud be?

The office of the Tax Ombud will be separate from SARS and the Tax Ombud will be appointed by and report to the Minister of Finance. It should also be pointed out that the office of the Tax Ombud will be staffed by SARS officials who will be seconded to the office of the Tax Ombud.

The Tax Ombud will review complaints from taxpayers and resolve them “independently” and “fairly”.

The legislation ensures the confidentiality of the taxpayer. This is significant as taxpayers may feel they could be victimised if they complain about their treatment from SARS officials.

Is there a catch?

Decisions reached by the office of the Tax Ombud are not binding on either SARS or the taxpayer.

The taxpayer needs also to have exhausted all internal SARS avenues of recourse before making a complaint to the Tax Ombud. In cases where the taxpayer will suffer hardship or the Tax Ombud is of the opinion that pursuing SARS' internal channels will take too long, the Tax Ombud has the authority to investigate a taxpayer complaint before all channels have been used.

In summary

The Tax Ombud may have limited powers but it is worth noting that these powers are compatible with those of other tax ombudsmen around the world. In other countries the performance of tax ombudsmen has assisted taxpayers. For those who have felt that SARS has too much power, this is a welcome development.

VAT 201 RETURNS – “BUSINESS AS USUAL”



Following the implementation of the new Tax Administration Act (TAA) on 1 October, there was widespread concern that VAT 201 returns submitted **via eFiling** could no longer be submitted on the last business day of the applicable month as was previously the case.

The fear was that returns would in future have to be lodged on or before the 25th of each month, and panic set in when many taxpayers were told only on 19 October that the change would be effective immediately, i.e. that returns due in October would have to be lodged by 25 October.

Fortunately SARS announced at the last minute that, pending an amendment to the TAA, it will continue to accept returns and payments “submitted via eFiling (or EFT) on or before the last business day of the month.”

So relax, it’s “business as usual” with your VAT 201s. Remember that **manual** returns still have to be in by the last business day prior to the 25th of each month.

IFRS FOR SMEs IS HERE!



The **Accounting Practices Board** has withdrawn **SA GAAP** (South African Generally Accepted Accounting Practice) as a basis for preparing annual financial statements for SMEs (Small and Medium-sized Entities). The choices (with two exceptions noted below) for SMEs are either **IFRS** (International Financial Reporting Standards) or **IFRS for SMEs**.

Most SMEs will be able to adopt **IFRS for SMEs**. The person who draws up your financial statements will determine if you should use **IFRS** or **IFRS for SMEs** – speak to your accountant for further clarification.

It is important for you to understand the reasons for, and ramifications of, this change, so your first question will be:

Why the move to IFRS for SMEs?

One of the main reasons for producing financial statements is that decision makers can readily understand and have confidence in your financial statements. If your bankers or investors cannot place faith in or understand your financial statements, then your cost of funding will rise or, worse still, you may not be able to access funds at all.

As SMEs drive job creation in the economy, there has been a global initiative not only to improve the standard of financial reporting for SMEs but also to make financial statements as easy as possible to understand. **IFRS for SMEs** is a much simpler framework than **IFRS**, which is already used by large entities. You must also bear in mind that a wide variety of users will read your financial statements – apart from bankers and investors there are creditors, SARS, shareholders, credit agencies and your customers.

SAICA has extensively researched and been involved with the development of **IFRS for SMEs**. In fact, SAICA have gone even further by releasing a guide for **micro businesses** to assist them with the implementation of **IFRS for SMEs** – speak to your accountant about this. The guide is user-friendly, sets out if this guide applies to your business and takes you through the **IFRS for SMEs** process with examples, illustrative financial statements and disclosure checklists. Micro businesses in this context include entities with a public interest score of less than 100, determined as follows in terms of the Companies Act of 2008:

- One point for each employee (you must take the average number of

employees you had during the financial year)

- One point for each R1 million or part thereof of turnover
- One point for every R1 million of third party liabilities or part thereof
- One point for every shareholder (and anyone else with a direct or indirect “beneficial interest” in the issued shares and other securities).

How does this affect me?

