## REPUBLIC OF SOUTH AFRICA

# TAX ADMINISTRATION BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. 33721 of 3 November 2010) (The English text is the official text of the Bill)

(MINISTER OF FINANCE)

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#### **GENERAL EXPLANATORY NOTE:**

[	]	Words in bold type in square brackets indicate omissions from existing enactments.
		Words underlined with a solid line indicate insertions in existing enactments.

## **BILL**

To provide for the effective and efficient collection of tax; to provide for the alignment of the administration provisions of tax Acts and the consolidation of the provisions into one piece of legislation to the extent practically possible; to determine the powers and duties of the South African Revenue Service and officials; to provide for the delegation of powers by the Commissioner; to provide for the authority to act in legal proceedings; to determine the powers and duties of the Minister of Finance; to provide for the establishment of the office of the Tax Ombud; to determine the powers and duties of the Tax Ombud; to provide for registration requirements; to provide for the submission of returns and the duty to keep records; to provide for reportable arrangements; to provide for the request for information; to provide for the carrying out of an audit or investigation by the South African Revenue Service; to provide for inquiries; to provide for powers of the South African Revenue Service to carry out searches and seizures; to provide for the confidentiality of information; to provide for the South African Revenue Service to issue advance rulings; to make provision in respect of tax assessments; to provide for dispute resolution; to make provision for the payment of tax; to provide for the recovery of tax; to provide for the South African Revenue Service to recover interest on outstanding tax debts; to provide for the refund of excess payments; to provide for the write-off and compromise of tax debts; to provide for the imposition and remittance of administrative non-compliance penalties; to provide for the imposition of understatement penalties; to provide for a voluntary disclosure programme; to provide for criminal offences and sanctions; to provide for the reporting of unprofessional conduct by tax practitioners; and to provide for matters connected therewith.

**R**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## **CHAPTER 1**

## **DEFINITIONS**

## **Definitions**

1. In this Act, unless the context indicates otherwise, a term which is assigned a meaning in another tax Act has the meaning so assigned, and the following terms have the following meaning:  "additional assessment" is an assessment referred to in section 92;  "administration of a tax Act" has the meaning assigned in section 3(2);	5
<ul> <li>"administrative non-compliance penalty" has the meaning assigned in section 208;</li> <li>"assessment" means the determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS;</li> </ul>	10
<ul> <li>"biometric information" means biological data used to authenticate the identity of a natural person by means of—</li> <li>(a) facial recognition;</li> <li>(b) fingerprint recognition;</li> <li>(c) voice recognition;</li> </ul>	15
<ul> <li>(d) iris or retina recognition; and</li> <li>(e) other, less intrusive biological data, as may be prescribed by the Minister in a regulation issued under section 257;</li> <li>"business day" means a day which is not a Saturday, Sunday or public holiday, and for purposes of determining the days or a period allowed for complying with the provisions of Chapter 9, excludes the days between 16 December of each year</li> </ul>	20
and 15 January of the following year, both days inclusive; "Commissioner" means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the SARS Act or the Acting Commissioner designated in terms of section 7 of that Act;	25
"company" has the meaning assigned in section 1 of the Income Tax Act; "connected person" means a connected person as defined in section 1 of the Income Tax Act; "Customs and Excise Act" means the Customs and Excise Act, 1964 (Act No. 91 of 1964);	30
<ul><li>"date of assessment" means—</li><li>(a) in the case of an assessment by SARS, the date of the issue of the notice of assessment; or</li><li>(b) in the case of self-assessment by the taxpayer—</li></ul>	35
<ul> <li>(i) if a return is required, the date that the return is submitted; or</li> <li>(ii) if no return is required, the date of the last payment of the tax for the tax period or, if no payment was made in respect of the tax for the tax period, the effective date;</li> <li>"date of sequestration" means—</li> <li>(a) the date of voluntary surrender of an estate, if accepted by a court; or</li> <li>(b) the date of provisional sequestration of an estate, if a final order of</li> </ul>	40
sequestration is granted by a court;  "Diamond Export Levy Act" means the Diamond Export Levy Act, 2007 (Act No. 15 of 2007);	45
"Diamond Export Levy (Administration) Act" means the Diamond Export Levy (Administration) Act, 2007 (Act No. 14 of 2007);  "document" means anything that contains a written, sound or pictorial record, or other record of information, whether in physical or electronic form;  "effective date" is the date described in section 187(3), (4) and (5);  "Estate Duty Act" means the Estate Duty Act, 1955 (Act No. 45 of 1955);  "fair market value" means the price which could be obtained upon a sale of an asset between a willing buyer and a willing seller dealing at arm's length in an open market;	50 55
"income tax" means normal tax referred to in section 5 of the Income Tax Act; "Income Tax Act" means the Income Tax Act, 1962 (Act No. 58 of 1962); "information" includes information generated, recorded, sent, received, stored or displayed by any means;	

"international tax agreement" means an agreement entered into with the		
government of another country in accordance with a tax Act;		
"jeopardy assessment" is an assessment referred to in section 94;		
"judge" means a judge of the High Court of South Africa, whether in chambers or		
otherwise;	5	
"magistrate" means a judicial officer as defined in section 1 of the Magistrates'		
Courts Act, 1944 (Act No. 32 of 1944), whether in chambers or otherwise;		
"Mineral and Petroleum Resources Royalty (Administration) Act" means the		
Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29	10	
/ /		
"Minister" means the Minister of Finance;		
"official publication" means a binding general ruling, interpretation note, practice		
note or public notice issued by a senior SARS official or the Commissioner;		
"original assessment" is an assessment referred to in section 91;		
"practice generally prevailing" has the meaning assigned in section 5;	15	
"prescribed rate" has the meaning assigned in section 189(3);		
"premises" includes a building, aircraft, vehicle, vessel or place;		
"presiding officer" is the person referred to in section 50(1);		
"Promotion of Access to Information Act" means the Promotion of Access to	• •	
Information Act, 2000 (Act No. 2 of 2000);	20	
"public officer" is an officer referred to in section 246(1), (2) and (3);		
"public notice" means a notice published in the Government Gazette;		
"reduced assessment" is an assessment referred to in section 93;		
"relevant material" means any information, document or thing that is forseeably	25	
relevant for tax risk assessment, assessing tax, collecting tax, showing non-	25	
compliance with an obligation under a tax Act or showing that a tax offence was		
committed;		
"reportable arrangement" has the meaning assigned in section 35;		
"representative taxpayer" has the meaning assigned in section 153(1);	30	
"responsible third party" has the meaning assigned under section 158;	30	
<b>"return"</b> means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an		
assessment is to be made by SARS;		
"SARS" means the South African Revenue Service established under the SARS		
Act:	35	
"SARS Act" means the South African Revenue Service Act, 1997 (Act No. 34 of	33	
1997);		
"SARS confidential information" has the meaning assigned under section 68(1);		
"SARS official" means—		
(a) the Commissioner,	40	
(b) an employee of SARS; or		
(c) a person contracted by SARS for purposes of the administration of a tax Act		
and who carries out the provisions of a tax Act under the control, direction or		
supervision of the Commissioner;		
"Securities Transfer Tax Act" means the Securities Transfer Tax Act, 2007 (Act	45	
No. 25 of 2007);		
"Securities Transfer Tax Administration Act" means the Securities Transfer Tax		
Administration Act, 2007 (Act No. 26 of 2007);		
"self-assessment" means a determination of the amount of tax payable under a tax		
Act by a taxpayer and—	50	
(a) submitting a return which incorporates the determination of the tax; or		
(b) if no return is required, making a payment of the tax;		
"senior SARS official" is a SARS official referred to in section 6(3);		
"serious tax offence" means a tax offence for which a person may be liable on		
conviction to imprisonment for a period exceeding two years without the option of	55	
a fine or to a fine exceeding the equivalent amount of a fine under the Adjustment		
of Fines Act, 1991 (Act No. 101 of 1991);		
"shareholder" means a person who holds a beneficial interest in a share in a		
company as defined in the Income Tax Act;	60	
"Skills Development Levies Act" means the Skills Development Levies Act,	60	
1999 (Act No. 9 of 1999);		

<b>"tax"</b> , for purposes of administration under this Act, includes a tax, duty, levy, royalty, fee, contribution, penalty, interest and any other moneys imposed under a tax Act;	
,	
"taxable event" means an occurrence which affects or may affect the liability of	_
a person to tax; "tax Act" means this Act or an Act, or portion of an Act, referred to in section 4 of	5
the SARS Act, excluding the Customs and Excise Act;	
"tax board" means a tax board established under section 108;	
"tax court" means a court established under section 116;	
"tax debt" means an amount of tax due by a person in terms of a tax Act;	10
"tax offence" means an offence in terms of a tax Act or any other offence involving	
fraud on SARS or on a SARS official relating to the administration of a tax Act;	
"Tax Ombud" is the person appointed by the Minister under section 14;	
"tax period" means, in relation to—	
<ul> <li>(a) income tax, a year of assessment as defined in section 1 of the Income Tax Act;</li> <li>(b) provisional tax or employees' tax, skills development levies as determined in section 3 of the Skills Development Levies Act, and contributions as determined in section 6 of the Unemployment Insurance Contributions Act, the period in respect of which the amount of tax payable must be determined under the relevant tax Act;</li> </ul>	15
	20
Tax Act or the period or date of the taxable event in respect of which the	
amount of tax payable must be determined under that Act;	
(d) royalty payable on the transfer of minerals and petroleum resources, a year of	
assessment as defined in section 1 of the Mineral and Petroleum Resources	25
Royalty (Administration) Act;	
(e) the levy on diamond exports as determined under section 2 of the Diamond Export Levy Act, the assessment period referred to in section 1 of the Diamond Export Levy (Administration) Act;	
(f) securities transfer tax, the period referred to in section 3 of the Securities	30
Transfer Tax Administration Act;	
(g) any other tax, the period or date of the taxable event in respect of which the	
amount of tax payable must be determined under a tax Act; or	
(h) in relation to a jeopardy assessment, the period determined under this Act;	
	35
"taxpayer" has the meaning assigned under section 151;	33
"taxpayer information" has the meaning assigned under section $67(1)(b)$ ;	
"taxpayer reference number" is the number referred to in section 24;	
"thing" includes a corporeal or incorporeal thing;	
"this Act" includes the regulations and a public notice issued under this Act;	
"Transfer Duty Act" means the Transfer Duty Act, 1949 (Act No. 40 of 1949);	40
"understatement penalty" means a penalty imposed by SARS in accordance	
with Part A of Chapter 16;	
"Unemployment Insurance Contributions Act" means the Unemployment	
Insurance Contributions Act, 2002 (Act No. 4 of 2002);	
"Value-Added Tax Act" means the Value-Added Tax Act, 1991 (Act No. 89 of	15
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1991);	
"withholding agent" has the meaning assigned under section 156.	
CHAPTER 2	
GENERAL ADMINISTRATION PROVISIONS	
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## In general

## **Purpose of Act**

- 2. The purpose of this Act is to ensure the effective and efficient collection of tax by—
  (a) aligning the administration of the tax Acts to the extent practically possible;

  - (b) prescribing the rights and obligations of taxpayers and other persons to whom 55 this Act applies;

- (c) prescribing the powers and duties of persons engaged in the administration of a tax Act; and
- (d) generally giving effect to the objects and purposes of tax administration.

#### **Administration of tax Acts**

- **3.** (1) SARS is responsible for the administration of this Act under the control or 5 direction of the Commissioner.
  - (2) Administration of a tax Act means to—
    - (a) obtain full information in relation to—
      - (i) anything that may affect the liability of a person for tax in respect of a previous, current or future tax period;

(ii) a taxable event; or

- (iii) the obligation of a person (whether personally or on behalf of another person) to comply with a tax Act;
- (b) ascertain whether a person has filed or submitted correct returns, information or documents in compliance with the provisions of a tax Act;
- (c) establish the identity of a person for purposes of determining liability for tax;
- (d) determine the liability of a person for tax;
- (e) collect tax and refund tax overpaid;
- (f) investigate whether an offence has been committed in terms of a tax Act, and, if so—

(i) to lay criminal charges; and

- (ii) to provide the assistance that is reasonably required for the investigation and prosecution of tax offences or related common law offences;
- (g) enforce SARS' powers and duties under a tax Act to ensure that an obligation imposed by or under a tax Act is complied with;
- (h) perform any other administrative function necessary to carry out the provisions of a tax Act; and
- (i) give effect to the obligation of the Republic to provide assistance under an international tax agreement.
- (3) If SARS has, in accordance with an international agreement, received a request 30 for—
  - (a) information, SARS may obtain the information requested for transmission to the competent authority of the other country as if it were relevant material required for purposes of a tax Act and must treat the information obtained as if it were taxpayer information;

(b) the conservancy or the collection of an amount alleged to be due by a person under the tax laws of the requesting country, SARS may deal with the request under the provisions of section 185; or

(c) the service of a document which emanates from the requesting country, SARS may effect service of the document as if it were a notice, document or other communication required under a tax Act to be issued, given, sent or served by SARS.

### **Application of Act**

- **4.** (1) This Act applies to every person who is liable to comply with a provision of a tax Act (whether personally or on behalf of another person) and binds SARS.
- (2) If this Act is silent with regard to the administration of a tax Act and it is specifically provided for in the relevant tax Act, the provisions of that tax Act apply.
- (3) In the event of any inconsistency between this Act and another tax Act, the other Act prevails.

### Practice generally prevailing

**5.** (1) A practice generally prevailing is a practice set out in an official publication regarding the application or interpretation of a tax Act.

(2) Despite any provision to the contrary contained in a tax Act, a practice generally prevailing set out in an official publication, other than a binding general ruling, ceases to be a practice generally prevailing if—

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- (a) the provision of the tax Act that is the subject of the official publication is repealed or amended to an extent material to the practice, from the date the repeal or amendment becomes effective;
  (b) a court overturns or modifies an interpretation of the tax Act which is the subject of the official publication to an extent material to the practice from the date of judgment, unless—
  - (i) the decision is under appeal;(ii) the decision is fact-specific and the general interpretation upon which the official publication was based is unaffected; or
  - (iii) the reference to the interpretation upon which the official publication was 10 based was *obiter dicta*; or

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- (c) the official publication is withdrawn or modified by the Commissioner, from the date of the official publication of the withdrawal or modification.
- (3) A binding general ruling ceases to be a practice generally prevailing in the circumstances described in section 85 or 86.

#### Part B

### Powers and duties of SARS and SARS officials

### **Powers and duties**

- **6.** (1) The powers and duties of SARS under this Act may be exercised for purposes of the administration of a tax Act.
- (2) Powers and duties which are assigned to the Commissioner by this Act must be exercised by the Commissioner personally but he or she may delegate such powers and duties in accordance with section 10.
- (3) Powers and duties required by this Act to be exercised by a senior SARS official must be exercised by—
  - (a) the Commissioner;
  - (b) a SARS official who has specific written authority from the Commissioner to do so; or
  - (c) a SARS official occupying a post designated by the Commissioner for this purpose.
- (4) The execution of a task ancillary to a power or duty under subsection (2) or (3) may be done by—  $\,$ 
  - (a) an official under the control of the Commissioner or a senior SARS official; or
    - (b) the incumbent of a specific post under the control of the Commissioner or a senior SARS official.
- (5) Powers and duties not specifically required by this Act to be exercised by the Commissioner or by a senior SARS official, may be exercised by a SARS official employed or contracted to exercise or perform powers or duties for purposes of the administration of a tax Act.
- (6) The Commissioner may by public notice specify that a power or duty in a tax Act 40 other than this Act must be exercised by the Commissioner personally or a senior SARS official.

#### **Conflict of interest**

- 7. The Commissioner or a SARS official may not exercise a power or become involved in a matter pertaining to the administration of a tax Act, if—
  - (a) the power or matter relates to a taxpayer in respect of which the Commissioner or the official has or had, in the previous three years, a personal, family, social, business, professional, employment or financial relationship presenting a conflict of interest; or
- (b) other circumstances present a conflict of interest, 50 that will reasonably be regarded as giving rise to bias.

## **Identity cards**

**8.** (1) SARS must issue an identity card to each SARS official exercising powers and duties for purposes of the administration of a tax Act.

17 (2) When a SARS official exercises a power or duty for purposes of the administration of a tax Act in person, the official must produce the identity card upon request by a member of the public. (3) If the official does not produce the identity card, a member of the public is entitled to assume that the person is not a SARS official. Decision or notice by SARS 9. (1) A decision made by a SARS official and a notice to a specific person issued by

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- SARS, excluding a decision given effect to in an assessment or a notice of assessment-
  - (a) is regarded as made by a SARS official, authorised to do so or duly issued by SARS, until proven to the contrary; and
  - (b) may in the discretion of a SARS official described in subparagraphs (i) to (iii) or at the request of the relevant person, be withdrawn or amended by-
    - (i) the SARS official;
    - (ii) a SARS official to whom the SARS official reports; or
    - (iii) a senior SARS official.

(2) If all the material facts were known to the SARS official at the time the decision was made, a decision or notice referred to in subsection (1) may not be withdrawn or amended with retrospective effect, after three years from the later of the-

- (a) date of the written notice of that decision; or
- (b) date of assessment of the notice of assessment giving effect to the decision (if 20 applicable).

