

INTERPRETATION NOTE NO: 68 (Issue 2)

DATE: 7 February 2013

ACT : TAX ADMINISTRATION ACT NO. 28 OF 2011 (the Act)
SECTION : CHAPTER 12 AND SCHEDULE 1
SUBJECT : PROVISIONS OF THE TAX ADMINISTRATION ACT THAT DID NOT COMMENCE ON 1 OCTOBER 2012 UNDER PROCLAMATION NO. 51 IN GOVERNMENT GAZETTE 35687

Preamble

In this Note unless the context indicates otherwise –

- “**section**” means a section of the Act;
- “**the Proclamation**” means Proclamation No. 51 of 14 September 2012 published in *Government Gazette* No. 35687; and
- any word or expression bears the meaning ascribed to it in the Act.

1. Purpose

On 1 October 2012 the Act came into operation except for certain provisions relating to interest. This Note provides guidance on the identification of those interest provisions which have not come into operation.

Issue 1 of this Note omitted to include sections 64B(9) and 64K(6) of the Income Tax Act No. 58 of 1962 in **Annexure B**. This oversight has been corrected in this issue.

2. Background

Under section 272 the President must by proclamation in the *Gazette* determine the date on which the Act comes into operation and may determine different effective dates for different provisions.

The proclamation (**Annexure A**) was published on 14 September 2012 and provides that the Act shall come into operation on 1 October 2012 **except** for –

- sections 187(2), (3)(a) to (e) and (4), 188(2) and (3) and 189(2) and (5); and
- a provision of Schedule 1 to the Act that amends or repeals a provision of a tax Act relating to interest under that tax Act, to the extent of that amendment or repeal.

The Act introduces a new regime for purposes of the accrual of interest on tax debts or refunds owed by SARS. Most of the interest provisions are contained in Chapter 12 which comprises –

- section 187 – General interest rules;
- section 188 – Period over which interest accrues; and
- section 189 – Rate at which interest is charged.

Schedule 1 of the Act sets out the provisions of various Acts administered by SARS that have been or will be amended by the Act. The Acts affected and the paragraphs of Schedule 1 that apply include the Transfer Duty Act, 1949 (paragraphs 1 to 11), Estate Duty Act, 1955 (paragraphs 12 to 22), Income Tax Act, 1962 (paragraphs 23 to 107), Value-Added Tax Act, 1991 (paragraphs 108 to 146), South African Revenue Service Act, 1997 (paragraph 147), Skills Development Levies Act, 1999 (paragraphs 148 to 156), Unemployment Insurance Contributions Act, 2002 (paragraphs 157 to 166), Diamond Export Levy (Administration) Act, 2007 (paragraphs 167 to 171), Securities Transfer Tax Administration Act, 2007 (paragraphs 172 to 179), Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (paragraphs 183 to 192) and a number of amending Acts.

The new interest regime necessitated substantial changes to SARS's existing systems which were not finalised by 1 October 2012. As a result, most of the provisions of Chapter 12 of the Act that relate to the accrual of interest on tax debts or refunds, did not commence on that date. Consequently, until the commencement of the provisions contained in Chapter 12, the provisions of Schedule 1 to the Act that repeal, delete or amend the interest provisions of the other tax Acts regulating the accrual and calculation of interest, will not commence and these provisions of the other tax Acts remain in force.

3. The law

The provisions of the Act that relate to the accrual of interest on tax debts or refunds that did not commence are contained in Chapter 12 and Schedule 1 to the Act. The table in **Annexure B** sets out a description of the provisions of Schedule 1 to the Act that have not commenced or have commenced except to the extent that they relate to interest.

4. Application of the law

4.1 Provisions of the Act relating to the accrual of interest that commenced on 1 October 2012

The new interest regime under the Act commenced in respect of –

- interest on an understatement penalty imposed under Chapter 16 and not paid by the effective date of the tax that is understated; and
- interest on a tax debt resulting from a jeopardy assessment issued under section 94 and not paid by the date for payment specified in the jeopardy assessment.

The interest provisions of the Act relating to understatement penalties and jeopardy assessments commenced on 1 October 2012 because they are not regulated under any of the other tax Acts.

For purposes of the accrual and calculation of interest on the outstanding amount of a tax debt or refund in respect of understatement penalties or a jeopardy assessment, the following provisions of the Act apply:

- *Charging of interest:* under section 187(1), if the tax debt is not paid in full by the effective date, interest accrues on the amount of the outstanding balance of the tax debt at the rate provided under section 189, and for the period provided under section 188.