If your public interest score is less than 100 and a) you compile your own financial statements or b) you are an owner-managed entity, then there is no need to adopt [IFRS for SMEs](#) – you may still produce financial statements on the standard you have always used. Remember though that your bankers and other external readers of your financial statements will find it harder to understand them as [IFRS for SMEs](#) becomes the de facto standard for financial statements.

There will be an investment of money and effort as your business moves to [IFRS for SMEs](#). The International Accounting Standards Board has undertaken that there will be no changes to this standard for at least three years after publication which gives you the opportunity to absorb this change.

Remember you are moving to a globally recognised and best practice standard which should improve your relationships with your key stakeholders as they will be in a better position to understand your financials.

ADMINISTRATION 101 – THREE THINGS TO THINK ABOUT



101.1 Unemployment Insurance Fund (UIF) Increase – Update Your Systems

The Minister of Labour announced, via Government Gazette on 26 September, that the UIF threshold had been raised from 1 October 2012. The ceiling amount goes from R149,736 per annum (or R12,478 per month) to R178,464 per annum (or R14,872 per month). The maximum monthly deduction for employees and employers increases to R148-72 from R124-78.

At the same time benefits paid to qualifying unemployed persons increase to a maximum of R5,651 per month

from R4,732 per month.

This increasing of the UIF threshold has been ushered in with little publicity and gave taxpayers just one month to adjust their systems. The onus though is on you to update your payroll system to ensure deductions are correct, and that the right amount is paid over to SARS with your submission of the EMP201 form. Please ensure you do this to avoid paying unnecessary penalties and interest.

A recent survey of small businesses in the Eastern Cape by the Labour Department found more than two thirds were not registered for UIF. Whilst this almost certainly does not apply to you, it is the type of story which could lead to authorities auditing UIF deductions. So be prepared!



101.2 Your Business Address: CIPC Gets Tough

As you are aware, the CIPC (Companies and Intellectual Property Commission) replaced the old CIPRO with the introduction of the new Companies Act in 2011. The CIPC has issued a notice to companies and close corporations

(CCs) requiring that postal and physical addresses “be of the actual physical premises” of the entity, i.e. “the site from where the business operates”. The practice of using “addresses of convenience”, such as your auditor, is no longer acceptable. Addresses are to be as follows:

“Physical Address:

- Street number
- Street name
- Suburb/town/city
- Province
- Postal code

Postal Address:

- Postal number or description
- Suburb/town/city
- Province
- Postal code”

If the address is outside South Africa the name of the country is to be shown.

Why is CIPC doing this?

CIPC are seeking to improve their “statistical records and data quality”

What happens if I don’t follow CIPC’s laid down procedure?

Your submission will be rejected and you will have to redo it. This applies to all businesses – both new and existing.

Avoid the frustration of wasting time and effort.



101.3 Electronic Records Storage

On 1 October, the Commissioner of SARS released a Notice prescribing the format in which electronic records are to be kept.

In specifying the format for an “acceptable electronic form”, the Commissioner refers to the standard set out in the Electronic Communications and Transactions Act. The overriding factor is that the electronic document be presented or retained in its original form and thus cannot be altered.

In addition, you must be able to provide SARS with the electronic document so that SARS can access, read and analyse the electronic document. This means you must be able to email it to SARS and provide them with print copies.

Finally, the electronic records are to be available for inspection by SARS at a reasonable time and in a location in South Africa so that SARS can administer all tax Acts in terms of the Tax Administration Act.

What about Cloud storage?

We have seen that records have to be available for inspection at a location in South Africa. Thus, if your Cloud storage is outside of South Africa:

1. You will need to get the permission of a *senior SARS official*,
2. There must be a double tax agreement between South Africa and the country where your records are stored,
3. You must be able to fulfil the requirements for electronic storage set out above, and
4. If software or the platform used is not recognised in South Africa, then you need to keep manuals that document the method of record keeping and how to access the records. If you do not have this documentation, then you must compile a written list as per the requirements of the Commissioner’s Notice.

This is quite an extensive list so if you plan to use the Cloud for storage outside the Republic, make sure that your service provider can meet the Commissioner's requirements.

Have a Great November!

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