#### Part C

### **Delegations**

#### **Delegations by the Commissioner**

- **10.** (1) A delegation by the Commissioner under section 6(2)—
  - (a) must be in writing;
  - (b) becomes effective only when signed by the person to whom the delegation is
  - is subject to the limitations and conditions the Commissioner may determine in making the delegation;
  - (d) may either be to-
    - (i) a specific individual; or
    - (ii) the incumbent of a specific post; and
  - (e) may be amended or withdrawn by the Commissioner.
- (2) A delegation does not divest the Commissioner of the responsibility for the 35 exercise of the delegated power or the performance of the delegated duty.

#### Part D

#### Authority to act in legal proceedings

### Legal proceedings on behalf of Commissioner

- 11. (1) No SARS official other than the Commissioner or a SARS official duly 40 authorised by the Commissioner may institute or defend civil proceedings on behalf of the Commissioner.
- (2) For purposes of subsection (1), a SARS official who, on behalf of the Commissioner, institutes litigation, or performs acts which are relied upon by the Commissioner in litigation, is regarded as duly authorised until proven to the contrary. 45
- (3) A senior SARS official may lay a criminal charge relating to a tax offence described in section 235.

### Right of appearance in proceedings

12. (1) Despite any law to the contrary, a senior SARS official may on behalf of SARS or the Commissioner in proceedings referred to in a tax Act, appear ex parte in a judge's 50 chambers in the tax court or in a High Court.

(2) A senior SARS official may appear in the tax court or a High Court only if the	
person—  (a) is an advocate duly admitted under—  (i) the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or  (ii) a law providing for the admission of advocates in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996; or  (b) is an attorney duly admitted and enrolled under—  (i) the Attorneys Act, 1979 (Act No. 53 of 1979); or  (ii) a law providing for the admission of attorneys in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996.	5
Part E	
Powers and duties of Minister	
Powers and duties of Minister	15
<ul> <li>13. (1) The powers conferred and the duties imposed upon the Minister by or under the provisions of a tax Act may— <ul> <li>(a) be exercised or performed by the Minister personally; and</li> <li>(b) except for the powers under sections 14 and 257, be delegated by the Minister to the Deputy Minister or Director-General of the National Treasury.</li> </ul> </li> <li>(2) The Director-General may in turn delegate the powers and duties delegated to the Director-General by the Minister to a person under the control, direction or supervision of the Director-General.</li> </ul>	20
Power of Minister to appoint Tax Ombud	
14. (1) The Minister must appoint a person as Tax Ombud—  (a) for a term of three years, which term may be renewed; and  (b) under such conditions regarding remuneration and allowances as the Minister	25
may determine.  (2) The person appointed under subsection (1) or (3) may be removed by the Minister for misconduct, incapacity or incompetence.  (3) During a vacancy in the office of Tax Ombud, the Minister may designate a person in the office of the Tax Ombud to act as Tax Ombud.	30
<ul> <li>(4) No person may be designated in terms of subsection (3) as acting Tax Ombud for a period longer than 90 days at a time.</li> <li>(5) A person appointed as Tax Ombud— <ul> <li>(a) is accountable to the Minister;</li> </ul> </li> </ul>	35
<ul> <li>(b) must have a good background in customer service as well as tax law; and</li> <li>(c) may not at any time during the preceding five years have been convicted (whether in the Republic or elsewhere) of— <ul> <li>(i) theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); or</li> <li>(ii) any other offence involving dishonesty, for which the person has been sentenced to a period of imprisonment exceeding two years without the option of a fine or to a fine exceeding the amount prescribed in the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).</li> </ul> </li> </ul>	
Part F	

## Powers and duties of Tax Ombud

## Office of Tax Ombud 50

**15.** (1) The staff of the office of the Tax Ombud must be employed in terms of the SARS Act and be seconded to the office of the Tax Ombud at the request of the Tax Ombud in consultation with the Commissioner.

- (2) When the Tax Ombud is absent or otherwise unable to perform the functions of office, the Tax Ombud may designate another person in the office of the Tax Ombud as acting Tax Ombud. (3) No person may be designated in terms of subsection (2) as acting Tax Ombud for a period longer than 90 days at a time. 5 (4) The expenditure connected with the functions of the office of the Tax Ombud is paid out of the funds of SARS. Mandate of Tax Ombud **16.** (1) The mandate of 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 10 the application of the provisions of a tax Act by SARS. (2) In discharging his or her mandate, the Tax Ombud must— (a) review a complaint and, if necessary, resolve it through mediation or conciliation: (b) act independently in resolving a complaint; 15 (c) follow informal, fair and cost-effective procedures in resolving a complaint; (d) provide information to a taxpayer about the mandate of the Tax Ombud and the procedures to pursue a complaint; (e) facilitate access by taxpayers to complaint resolution mechanisms within SARS to address complaints; and 20 identify and review systemic and emerging issues related to service matters or the application of the provisions of this Act or procedural or administrative provisions of a tax Act that impact negatively on taxpayers. Limitations on authority 17. The Tax Ombud may not review— 25 (a) legislation or tax policy; (b) SARS policy or practice generally prevailing, other than to the extent that it relates to a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS; (c) a matter subject to objection and appeal under a tax Act, except for an 30 administrative matter relating to such objection and appeal; or (d) a decision of, proceeding in or matter before the tax court. Review of complaint 18. (1) The Tax Ombud may review any issue within the Tax Ombud's mandate on receipt of a request from a taxpayer. 35 (2) The Tax Ombud may-(a) determine how a review is to be conducted; and (b) determine whether a review should be terminated before completion. (3) In exercising the discretion set out in subsection (2), the Tax Ombud must consider such factors as-40 (a) the age of the request or issue; (b) the amount of time that has elapsed since the requester became aware of the (c) the nature and seriousness of the issue; (d) the question of whether the request was made in good faith; and 45 (e) the findings of other redress mechanisms with respect to the request. (4) The Tax Ombud may only review a request if the requester has exhausted the available complaints resolution mechanisms in SARS, unless there are compelling circumstances for not doing so.
  - (a) the request raises systemic issues; (b) exhausting the complaints resolution mechanisms will cause undue hardship to the requester; or (c) exhausting the complaints resolution mechanisms is unlikely to produce a 55 result within a period of time that the Tax Ombud considers reasonable.

consider factors such as whether-

(5) To determine whether there are compelling circumstances, the Tax Ombud must 50

(6) The Tax Ombud must inform the requester of the results of the review or any action taken in response to the request, but at the time and in the manner chosen by the Tax Ombud.

## Reports by Tax Ombud

19. (1) The Tax Ombud must—	5
(a) report directly to the Minister;	
(b) submit an annual report to the Minister within five months of the end of SARS' financial year; and	
(c) submit a report to the Commissioner quarterly or at such other intervals as may be agreed.	10
(2) The reports must—	
<ul> <li>(a) contain a summary of at least ten of the most serious issues encountered by taxpayers and identified systematic and emerging issues referred to in section 16(2)(f), including a description of the nature of the issues;</li> <li>(b) contain an inventory of the issues described in subparagraph (a) for which— <ol> <li>(i) action has been taken and the result of such action;</li> <li>(ii) action remains to be completed and the period during which each item has remained on such inventory; or</li> </ol> </li> </ul>	15
<ul> <li>(iii) no action has been taken, the period during which each item has remained on such inventory and the reasons for the inaction; and</li> <li>(c) contain recommendations for such administrative action as may be appropriate to resolve problems encountered by taxpayers.</li> <li>(3) The Minister must table the annual report of the Tax Ombud in the National Assembly.</li> </ul>	20
Resolution and recommendations	25
<b>20.</b> (1) The Tax Ombud must attempt to resolve all issues within the Tax Ombud's mandate at the level at which they can most efficiently and effectively be resolved and must, in so doing, communicate with SARS officials identified by SARS.  (2) The Tax Ombud's recommendations are not binding on taxpayers or SARS.	
Confidentiality	30
21. (1) The provisions of Chapter 6 apply with the changes required by the context for the purpose of this Part.  (2) SARS must allow the Tax Ombud access to information in the possession of SARS that relates to the Tax Ombud's powers and duties under this Act.  (3) The Tax Ombud and any person acting on the Tax Ombud's behalf may not disclose information of any kind that is obtained by or on behalf of the Tax Ombud, or prepared from information obtained by or on behalf of the Tax Ombud, to SARS, except to the extent required for the purpose of the performance of functions and duties under this Part.	35
CHAPTER 3	40
REGISTRATION	
Registration requirements	
<ul> <li>22. (1) A person— <ul> <li>(a) obliged to apply to; or</li> <li>(b) who may voluntarily,</li> </ul> </li> <li>register with SARS under a tax Act must do so in terms of the requirements of this Chapter or, if applicable, the relevant tax Act.</li> <li>(2) A person referred to in subsection (1) must—</li> </ul>	45
(a) apply for registration within the period provided for in a tax Act or, if no such period is provided for, 21 business days of so becoming obliged or within the further period as SARS may approve in the prescribed form and manner;	50

	apply for registration for one or more taxes in the prescribed form and manner;	
<i>(c)</i>	and provide SARS with the further particulars and any documents as SARS may require for the purpose of registering the person for the tax or taxes.	
	erson registered or applying for registration under a tax Act may be required to ometric information in the prescribed form and manner if the information is	5
	o ensure—	
	proper identification of the person; or	
	counteracting identity theft or fraud.  erson who applies for registration in terms of this Chapter and has not provided	10
all particu	alars and documents required by SARS, may be regarded not to have applied ration until all the particulars and documents have been provided to SARS. ere a taxpayer that is obliged to register with SARS under a tax Act fails to do	10
	may register the taxpayer for one or more tax types as is appropriate under the	1.5
circumsta	nces.	15
Commun	ication of changes in particulars	
within 21	business days any change that relates to—postal address;	
<i>(b)</i>	physical address;	20
	representative taxpayer; banking particulars used for transactions with SARS;	
	electronic address used for communication with SARS; or	
<i>(f)</i>	such other details as the Commissioner may require by public notice.	
Taxpayer	reference number	25
taxes to ea (2) SAI	SARS may allocate a taxpayer reference number in respect of one or more ach person registered under a tax Act or this Chapter. RS may register and allocate a taxpayer reference number to a person who is	
	ered.  berson who has been allocated a taxpayer reference number by SARS must the relevant reference number in all returns or other documents submitted to	30
(4) SAI if it does r	RS may regard a return or other document submitted by a person to be invalid not contain the reference number referred to in subsection (3) and must inform a accordingly if practical.	35
	CHAPTER 4	
	RETURNS AND RECORDS	
	Part A	
	General	
Carbaniasi	or of water	40
Submissi	on of return	40
<b>25.</b> (1) A must do s	A person required under a tax Act to submit or who voluntarily submits a return o—	
(b) (2) A re	in the prescribed form and manner; and by the date specified in the tax Act or, in its absence, by the date specified by the Commissioner in the public notice requiring the submission. Sturn must contain the information prescribed by a tax Act or the Commissioner full and true return.	45
(3) A representation	return must be signed by the taxpayer or by the taxpayer's duly authorised ative and the person signing the return is regarded for all purposes in must be atax Act to be cognisant of the statements made in the return.  In-receipt by a person of a return form does not affect the obligation to submit	50

- (5) SARS may, prior to the issue of an original assessment by SARS, request a person to submit an amended return to correct an undisputed error in a return.
- (6) SARS may extend the time period for filing a return in a particular case, in accordance with procedures and criteria in policies published by the Commissioner.
- (7) The Commissioner may also extend the filing deadline generally or for specific classes of persons by public notice.
- (8) An extension under subsection (6) or (7) does not affect the deadline for paying the tax.

### Third party returns

**26.** The Commissioner may by public notice require a person who employs, pays 10 amounts to, receives amounts on behalf of or otherwise transacts with another person, or has control over assets of another person, to submit a return with the required information in the prescribed form and manner and by the date specified in the notice.

#### Other returns required

**27.** SARS may require a person to submit further or more detailed returns regarding 15 any matter for which a return is required or prescribed by a tax Act.

#### **Statement concerning accounts**

- **28.** (1) SARS may require a person who submits financial statements or accounts prepared by another person in support of that person's submitted return, to submit a certificate or statement by the other person setting out the details of—
  - (a) the extent of the other person's examination of the books of account and of the documents from which the books of account were written up; and

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- (b) whether or not the entries in those books and documents disclose the true nature of the transactions, receipts, accruals, payments or debits in so far as may be ascertained by that examination.
- (2) A person who prepares financial statements or accounts for another person must, at the request of that other person, submit to that other person a copy of the certificate or statement referred to in subsection (1).

#### **Duty to keep records**

- **29.** (1) A person must keep the records, books of account or documents that—
  - (a) enable the person to observe the requirements of a tax Act;
  - (b) are specifically required under a tax Act; and
- (c) enable SARS to be satisfied that the person has observed these requirements.
- (2) The requirements of this Act to keep records for a tax period apply to a person who—
  - (a) has submitted a return for the tax period;
  - (b) is required to submit a return for the tax period and has not submitted a return for the tax period; or
  - (c) is not required to submit a return but has, during the tax period, received income, has a capital gain or capital loss, or engaged in any other activity that 40 is subject to tax or would be subject to tax but for the application of a threshold or exemption.
  - (3) Records need not be retained by the person described in—
    - (a) subsection (2)(a), after a period of five years from the date of the submission of the return; and
    - (b) subsection (2)(c), after a period of five years from the end of the relevant tax period.

## Form of records kept or retained

- **30.** (1) The records, books of account, and documents referred to in section 29, must be kept or retained—
  - (a) in their original form in an orderly fashion and in a safe place;
  - (b) in the form, including electronic form, as may be prescribed by the Commissioner in a public notice; or

(c) in a form specifically authorised by a senior SARS official in terms of subsection (2).

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(2) A senior SARS official may, subject to the conditions as the official may determine, authorise the retention of information contained in records, books of account or documents referred to in section 29 in a form acceptable to the official.

### **Inspection of records**

- 31. The records, books of account and documents referred to in section 29 whether in the form referred to in section 30(1) or in a form authorised under section 30(2), must at all reasonable times during the required periods under section 29, be open for inspection by a SARS official in the Republic for the purpose of—
  - (a) determining compliance with the requirements of sections 29 and 30; or
  - (b) an inspection, audit or investigation under Chapter 5.

### Retention period in case of audit, objection or appeal

- 32. Despite section 29(3), if—
  - (a) records are relevant to an audit or investigation under Chapter 5 which the 15 person subject to the audit or investigation has been notified of or is aware of;
  - (b) a person lodges an objection or appeal against an assessment or decision under section 104(2),

the person must retain the records relevant to the audit, objection or appeal until the 20 audit is concluded or the assessment or the decision becomes final.

#### **Translation**

- 33. (1) In the case of information that is not in one of the official languages of the Republic, a senior SARS official may by notice require a person who must furnish the information to SARS, to produce a translation in one of the official languages 25 determined by the official within a reasonable period.
  - (2) A translation referred to in subsection (1) must—
    - (a) be produced at a time and at the place specified by the notice; and
    - (b) if required by SARS, be prepared and certified by a sworn and accredited translator or another person approved by the senior SARS official.