- *Effective date:* The effective date for purposes of the calculation of interest in relation to –
 - an understatement penalty, is the date by which tax for the tax period should have been paid [see section 187(2)(e)].
 - a jeopardy assessment, is the date for payment specified in the jeopardy assessment [see section 187(5)].
- *Period over which interest accrues:* Interest is charged for the period from the effective date to the date the tax is paid [see section 188(1)].
- *Rate at which interest is charged:* The rate at which interest is payable under section 187 is the prescribed rate, which is the interest rate that the Minister may from time to time fix by Notice in the *Government Gazette* under section 80(1)(b) of the Public Finance Management Act, 1999 [see section 189(1), (3) and (4)].
- *Remittal of interest:* A taxpayer may request a senior SARS official to direct that so much of the interest as is attributable to prescribed circumstances beyond the taxpayer's control, is not payable by the taxpayer. These circumstances are limited to a natural or human-made disaster, a civil disturbance or disruption in services; or a serious illness or accident [see section 187(6) read with 187(7)]. As section 187(6) refers to interest imposed under section 187(1), the remittal *only* applies to interest payable on a tax debt in respect of understatement penalties or a jeopardy assessment as set out above.

Section 187(1) also regulates the accrual of interest on refunds payable by SARS. However, because section 188(3) did not come into operation such interest will only accrue once section 188(3) comes into operation.

4.2 Provisions of the Act relating to the accrual of interest that did not commence

4.2.1 Provisions of Chapter 12

Sections 187(2), (3)(a) to (e) and (4), 188(2) and (3) and 189(2) and (5) did not commence on 1 October 2012. These provisions relate to the accrual of interest on tax debts and refunds in respect of tax types for purposes of which the accrual of interest is regulated under the other tax Acts.

4.2.2 Provisions of Schedule 1 to the Act

For purposes of the new regime for the accrual of interest under Chapter 12, most of the interest accrual provisions contained in the tax Acts would have been repealed upon commencement of Schedule 1 to the Act.

As some of the provisions of Chapter 12 regulating the accrual of interest have not commenced, the provisions of the other tax Acts regulating the accrual of interest remain in force until the President determines by proclamation when the relevant provisions of Schedule 1 come into operation.

Because the definition of the term “tax” in section 1 includes “interest ...under a tax Act”, the other provisions of the Act are applicable in respect of interest that will still accrue under the tax Acts on tax debts and refunds (when applicable), for example:

- Information gathering under Chapter 5;
- Confidentiality under Chapter 6;
- Advance rulings under Chapter 7;
- Assessment under Chapter 8;
- Dispute resolution under Chapter 9;
- Liability and payment under Chapter 10;
- Recovery under Chapter 11;
- Write-off or compromise under Chapter 14; and
- Sanctions under Chapters 15, 16 and 17.

The table in **Annexure B** sets out the provisions of the Schedule to the Act that have not commenced or have commenced except to the extent that they relate to interest.

Legal and Policy Division
SOUTH AFRICAN REVENUE SERVICE
Date of first issue: 16 November 2012

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PROCLAMATION*by the**President of the Republic of South Africa***No. 51, 2012****DETERMINATION OF THE DATES ON WHICH CERTAIN PROVISIONS OF THE TAX
ADMINISTRATION ACT, 2011 (ACT NO. 28 OF 2011) MUST COME INTO OPERATION**

In terms of section 272 of the Tax Administration Act, 2011 (Act No. 28 of 2011), I hereby, determine the dates on which specific provisions of the Act must come into operation, as set out in the Schedule hereto.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Eighth day of September, Two Thousand and Twelve.

PRESIDENT**By Order of the President-in-Cabinet****MINISTER OF THE CABINET**

SCHEDULE

The Tax Administration Act, 2011 (Act No. 28 of 2011) shall commence on 1 October 2012 except for—

- (a) sections 187(2), (3)(a) to (e) and (4), 188(2) and (3) and 189(2) and (5) of the Act; and
- (b) any provision of Schedule 1 to the Act that amends or repeals a provision of a tax Act relating to interest under that tax Act, to the extent of that amendment or repeal.

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Annexure B – Table: Extent to which provisions of Schedule 1 to the Tax Administration Act, 2011, did not commence

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
Transfer Duty Act, No. 40 of 1949					
1.	Para. 3(a)	Substitution of heading of section 4	Section 4 of the Transfer Duty Act, 1949, is hereby amended— (a) by the substitution for the heading of the following heading: “Penalty [and interest] on late payment of duty”;	<i>No changes to current heading of section 4</i> <i>Proposed note under provision:</i> [S. 4 heading to be substituted by Para. 3(a) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i> .]	<ul style="list-style-type: none"> As the amendment under para. 3(a) <i>only</i> relates to interest, there are no changes to the current heading. Para. 3(b), which substitutes section 4(1), did commence as it only relates to penalties. The effect is that the penalty concerning amounts not paid in relation to transactions that occurred prior to 1 March 2005 is treated as an administrative penalty under Chapter 15 of the Act.
2.	Para. 3(c)	Deletion of section 4(1A)	Section 4 of the Transfer Duty Act, 1949, is hereby amended— (c) by the deletion of subsection (1A).	<i>No changes to current wording of section 4(1A)</i> <i>Proposed note under provision:</i> [Sub-s. 4(1A) ... to be deleted by para. 3(c) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i> .]	<ul style="list-style-type: none"> Interest on unpaid amounts concerning transactions occurring after 1 March 2005 is levied in terms of section 4(1A) of the TDA. As the amendment under para. 3(a) <i>only</i> relates to interest, there are no changes to the current wording.
Estate Duty Act, No. 45 of 1955					
3.	Para. 18	Amendment of section 10(1)	Section 10 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection; “(1) If [any duty remains unpaid at the expiration of a period of	<i>No changes to current wording of section 10</i> <i>Proposed note under provision:</i> [Sub-s. 10(1) ... to be substituted by para. 18 of Schedule 1 to Act 28	<ul style="list-style-type: none"> As the amendment under para. 18 <i>only</i> relates to interest, there are no changes to the current wording.