#### Part B

#### Reportable arrangements

#### **Definitions**

- 34. In this Part and in section 212, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings:
  - 'arrangement' means any transaction, operation, scheme, agreement or understanding (whether enforceable or not);
  - 'financial benefit' means a reduction in the cost of finance, including interest, finance charges, costs, fees and discounts on a redemption amount;
  - 'financial reporting standards' means, in the case of a company required to 40 submit financial statements in terms of the Companies Act, 2008 (Act No. 71 of 2008), financial reporting standards prescribed by that Act, or, in any other case, the Generally Accepted Accounting Practice or appropriate financial reporting standards that provide a fair presentation of the financial results and position of the taxpayer;

'participant', in relation to an 'arrangement', means—

- (a) a 'promoter'; or
- (b) a company or trust which directly or indirectly derives or assumes that it derives a 'tax benefit' or 'financial benefit' by virtue of an 'arrangement';
- 'pre-tax profit', in relation to an 'arrangement', means the profit of a 'participant' resulting from that 'arrangement' before deducting normal tax, which profit must be determined in accordance with 'financial reporting standards' after taking into account all costs and expenditure incurred by the 'participant' in connection with

the 'arrangement' and after deducting any foreign tax paid or payable by the 'participant' in connection with the 'arrangement';  'promoter', in relation to an 'arrangement', means a person who is principally responsible for organising, designing, selling, financing or managing the reportable arrangement;  'tax benefit' includes avoidance, postponement or reduction of a liability for tax.	5
Reportable arrangements	
35. (1) An 'arrangement' is a reportable arrangement if it is listed in terms of subsection (2) or if a 'tax benefit' is or will be derived or is assumed to be derived by any 'participant' by virtue of the 'arrangement' and the 'arrangement'—  (a) contains provisions in terms of which the calculation of "interest" as defined in section 24J of the Income Tax Act, finance costs, fees or any other charges	10
is wholly or partly dependent on the assumptions relating to the tax treatment of that 'arrangement' (otherwise than by reason of any change in the provisions of a tax Act);  (b) has any of the characteristics contemplated in section 80C(2)(b) of the Income	15
Tax Act, or substantially similar characteristics; (c) gives rise to an amount that is or will be disclosed by any 'participant' in any year of assessment or over the term of the 'arrangement' as—	
<ul> <li>(i) a deduction for purposes of the Income Tax Act but not as an expense for purposes of 'financial reporting standards'; or</li> <li>(ii) revenue for purposes of 'financial reporting standards' but not as gross income for purposes of the Income Tax Act;</li> </ul>	20
(d) does not result in a reasonable expectation of a 'pre-tax profit' for any 'participant'; or  (e) results in a reasonable expectation of a 'pre-tax profit' for any 'participant'	25
that is less than the value of that 'tax benefit' to that 'participant' if both are discounted to a present value at the end of the first year of assessment when that 'tax benefit' is or will be derived or is assumed to be derived, using consistent assumptions and a reasonable discount rate for that 'participant'.  (2) The Commissioner may list an 'arrangement' by public notice, if satisfied that the 'arrangement' may lead to an undue 'tax benefit'.	30
(3) This section does not apply to an excluded 'arrangement' referred to in section 36.	
Excluded arrangements	35
<b>36.</b> (1) An 'arrangement' is an excluded 'arrangement' if it is— (a) a loan, advance or debt in terms of which—	
<ul> <li>(i) the borrower receives or will receive an amount of cash and agrees to repay at least the same amount of cash to the lender at a determinable future date; or</li> </ul>	40
<ul><li>(ii) the borrower receives or will receive a fungible asset and agrees to return an asset of the same kind and of the same or equivalent quantity and quality to the lender at a determinable future date;</li></ul>	
<ul><li>(b) a lease;</li><li>(c) a transaction undertaken through an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004); or</li></ul>	45
(d) a transaction in participatory interests in a scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).	
<ul> <li>(2) Subsection (1) applies only to an 'arrangement' that—         <ul> <li>(a) is undertaken on a stand-alone basis and is not directly or indirectly connected to any other 'arrangement' (whether entered into between the same or different parties); or</li> </ul> </li> </ul>	50
<ul><li>(b) would have qualified as having been undertaken on a stand-alone basis as required by paragraph (a), were it not for a connected 'arrangement' that is entered into for the sole purpose of providing security and if no 'tax benefit' is obtained or enhanced by virtue of the security 'arrangement'.</li><li>(3) Subsection (1) does not apply to an 'arrangement' that is entered into—</li></ul>	55
(a) with the main purpose or one of its main purposes of obtaining or enhancing a 'tax benefit'; or	

(b) in a specific manner or form that enhances or will enhance a 'tax benefit'. (4) The Commissioner may determine an 'arrangement' to be an excluded 'arrangement' by public notice, if satisfied that the 'arrangement' is not likely to lead to an undue 'tax benefit'. Disclosure obligation 5 37. (1) The 'promoter' must disclose the information referred to in section 38 in respect of a reportable arrangement. (2) If there is no 'promoter' in relation to the 'arrangement' or if the 'promoter' is not a resident, all other 'participants' must disclose the information. (3) A 'participant' need not disclose the information in respect of the 'arrangement' if 10 the 'participant' obtains a written statement from-(a) the 'promoter' that the 'promoter' has disclosed the 'arrangement'; or (b) any other 'participant', if subsection (2) applies, that the other 'participant' has disclosed the 'arrangement'. (4) The 'arrangement' must be disclosed within 45 business days after an amount is 15 first received by or has accrued to a 'participant' or is first paid or actually incurred by a 'participant' in terms of the 'arrangement'. (5) SARS may grant extension for disclosure for a further 45 business days, if reasonable grounds exist for the extension. Information to be submitted 20 38. The 'promoter' or 'participant' must submit, in relation to a reportable arrangement, in the prescribed form and manner and by the date specified-(a) a detailed description of all its steps and key features, including, in the case of an 'arrangement' that is a step or part of a larger 'arrangement', all the steps and key features of the larger 'arrangement'; 25 (b) a detailed description of the assumed 'tax benefits' for all 'participants', including, but not limited to, tax deductions and deferred income; the names, registration numbers, and registered addresses of all 'participants'; (d) a list of all its agreements; and (e) any financial model that embodies its projected tax treatment. 30 Reportable arrangement reference number **39.** SARS must, after receipt of the information contemplated in section 38, issue a reportable arrangement reference number to each 'participant' for administrative purposes only. **CHAPTER 5** 35 INFORMATION GATHERING Part A General rules for inspection, verification, audit and criminal investigation Selection for inspection, verification or audit **40.** SARS may select a person for inspection, verification or audit on the basis of any 40 consideration relevant for the proper administration of a tax Act, including on a random or a risk assessment basis. Authorisation for SARS official to conduct audit or criminal investigation 41. (1) A senior SARS official may grant a SARS official written authorisation to conduct a field audit or criminal investigation, as referred to in Part B. 45

(2) When a SARS official exercises a power or duty under a tax Act in person, the

(3) If the official does not produce the authorisation, a member of the public is entitled

official must produce the authorisation.

to assume that the official is not a SARS official so authorised.

### Keeping taxpayer informed

- **42.** (1) A SARS official involved in or responsible for an audit under this Part must, in the form and in the manner as may be prescribed by the Commissioner by public notice, provide the taxpayer with a report indicating the stage of completion of the audit.
  - (2) Upon conclusion of the audit or a criminal investigation, and where—
    - (a) the audit or investigation was inconclusive, SARS must inform the taxpayer accordingly within 21 business days; or

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- (b) the audit identified potential adjustments of a material nature, SARS must within 21 business days, or the further period that may be required based on the complexities of the audit, provide the taxpayer with a document 10 containing the outcome of the audit, including the grounds for the proposed assessment or decision referred to in section 104(2).
- (3) Upon receipt of the document described in subsection (2)(b), the taxpayer must within 21 business days of delivery of the document, or the further period requested by the taxpayer that may be allowed by SARS based on the complexities of the audit, 15 respond in writing to the facts and conclusions set out in the document.
  - (4) The taxpayer may waive the right to receive the document.
- (5) Subsections (1) and (2)(b) do not apply if a senior SARS official has a reasonable belief that compliance with those subsections would impede or prejudice the purpose, progress or outcome of the audit.
- (6) SARS may under the circumstances described in subsection (5) issue the assessment or make the decision referred to in section 104(2) resulting from the audit and the grounds of the assessment must be provided to the taxpayer within 21 business days of the assessment or the decision referred to in section 104(2), or the further period that may be required based on the complexities of the audit.

### Referral for criminal investigation

- **43.** (1) If at any time before or during the course of an audit it appears that a person may have committed a serious tax offence, the investigation of the offence must be referred to a senior SARS official responsible for criminal investigations for a decision as to whether a criminal investigation should be pursued.
- (2) Relevant material gathered during an audit after the referral, must be kept separate from the criminal investigation and may not be used in criminal proceedings instituted in respect of the offence.
- (3) If an investigation is referred under subsection (1) the relevant material and files relating to the case must be returned to the SARS official responsible for the audit if— 35
  - (a) it is decided not to pursue a criminal investigation;
  - (b) it is decided to terminate the investigation; or
  - (c) after referral of the case for prosecution, a decision is made not to prosecute.

### Conduct of criminal investigation

- **44.** (1) During a criminal investigation, SARS must apply the information gathering powers in terms of this Chapter with due recognition of the taxpayer's constitutional rights as a suspect in a criminal investigation.
- (2) In the event that a decision is taken to pursue the criminal investigation of a serious tax offence, SARS may make use of relevant material obtained prior to the referral referred to in section 43.
- (3) Relevant information obtained during a criminal investigation may be used for purposes of audit as well as in subsequent civil and criminal proceedings.

#### Part B

#### Inspection, request for relevant material, audit and criminal investigation

## Inspection 50

- **45.** (1) A SARS official may, for the purposes of the administration of a tax Act and without prior notice, arrive at a premises where the SARS official has a reasonable belief that a trade or enterprise is being carried on and conduct an inspection to determine only—
  - (a) the identity of the person occupying the premises;

- (b) whether the person occupying the premises is registered for tax; or
- (c) whether the person is complying with sections 29 and 30.
- (2) A SARS official may not enter a dwelling-house or domestic premises, except any part thereof used for the purposes of trade, under this section without the consent of the occupant.

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### Request for relevant material

- **46.** (1) SARS may, for the purposes of the administration of a tax Act in relation to a taxpayer, whether identified by name or otherwise objectively identifiable, require the taxpayer or another person to, within a reasonable period, submit relevant material (whether orally or in writing) that SARS requires.
- (2) A senior SARS official may require relevant material in terms of subsection (1) in respect of taxpayers in an objectively identifiable class of taxpayers.
- (3) A request by SARS for relevant material from a person other than the taxpayer is limited to the records maintained or that should reasonably be maintained by the person in relation to the taxpayer.
- (4) A person receiving from SARS a request for relevant material under this section must submit the relevant material to SARS at the place and within the time specified in the request.
- (5) SARS may extend the period within which the relevant material must be submitted on good cause shown.
- (6) Relevant material required by SARS under this section must be referred to in the request with reasonable specificity.
- (7) A senior SARS official may direct that relevant material be provided under oath or solemn declaration.
- (8) A senior SARS official may request relevant material that a person has available 25 for purposes of revenue estimation.

#### Production of relevant material in person

- **47.** (1) A senior SARS official may, by notice, require a person, whether or not chargeable to tax, to attend in person at the time and place designated in the notice for the purpose of being interviewed by a SARS official concerning the tax affairs of the person, if the interview—
  - (a) is intended to clarify issues of concern to SARS to render further verification or audit unnecessary; and
  - (b) is not for purposes of a criminal investigation.
- (2) The senior SARS official issuing the notice may require the person interviewed to 35 produce relevant material under the control of the person during the interview.
- (3) Relevant material required by SARS under subsection (2) must be referred to in the notice with reasonable specificity.
- (4) A person may decline to attend an interview, if the distance between the place designated in the notice and the usual place of business or residence of the person 40 exceeds the distance prescribed by the Commissioner by public notice.

## Field audit or criminal investigation

- **48.** (1) A SARS official named in an authorisation referred to in section 41 may require a person, with prior notice of at least 10 business days, to make available at the person's premises specified in the notice relevant material that the official may require to audit or criminally investigate in connection with the administration of a tax Act in relation to the person or another person.
  - (2) The notice referred to in subsection (1) must—
    - (a) state the place where and the date and time that the audit or investigation is due to start (which must be during normal business hours); and 50
    - (b) indicate the initial basis and scope of the audit or investigation.
- (3) SARS is not required to give the notice if the person waives the right to receive the notice.
- (4) If a person at least five business days before the date listed in the notice advances reasonable grounds for varying the notice, SARS may vary the notice accordingly, subject to conditions SARS may impose with regard to preparatory measures for the audit or investigation.

(5) A SARS official may not enter a dwelling-house or domestic premises, except any part thereof used for the purposes of trade, under this section without the consent of the occupant.

### Assistance during field audit or criminal investigation

- **49.** (1) The person on whose premises an audit or criminal investigation is carried out, must provide such reasonable assistance as is required by SARS to conduct the audit or investigation, including—
  - (a) making available appropriate facilities, to the extent that such facilities are available;
  - (b) answering questions relating to the audit or investigation; and
  - (c) submitting relevant material as required.
  - (2) No person may without just cause—
    - (a) obstruct a SARS official from carrying out the audit or investigation; or
    - (b) refuse to give the access or assistance as may be required under subsection (1).
- (3) The person may recover from SARS after completion of the audit (or, at the person's request, on a monthly basis) the costs for the use of photocopying facilities in accordance with the fees prescribed in section 92(1)(b) of the Promotion of Access to Information Act.

#### Part C

### *Inquiries* 20

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#### **Authorisation for inquiry**

- **50.** (1) A judge may, on application made *ex parte* by a senior SARS official grant an order in terms of which a person described in section 51(3) is designated to act as presiding officer at the inquiry referred to in this section.
- (2) An application under subsection (1) must be supported by information supplied 2: under oath or solemn declaration, establishing the facts on which the application is based
- (3) A senior SARS official may authorise a person to conduct an inquiry for the purposes of the administration of a tax Act.

Inquiry order 30

- **51.** (1) A judge may grant the order referred to in section 50(2) if satisfied that there are reasonable grounds to believe that—
  - (a) a person has—
    - (i) failed to comply with an obligation imposed under a tax Act; or
    - (ii) committed a tax offence; and

(b) relevant material is likely to be revealed during the inquiry which may provide proof of the failure to comply or of the commission of the offence.

- (2) The order referred to in subsection (1) must—
  - (a) designate a presiding officer before whom the inquiry is to be held;
  - (b) identify the person referred to in subsection (1)(a);
  - (c) refer to the alleged non-compliance or offence to be inquired into;
  - (d) be reasonably specific as to the ambit of the inquiry; and
  - (e) be provided to the presiding officer.
- (3) A presiding officer must be a person appointed to the panel described in section 111.

#### **Inquiry proceedings**

- **52.** (1) The presiding officer determines the conduct of the inquiry as the presiding officer thinks fit.
- (2) The presiding officer must ensure that the recording of the proceedings and evidence at the inquiry is of a standard that would meet the standard required for the 50 proceedings and evidence to be used in a court of law.
- (3) A person has the right to have a representative present when that person appears as a witness before the presiding officer.

### Notice to appear

- 53. (1) The presiding officer may, by notice in writing, require a person, whether or not chargeable to tax, to-
  - (a) appear before the inquiry, at the time and place designated in the notice, for the purpose of being examined under oath or solemn declaration, and
  - (b) produce any relevant material in the custody of the person.
- (2) If the notice requires the production of relevant material, it is sufficient if the relevant material is referred to in the notice with reasonable specificity.

#### Powers of presiding officer

**54.** The presiding officer has the same powers regarding witnesses at the inquiry as are 10 vested in a President of the tax court under sections 127 and 128.

#### Witness fees

55. The presiding officer may direct that a person receive witness fees to attend an inquiry in accordance with the tariffs prescribed in terms of section 51bis of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944). 15

#### Confidentiality of proceedings

- **56.** (1) An inquiry under this Part is private and confidential.
- (2) The presiding officer may, on request, exclude a person from the inquiry if the person's attendance is prejudicial to the inquiry.
- (3) Section 69 applies with the necessary changes to persons present at the 20 questioning of a person, including the person being questioned.
- (4) Subject to section 57(2), SARS may use evidence given by a person under oath or solemn declaration at an inquiry in a subsequent proceeding involving the person or another person.

## **Incriminating evidence**

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- **57.** (1) A person may not refuse to answer a question during an inquiry on the grounds that it may incriminate the person.
- (2) Incriminating evidence obtained under this section is not admissible in criminal proceedings against the person giving the evidence, unless the proceedings relate to—
  - (a) the administering or taking of an oath or the administering or making of a 30 solemn declaration;
  - (b) the giving of false evidence or the making of a false statement; or
  - (c) the failure to answer questions lawfully put to the person, fully and satisfactorily.

#### Inquiry not suspended by civil or criminal proceedings

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58. Unless a court orders otherwise, an inquiry relating to a person referred to in section 51(1)(a) must proceed despite the fact that a civil or criminal proceeding is pending or contemplated against or involves the person, a witness or potential witness in the inquiry, or another person whose affairs may be investigated in the course of the inquiry.

#### Search and seizure

Part D

### **Application for warrant**

**59.** (1) A senior SARS official may, if necessary or relevant to administer a tax Act, authorise an application for a warrant under which SARS may enter a premises where 45 relevant material is kept to search the premises and any person present on the premises and seize relevant material.

- (2) SARS must apply *ex parte* to a judge for the warrant, which application must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.
- (3) Despite subsection (2), SARS may apply for the warrant referred to in subsection (1) and in the manner referred to in subsection (2), to a magistrate, if the matter relates to an audit or investigation where the estimated tax in dispute does not exceed the amount determined in the notice issued under section 109(1)(a).

#### **Issuance of warrant**

- **60.** (1) A judge or magistrate may issue the warrant referred to in section 59(1) if satisfied that there are reasonable grounds to believe that—
  - (a) a person failed to comply with an obligation imposed under a tax Act, or committed a tax offence; and
  - (b) relevant material likely to be found on the premises specified in the application may provide evidence of the failure to comply or commission of the offence.
  - (2) A warrant issued under subsection (1) must contain the following:
    - (a) the alleged failure to comply or offence that is the basis for the application;
    - (b) the person alleged to have failed to comply or to have committed the offence;
    - (c) the premises to be searched; and
    - (d) the fact that relevant material as defined in section 1 is likely to be found on 20 the premises.
- (3) The warrant must be exercised within 45 business days or such further period as a judge or magistrate deems appropriate on good cause shown.

#### Carrying out search

- **61.** (1) A SARS official exercising a power under a warrant referred to in section 60 25 must produce the warrant.
- (2) Subject to section 63, a SARS official's failure to produce a warrant entitles a person to refuse access to the official.
  - (3) The SARS official may—
    - (a) open or cause to be opened or removed in conducting a search, anything 30 which the official suspects to contain relevant material;
    - (b) seize any relevant material;
    - (c) seize and retain a computer or storage device in which relevant material is stored for as long as it is necessary to copy the material required;
    - (d) make extracts from or copies of relevant material, and require from a person 35 an explanation of relevant material; and

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- (e) if the premises listed in the warrant is a vessel, aircraft or vehicle, stop and board the vessel, aircraft or vehicle, search the vessel, aircraft or vehicle or a person found in the vessel, aircraft or vehicle, and question the person with respect to a matter dealt with in a tax Act.
- (4) The SARS official must make an inventory of the relevant material seized in the form, manner and at the time that is reasonable under the circumstances and provide a copy thereof to the person.
- (5) The SARS official must conduct the search with strict regard for decency and order, and may search a person if the official is of the same gender as the person being 45 searched
- (6) The SARS official may, at any time, request such assistance from a police officer as the official may consider reasonably necessary and the police officer must render the assistance.
- (7) No person may obstruct a SARS official or a police officer from executing the 50 warrant or without reasonable excuse refuse to give such assistance as may be reasonably required for the execution of the warrant.
- (8) If the SARS official seizes relevant material, the official must ensure that the relevant material seized is preserved and retained until it is no longer required for—
  - (a) the investigation into the non-compliance or the offence described under 55 section 60(1)(a); or
  - (b) the conclusion of any legal proceedings under a tax Act or criminal proceedings in which it is required to be used.