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
			<p>thirty days from the date of payment notified in accordance with subsection (2) of section nine, there shall be payable, in addition to the unpaid duty, interest at the rate of six per cent per annum on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment: Provided that, where] the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the prescribed rate [of six per cent per annum] shall be payable as from a date twelve months after the date of death on the difference (if any) between the duty assessed and any deposit (if any) made on account of the duty payable within the said period of twelve months.”.</p>	<p>of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>.]</p>	
Income Tax Act, No. 58 of 1962					
4.	Para. 23(f)	Substitution of the definition of “prescribed rate” in section 1	<p>Section 1 of the Income Tax Act, 1962, is hereby amended— (f) by the substitution for the definition of “prescribed rate” of the following definition: “prescribed rate’ means the <u>rate contemplated in section 189(3) of the Tax Administration Act</u>.”.</p>	<p><i>No changes to current wording of definition of “prescribed rate” in section 1.</i> <i>Proposed note under provision:</i> [Definition of “prescribed rate” ... to be substituted by para. 23(f) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	<ul style="list-style-type: none"> ▪ The definition of “prescribed rate” is relevant to the calculation of interest under section 89(2), 89bis and 89quat. ▪ As the amendment under para. 23(f) <i>only</i> relates to interest, there are no changes to the current wording.

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
5.	Para. 43(c)	Substitution of section 35A(9)	<p>Section 35A of the Income Tax Act, 1962, is hereby amended—</p> <p>(c) by the substitution for subsection (9) of the following subsection:</p> <p>“(9) If a purchaser fails to pay any amount contemplated in subsection (1) to the Commissioner within the period allowed for payment in terms of subsection (4), that purchaser[—</p> <p>(a) is liable for interest at the prescribed rate on any amount outstanding calculated from the day following the last date for payment to the date that the amount is received by the Commissioner; and</p> <p>(b)] must pay a penalty equal to ten per cent of [that] the amount, in addition to any other penalty or charge for which he or she may be liable under this Act.”.</p>	<p><i>No changes to current wording of section 35A(9).</i></p> <p><i>Proposed note under provision:</i> [Sub-s. 35A(9) ... to be substituted by para. 43(c) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	<ul style="list-style-type: none"> ▪ This subsection charges interest on unpaid withholding tax ▪ As the amendment under para. 43(c) <i>only</i> relates to interest, there are no changes to the current wording. ▪ The amendment reflected in section 35A(9)(b) will only commence when para. 43(c) commences.
6.	Para. 54	Deletion of section 64B(9)	Section 64B of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (9) ...	<p><i>No changes to current wording of section 64B(9).</i></p> <p><i>Proposed note under provision:</i> [Sub-s.(9) ... to be deleted by para. 54 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the</p>	<ul style="list-style-type: none"> ▪ Interest on unpaid STC amounts is levied under section 64B(9) of the ITA. ▪ As section 64B(9) only relates to the imposition of interest, para. 54 does not commence to

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				President by proclamation in the <i>Gazette</i>]	the extent that it repeals this subsection. <ul style="list-style-type: none"> ▪ Para. 54 partially commenced to the extent that subsection 64B(11) is deleted.
7.	Para. 55	Deletion of section 64K(6)	Section 64K of the Income Tax Act, 1962, is hereby amended by the deletion of subsections ... (6) ...	<i>No changes to current wording of section 64K(6).</i> <i>Proposed note under provision:</i> [Sub-s. (6) ... to be deleted by para. 55 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]	<ul style="list-style-type: none"> ▪ Interest on unpaid amounts of dividends tax is levied under section 64K(6) of the ITA. ▪ As section 64K(6) only relates to the imposition of interest, para. 55 does not commence to the extent that it repeals this subsection. ▪ Para. 55 partially commenced to the extent that subsections 64K(3), (5), (7) and (8) are deleted.
8.	Para. 66 <i>to the extent related to interest</i>	Repeal of sections 80K; 89(2); 89bis; 89quat and 89quin	Sections 80K ... 89(2), 89bis ... 89quat, 89quin ... of the Income Tax Act, 1962, are hereby repealed.	<i>No changes to current wording of sections 80K; 89(2); 89bis; 89quat; 89quin.</i> <i>Proposed note under each provision:</i> [S. XX ... to be repealed by para. 66 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]	<i>Commenced in part:</i> <ul style="list-style-type: none"> ▪ The repeal of the following sections under para. 66 commenced: sections 80M, 80N, 80O, 80P, 80Q, 80R, 80S, 80T, 81, 82, 83, 83A, 84, 85, 86A, 87, 88, 88A, 88B, 88C, 88D, 88E, 88F, 88G, 88H, 89(1), 89ter, 89sex and 89sept. ▪ These provisions are now regulated under the Act and do not relate to the accrual of interest on tax debts or refunds.
9.	Para. 68(b)	Amendment of section 91(5)	Section 91 of the Income Tax Act, 1962, is hereby amended— (b) by the substitution for subsection (5) of the following	<i>No changes to current wording of section 91(5).</i> <i>Proposed note under provision:</i> [Sub-s. 91(5) ... to be substituted	<ul style="list-style-type: none"> ▪ Section 91(4), (4A) and (5) remains applicable for purposes of the recovery of tax and interest under the Act recovery

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
			subsection: “(5) So much of any interest payable in terms of [section eighty-nine] Chapter 12 of the Tax Administration Act as relates to such portion of any tax as is in terms of subsection (4) recoverable from the assets referred to in that subsection may also be recovered from such assets.”.	by para. 68(b) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i> .]	procedures, as these are specific to the ITA <ul style="list-style-type: none"> ▪ Subsection (5) provides that interest charged under section 89(2), may be recovered from the assets by which the income deemed to be included as income under the anti-avoidance provisions of section 7 of the ITA, was produced. ▪ As the amendment under para. 68(b) only relates to interest, there are no changes to the current wording.
Fourth Schedule to the Income Tax Act, No. 58 of 1962 (Provisional Tax)					
10.	Para. 93(a)	Amendment of para. 23A(1) of Fourth Schedule	Para. 23A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— (a) by the substitution for subparagraph (1) of the following subparagraph: “(1) Any provisional taxpayer may for the purpose of avoiding or reducing his or her liability for any interest which may become payable by him or her in respect of any year of assessment under [section 89quat] Chapter 12 of the Tax Administration Act, elect to make an additional payment of provisional tax in respect of such year.”.	<i>No changes to current wording of para. 23A(1).</i> <i>Proposed note under provision:</i> [para. 23A(1) ... to be substituted by para. 93(a) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i> .]	<ul style="list-style-type: none"> ▪ Para. 23A(1) enables a provisional taxpayer for purpose of avoiding or reducing his liability for any interest payable under section 89<i>quat</i>, to elect to make an additional payment of provisional tax. ▪ As the amendment under para. 93(a) <i>only</i> relates to interest, there are no changes to the current wording.

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
11.	Para. 93(b)	Deletion of para. 23A(2) of Fourth Schedule	Paragraph 23A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— (b) by the deletion of subparagraph (2).	<i>No changes to current wording of para.23(2).</i> <i>Proposed note under provision:</i> [para. 23A(2) ... to be deleted by para.93(b) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i> .]	<ul style="list-style-type: none"> ▪ Para. 23A(2) provides that if an additional payment of provisional tax under para.23A(1) is paid after the effective date determined under section 89<i>quat</i>(1), the payment is regarded for purposes of section 89<i>bis</i>(2) to be an amount of provisional tax which was payable before the effective date. ▪ As the amendment under para. 93(b) <i>only</i> relates to interest, there are no changes to the current wording.
Sixth Schedule to the Income Tax Act, No. 58 of 1962 (Turnover tax)					
12.	Para. 99(a)	Deletion of para. 11(3), Sixth Schedule	Paragraph 11 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended— (a) by the deletion of subparagraph (3).	<i>No changes to current wording of para. 11(3).</i> <i>Proposed note under provision:</i> [Sub-para. 11(3) ... to be deleted by para.99 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i> .]	<ul style="list-style-type: none"> ▪ Sub- para. (3) provides that interest is payable at the prescribed rate if a micro-business fails to pay the tax payable on its estimated taxable turnover. ▪ As the amendment under para. 99(a) <i>only</i> relates to interest, there are no changes to the current wording.
Value Added Tax Act, No. 89 of 1991 (VAT Act)					
13.	Para. 108(c)	Substitution of the definition of “prescribed rate” in section 1	Section 1 of the Value-Added Tax Act, 1991, is hereby amended— (c) by the substitution for the definition of “prescribed rate” of	<i>No changes to current wording of definition of “prescribed rate” in section 1.</i> <i>Proposed note under provision:</i>	<ul style="list-style-type: none"> ▪ The definition of “prescribed rate” is relevant to the calculation of interest under section 39 (interest on outstanding tax) and section 45