#### Search of premises not identified in warrant

- **62.** (1) If a senior SARS official has reasonable grounds to believe that—
  - (a) the relevant material referred to in section 60(1)(b) and included in a warrant is at premises not identified in the warrant and may be removed or destroyed;
  - (b) a warrant cannot be obtained in time to prevent the removal or destruction of the relevant material; and

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- (c) the delay in obtaining a warrant would defeat the object of the search and seizure,
- a SARS official may enter and search the premises and exercise the powers granted in terms of this Part, as if the premises had been identified in the warrant.
- (2) A SARS official may not enter a dwelling-house or domestic premises, except any part thereof used for purposes of trade, under this section without the consent of the occupant.

#### **Search without warrant**

- **63.** (1) A senior SARS official may without a warrant exercise the powers referred to 15 in section 61(3)—
  - (a) if the owner or person in control of the premises so consents in writing; or
  - (b) if the senior SARS official on reasonable grounds is satisfied that—
    - (i) there may be an imminent removal or destruction of relevant material likely to be found on the premises;
    - (ii) if SARS applies for a search warrant under section 59, a search warrant will be issued; and
    - (iii) the delay in obtaining a warrant would defeat the object of the search and seizure.
- (2) A SARS official must, before carrying out the search, inform the owner or person 25 in control of the premises—
  - (a) that the search is being conducted under this section; and
  - (b) of the alleged failure to comply with an obligation imposed under a tax Act or tax offence that is the basis for the search.
  - (3) Section 61(4) to (9) applies to a search conducted under this section.
- (4) A SARS official may not enter a dwelling-house or domestic premises, except any part thereof used for purposes of trade, under this section without the consent of the occupant.

#### Legal professional privilege

- **64.** (1) If SARS foresees the need to search and seize relevant material that may be alleged to be subject to legal professional privilege, SARS must arrange for an attorney from the panel appointed under section 111 to be present during the execution of the warrant.
- (2) An attorney with whom SARS has made an arrangement in terms of subsection (1) may appoint a substitute attorney to be present on the appointing attorney's behalf 40 during the execution of a warrant.
- (3) If, during the carrying out of a search and seizure by SARS, a person alleges the existence of legal professional privilege in respect of relevant material and an attorney is not present under subsection (1) or (2), SARS must seal the material, make arrangements with an attorney from the panel appointed under section 111 to take 45 receipt of the material and, as soon as is reasonably possible, hand over the material to the attorney.
  - (4) An attorney referred to in subsections (1), (2) and (3)—
    - (a) is not regarded as acting on behalf of either party; and
    - (b) must personally take responsibility—
      - (i) in the case of a warrant issued under section 60, for the removal from the premises of relevant material in respect of which legal privilege is alleged:
      - (ii) in the case of a search and seizure carried out under section 63, for the receipt of the sealed information; and
      - (iii) if a substitute attorney in terms of subsection (2), for the delivery of the information to the appointing attorney for purposes of making the determination referred to in subsection (5).

- (5) The attorney referred to in subsection (1) or (3) must within 21 business days make a determination of whether the privilege applies and may do so in the manner the attorney deems fit, including considering representations made by the parties.
- (6) If a determination of whether the privilege applies is not made under subsection (5) or a party is not satisfied with the determination, the attorney must retain the relevant material pending final resolution of the dispute by the parties or an order of court.
- (7) The attorney from the panel appointed under section 111 and any attorney acting on behalf of that attorney referred to in subsection (1) must be compensated in the same manner as if acting as Chairperson of the tax board.

### Person's right to examine and make copies

- **65.** (1) The person to whose affairs relevant material seized relates, may examine and copy it.
  - (2) Examination and copying must be made—
    - (a) at the person's cost in accordance with the fees prescribed in accordance with 15 section 92(1)(b) of the Promotion of Access to Information Act;

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- (b) during normal business hours; and
- (c) under the supervision determined by a senior SARS official.

### Application for return of seized relevant material or costs of damages

- **66.** (1) A person may request SARS to—
  - (a) return some or all of the seized material; and
  - (b) pay the costs of physical damage caused during the conduct of a search and seizure
- (2) If SARS refuses the request, the person may apply to a High Court for the return of the seized material or payment of compensation for physical damage caused during 25 the conduct of the search and seizure.
  - (3) The court may, on good cause shown, make the order as it deems fit.
- (4) If the court sets aside the warrant issued in terms of section 60(1) or orders the return of the seized material, the court may nevertheless authorise SARS to retain the original or a copy of any relevant material in the interests of justice.

### **CHAPTER 6**

#### CONFIDENTIALITY OF INFORMATION

#### General prohibition of disclosure

- **67.** (1) This Chapter applies to—
  - (a) SARS confidential information as referred to in section 68(1); and
  - (b) taxpayer information, which means any information provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information.
- (2) An oath or solemn declaration undertaking to comply with the requirements of this Chapter in the prescribed form, must be taken before a magistrate, justice of the peace or commissioner of oaths by—
  - (a) a SARS official and the Tax Ombud, before commencing duties or exercising any powers under a tax Act; and
  - (b) a person referred to in section 70 who performs any function referred to in that section, before the disclosure described in that section may be made.
- (3) In the event of the disclosure of SARS confidential information or taxpayer 45 information contrary to this Chapter, the person to whom it was so disclosed may not in any manner disclose, publish or make it known to any other person who is not a SARS official
- (4) A person who receives information under section 68, 69, 70 or 71, must preserve the secrecy of the information and may only disclose the information to another person 50 if the disclosure is necessary to perform the functions specified in those sections.
- (5) The Commissioner may, for purposes of protecting the integrity and reputation of SARS as an organisation and after giving the taxpayer at least 24 hours' notice, disclose taxpayer information to the extent necessary to counter or rebut false allegations or information disclosed by the taxpayer, the taxpayer's duly authorised representative or 55

other person acting under the instructions of the taxpayer and published in the media or in any other manner.

SARS co	onfidential information and disclosure	
<b>68.</b> (1)	SARS confidential information means information relevant to the administra-	
tion of a	tax Act that is—	5
(a)	personal information about a current or former SARS official, whether deceased or not;	
(b)	information subject to legal professional privilege vested in SARS;	
(c)	information that was supplied in confidence by a third party to SARS the disclosure of which could reasonably be expected to prejudice the future supply of similar information, or information from the same source;	10
( <i>d</i> )	information related to investigations and prosecutions described in section 39 of the Promotion of Access to Information Act;	
(e)	information related to the operations of SARS, including an opinion, advice, report, recommendation or an account of a consultation, discussion or	15
	deliberation that has occurred, if—	13
	(i) the information was given, obtained or prepared by or for SARS for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; and	20
	(ii) the disclosure of the information could reasonably be expected to frustrate the deliberative process in SARS or between SARS and other organs of state by—	
	(aa) inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or	25
	(bb) frustrating the success of a policy or contemplated policy by the premature disclosure thereof;	
(f)	information about research being or to be carried out by or on behalf of SARS, the disclosure of which would be likely to prejudice the outcome of the research;	30
(g)	information, the disclosure of which could reasonably be expected to prejudice the economic interests or financial welfare of the Republic or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic, including a contemplated change or decision to change a tax or a duty, levy, penalty, interest and similar moneys imposed under a tax Act or the Customs and Excise Act;	35
(h)	information supplied in confidence by or on behalf of another state or an international organisation to SARS;	
<i>(i)</i>	(Act No. 98 of 1978), owned by SARS; and	40
	information relating to the security of SARS buildings, property, structures or systems.	
	person who is a current or former SARS official—	
	may not disclose SARS confidential information to a person who is not a SARS official;	45
(b)	may not disclose SARS confidential information to a SARS official who is not authorised to have access to the information; and	
(c)	must take the precautions that may be required by the Commissioner to prevent a person referred to in paragraph $(a)$ or $(b)$ from obtaining access to the information.	50
	person who is a SARS official or former SARS official may disclose SARS	
	tial information if—	
(a)	the information is public information;	
(b)	authorised by the Commissioner;	55
(c) (d)	disclosure is authorised under any other Act which expressly provides for the disclosure of the information despite the provisions in this Chapter; access has been granted for the disclosure of the information in terms of the	
(e)	Promotion of Access to Information Act; or required by order of a High Court.	60

## Secrecy of taxpayer information and general disclosure

<b>69.</b> (1) A person who is a current or former SARS official must preserve the secrecy of taxpayer information and may not disclose taxpayer information to a person who is not a SARS official.	
(2) Subsection (1) does not prohibit the disclosure of taxpayer information by a person who is a current or former SARS official—	5
<ul> <li>(a) in the course of performance of duties under a tax Act, including—</li> <li>(i) to the South African Police Service or the National Prosecuting Authority, if the information relates to, and constitutes material information for the proving of, a tax offence;</li> <li>(ii) as a witness in civil or criminal proceedings under a tax Act; or</li> <li>(iii) the taxpayer information necessary to enable a person to provide such information as may be required by SARS from that person;</li> </ul>	10
<ul> <li>(b) under any other Act which expressly provides for the disclosure of the information despite the provisions in this Chapter;</li> <li>(c) by order of a High Court; or</li> </ul>	15
<ul> <li>(d) if the information is public information.</li> <li>(3) An application to the High Court for the order referred to in subsection (2)(c) requires prior notice to SARS of at least 15 business days unless the court, based on urgency, allows a shorter period.</li> <li>(4) SARS may oppose the application on the basis that the disclosure may seriously</li> </ul>	20
prejudice the taxpayer concerned or impair a civil or criminal tax investigation by SARS.  (5) The court may not grant the order unless satisfied that the following circumstances	
(a) the information cannot be obtained elsewhere; (b) the primary mechanisms for procuring evidence under an Act or rule of court will yield or yielded no or disappointing results;	25
<ul> <li>(c) the information is central to the case; and</li> <li>(d) the information does not constitute biometric information.</li> <li>(6) Subsection (1) does not prohibit the disclosure of information—</li> <li>(a) to the taxpayer; or</li> </ul>	30
<ul> <li>(b) with the written consent of the taxpayer, to another person.</li> <li>(7) Biometric information of a taxpayer may not be disclosed by SARS except under the circumstances described in subsection (2)(a)(i).</li> <li>(8) The Commissioner may, despite the provisions of this section, publish— <ul> <li>(a) the name and taxpayer reference number of a taxpayer; and</li> <li>(b) a list of approved public benefit organisations for the purposes of the provisions of sections 18A and 30 of the Income Tax Act.</li> </ul> </li> </ul>	35
Disclosure to other entities	40
<b>70.</b> (1) A senior SARS official may provide to the Director-General of the National Treasury taxpayer information or SARS information in respect of—	
<ul> <li>(a) a taxpayer which is an—</li> <li>(i) institution referred to in section 3(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or</li> <li>(ii) entity referred to in section 3 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), to the extent necessary for the Director-General to perform the functions and</li> </ul>	45
exercise the powers of the National Treasury under those Acts; and  (b) a class of taxpayers to the extent necessary for the purposes of tax policy design or revenue estimation.  (2) A senior SARS official may disclose to—	50
(a) the Statistician-General the taxpayer information as may be required for the purpose of carrying out the Statistician-General's duties to publish statistics in an anonymous form;	55
(b) the Chairperson of the Board administering the National Student Financial Aid Scheme, the name and address of the employer of a person to whom a loan or bursary has been granted under that scheme, for use in performing the Chairperson's functions under the National Student Financial Aid Scheme Act, 1999 (Act No. 56 of 1999);	60

- (c) a Commission of Inquiry established by the President of the Republic of South Africa under a law of the Republic, the information to which the Commission is authorised by law to have access; and
- (d) to an employer (as defined in the Fourth Schedule to the Income Tax Act) of an employee (as defined in the Fourth Schedule), but only the income tax reference number, identity number, physical or postal address of that employee and such other non-financial information in relation to that employee, as that employer may require in order to comply with its obligations in terms of a tax Act.

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- (3) A senior SARS official may disclose to-
  - (a) the Governor of the South African Reserve Bank, or other person to whom the Minister delegates powers, functions and duties under the Exchange Control Regulations, 1961, issued under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), the information as may be required to exercise a power or perform a function or duty under the South African Reserve Bank 15 Act, 1994 (Act No. 29 of 1994), or those Regulations;
  - (b) the Financial Services Board, the information as may be required for the purpose of carrying out the Board's duties and functions under the Financial Services Board Act, 1989 (Act No. 90 of 1989);
  - (c) the Financial Intelligence Centre, the information as may be required for the 20 purpose of carrying out the Centre's duties and functions under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and
  - (d) the National Credit Regulator, the information as may be required for the purpose of carrying out the Regulator's duties and functions under the National Credit Act, 2005 (Act No. 34 of 2005).
- (4) A senior SARS official may disclose to an organ of state or institution listed in a regulation issued by the Minister under section 257, information to which the organ of state or institution is otherwise lawfully entitled to and for the purposes only of verifying the correctness of the following particulars of a taxpayer:
  - (a) name and taxpayer reference number
  - (b) any identifying number;
  - (c) physical and postal address and other contact details;
  - (d) employer's name, address and contact details; and
  - (e) other non-financial information as the organ of state or institution may require for purposes of verifying paragraphs (a) to (d).
- (5) The information disclosed under subsection (2) or (3) may only be disclosed by SARS or the persons or entities referred to in subsection (2) or (3) to the extent that it
  - (a) necessary for the purpose of exercising a power or performing a regulatory function or duty under the legislation referred to in subsection (2) or (3); and
  - (b) relevant and proportionate to what the disclosure is intended to achieve as determined under the legislation.
- (6) SARS must allow the Auditor-General to have access to information in the possession of SARS that relates to the performance of the Auditor-General's duties under section 4 of the Public Audit Act, 2004 (Act No. 25 of 2004).
- (7) Despite subsections (1) to (5), a senior SARS official may not disclose information under this section if satisfied that the disclosure would seriously impair a civil or criminal tax investigation.

### Disclosure in criminal, public safety or environmental matters

- **71.** (1) If so ordered by a judge under this section, a senior SARS official must 50 disclose the information described in subsection (2) to—
  - (a) the National Commissioner of the South African Police Service, referred to in section 6(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995); or
  - (b) the National Director of Public Prosecutions, referred to in section 5(2)(a) of 55 the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998).
  - (2) Subsection (1) applies to information which may reveal evidence—
    - (a) that an offence (other than a tax offence) has been or may be committed in respect of which a court may impose a sentence of imprisonment exceeding five years;
    - (b) that may be relevant to the investigation or prosecution of the offence; or

- (c) of an imminent and serious public safety or environmental risk.
- (3) A senior SARS official may, if of the opinion that-
  - (a) SARS has information referred to in subsection (2);
  - (b) the information will likely be critical to the prosecution of the offence or avoidance of the risk; and

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(c) the disclosure of the information would not seriously impair a civil or criminal tax investigation,

make an application ex parte to a judge in chambers for an order authorising SARS to disclose the information under subsection (1).

- (4) The National Commissioner of the South African Police Service, the National Director of Public Prosecutions or a person acting under their respective direction and control, if-
  - (a) carrying out an investigation relating to an offence or a public safety or environmental risk referred to in subsection (2); and
  - (b) of the opinion that SARS may have information that is relevant to that 15 investigation,

may make an ex parte application to a judge in chambers for an order requiring SARS to disclose the information referred to in subsection (2).

(5) SARS must be given prior notice of at least 10 business days of an application under subsection (4) unless the judge, based on urgency, allows a shorter period and 20 SARS may oppose the application on the basis that the disclosure would seriously impair or prejudice a civil or criminal tax investigation or other enforcement of a tax Act by SARS.

#### **Self-incrimination**

**72.** (1) A taxpayer may not refuse to comply with his or her obligations in terms of 25 legislation to complete and file a return or an application on the grounds that to do so might incriminate him or her, and an admission by the taxpayer contained in a return, application, or other document submitted to SARS by a taxpayer is admissible in criminal proceedings against the taxpayer for an offence under a tax Act, unless a competent court directs otherwise.

(2) An admission by the taxpayer of the commission of an offence under a tax Act obtained from a taxpayer under Chapter 5 is not admissible in criminal proceedings against the taxpayer, unless a competent court directs otherwise.

#### Disclosure to taxpayer of own record

- 73. (1) A taxpayer or the taxpayer's duly authorised representative is entitled to 35
  - (a) a copy, certified by SARS, of the recorded particulars of an assessment or decision referred to in section 104(2) relating to the taxpayer;
  - (b) access to information submitted to SARS by the taxpayer or by a person on the taxpayer's behalf; and 40
  - (c) other information relating to the tax affairs of the taxpayer.
- (2) A request for information under subsection (1)(c) must be made under the Promotion of Access to Information Act.
- (3) The person requesting information under subsection (1)(b) may be required to pay for the costs of copies in accordance with the fees prescribed in section 92(1)(b) of the 45 Promotion of Access to Information Act.