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			<p>the following definition:</p> <p><u>“‘prescribed rate’ means the rate contemplated in section 189(3) of the Tax Administration Act.”.</u></p>	<p>[Definition of “prescribed rate” ... to be substituted by para. 107(c) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	<p>(interest on delayed refunds).</p> <ul style="list-style-type: none"> ▪ As the amendment under para. 107(c) <i>only</i> relates to interest, there are no changes to the current wording.
14.	Para. 115(b) to the extent related to interest	Substitution of section 16(5)	<p>Section 16 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(b) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) If, in relation to any tax period of any vendor, the aggregate of the amounts that may be deducted under subsection (3) from the sum referred to in that subsection, the amount (if any) refundable to the vendor under section 15(8), [the amount (if any) brought forward from the tax period preceding the first-mentioned tax period as provided in paragraph (ii) of the proviso to section 44(1) and the amount (if any) credited under section 44(4) to the vendor’s account during the first-mentioned tax period] and any other amount refundable under Chapter 13 of the Tax Administration Act, exceeds the said sum, the amount of the excess shall, subject to the provisions of this Act, be refundable to the vendor by the Commissioner as</p>	<p><i>Substitution should be effected with note that substitution does not apply to the extent related to interest.</i></p> <p><i>Proposed note under provision:</i></p> <p>[Sub-s. 16(5) ... substituted by para. 115(b) of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012 except to the extent related to interest under section 39 in respect of which the wording prior to the amendment applies: Proclamation 51 in <i>Government Gazette</i> 35687.]</p>	<ul style="list-style-type: none"> ▪ Section 16(5) is relevant to section 44 which provides for the refund of interest under the VAT Act, and accordingly does not commence to this extent.

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			provided in [section 44(1)] Chapter 13 of the Tax Administration Act.”		
15.	Para. 128(a) and (b) to the extent related to interest	Substitution of section 39 heading and subsection (1) to the extent related to interest	<p>Section 39 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading:</p> <p>“Penalty [and interest] for failure to pay tax when due”;</p> <p>(b) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) [(a)] If any person who is liable for the payment of tax and is required to make such payment [in the manner prescribed in] in accordance with the provisions of section 14, 28(1) or 29, fails to pay any amount of such tax within the period for the payment of such tax specified in the said [provision he shall] provisions, the Commissioner must, in [addition to such amount of tax, pay] accordance with Chapter 15 of the Tax Administration Act, impose[—</p> <p>(i)] a penalty equal to 10 per cent of the said amount of tax[; and</p> <p>(ii)] where payment of the</p>	<p><i>Substitution of section 39 heading and subsection (1) must be effected with explanatory note as proposed below.</i></p> <p>Penalty for failure to pay tax when due.— (1) If any person who is liable for the payment of tax and is required to make such payment in accordance with the provisions of section 14, 28(1) or 29, fails to pay any amount of such tax within the period for the payment of such tax specified in the said provisions, the Commissioner must, in accordance with Chapter 15 of the Tax Administration Act, impose a penalty equal to 10 per cent of the said amount of tax.</p> <p>[S.39 heading and sub-s. (1) ... substituted by para. 128(a) and (b) of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012 except to the extent related to interest in respect of which the wording prior to the amendment applies: Proclamation 51 in <i>Government Gazette</i> 35687.]</p>	<p><i>Para. 128(a) and (b):</i></p> <p>The substitution of section 39(1) under para. 128(a) and (b) commenced to the following extent:</p> <ul style="list-style-type: none"> ▪ The substitution of the heading ▪ The incorporation of sections 14 and 29 of the VAT Act into section 39(1); ▪ The retention of a 10% penalty imposed for the non-payment of VAT by the due date under section 39(1); and ▪ The treatment of the penalty as an administrative penalty under Chapter 15 of the Act. <p>The effect is of the partial commencement is that:</p> <ul style="list-style-type: none"> ▪ The 10% late-payment penalty on the late or non-payment of VAT is imposed, remitted and otherwise handled procedurally under Chapter 15 of the Act; ▪ Interest continues to accrue under section 39 at the prescribed rate for each month or part of a month on amounts not paid by the first day of the month following the month during which payment is required to be made.

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			<p>said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.</p> <p>(b) Where any amount of tax has in relation to any tax period of any vendor been refunded to the vendor in terms of the provisions of section 44(1), read with section 16(5), or has in relation to that period been set off against unpaid tax in terms of the provisions of section 44(6), and such amount was in whole or in part not properly refundable to the vendor under section 16(5), so much of such amount as was not properly so refundable shall for the purposes of paragraph (a)(i) be deemed to an amount of tax required</p>		

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
			to be paid by the vendor within the said period and for the purposes of paragraph (a)(ii), an amount of tax required to be paid by the vendor during the period in which the refund was made].”		
16.	Para. 128(c) to the extent related to interest	Deletion of section 39(2) to the extent related to interest	(c) by the deletion of subsection (2).	<p><i>Deletion of section 39(2) must be effected with explanatory note as proposed below.</i></p> <p>(2) ...</p> <p>[Sub-s. (2) ... deleted by para. 128(c) of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012 except to the extent related to interest in respect of which the wording prior to the amendment applies: Proclamation 51 in <i>Government Gazette</i> 35687.]</p>	<ul style="list-style-type: none"> ▪ As para. 128(b) incorporates into section 39(1) the non-payment of amounts in terms of section 29 of the VAT Act, and subjects the non-payment to both penalty and interest, the deletion of section 39(2) of the VAT Act by para. 128(c) commenced to the extent of the penalty.
				<p>(3) If any person who is liable for the payment of tax in accordance with the provisions of section 8(2C) or 8(2D) fails to pay any amount of such tax within the period allowed for the payment of such tax in terms of that section, the person shall, in addition to such amount of tax, pay where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of</p>	<ul style="list-style-type: none"> ▪ No changes are effected to subsection (3) by Schedule 1 to the Act

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
				section 45A) for each month or part of a month in the period reckoned from the said first day.	
17.	Para. 128(d) to the extent related to interest	Substitution of section 39(4) to the extent related to interest	<p>(d) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Where any importer of goods which are required to be entered under the Customs and Excise Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later, the Commissioner must, <u>in accordance with Chapter 15 of the Tax Administration Act</u>, impose on that importer [shall, in addition to such amount of tax pay—</p> <p>(a)] a penalty equal to 10 per cent of the said amount of tax[; and</p> <p>(b) where payment of the said amount of tax is made on or after the</p>	<p><i>Substitution of section 39(4) must be effected with explanatory note as proposed below.</i></p> <p>(4) Where any importer of goods which are required to be entered under the Customs and Excise Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later, the Commissioner must, in accordance with Chapter 15 of the Tax Administration Act, impose on that importer a penalty equal to 10 per cent of the said amount of tax.</p> <p>[Sub-s. (4) ... substituted by para. 128(d) of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012 except to the extent related to interest in respect of which the wording prior to the amendment applies: Proclamation 51 in <i>Government Gazette</i> 35687.]</p>	<ul style="list-style-type: none"> ▪ The substituted section 39(4) removes the interest-charging provision and therefore the substitution is not effective except to the extent that a penalty is now levied in terms of Chapter 15 of the Act for non-payment of tax by the due date.

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			<p>first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day].”</p>		
18.	Para. 128(e) to the extent related to interest	Substitution of section 39(5) to the extent related to interest	<p>(e) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) Where any person who is liable for the payment of tax fails to pay any amount of such tax on the date on which in terms of the Customs and Excise Act, liability arises for the payment of the excise duty or environmental levy referred to in section 7(3)(a), the Commissioner must, in accordance with Chapter 15 of the Tax Administration Act, impose on that person [shall, in addition to such amount of tax, pay—</p> <p>(a)] a penalty equal to 10 per cent of the said amount of tax[; and</p>	<p><i>Substitution of section 39(5) must be effected with explanatory note as proposed below.</i></p> <p>(5) Where any person who is liable for the payment of tax fails to pay any amount of such tax on the date on which in terms of the Customs and Excise Act, liability arises for the payment of the excise duty or environmental levy referred to in section 7(3)(a), the Commissioner must, in accordance with Chapter 15 of the Tax Administration Act, impose on that person a penalty equal to 10 per cent of the said amount of tax.</p> <p>[Sub-s. (5) ... substituted by para. 128(e) of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012 except to the extent related to interest in respect of which the wording prior to the amendment</p>	<ul style="list-style-type: none"> ▪ The substituted section 39(5) removes the interest-charging provision and therefore the substitution is not effective except to the extent that a penalty is now levied in terms of Chapter 15 of the Act for non-payment of tax by the due date.

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
			<p>(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on that amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day].”</p>	<p>applies: Proclamation 51 in <i>Government Gazette</i> 35687.]</p>	
19.	Para. 128(f) to the extent related to interest	Deletion of section 39(6), (6A), (7) and (8) to the extent related to interest	(e) by the deletion of subsections (6), (6A), (7) and (8)	<p><i>Deletion of section 39(6), (6A), (7) and (8)) must be effected with explanatory note as proposed below.</i></p> <p>(6) ... [Sub-s. (6) ... deleted by para. 128(f) of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012: Proclamation 51 in <i>Government Gazette</i> 35687.]</p> <p>(6A) ... [Sub-s. (6A) ... deleted by para. 128(f) of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012: Proclamation 51 in <i>Government Gazette</i> 35687.]</p>	<p>The deletion of subsections 39(6), (6A), (7) and (8) under para. 128(f) commenced to the following extent:</p> <ul style="list-style-type: none"> ▪ As para. 128(b) incorporates the non-payment of amounts in terms of section 14 of the VAT Act, and subjects the non-payment to both penalty and interest, the deletion of section 39(6) of the VAT Act commenced. ▪ The deletion of section 39(6A) of the VAT Act commenced and interest on the understatement penalty is imposed under section 187(3)(f) of the Act.