#### Publication of names of offenders

- 74. (1) The Commissioner may publish for general information the particulars specified in subsection (2), relating to a tax offence committed by a person, if—
  - (a) the person was convicted of the offence; and
  - (b) all appeal or review proceedings relating to the offence have been completed or were not instituted within the period allowed.
  - (2) The publication referred to in subsection (1) may specify—
    - (a) the name and area of residence of the offender;
    - (b) any particulars of the offence that the Commissioner thinks fit; and
    - (c) the particulars of the fine or sentence imposed.

## **CHAPTER 7**

## ADVANCE RULINGS

## Definitions

Dennitions	
75. In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings:	5
<b>'advance ruling'</b> means a 'binding general ruling', a 'binding private ruling' or a	
'binding class ruling';  (applicant') means a person who submits an 'application' for a 'binding private	
<b>'applicant'</b> means a person who submits an 'application' for a 'binding private ruling' or a 'binding class ruling';	
<b>'application'</b> means an application for a 'binding private ruling' or a 'binding class	10
ruling';	10
'binding class ruling' means a written statement issued by SARS regarding the	
application of a tax Act to a specific 'class' of persons in respect of a 'proposed	
transaction';	
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tax Act in accordance with an 'advance ruling' under section 82;	
'binding general ruling' means a written statement issued by a senior SARS	
official under section 89 regarding the interpretation of a tax Act or the application	
of a tax Act to the stated facts and circumstances;	20
<b>'binding private ruling'</b> means a written statement issued by SARS regarding the application of a tax Act to one or more parties to a 'proposed transaction', in respect	20
of the 'transaction';	
'class' means—	
(a) shareholders, members, beneficiaries or the like in respect of a company,	
association, pension fund, trust, or the like; or	25
(b) a group of persons, that may be unrelated and—	
(i) are similarly affected by the application of a tax Act to a 'proposed	
transaction'; and	
(ii) agree to be represented by an 'applicant';	20
'class member' and 'class members' means a member or members of the 'class'	30
to which a 'class ruling' applies; 'non-binding private opinion' means informal guidance issued by SARS in	
respect of the tax treatment of a particular set of facts and circumstances or	
'transaction', but which does not have a 'binding effect' within the meaning of section 88;	35
<b>'proposed transaction'</b> means a 'transaction' that an 'applicant' proposes to	
undertake, but has not agreed to undertake, other than by way of an agreement that is subject to a suspensive condition or is otherwise not binding; and	
<b>'transaction'</b> means any transaction, deal, business, arrangement, operation or scheme and includes a series of transactions.	40

# Purpose of advance rulings

**76.** The purpose of the 'advance ruling' system is to promote clarity, consistency and certainty regarding the interpretation and application of a tax Act by creating a framework for the issuance of 'advance rulings'.

# Scope of advance rulings

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77. SARS may make an 'advance ruling' on any provision of a tax Act.

# Private rulings and class rulings

- **78.** (1) SARS may issue a 'binding private ruling' upon 'application' by a person in accordance with section 79.
- (2) SARS may issue a 'binding class ruling' upon 'application' by a person in 50 accordance with section 79.
- (3) SARS may make a 'binding private ruling' or 'binding class ruling' subject to the conditions and assumptions as may be prescribed in the ruling.

- (4) SARS must issue the ruling to the 'applicant' at the address shown in the 'application' unless the 'applicant' provides other instructions, in writing, before the ruling is issued.
- (5) A 'binding private ruling' or 'binding class ruling' may be issued in the prescribed form and manner, must be signed by a senior SARS official and must contain the following:
  - (a) a statement identifying it as a 'binding private ruling' or as a 'binding class ruling' made under this section;
  - (b) the name, tax reference number (if applicable), and postal address of the 'applicant';

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- (c) in the case of a 'binding class ruling', a list or a description of the affected 'class members';
- (d) the relevant statutory provisions or legal issues;
- (e) a description of the 'proposed transaction';
- (f) any assumptions made or conditions imposed by SARS in connection with the 15 validity of the ruling;
- (g) the specific ruling made; and
- (h) the period for which the ruling is valid.
- (6) In the case of a 'binding class ruling', the 'applicant' alone is responsible for communicating with the affected 'class members' regarding the 'application' for the 20 ruling, the issuance, withdrawal or modification of the ruling, or any other information or matter pertaining to the ruling.

## Applications for advance rulings

- **79.** (1) An 'application' must be made in the prescribed form and manner.
- (2) An 'application' for a 'binding private ruling' may be made by one person who is a party to a 'proposed transaction', or by two or more parties to a 'proposed transaction' as co-applicants, and if there is more than one 'applicant', each 'applicant' must join in designating one 'applicant' as the lead 'applicant' to represent the others.
- (3) An 'application' for a 'binding class ruling' may be made by a person on behalf of a 'class'.
  - (4) An 'application' must contain the following minimum information:
    - (a) the 'applicant's' name, applicable identification or taxpayer reference number, postal address, email address, and telephone number;
    - (b) the name, postal address, email address and telephone number of the 'applicant's' representative, if any;
    - (c) a complete description of the 'proposed transaction' in respect of which the ruling is sought, including its financial implications;
    - (d) a complete description of the impact the 'proposed transaction' may have upon the tax liability of the 'applicant' or any 'class member' or, if relevant, any connected person in relation to the 'applicant' or any 'class member';
    - (e) a complete description of any 'transaction' entered into by the 'applicant' or 'class member' prior to submitting the 'application' or that may be undertaken after the completion of the 'proposed transaction' which may have a bearing on the tax consequences of the 'proposed transaction' or may be considered to be part of a series of 'transactions' involving the 'proposed transaction';
    - (f) the proposed ruling being sought, including a draft of the ruling;
    - (g) the relevant statutory provisions or legal issues;
    - (h) the reasons why the 'applicant' believes that the proposed ruling should be granted;
    - (i) a statement of the 'applicant's' interpretation of the relevant statutory 50 provisions or legal issues, as well as an analysis of relevant authorities either considered by the 'applicant' or of which the 'applicant' is aware, as to whether those authorities support or are contrary to the proposed ruling being sought:
    - (*j*) a statement, to the best of the 'applicant's' knowledge, as to whether the ruling 55 requested is referred to in section 80;
    - (*k*) a description of the information that the 'applicant' believes should be deleted from the final ruling before publication in order to protect the confidentiality of the 'applicant' or 'class members';
    - (1) the 'applicant's' consent to the publication of the ruling by SARS in 60 accordance with section 87; and

(m) in the case of an 'application' for a 'binding class ruling'— (i) a description of the 'class members'; and (ii) the impact the 'proposed transaction' may have upon the tax liability of the 'class members' or, if relevant, any connected person in relation to 5 the 'applicant' or to any 'class member'. (5) SARS may request additional information from an 'applicant' at any time. (6) An 'application' must be accompanied by the 'application' fee prescribed under (7) SARS must provide an 'applicant' with a reasonable opportunity to make representations if, based upon the 'application' and any additional information received, 10 it appears that the content of the ruling to be made would differ materially from the proposed ruling sought by the 'applicant'. (8) An 'applicant' may withdraw an 'application' for a ruling at any time. (9) A co-applicant to a 'binding private ruling' referred to in subsection (2) may withdraw from an 'application' at any time. 15 (10) A withdrawal does not affect the liability to pay fees under section 81. Rejection of application for advance ruling **80.** (1) SARS may reject an 'application' for an 'advance ruling' if the 'application'— (a) requests or requires the rendering of an opinion, conclusion or determination regarding-20 (i) the market value of an asset; (ii) the application or interpretation of the laws of a foreign country; (iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the 'applicant' or a 'class member'; (iv) the constitutionality of a tax Act; 25 (v) a 'proposed transaction' that is hypothetical or not seriously contem-(vi) a matter which can be resolved by SARS issuing a directive under the Fourth Schedule to the Income Tax Act; (vii) whether a person is an independent contractor, labour broker or personal 30 service provider; or (viii) a matter which is submitted for academic purposes; (b) contains-(i) a frivolous or vexatious issue; (ii) an alternative course of action by the 'applicant' or a 'class member' that 35 is not seriously contemplated; or (iii) an issue that is the same as or substantially similar to an issue that is— (aa) currently before SARS in connection with an audit, investigation or other proceeding involving the 'applicant' or a 'class member' or a connected person in relation to the 'applicant' or a 'class member'; 40 (bb) the subject of a policy document or draft legislation that has been published; or (cc) subject to dispute resolution under Chapter 9; (c) involves the application or interpretation of a general or specific antiavoidance provision or doctrine; 45 (d) involves an issue-(i) that is of a factual nature; (ii) the resolution of which would depend upon assumptions to be made regarding a future event or other matters which cannot be reasonably determined at the time of the 'application'; 50 (iii) which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double (iv) in which the tax treatment of the 'applicant' is dependent upon the tax treatment of another party to the 'proposed transaction' who has not 55 applied for a ruling; (v) in respect of a 'transaction' that is part of another 'transaction' which has a bearing on the issue, the details of which have not been disclosed; or (vi) which is the same as or substantially similar to an issue upon which the

'applicant' has already received an unfavourable ruling;

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- (e) involves a matter the resolution of which would be unduly time-consuming or resource intensive; or
- (f) requests SARS to rule on the substance of a 'transaction' and disregard its form.
- (2) The Commissioner may publish by public notice a list of additional considerations in respect of which the Commissioner may reject an 'application'.
- (3) If SARS requests additional information in respect of an 'application' and the 'applicant' fails or refuses to provide the information, SARS may reject the 'application' without a refund or rebate of any fees imposed under section 81.

## Fees for advance rulings

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- **81.** (1) In order to defray the cost of the 'advance ruling' system, the Commissioner may by public notice prescribe fees for the issuance of a 'binding private ruling' or 'binding class ruling', including—
  - (a) an 'application' fee; and
  - (b) a cost recovery fee.

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- (2) Following the acceptance of an 'application' SARS must, if requested, provide the 'applicant' with an estimate of the cost recovery fee anticipated in connection with the 'application' and must notify the 'applicant' if it subsequently appears that this estimate may be exceeded.
- (3) The fees imposed under this section constitute fees imposed by SARS within the meaning of section 5(1)(h) of the SARS Act, and constitute funds of SARS within the meaning of section 24 of that Act.
- (4) If there is more than one 'applicant' for a ruling in respect of a 'proposed transaction' SARS may, upon request by the 'applicants', impose a single prescribed fee in respect of the 'application'.

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## Binding effect of advance rulings

- **82.** (1) If an 'advance ruling' applies to a person in accordance with section 83, then SARS must interpret or apply the applicable tax Act to the person in accordance with the ruling.
- (2) An 'advance ruling' does not have 'binding effect' upon SARS in respect of a 30 person unless it applies to the person in accordance with section 83.
- (3) A 'binding general ruling' may be cited by SARS or a person in any proceedings, including court proceedings.
- (4) A 'binding private ruling' or 'binding class ruling' may not be cited in any proceeding, including court proceedings, other than a proceeding involving an 35 'applicant' or a 'class member', as the case may be.
- (5) A publication or other written statement issued by SARS does not have 'binding effect' unless it is an 'advance ruling'.

## Applicability of advance rulings

- 83. A 'binding private ruling' or 'binding class ruling' applies to a person only if— 40
  - (a) the provision or provisions of the Act at issue are the subject of the 'advance ruling';
  - (b) the person's set of facts or 'transaction' are the same as the particular set of facts or 'transaction' specified in the ruling;
  - (c) the person's set of facts or 'transaction' fall entirely within the effective period 45 of the ruling;
  - (d) any assumptions made or conditions imposed by SARS in connection with the validity of the ruling have been satisfied or carried out;
  - (e) in the case of a 'binding private ruling', the person is an 'applicant' identified in the ruling; and
  - (f) in the case of a 'binding class ruling', the person is a 'class member' identified in the ruling.

#### Rulings rendered void

**84.** (1) A 'binding private ruling' or 'binding class ruling' is *void ab initio* if—

- (a) the 'proposed transaction' as described in the ruling is materially different from the 'transaction' actually carried out;
- (b) there is fraud, misrepresentation or non-disclosure of a material fact; or
- (c) an assumption made or condition imposed by SARS is not satisfied or carried out.

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(2) For purposes of this section, a fact described in subsection (1) is considered material if it would have resulted in a different ruling had SARS been aware of it when the original ruling was made.

#### Subsequent changes in tax law

- **85.** (1) Despite any provision to the contrary contained in a tax Act, an 'advance 10 ruling' ceases to be effective if—
  - (a) a provision of the tax Act that was the subject of the 'advance ruling' is repealed or amended in a manner that materially affects the 'advance ruling', in which case the 'advance ruling' will cease to be effective from the date that the repeal or amendment is effective; or
  - (b) a court overturns or modifies an interpretation of the tax Act on which the 'advance ruling' is based, in which case the 'advance ruling' will cease to be effective from the date of judgment unless—
    - (i) the decision is under appeal;
    - (ii) the decision is fact-specific and the general interpretation upon which the 20 'advance ruling' was based is unaffected; or
    - (iii) the reference to the interpretation upon which the 'advance ruling' was based was *obiter dicta*.
- (2) An 'advance ruling' ceases to be effective upon the occurrence of any of the circumstances described in subsection (1), whether or not SARS publishes a notice of 25 withdrawal or modification.

# Withdrawal or modification of advance rulings

- 86. (1) SARS may withdraw or modify an 'advance ruling' at any time.
- (2) If the 'advance ruling' is a 'binding private ruling' or 'binding class ruling', SARS must first provide the 'applicant' with notice of the proposed withdrawal or modification 30 and a reasonable opportunity to object to the decision.
- (3) SARS must specify the date the decision to withdraw or modify the 'advance ruling' becomes effective, which date may not be earlier than the date—
  - (a) the decision is delivered to an 'applicant', unless the circumstances in subsection (4) apply; or
  - (b) in the case of a 'binding general ruling', the decision is published.
- (4) SARS may withdraw or modify a 'binding private ruling' or a 'binding class ruling' retrospectively if the ruling was made in error and if—
  - (a) the 'applicant' or 'class member' has not yet commenced the 'proposed transaction' or has not yet incurred significant costs in respect of the 40 arrangement;
  - (b) a person other than the 'applicant' or 'class member' will suffer significant tax disadvantage if the ruling is not withdrawn or modified retrospectively and the 'applicant' will suffer comparatively less if the ruling is withdrawn or modified retrospectively; or
  - (c) the effect of the ruling will materially erode the South African tax base and it is in the public interest to withdraw or modify the ruling retrospectively.

#### **Publication of advance rulings**

- **87.** (1) A person applying for a 'binding private ruling' or 'binding class ruling' must consent to the publication of the ruling in accordance with this section.
- (2) A 'binding private ruling' or 'binding class ruling' must be published by SARS for general information in the manner and in the form that the Commissioner may prescribe, but without revealing the identity of an 'applicant', 'class member' or other person identified or referred to in the ruling.
- (3) Prior to publication, SARS must provide the 'applicant' with a draft copy of the 55 edited ruling for review and comment.

42 (4) SARS must consider, prior to publication, any comments and proposed edits and deletions submitted by the 'applicant', but is not required to accept them. (5) An 'applicant' for a 'binding class ruling' may consent in writing to the inclusion of information identifying it or the proposed arrangement in order to facilitate communication with the 'class members'. 5 (6) The application or interpretation of the relevant tax Act to a 'transaction' does not constitute information that may reveal the identity of an 'applicant', 'class member' or other person identified or referred to in the ruling. (7) SARS must treat the publication of the withdrawal or modification of a 'binding private ruling' or 'binding class ruling' in the same manner and subject to the same 10 requirements as the publication of the original ruling. (8) Subsection (2) does not— (a) require the publication of a ruling that is materially the same as a ruling already published; or (b) apply to a ruling that has been withdrawn before SARS has had occasion to 15 publish it. (9) If an 'advance ruling' has been published, notice of the withdrawal or modification thereof must be published in the manner and media as the Commissioner may deem appropriate. Non-binding private opinions 20 88. (1) A 'non-binding private opinion' does not have 'binding effect' upon SARS. (2) A 'non-binding private opinion' may not be cited in any proceedings including court proceedings, other than proceedings involving the person to whom the opinion was issued. 25 **Binding general rulings 89.** (1) A senior SARS official may issue a 'binding general ruling' that is effective for either-(a) a particular tax period or other definite period; or (b) an indefinite period. 30 (2) A 'binding general ruling' must state— (a) that it is a 'binding general ruling' made under this section; (b) the provisions of a tax Act which are the subject of the 'binding general ruling'; and (c) either— (i) the tax period or other definite period for which it applies; or 35 (ii) in the case of a 'binding general ruling' for an indefinite period, that it is for an indefinite period and the date or tax period from which it applies. (3) A 'binding general ruling' may be issued as an interpretation note or in another form and may be issued in the manner that the Commissioner prescribes. (4) A publication or other written statement does not constitute and may not be 40 considered or treated as a 'binding general ruling' unless it contains the information prescribed by subsection (2). Procedures and guidelines for advance rulings

90. The Commissioner may issue procedures and guidelines, in the form of 'binding general rulings', for implementation and operation of the 'advance ruling' system.