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
				<p>(7) ... [Sub-s. (7) ... substituted by para. 128(f) of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012 except to the extent related to interest in respect of which the wording prior to the amendment applies: Proclamation 51 in <i>Government Gazette</i> 35687.]</p> <p>(8) Notwithstanding anything to the contrary in this section, the Commissioner may prescribe, by notice in the Gazette, that any interest on any outstanding amount payable in terms of this Act, is calculated on the daily balance owing and compounded monthly from such date and for such period as the Commissioner may prescribe</p> <p>[Sub-s. (8) ...to be deleted by para. 128(f) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>.]</p>	<ul style="list-style-type: none"> ▪ The deletion of section 39(7) commenced to the extent that the remission of an administrative penalty is regulated under Part E of Chapter 15 of the Act, but did not commence to the extent related to interest. ▪ The deletion of section 39(8) did not commence as it only relates to the calculation of interest under section 39.
20.	Para. 133(a) to the extent related to interest	Deletion of section 44(1) to the extent related to interest	Section 44 of the Value-Added Tax Act, 1991, is hereby amended— (a) by the deletion of subsections (1) ...	<p><i>Deletion of section 44(1) should be effected with note that substitution does not apply to the extent related to interest.</i></p> <p><i>Proposed note under provision:</i> [Sub-s. 44(1) substituted by para. 133(a) of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012 except to the extent related to interest in respect of which the wording prior to the amendment applies:</p>	<ul style="list-style-type: none"> ▪ Section 39(1)(b) of the VAT Act provides that any undue refund paid under section 44(1) or set-off under section 44(6) is to be treated as tax unpaid to calculate interest and the 10% penalty. ▪ Para. 133(a) does not commence to the extent that section 44(1) of the VAT Act is required for the purpose of

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
				Proclamation 51 in <i>Government Gazette</i> 35687.]	<p>determining the amount upon which interest is payable.</p> <ul style="list-style-type: none"> ▪ The deletion of section 44(2) commenced as the refund of the other overpaid amounts is made in accordance with section 190 and 191 of the Act.
21.	Para. 134	Substitution of section 45	<p>The Value-Added Tax Act, 1991, is hereby amended by the substitution for section 45 of the following section:</p> <p>“Interest on delayed refunds</p> <p>45. (1) Where the Commissioner does not within the period of 21 business days after the date on which the vendor’s return in respect of a tax period is received by a SARS office refund any amount refundable under the Tax Administration Act, interest will be paid on such amount in accordance with Chapter 12 of that Act.</p> <p>(2) Despite the provisions of Chapter 12 of the Tax Administration Act, if a person fails to—</p> <p>(a) without just cause submit relevant material, requested by SARS for purposes of verification, inspection or audit of a refund in accordance with Chapter 5 of the Tax Administration Act; or</p> <p>(b) furnish SARS in writing with</p>	<p><i>No changes to current wording of section 45.</i></p> <p><i>Proposed note under provision:</i> [S. 45 ... to be substituted by para. 134 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	<ul style="list-style-type: none"> ▪ As the amendment only relates to interest, there are no changes to the current wording.

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			<p><u>particulars of the account required in terms of section 44(3)(d) to enable SARS to transfer a refund to that account,</u></p> <p><u>no interest accrues on the amount refundable for the period from the date that—</u></p> <p><u>(i) in respect of subparagraph (a), the relevant material was required to be submitted; or</u></p> <p><u>(ii) in respect of subparagraph (b), the refund is authorised,</u></p> <p><u>until the date that the person submits the relevant material or bank account particulars.”.</u></p>		
22.	Para. 135	Deletion of section 45A	Section 45A of the Value-Added Tax Act, 1991, is hereby repealed.	<p><i>No changes to current wording of section 45A.</i></p> <p><i>Proposed note under provision:</i></p> <p>[S. 45A ... to be substituted by para. 135 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	<ul style="list-style-type: none"> ▪ As the amendment only relates to interest, there are no changes to the current wording. ▪ Section 45A addresses the situation when the rate of interest changes during the period that interest is calculated.
Skills Development Levies Act, No. 9 of 1999					
23.	Para. 152(a)	Substitution of section 11(1)	<p>Section 11 of the Skills Development Levies Act, 1999, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If an employer fails to pay a levy or any portion</p>	<p><i>No changes to current wording of section 11.</i></p> <p><i>Proposed note under provision:</i></p> <p>[Sub-s. 11(1) ... to be substituted by para. 152(a) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by</p>	<ul style="list-style-type: none"> ▪ As the amendment only relates to interest, there are no changes to the current wording.

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			<p>thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount [at the rate contemplated in paragraph (b) of the definition of 'prescribed rate' in section 1 of the Income Tax Act, calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be] in accordance with the provisions of Chapter 12 of the Tax Administration Act".</p>	proclamation in the <i>Gazette</i>]	
24.	Para. 152(b)	Deletion of section 11(2)	Section 11 of the Skills Development Levies Act, 1999, is hereby amended— (b) by the deletion of subsection (2).	<p><i>No changes to current wording of section 11(2).</i></p> <p><i>Proposed note under provision:</i> [Sub-s. 11(2) ... to be deleted by para. 152(b) of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	<ul style="list-style-type: none"> ▪ As the amendment only relates to interest, there are no changes to the current wording.
Unemployment Insurance Contributions Act, No. 4 of 2002					
25.	Para. 162	Repeal of section 12	Section 12 of the Unemployment Insurance Contributions Act, 2002, is hereby repealed.	<i>No changes to current wording of section 12.</i>	<ul style="list-style-type: none"> ▪ As the amendment only relates to interest, there are no changes to the current wording.