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#### **CHAPTER 8**

#### ASSESSMENTS

## **Original assessments**

**91.** (1) If a tax Act requires a taxpayer to submit a return which does not incorporate a determination of the amount of a tax liability, SARS must make an original assessment 50 based on the return submitted by the taxpayer or other information available or obtained in respect of the taxpayer.

- (2) If a tax Act requires a taxpayer to submit a return which incorporates a determination of the amount of a tax liability, the submission of the return is an original self-assessment of the tax liability.
- (3) If a tax Act requires a taxpayer to make a determination of the amount of a tax liability and no return is required, the payment of the amount of tax due is an original assessment.
- (4) If a taxpayer does not or is not required to submit a return, SARS may make an assessment based on an estimate under section 95 if that taxpayer fails to pay the tax required under a tax Act.
  - (5) If a tax Act requires a taxpayer to submit a return—

- (a) the making of an assessment under subsection (4) does not detract from the obligation to submit a return; and
- (b) the taxpayer in respect of whom the assessment has been issued may, within the period described in section 104, request SARS to issue a reduced assessment or additional assessment by submitting a complete and correct 15 return.

#### Additional assessments

**92.** If at any time SARS is satisfied that an assessment does not reflect the correct application of a tax Act to the prejudice of SARS or the *fiscus*, SARS must make an additional assessment to correct the prejudice.

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#### **Reduced assessments**

- 93. (1) SARS may make a reduced assessment if-
  - (a) the taxpayer successfully disputed the assessment under Chapter 9;
  - (b) necessary to give effect to a settlement under section 149;
  - (c) necessary to give effect to a judgment pursuant to an appeal under Part E of 25 Chapter 9 and there is no right of further appeal; or
  - (d) SARS is satisfied that there is an error in the assessment as a result of an undisputed error by—
    - (i) SARS; or
    - (ii) the taxpayer in a return.

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(2) SARS may reduce an assessment despite the fact that no objection has been lodged or appeal noted.

# Jeopardy assessments

- **94.** (1) SARS may make a jeopardy assessment in advance of the date on which the return is normally due, if the Commissioner is satisfied that it is required to secure the 35 collection of tax that would otherwise be in jeopardy.
- (2) In addition to any rights under Chapter 9, a review application against an assessment made under this section may be made to the High Court on the grounds that—
  - (a) its amount is excessive; or

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- (b) circumstances that justify a jeopardy assessment do not exist.
- (3) In proceedings under subsection (2), SARS bears the burden of proving that the making of the jeopardy assessment is reasonable under the circumstances.

#### Estimation of assessments

- **95.** (1) SARS may make an original, additional, reduced or jeopardy assessment 45 based in whole or in part on an estimate if the taxpayer—
  - (a) fails to submit a return as required; or
  - (b) submits a return or information that is incorrect or inadequate.
  - (2) SARS must make the estimate based on information readily available to it.
- (3) If the taxpayer is unable to submit an accurate return, a senior SARS official may agree in writing with the taxpayer as to the amount of tax chargeable and issue an assessment accordingly, which assessment is not subject to objection or appeal.

Notice of	f assessment	
	SARS must issue to the taxpayer assessed a notice of the assessment made by	
<i>(b)</i>	the name of the taxpayer; the taxpayer's taxpayer reference number, or if one has not been allocated, any other form of identification; the date of the assessment;	5
(e) (f) (g)	the amount of the assessment; the tax period in relation to which the assessment is made; the date for paying the amount assessed; and a summary of the procedures for lodging an objection to the assessment. addition to the information provided in terms of subsection (1) SARS must give	10
the perso	on assessed—	
(a)	in the case of an assessment described in section 95 or an assessment that is not fully based on a return submitted by the taxpayer, a statement of the grounds for the assessment; and	15
<i>(b)</i>	in the case of a jeopardy assessment, the grounds for believing that the tax would otherwise be in jeopardy.	
Recordi	ng of assessments	
be record (2) A 1 authorise	The particulars of an assessment and the amount of tax payable thereon must ded and kept by SARS.  notice of assessment issued by SARS is regarded as made by a SARS official do do so or duly issued by SARS, until proven to the contrary.  e record of an assessment is not open to public inspection.	20
(4) Th destroyed	e record of an assessment, whether in electronic format or otherwise, may be d by SARS after five years from the date of assessment or the expiration of a eriod that may be required by the Auditor-General.	25
Withdra	awal of assessments	
withdraw (a) (b) (c)	SARS may, despite the fact that no objection has been lodged or appeal noted, an assessment which— was issued to the incorrect taxpayer; was issued in respect of the incorrect tax period; or was issued as a result of an incorrect payment allocation. assessment withdrawn under this section is regarded not to have been issued.	30
Period o	f limitations for issuance of assessments	35
<b>99.</b> (1) (a) (b)	in the case of self-assessment for which a return is required, five years after the date of assessment of an original assessment—	
(c)	<ul><li>(i) by way of self-assessment by the taxpayer; or</li><li>(ii) if no return is received, by SARS;</li><li>in the case of a self-assessment for which no return is required, after the expiration of five years from the—</li></ul>	40
	<ul><li>(i) date of the last payment of the tax for the tax period; or</li><li>(ii) effective date, if no payment was made in respect of the tax for the tax period;</li></ul>	45
(d)	in the case of—  (i) an additional assessment if the—  (aa) amount which should have been assessed to tax under the preceding assessment was, in accordance with the practice generally prevailing at the date of assessment, not assessed to tax; or  (bb) full amount of tax which should have been assessed under the preceding assessment was, in accordance with the practice, not assessed;	50

	(ii) a reduced assessment, if the preceding assessment was made in accordance with the practice generally prevailing at the date of that	
	assessment; or (iii) a tax for which no return is required, if the payment was made in	
	accordance with the practice generally prevailing at the date of that payment; or	5
	in respect of a dispute that has been resolved under Chapter 9.	
	bsection (1) does not apply to the extent that—	
(a)	in the case of assessment by SARS, the fact that the full amount of tax chargeable was not assessed, was due to—	10
	(i) fraud;	10
	(ii) misrepresentation; or	
(1)	(iii) non-disclosure of material facts;	
<i>(b)</i>	in the case of self-assessment, the fact that the full amount of tax chargeable was not assessed, was due to—	15
	(i) fraud;	13
	(ii) intentional or negligent misrepresentation;	
	(iii) intentional or negligent non-disclosure of material facts; or	
	(iv) the failure to submit a return or, if no return is required, the failure to make the required payment of tax;	20
(c)	SARS and the taxpayer so agree prior to the expiry of the limitations period;	20
	or	
( <i>d</i> )	it is necessary to give effect to—	
	<ul><li>(i) the resolution of a dispute under Chapter 9; or</li><li>(ii) a judgment pursuant to an appeal under Part E of Chapter 9 and there is</li></ul>	25
	no right of further appeal.	23
T2' 1'4		
Finanty	of assessment or decision	
100. (	1) An assessment or a decision referred to in section 104(2) is final if, in relation	
	sessment or decision—	20
(a)	it is an assessment described— (i) in section 95(1) and no return described in section 91(5)(b) has been	30
	received by SARS; or	
	(ii) in section 95(3);	
(b)	no objection has been made, or an objection has been withdrawn;	25
(c) (d)	after decision of an objection, no notice of appeal has been filed; the dispute has been settled under part F of Chapter 9;	35
(e)	an appeal has been determined by the tax board and there is no referral to the	
( 0)	tax court under section 115;	
<i>(f)</i>	an appeal has been determined by the tax court and there is no right of further appeal; or	40
(g)	an appeal has been determined by a higher court and there is no right of further	+0
	appeal.	
	bsection (1) does not prevent SARS from making an additional assessment, but	
to in—	et of an amount of tax that has been dealt with in a disputed assessment referred	45
(a)	subsection $(1)(d)$ , $(e)$ and $(f)$ , SARS may only make an additional assessment	15
	under the circumstances referred to in section $99(2)(a)$ and $(b)$ ; and	
<i>(b)</i>	subsection $(1)(g)$ , SARS may not make an additional assessment.	
	CHAPTER 9	
	DISPUTE RESOLUTION	50
	Part A	
	General	

# **Definitions**

101. In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings:

- 46 'appellant', except in Part E of this Chapter, means a person who has noted an appeal against an assessment or 'decision' under section 107; 'decision' means a decision referred to in section 104(2); 'registrar' means the registrar of the tax court; and 'rules' mean the rules made under section 103. 5 Burden of proof **102.** (1) A taxpayer bears the burden of proving— (a) that an amount, transaction, event or item is exempt or otherwise not taxable; (b) that an amount or item is deductible or may be set-off; (c) the rate of tax applicable to a transaction, event, item or class of taxpayer; 10 (d) that an amount qualifies as a reduction of tax payable; (e) that a valuation is correct; or (f) whether a 'decision' that is subject to objection and appeal under a tax Act, is (2) The burden of proving whether an estimate under section 95 is reasonable or the 15 facts on which SARS based the imposition of an understatement penalty under Chapter 16, is upon SARS. Rules for dispute resolution 103. (1) The Minister may, after consultation with the Minister of Justice and Constitutional Development, by public notice make 'rules' governing the procedures to 20 lodge an objection and appeal against an assessment or 'decision', and the conduct and hearing of an appeal before a tax board or tax court. (2) The 'rules' may provide for alternative dispute resolution procedures under which SARS and the person aggrieved by an assessment or 'decision' may resolve a dispute. Part B 25 Objection and appeal Objection against assessment or decision 104. (1) A taxpayer who is aggrieved by an assessment made in respect of the taxpayer may object to the assessment. (2) The following decisions may be objected to and appealed against in the same 30 manner as an assessment: (a) a decision under subsection (4) not to extend the period for lodging an objection; (b) a decision under section 107(2) not to extend the period for lodging an appeal; 35 (c) any other decision that may be objected to or appealed against under a tax Act. (3) A taxpayer entitled to object to an assessment or 'decision' must lodge an objection in the manner, under the terms, and within the period prescribed in the 'rules'. (4) A senior SARS official may extend the period prescribed in the 'rules' within which objections must be made if satisfied that reasonable grounds exist for the delay in 40 lodging the objection. (5) The period for objection must not be so extended— (a) for a period exceeding 21 business days, unless a senior SARS official is satisfied that exceptional circumstances exist which gave rise to the delay in 45
  - lodging the objection; (b) if more than three years have lapsed from the date of assessment or the 'decision'; or
  - (c) if the grounds for objection are based wholly or mainly on a change in a practice generally prevailing which applied on the date of assessment or the 'decision'.

#### Forum for dispute of assessment or decision

**105.** A taxpayer may not dispute an assessment or 'decision' as described in section 104 in any court or other proceedings, except in proceedings under this Chapter or by application to the High Court for review.

## **Decision on objection**

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- **106.** (1) SARS must consider a valid objection in the manner and within the period prescribed under this Act and the 'rules'.
  - (2) SARS may disallow the objection or allow it either in whole or in part.
- (3) If the objection is allowed either in whole or in part, the assessment or 'decision' must be altered accordingly.

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- (4) SARS must, by notice, inform the taxpayer objecting or the taxpayer's representative of the decision referred to in subsection (2), unless the objection is stayed under subsection (6) in which case notice of this must be given in accordance with the 'rules'.
- (5) The notice must state the basis for the decision and a summary of the procedures 15 for appeal.
- (6) If a senior SARS official considers that the determination of the objection or an appeal referred to in section 107, whether on a question of law only or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections or appeals, the official may—

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- (a) designate that objection or appeal as a test case; and
- (b) stay the other objections or appeals by reason of the taking of a test case on a similar objection or appeal before the tax court,

in the manner, under the terms, and within the periods prescribed in the 'rules'.

## Appeal against assessment or decision

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- **107.** (1) After delivery of the notice of the decision referred to in section 106(4), a taxpayer objecting to an assessment or 'decision' may appeal against the assessment or 'decision' to the tax board or tax court in the manner, under the terms and within the period prescribed in this Act and the 'rules'.
- (2) A senior SARS official may extend the period within which an appeal must be 30 lodged for—
  - (a) 21 business days, if satisfied that reasonable grounds exist for the delay; or
  - (b) up to 45 business days, if exceptional circumstances exist that justify an extension beyond 21 business days.
- (3) A notice of appeal that does not satisfy the requirements of subsection (1) is not 35 valid.
- (4) If an assessment or 'decision' has been altered under section 106(3), the assessment or 'decision' as altered is the assessment or 'decision' against which the appeal is noted.
- (5) By mutual agreement, SARS and the taxpayer making the appeal may attempt to 40 resolve the dispute through alternative dispute resolution under procedures specified in the 'rules'.
- (6) Proceedings on the appeal are suspended while the alternative dispute resolution procedure is ongoing.

**Part** C 45

#### Tax board

#### Establishment of tax board

- 108. (1) The Minister may by public notice—
  - (a) establish a tax board or boards for areas that the Minister thinks fit; and
  - (b) abolish an existing tax board or establish an additional tax board as 50 circumstances may require.
- (2) Tax boards are established under subsection (1) to hear appeals referred to in section 107 in the manner provided in this Part.

#### Jurisdiction of tax board

- 109. (1) An appeal against an assessment or 'decision' must in the first instance be heard by a tax board, if—

  (a) the tax in dispute does not exceed the amount the Minister determines by
  - public notice; and

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- (b) a senior SARS official and the 'appellant' so agree.
- (2) SARS must designate the places where tax boards hear appeals.
- (3) The tax board must hear an appeal at the place referred to in subsection (2) which is closest to the 'appellant's' residence or place of business, unless the 'appellant' and SARS agree that the appeal be heard at another place.
- (4) In making a decision under subsection (1)(b), a senior SARS official must consider whether the grounds of the dispute or legal principles related to the appeal should rather be heard by the tax court.
- (5) If the chairperson prior to or during the hearing, considering the grounds of the dispute or the legal principles related to the appeal, believes that the appeal should be 15 heard by the tax court rather than the tax board, the chairperson may direct that the appeal be set down for hearing *de novo* before the tax court.

#### Constitution of tax board

- 110. (1) A tax board consists of—
  - (a) the chairperson, who must be an advocate or attorney from the panel 20 appointed under section 111; and
  - (b) if the chairperson, a senior SARS official, or the taxpayer considers it necessary—
    - (i) an accountant who is a member of the panel referred to in section 120; and
    - (ii) a representative of the commercial community who is a member of the panel referred to in section 120.
- (2) Sections 122, 123, 124, 126, 127 and 128 apply, with the necessary changes, and under procedures determined in the 'rules', to the tax board and the chairperson.

#### Appointment of chairpersons

- **111.** (1) The Minister must, in consultation with the Judge-President of the General Division of the High Court within the jurisdiction where the tax board is to sit, by public notice appoint advocates and attorneys to a panel from which a Chairperson of the tax board must be nominated from time to time.
  - (2) The persons appointed under subsection (1)—
    - (a) hold office for five years from the date the notice of appointment is published in the public notice; and
    - (b) are eligible for reappointment as the Minister thinks fit.
- (3) The Minister may terminate an appointment made under this section at any time for misconduct, incapacity or incompetence.
  - (4) A member of the panel must be appointed as chairperson of a tax board.
- (5) A chairperson will not solely on account of his or her liability to tax be regarded as having a personal interest or a conflict of interest in any matter upon which he or she may be called upon to adjudicate.
- (6) A chairperson must withdraw from the proceedings as soon as the chairperson 45 becomes aware of a conflict of interest which may give rise to bias which the chairperson may experience with the case concerned or other circumstances that may affect the chairperson's ability to remain objective for the duration of the case.
- (7) Either party may ask for withdrawal of the chairperson on the basis of conflict of interest or other indications of bias, under procedures provided in the 'rules'.

# Clerk of tax board

- 112. (1) The Commissioner must appoint a clerk of the tax board.
- (2) The clerk acts as convener of the tax board.
- (3) If no chairperson is available in the jurisdiction within which the tax board is to be convened, the clerk may convene the tax board with a chairperson from another 55 jurisdiction.

(4) The clerk of the tax board must, within the period and in the manner provided in the 'rules', submit a notice to the members of the tax board and the 'appellant' specifying the time and place for the hearing.

### Tax board procedure

- **113.** (1) Subject to the procedure provided for by the 'rules', the chairperson determines the procedures during the hearing of an appeal as the chairperson sees fit, and each party must have the opportunity to put the party's case to the tax board.
  - (2) The tax board is not required to record its proceedings.
- (3) The chairperson may, when the proceedings open, formulate the issues in the appeal.