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				<p><i>Proposed note under provision:</i> [S. 12 ... to be repealed by para. 162 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	
Diamond Export Levy (Administration) Act, No.14 of 2007					
26.	Para. 169 <i>to the extent related to interest</i>	Repeal of section 15	Sections ... 15 of the Diamond Export Levy (Administration) Act, 2007, are hereby repealed.	<p><i>No changes to current wording of section 15.</i></p> <p><i>Proposed note under provision:</i> [S. 15 ... to be substituted by para. 169 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	<p><i>Commenced in part:</i></p> <ul style="list-style-type: none"> ▪ para. 169 commenced to the extent that sections 10, 11, 12, 13, 14 and 16 of the Act are repealed.
Securities Transfer Tax Administration Act, No. 26 of 2007					
27.	Para. 175 <i>to the extent related to interest</i>	Repeal of section 5	Sections 5 ... of the Securities Transfer Tax Administration Act, 2007, are hereby repealed.	<p><i>No changes to current wording of section 5.</i></p> <p><i>Proposed note under provision:</i> [S. 5 ... to be repealed by para. 175 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	<p><i>Commenced in part:</i></p> <ul style="list-style-type: none"> ▪ Para. 175 commenced to the extent that sections 6 and 7 of the Act are repealed.
28.	Para. 176 <i>to the extent related to interest</i>	Substitution of section 8	<p>The Securities Transfer Tax Administration Act, 2007, is hereby amended by the substitution for section 8 of the following section:</p> <p>“8. Interest on overdue payments and penalty on default recoverable from person to whom security is</p>	<p><i>Substitution of section 8 should be effected with note that substitution does not apply to the extent related to the recovery of interest under section 5.</i></p> <p>8. Interest on overdue payments and penalty on default recoverable from person to whom security is transferred.—</p>	<p><i>Commenced in part:</i></p> <ul style="list-style-type: none"> ▪ As the amendment under para. 176 relates to the recovery penalty <i>and</i> interest, the changes should be effected with an explanatory note that it did not commence to the extent related to interest referred to section 5.

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			<p>transferred.—(1) In the case of a listed security, a member or participant may recover the amount of [the] interest [referred to in section 5, penalty on default referred to in section 6 or the] <u>or</u> penalty [in the case of evasion referred to in section 7] payable by that member or participant [in terms of this Act] under the Tax Administration Act from the person—</p> <p>(a) to whom a listed security is transferred; or</p> <p>(b) who cancels or redeems a listed security,</p> <p>to the extent that the action or inaction of that person resulted in the interest or penalty.</p> <p>(2) In the case of an unlisted security, the company which issued that security may recover the amount of [the] interest [referred to in section 5, penalty on default referred to in section 6 or the] <u>or</u> penalty [in the case of evasion referred to in section 7] payable by that company [in terms of this Act] under the Tax Administration Act from the person to whom that security was transferred, to the extent that the action or inaction of that</p>	<p>(1) In the case of a listed security, a member or participant may recover the amount of interest <u>or</u> penalty payable by that member or participant under the Tax Administration Act from the person—</p> <p>(a) to whom a listed security is transferred; or</p> <p>(b) who cancels or redeems a listed security,</p> <p>to the extent that the action or inaction of that person resulted in the interest or penalty.</p> <p>(2) In the case of an unlisted security, the company which issued that security may recover the amount of interest or penalty payable by that company under the Tax Administration Act from the person to whom that security was transferred, to the extent that the action or inaction of that person resulted in the interest or penalty.</p> <p><i>Proposed note under provision:</i></p> <p>[S. 8 ... substituted by para. 176 of Schedule 1 to Act 28 of 2011 and commenced on 1 October 2012 except to the extent related to interest in respect of which the wording prior to the amendment applies: Proclamation 51 in <i>Government Gazette</i> 35687.]</p>	

No.	Schedule 1 provisions not commenced	Provisions of tax Acts not repealed or amended	Wording of relevant Schedule 1 provisions	Final wording in tax Act after application of Schedule 1 to the Act	Explanatory notes
			person resulted in the interest or penalty.”.		
Mineral and Petroleum Resources Royalty (Administration) Act, No. 29 of 2008					
29.	Para. 189	Repeal of section 16	Sections ... 16 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, are hereby repealed.	<p><i>No changes to current wording of section 16.</i></p> <p><i>Proposed note under provision:</i> [S. 16 ... to be substituted by para. 189 of Schedule 1 to Act 28 of 2011 with effect from a date determined by the President by proclamation in the <i>Gazette</i>]</p>	<p><i>Commenced in part:</i></p> <ul style="list-style-type: none"> ▪ Para. 189 commenced to the extent that section 10, 11, 12 and 13 of the Act are repealed.

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