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- (4) The chairperson may adjourn the hearing of an appeal to a convenient time and place.
- (5) A senior SARS official must appear at the hearing of the appeal in support of the assessment or 'decision'.
  - (6) At the hearing of the appeal the 'appellant' must—
    - (a) appear in person in the case of a natural person; or
    - (b) in any other case, be represented by the representative taxpayer.
- (7) If a third party prepared the 'appellant's' return involved in the assessment or 'decision', that third party may appear on the 'appellant's' behalf.
- (8) The 'appellant' may, together with the notice of appeal, or within the further 20 period as the chairperson may allow, request permission to be represented at the hearing otherwise than as referred to in subsection (6).
- (9) If neither the 'appellant' nor anyone authorised to appear on the 'appellant's' behalf appears before the tax board at the time and place set for the hearing, the tax board may confirm the assessment or 'decision' in respect of which the appeal has been 25 lodged—
  - (a) at the request of the SARS representative; and
  - (b) on proof that the 'appellant' was furnished with the notice of the sitting of the tax board.
- (10) If the tax board confirms an assessment or 'decision' under subsection (9), the 'appellant' may not thereafter request that the appeal be referred to the tax court under section 115.
- (11) If the senior SARS official fails to appear before the tax board at the time and place set for the hearing, the tax board may allow the 'appellant's' appeal at the 'appellant's' request.
- (12) If the tax board allows the appeal under subsection (11), SARS may not thereafter refer the appeal to the tax court under section 115.
- (13) Subsections (9), (10), (11) and (12) do not apply if the Chairperson is satisfied that sound reasons exist for the non-appearance and the reasons are delivered by the 'appellant' or SARS to the clerk of the tax board within 10 business days after the date determined for the hearing or the longer period as may be allowed in exceptional circumstances.

#### Decision of tax board

- **114.** (1) The tax board, after hearing the 'appellant's' appeal against an assessment or 'decision', must decide the matter in accordance with this Chapter.
- (2) The Chairperson must prepare a written statement of the tax board's decision that includes the tax board's findings of the facts of the case and the reasons for its decision, within 60 business days after conclusion of the hearing.
- (3) The clerk must by notice in writing submit a copy of the tax board's decision to SARS and the 'appellant'.

## Referral of appeal to tax court

115. (1) If the 'appellant' or SARS is dissatisfied with the tax board's decision or the Chairperson fails to deliver the decision under section 114(2) within the prescribed 60 business day period, the 'appellant' or SARS may within 21 business days, or within the further period as the Chairperson may on good cause shown allow, after the date of the notice referred to in section 114(3) or the expiry of the period referred to in section 114(2), require, in writing, that the appeal be referred to the tax court for hearing.

(2) The tax court must hear *de novo* a referral of an appeal from the tax board's decision under subsection (1).

#### Part D

#### Tax court

#### Establishment of tax court

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**116.** (1) The President of the Republic may by proclamation in the *Gazette* establish a tax court or additional tax courts for areas that the President thinks fit and may abolish an existing tax court as circumstances may require.

(2) The tax court is a court of record.

#### Jurisdiction of tax court

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- **117.** (1) The tax court for purposes of this Chapter has jurisdiction over tax appeals lodged under section 107.
  - (2) The place where an appeal is heard is determined by the 'rules'.
- (3) The court may hear an interlocutory application relating to an objection or appeal and may decide on a procedural matter as provided for in the 'rules'.

#### **Constitution of tax court**

- 118. (1) A tax court established under this Act consists of—
  - (a) a judge or an acting judge of the High Court, who is the president of the tax court;
  - (b) an accountant selected from the panel of members appointed in terms of 20 section 120; and
  - (c) a representative of the commercial community selected from the panel of members appointed in terms of section 120.
- (2) If the President of the tax court, a senior SARS official or the 'appellant' so requests, the representative of the commercial community referred to in subsection 25 (1)(c) must—
  - (a) if the appeal relates to the business of mining, be a registered mining engineer; or
  - (b) if the appeal involves the valuation of assets, be a sworn appraiser.
- (3) If an appeal to the tax court involves a matter of law only or is an application for 30 condonation or an interlocutory application, the president of the court alone must decide the appeal.
- (4) The President of the court alone decides whether a matter for decision involves a matter of fact or a matter of law.
- (5) The Judge-President of the General Division of the High Court with jurisdiction 35 in the area where the relevant tax court is situated, may direct that the tax court consist of three judges or acting judges of the High Court (one of whom is the president of the tax court) and the members of the court referred to in subsections (1)(b) and (c) and (2), where necessary, if—
  - (a) the amount in dispute exceeds R50 million; or

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(b) SARS and the 'appellant' jointly apply to the Judge-President.

#### Nomination of president of tax court

- **119.** (1) The Judge-President of the General Division of the High Court with jurisdiction in the area for which a tax court has been constituted must nominate and second a judge or an acting judge of the division to be the president of that tax court.
- (2) The Judge-President must determine whether the secondment referred to in subsection (1) applies for a period, or for the hearing of a particular case.
- (3) A judge will not solely on account of his or her liability to tax be regarded as having a personal interest or a conflict of interest in any matter upon which he or she may be called upon to adjudicate.

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#### Appointment of panel of tax court members

- **120.** (1) The President of the Republic by proclamation in the *Gazette* must appoint the panel of members of a tax court for purposes of section 118(1)(b) and (c) for a term of office of five years from the date of the relevant proclamation.
- (2) A person appointed in terms of subsection (1) must be a person of good standing who has appropriate experience.
- (3) A person appointed in terms of subsection (1) is eligible for re-appointment for a further period or periods as the President of the Republic may think fit.
- (4) The President of the Republic may terminate the appointment of a member under this section at any time for misconduct, incapacity or incompetence.
- (5) A member's appointment lapses in the event that the tax court is abolished under section 116(1).
- (6) A member of the tax court must perform the member's functions independently, impartially and without fear, favour or prejudice.

#### Appointment of registrar of tax court

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- **121.** (1) The Commissioner appoints the 'registrar' of the tax court.
- (2) A person appointed as 'registrar' and persons appointed in the 'registrar's' office are SARS employees.
- (3) The 'registrar' and other persons referred to in subsection (2) must perform their functions under this Act and the 'rules' independently, impartially and without fear, 20 favour or prejudice.

## Conflict of interest of tax court members

- **122.** (1) A member of the court must withdraw from the proceedings as soon as the member becomes aware of a conflict of interest which may give rise to bias which the member may experience with the case concerned or other circumstances that may affect 25 the member's ability to remain objective for the duration of the case.
- (2) Either party may ask for withdrawal of a member on the basis of conflict of interest or other indications of bias, under procedures provided in the 'rules'.
- (3) A member of the court will not solely on account of his or her liability to tax be regarded as having a personal interest or a conflict of interest in the case. 30

#### Death, retirement or incapability of judge or member

- **123.** (1) If at any stage during the hearing of an appeal, or after hearing of the appeal but before judgment has been handed down, one of the judges dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal must be heard de
- (2) If the tax court has been constituted under section 118(5), the hearing of the appeal referred to in subsection (1) must proceed before the remaining judges and members, if the remaining judges constitute the majority of judges before whom the hearing was commenced.
- (3) If at any stage during or after the hearing of an appeal but before judgment has 40 been handed down, a member of the tax court dies, retires or becomes incapable of acting in that capacity, the hearing of the appeal must proceed before the president, any other judges, the remaining member, and, if the president deems it necessary, a replacement member.
- (4) The judgment of the remaining judges and members referred to in subsection (1) 45 or (3) is the judgment of the court.

## Sitting of tax court not public

- **124.** (1) The tax court sittings for purposes of hearing an appeal under section 107 are not public.
- (2) The President may in exceptional circumstances, on request of any person, allow that person or any other person to attend the sitting but may do so only after taking into account any representations that the 'appellant' and a senior SARS official, referred to in section 12 appearing in support of the assessment or 'decision', wishes to make on the request.

## Appearance at hearing of tax court

- **125.** (1) A senior SARS official referred to in section 12 may appear at the hearing of an appeal in support of the assessment or 'decision'.
- (2) The 'appellant' or the 'appellant's' representative may appear at the hearing of an appeal in support of the appeal.

## Subpoena of witness to tax court

**126.** SARS, the 'appellant' or the president of a tax court may subpoena any witness in the manner prescribed in the 'rules', whether or not that witness resides within the tax court's area of jurisdiction.

## Non-attendance by witness or failure to give evidence

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- **127.** (1) A person subpoenaed under section 126 is liable to the fine or imprisonment specified in subsection (2), if the person without just cause fails to—
  - (a) give evidence at the hearing of an appeal;
  - (b) remain in attendance throughout the proceedings unless excused by the president of the tax court; or
  - (c) produce a document or thing in the person's possession or under the person's control according to the subpoena without just cause to produce the document or thing.
- (2) The president of the tax court may impose a fine or, in default of payment, imprisonment for a period not exceeding three months, on a person described in 20 subsection (1) upon being satisfied by—
  - (a) oath or solemn declaration; or
- (b) the return of the person by whom the subpoena was served, that the person has been duly subpoenaed and that the person's reasonable expenses have been paid or offered.

(3) The president of the tax court may, in addition to imposing a fine or imprisonment under subsection (2), issue a warrant for the person to be apprehended and brought to give evidence or to produce the document or thing in accordance with the subpoena.

- (4) A fine imposed under subsection (2) is enforceable as if it were a penalty imposed by a High Court in similar circumstances and any laws applicable in respect of a penalty 3 imposed by a High Court apply with the necessary changes in respect of the fine.
- (5) The president of the tax court may, on good cause shown, remit the whole or any part of the fine or imprisonment imposed under subsection (2).
- (6) The president of the tax court may order the costs of a postponement or adjournment resulting from the default of a witness, or a portion of the costs, to be paid 35 out of a fine imposed under subsection (2).

#### Contempt of tax court

**128.** (1) If, during the sitting of a tax court, a person—

- (a) wilfully insults a judge or member of the tax court;
- (b) wilfully interrupts the tax court proceedings; or

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- (c) otherwise misbehaves in the place where the hearing is held, the president of a tax court may impose upon that person a fine or, in default of payment, imprisonment for a period not exceeding three months.
- (2) An order made under subsection (1) must be executed as if it were an order made by a Magistrate's Court under similar circumstances, and the provisions of a law which 45 apply in respect of such an order made by a Magistrate's Court apply with the necessary changes in respect of an order made under subsection (1).

## Decision by tax court

- **129.** (1) The tax court, after hearing the 'appellant's' appeal lodged under section 107 against an assessment or 'decision', must decide the matter on the basis that the burden 50 of proof as described in section 102 is upon the taxpayer.
  - (2) In the case of an assessment or 'decision' under appeal, the tax court may—
    - (a) confirm the assessment or 'decision';
    - (b) order the assessment or 'decision' to be altered; or

- (c) refer the assessment back to SARS for further examination and assessment.
- (3) In the case of an appeal against an understatement penalty imposed by SARS under a tax Act, the tax court must decide the matter on the basis that the burden of proof is upon SARS and may reduce, confirm or increase the understatement penalty so imposed.

(4) If SARS alters an assessment as a result of a referral under subsection (2)(c), the assessment is subject to objection and appeal.

# Order for costs by tax court

- **130.** (1) The tax court may, in dealing with an appeal under this Chapter and on application by an aggrieved party, grant an order for costs in favour of the party, if— 10
  - (a) the SARS grounds of assessments or 'decision' is held to be unreasonable;
  - (b) the 'appellant's' grounds of appeal are held to be unreasonable;
  - (c) the tax board's decision is substantially confirmed;
  - (d) the hearing of the appeal is postponed at the request of the other party; or
  - (e) the appeal is withdrawn or conceded by the other party after the 'registrar' 15 allocates a date of hearing.
- (2) The costs referred to in subsection (1) must be determined in accordance with the fees prescribed by the rules of the High Court.
- (3) A cost order in favour of SARS constitutes funds of SARS within the meaning of section 24 of the SARS Act.

## Registrar to notify parties of judgment of tax court

**131.** The 'registrar' must notify the 'appellant' and SARS of the court's decision within 21 business days of the date of the delivery of the written decision.

## Publication of judgment of tax court

**132.** A judgment of the tax court dealing with an appeal under this Chapter must be 25 published for general information and, unless the sitting of the tax court was public under the circumstances referred to in section 124(2), in a form that does not reveal the 'appellant's' identity.

## Part E

## Appeal against tax court decision

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#### Appeal against decision of tax court

- **133.** (1) The taxpayer or SARS may in the manner provided for in this Act appeal against a decision of the tax court under sections 129 and 130.
  - (2) An appeal against a decision of the tax court lies—
    - (a) to the full bench of the Provincial Division of the High Court which has 35 jurisdiction in the area in which the tax court sitting is held; or
    - (b) to the Supreme Court of Appeal, without an intermediate appeal to the Provincial Division, if—
      - (i) the President of the tax court has granted leave under the 'rules'; or
      - (ii) the appeal was heard by the tax court constituted under section 118(5). 40

## Notice of intention to appeal tax court decision

- **134.** (1) A party who intends to lodge an appeal against a decision of the tax court (hereinafter in this Part referred to as the appellant) must, within 21 business days after the date of the notice by the 'registrar' notifying the parties of the tax court's decision under section 131, or within a further period as the president of the tax court may on good cause shown allow, lodge with the 'registrar' and serve upon the opposite party or the opposite party's attorney or agent, a notice of intention to appeal against the decision
  - (2) A notice of intention to appeal must state—
    - (a) in which division of the High Court the 'appellant' wishes the appeal to be 50 heard:

- (b) whether the whole or only part of the judgment is to be appealed against (if in part only, which part), and the grounds of the intended appeal, indicating the findings of fact or rulings of law to be appealed against; and
- (c) whether the 'appellant' requires a transcript of the evidence given at the tax court's hearing of the case in order to prepare the record on appeal (or if only a part of the evidence is required, which part).
- (3) If the appellant is the taxpayer and requires a—
  - (a) transcript of the evidence or a part thereof from the 'registrar', the appellant must pay the fees prescribed by the Commissioner by public notice; or
  - (b) copy of the recording of the evidence or a part thereof from the 'registrar' for 10 purposes of private transcription, the appellant must pay the fees prescribed by the Commissioner in the public notice.

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(4) A fee paid under subsection (3) constitutes funds of SARS within the meaning of section 24 of the SARS Act.

## Leave to appeal to Supreme Court of Appeal against tax court decision

- 135. (1) If an intending appellant wishes to appeal against a decision of the tax court, the 'registrar' must submit the notice of intention to appeal lodged under section 134(1) to the president of the tax court, who must make an order granting or refusing leave to appeal having regard to the grounds of the intended appeal as indicated in the notice.
- (2) If the president of the tax court cannot act in that capacity or it is inconvenient for 20 the president to act in that capacity for purposes of this section, the Judge-President of the General Division of the High Court may nominate and second another judge or acting judge to act as president of the tax court for that purpose.
- (3) Subject to the right to petition the Chief Justice for leave to appeal to the Supreme Court of Appeal in terms of section 21 of the Supreme Court Act, 1959 (Act No. 59 of 25 1959), an order made by the president of the tax court under subsection (1) is final.

## Failure to lodge notice of intention to appeal tax court decision

- 136. (1) A person entitled to appeal against a decision of the tax court, who has not lodged a notice of intention to appeal within the time and in the manner required by section 134, abandons, subject to any right to note a cross appeal, the right of appeal 30 against the decision.
- (2) A person who under section 134 lodged a notice of intention to appeal against a decision of the tax court but who has subsequently withdrawn the notice, abandons the right to note an appeal or cross-appeal against the decision.

## Notice by registrar of period for appeal of tax court decision

- **137.** (1) After the expiry of the time allowed under section 134(1) for the lodging of a notice of intention to appeal, the 'registrar' must—
  - (a) give notice to a person who has lodged a notice of intention to appeal which has not been withdrawn, that if the person decides to appeal, the appeal must be noted within 21 business days after the date of the 'registrar's' notice; and 40
  - (b) supply to the person referred to in paragraph (a) a certified copy of an order that the President of the tax court made under section 135 which is the subject of the intended appeal.
- (2) The 'registrar' may not give notice under subsection (1)(a) until the order has been made or the transcript has been completed if—
  - (a) it appears that the president of the tax court will make an order under section 135; or
  - (b) an intending appellant requires a transcript of evidence given at the hearing of the case by the tax court as envisaged in section 134(2)(c).
- (3) If the opposite party is not also an intending appellant in the same case, the 'registrar' must provide to the opposite party copies of the notice and any order referred to in subsection (1)(a) and (b).

## Notice of appeal to Supreme Court of Appeal against tax court decision

- (a) appealed to the Supreme Court of Appeal from a court established under section 118(5);
- (b) been granted leave to appeal to the Supreme Court of Appeal under section 135; or

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- (c) successfully petitioned to the Supreme Court of Appeal for leave to appeal, the appeal which a party must note against a decision given in the relevant case must be noted to that Court.
- (2) If the notice of intention to appeal was noted to the High Court or leave to appeal to the Supreme Court of Appeal has been refused under section 135, the party who lodged the notice of intention to appeal must note an appeal to the appropriate Provincial 10 Division of the High Court.
- (3) The notice of appeal must be lodged within the period referred to in section 137(1)(a) or within a longer period as may be allowed under the rules of the court to which the appeal is noted.
- (4) A notice of appeal must be in accordance with the requirements in the rules of the 15 relevant higher court.

## Notice of cross-appeal of tax court decision

- 139. (1) A cross-appeal against a decision of the tax court in a case in which an appeal has been lodged under section 138, must be noted by lodging a written notice of cross-appeal with the 'registrar', serving it upon the opposite party or the opposite party's attorney and lodging it with the registrar of the court to which the cross-appeal is noted.
- (2) The notice of cross-appeal must be lodged within 21 business days after the date the appeal is noted under section 138 or within a longer period as may be allowed under the rules of the court to which the cross-appeal is noted.
  - (3) A notice of cross-appeal must state—
    - (a) whether the whole or only part of the judgment is appealed against, and if a part, which part;
    - (b) the grounds of cross-appeal specifying the findings of fact or rulings of law appealed against; and
    - (c) any further particulars that may be required under the rules of the court to which the cross-appeal is noted.

## Record of appeal of tax court decision

- **140.** (1) The record lodged with a court to which an appeal against a decision of a tax court is noted, includes all documents placed before the tax court under the 'rules'.
- (2) Documents submitted in the tax court which do not relate to the matters in dispute in the appeal may be excluded from the record with the consent of the parties.

# Abandonment of judgment

- **141.** (1) A party may by notice in writing lodged with the 'registrar' and the opposite party or the opposite party's attorney or agent, abandon the whole or a part of a judgment 40 in the party's favour.
  - (2) A notice of abandonment becomes part of the record.

#### Part F

## Settlement of disputes

Definitions 45

**142.** In this Part, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings:

'dispute' means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law, which arises pursuant to the issue of an assessment or the making of a 'decision'; and

**'settle'** means, after the lodging of an appeal under this Chapter, to resolve a 'dispute' by compromising a disputed liability, otherwise than by way of either SARS or the person concerned accepting the other party's interpretation of the facts

or the law applicable to those facts or of both the facts and the law, and 'settlement' must be construed accordingly.

## Purpose of part

- **143.** (1) A basic principle in tax law is that it is the duty of SARS to assess and collect tax according to the laws enacted by Parliament and not to forgo a tax which is properly chargeable and payable.
- (2) Circumstances may require that the strictness and rigidity of this basic principle be tempered, if such flexibility is to the best advantage of the State.
- (3) The purpose of this Part is to prescribe the circumstances in which it is appropriate for SARS to temper the basic principle and 'settle' a 'dispute'.

## Initiation of settlement procedure

- **144.** (1) Either party to a 'dispute' may initiate a 'settlement' procedure by communication with the other party.
- (2) Neither SARS nor the taxpayer has the right to require the other party to engage in a 'settlement' procedure.

## Circumstances where settlement is inappropriate

- **145.** It is inappropriate and not to the best advantage of the State to 'settle' a 'dispute' if in the opinion of SARS—
  - (a) no circumstances envisaged in section 146 exist and—
    - (i) the action by the person concerned that relates to the 'dispute' constitutes 20 intentional tax evasion or fraud;
    - (ii) the 'settlement' would be contrary to the law or a practice generally prevailing and no exceptional circumstances exist to justify a departure from the law or practice; or
    - (iii) the person concerned has not complied with the provisions of a tax Act 25 and the non-compliance is of a serious nature;
  - (b) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose; or
  - (c) the pursuit of the matter through the courts will significantly promote taxpayer compliance with a tax Act and the case is suitable for this purpose.

## Circumstances where settlement is appropriate

- **146.** The Commissioner may, if it is to the best advantage of the state, 'settle' a 'dispute', in whole or in part, on a basis that is fair and equitable to both the person concerned and to SARS, having regard to—
  - (a) whether the 'settlement' would be in the interest of good management of the 35 tax system, overall fairness, and the best use of SARS' resources;
  - (b) SARS' cost of litigation in comparison to the possible benefits with reference to—
    - (i) the prospects of success in court;
    - (ii) the prospects of the collection of the amounts due; and
    - (iii) the costs associated with collection;
  - (c) whether there are any—
    - (i) complex factual issues in contention; or
    - (ii) evidentiary difficulties,
    - which are sufficient to make the case problematic in outcome or unsuitable for 45 resolution through the alternative 'dispute' resolution procedures or the courts;

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- (d) a situation in which a 'participant' or a group of 'participants' in a tax avoidance arrangement has accepted SARS' position in the 'dispute', in which case the 'settlement' may be negotiated in an appropriate manner required to 50 unwind existing structures and arrangements; or
- (e) whether 'settlement' of the 'dispute' is a cost-effective way to promote compliance with a tax Act by the person concerned or a group of taxpayers.

#### Procedure for settlement

- **147.** (1) A person participating in a 'settlement' procedure must disclose all relevant facts during the discussion phase of the process of 'settling' a 'dispute'.
- (2) A 'settlement' is conditional upon full disclosure of material facts known to the person concerned at the time of 'settlement'.

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- (3) Disputes 'settled' in whole or in part must be evidenced by an agreement in writing between the parties in the prescribed format and must include details on—
  - (a) how each particular issue is 'settled';
  - (b) relevant undertakings by the parties;
  - (c) treatment of the issue in future years;
  - (d) withdrawal of objections and appeals; and
  - (e) arrangements for payment.
  - (4) The agreement must be signed by a senior SARS official.
- (5) SARS must, if the 'dispute' is not ultimately 'settled', explain to the person concerned the further rights of objection and appeal.
- (6) The agreement and terms of a 'settlement' agreement must remain confidential, unless their disclosure is authorised by law or SARS and the person concerned agree otherwise.

## Finality of settlement agreement

- **148.** (1) The settlement agreement represents the final agreed position between the 20 parties and is in full and final 'settlement' of all or the specified aspects of the 'dispute' in question between the parties.
- (2) SARS must adhere to the terms of the agreement, unless material facts were not disclosed as required by section 147(1) or there was fraud or misrepresentation of the facts
- (3) If the person concerned fails to pay the amount due pursuant to the agreement or otherwise fails to adhere to the agreement, a senior SARS official may—
  - (a) regard the agreement as void and proceed with the matter in respect of the original disputed amount; or
  - (b) enforce collection of the 'settlement' amount under the collection provisions 30 of this Act in full and final 'settlement' of the 'dispute'.

## Register of settlements and reporting

- 149. (1) SARS must—
  - (a) maintain a register of all 'disputes' that are 'settled' under this Part; and
- (b) document the process under which each 'dispute' is 'settled'.
- (2) The Commissioner must provide an annual summary of 'settlements' to the Auditor-General and to the Minister.
- (3) The summary referred to in subsection (2) must be submitted by no later than the date on which the annual report for SARS is submitted to Parliament for the year and must—
  - (a) be in a format which, subject to section 70(5), does not disclose the identity of the person concerned; and
  - (b) contain details, arranged by main classes of taxpayers or sections of the public, of the number of 'settlements', the amount of tax forgone, and the estimated savings in litigation costs.

## Alteration of assessment or decision on settlement

- **150.** (1) If a 'dispute' between SARS and the person aggrieved by an assessment or 'decision' is 'settled' under this Part, SARS may, despite anything to the contrary contained in a tax Act, alter the assessment or 'decision' to give effect to the 'settlement'.
- (2) An altered assessment or 'decision' referred to in subsection (1) is not subject to 50 objection and appeal.

# **CHAPTER 10**

# TAX LIABILITY AND PAYMENT

#### Part A

# **Taxpayers**

Taxpayer	5
<ul> <li>(a) a person chargeable to tax;</li> <li>(b) a representative taxpayer;</li> <li>(c) a withholding agent;</li> <li>(d) a responsible third party; or</li> <li>(e) a person who is the subject of a request to provide assistance under an international tax agreement.</li> </ul>	10
Person chargeable to tax	
<b>152.</b> A person chargeable to tax is a person upon whom the liability for tax due under a tax Act is imposed and who is personally liable for the tax.	15
Representative taxpayer	
153. (1) In this Act, a representative taxpayer means a person who is responsible for paying the tax liability of another person as an agent, other than as a withholding agent, and includes a person who—  (a) is a representative taxpayer in terms of the Income Tax Act;  (b) is a representative employer in terms of the Fourth Schedule to the Income Tax Act; or	20
<ul> <li>(c) is a representative vendor in terms of section 46 of the Value-Added Tax Act.</li> <li>(2) Every person who becomes or ceases to be a representative taxpayer (except a public officer of a company) under a tax Act, must notify SARS accordingly in such form as the Commissioner may prescribe, within 21 business days after becoming or ceasing to be a representative taxpayer, as the case may be.</li> <li>(3) A taxpayer is not relieved from any liability, responsibility or duty imposed under a tax Act by reason of the fact that the taxpayer's representative— <ul> <li>(a) failed to perform such responsibilities or duties; or</li> <li>(b) is liable for the tax payable by the taxpayer.</li> </ul> </li> </ul>	25
Liability of representative taxpayer	
<ul> <li>154. (1) A representative taxpayer is, as regards— <ul> <li>(a) the income to which the representative taxpayer is entitled;</li> <li>(b) moneys to which the representative taxpayer is entitled or has the management or control;</li> <li>(c) transactions concluded by the representative taxpayer; and</li> <li>(d) anything else done by the representative taxpayer,</li> </ul> </li> </ul>	35
<ul> <li>in such capacity—         <ul> <li>(i) subject to the duties, responsibilities and liabilities of the taxpayer represented;</li> </ul> </li> </ul>	40
<ul> <li>(ii) entitled to any abatement, deduction, exemption, right to set off a loss, and other items that could be claimed by the person represented; and</li> <li>(iii) liable for the amount of tax specified by a tax Act.</li> <li>(2) A representative taxpayer may be assessed in respect of any tax under subsection (1), but such assessment is regarded as made upon the representative taxpayer in such capacity only.</li> </ul>	45

# $\label{personal liability of representative taxpayer} Personal liability of representative taxpayer$

 $\textbf{155.} \ A \ representative \ taxpayer \ is \ personally \ liable \ for \ tax \ payable \ in \ the \ representative \ taxpayer's \ representative \ capacity, \ if, \ while \ it \ remains \ unpaid—$ 

- (a) the representative taxpayer alienates, charges or disposes of amounts in respect of which the tax is chargeable; or
- (b) the representative taxpayer disposes of or parts with funds or moneys, which are in the representative taxpayer's possession or come to the representative taxpayer after the tax is payable, if the tax could legally have been paid from or out of the funds or moneys.

#### Withholding agent

**156.** In this Act, withholding agent means a person who must under a tax Act withhold an amount of tax and pay it to SARS.

#### Personal liability of withholding agent

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- **157.** (1) A withholding agent is personally liable for an amount of tax—
  - (a) withheld and not paid to SARS; or
  - (b) which should have been withheld under a tax Act but was not so withheld.
- (2) An amount paid or recovered from a withholding agent in terms of subsection (1) is an amount of tax which is paid on behalf of the relevant taxpayer in respect of his or 15 her liability under the relevant tax Act.

## Responsible third party

**158.** In this Act, responsible third party means a person who becomes otherwise liable for the tax liability of another person, other than as a representative taxpayer or as a withholding agent, whether in a personal or representative capacity.

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#### Personal liability of responsible third party

**159.** A responsible third party is personally liable to the extent described in Part D of Chapter 11.

#### Right to recovery of taxpayer

- **160.** (1) A representative taxpayer, withholding agent or responsible third party who, 25 as such, pays a tax is entitled—
  - (a) to recover the amount so paid from the person on whose behalf it is paid; or
  - (b) to retain out of money or assets in that person's possession or that may come to that person in that representative capacity, an amount equal to the amount so paid.

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(2) Unless otherwise provided for in a tax Act, a taxpayer on whose behalf an amount deducted or withheld has been paid to SARS by a withholding agent is not entitled to recover from the withholding agent the amount so deducted or withheld.

## Security by taxpayer

- **161.** (1) A senior SARS official may require security from a taxpayer to safeguard the 35 collection of tax by SARS, if the taxpayer—
  - (a) is a representative taxpayer, withholding agent or responsible third party who was previously held liable in the taxpayer's personal capacity under a tax Act;
  - (b) has been convicted of a tax offence;
  - (c) has frequently failed to pay amounts of tax due;

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- (d) has frequently failed to carry out other obligations imposed under any tax Act which constitutes non-compliance referred to in Chapter 15; or
- (e) is under the management or control of a person who is or was a person contemplated in paragraphs (a) to (d).
- (2) If security is required, SARS must by written notice to the taxpayer require the 45 taxpayer to furnish to or deposit with SARS, within such period that SARS may allow, security for the payment of any tax which has or may become payable by the taxpayer in terms of a tax Act.
- (3) The security must be of the nature, amount and form that the senior SARS official directs.

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- (4) If the security is in the form of cash deposit and the taxpayer fails to make such deposit, it may—
  - (a) be collected as if it were a tax debt of the taxpayer recoverable under this Act; or

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(b) be set-off against any refund due to the taxpayer.

(5) A senior SARS official may, in the case of a taxpayer which is not a natural person and cannot provide the security required under subsection (1), require of any or all of the members, shareholders or trustees who control or are involved in the management of the taxpayer to enter into a contract of suretyship in respect of the taxpayer's liability for tax which may arise from time to time.

#### Part B

# Payment of tax

## Determination of time and manner of payment of tax

- **162.** (1) Tax must be paid by the day and at the place notified by SARS or as specified in a tax Act, and must be paid as a single amount or in terms of an instalment payment 15 agreement under section 167.
  - (2) SARS may prescribe the method of payment of tax, including electronically.
- (3) Despite sections 96(1)(f) and 167, a senior SARS official may, if there are reasonable grounds to believe that—
  - (a) a taxpayer will not pay the full amount of tax;
  - (b) a taxpayer will dissipate the taxpayer's assets; or
- (c) that recovery may become difficult in the future, require the taxpayer to—
  - (i) pay the full amount immediately upon receipt of the notice of assessment or a notice described in section 167(6) or within the period as the official deems 25 appropriate under the circumstances; or
  - (ii) provide such security as the official deems necessary.

## **Preservation order**

- **163.** (1) A senior SARS official may authorise an *ex parte* application to the High Court for an order for the preservation of any assets of a taxpayer or other person 30 prohibiting any person, subject to the conditions and exceptions as may be specified in the preservation order, from dealing in any manner with the assets to which the order relates.
- (2) (a) SARS may, in anticipation of the application and in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax due, seize the assets pending the outcome of an application for a preservation order, which application must commence within 24 hours from the time of seizure of the assets or the further period that SARS and the taxpayer or other person may agree on.
- (b) Until a preservation order is made in respect of the seized assets, SARS must take 40 reasonable steps to preserve and safeguard the assets.
- (3) A preservation order may be made if required to secure the collection of tax and in respect of—
  - (a) realisable assets seized by SARS under subsection (2);
  - (b) the realisable assets as may be specified in the order and which are held by the 45 person against whom the preservation order is being made;
  - (c) all realisable assets held by the person, whether it is specified in the order or not; or
  - (d) all assets which, if transferred to the person after the making of the preservation order, would be realisable assets.
  - (4) The court to which an application for a preservation order is made may—
    - (a) make a provisional preservation order having immediate effect;
    - (b) simultaneously grant a rule *nisi* calling upon the taxpayer or other person upon a business day mentioned in the rule to appear and to show cause why the preservation order should not be made final; and

61 (c) upon application by the taxpayer or other person, anticipate the return day for the purpose of discharging the provisional preservation order if 24 hours' notice of the application has been given to SARS. (5) A preservation order must provide for notice to be given to the taxpayer and a person from whom the assets are seized. 5 (6) For purposes of the notice or rule required under subsection (4)(b) or (5), if the taxpayer or other person has been absent for a period of 21 business days from his or her usual place of residence or business within the Republic, the court may direct that it will be sufficient service of that notice or rule if a copy thereof is affixed to or near the outer door of the buildings where the court sits and published in the Gazette, unless the court 10 directs some other mode of service. (7) The court, in granting a preservation order, may make any ancillary orders regarding how the assets must be dealt with, including-(a) authorising the seizure of all movable assets; (b) appointing a curator bonis in whom the assets of that taxpayer or another 15 person liable for tax vest; (c) realising the assets in satisfaction of the tax debt; (d) making provision as the court may think fit for the reasonable living expenses of a person against whom the preservation order is being made and his or her legal dependants, if the court is satisfied that the person has disclosed under 20 oath all direct or indirect interests in assets subject to the order and that the person cannot meet the expenses concerned out of his or her unrestrained assets: or (e) any other order that the court considers appropriate for the proper, fair and 25 effective execution of the order. (8) The court making a preservation order may also make such further order in respect of the discovery of any facts including facts relating to any asset over which the taxpayer or other person may have effective control and the location of the assets as the court may consider necessary or expedient with a view to achieving the objects of the preservation order. 30 (9) The court which made a preservation order may on application by a person affected by that order vary or rescind the order or an order authorising the seizure of the assets concerned or other ancillary order if it is satisfied that-(a) the operation of the order concerned will cause the applicant undue hardship; 35 the hardship that the applicant will suffer as a result of the order outweighs the (b) risk that the assets concerned may be destroyed, lost, damaged, concealed or transferred. (10) A preservation order remains in force— (a) pending the setting aside thereof on appeal, if any, against the preservation 40 until the assets subject to the preservation order are no longer required for purposes of the satisfaction of the tax debt. (11) In order to prevent any realisable assets that were not seized under subsection (2) from being disposed of or removed contrary to a preservation order under this section, 45 a senior SARS official may seize the assets if the official has reasonable grounds to believe that the assets will be so disposed of or removed. (12) Assets seized under this section must be dealt with in accordance with the directions of the High Court which made the relevant preservation order.

## Payment of tax pending objection or appeal

**164.** (1) Unless a senior SARS official otherwise directs in terms of subsection (3)—

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(a) the obligation to pay tax; and

(b) the right of SARS to receive and recover tax,

will not be suspended by an objection or appeal or pending the decision of a court of law pursuant to an appeal under section 133.

(2) A taxpayer may request a senior SARS official to suspend the payment of tax or a portion thereof due under an assessment if the taxpayer intends to dispute or disputes the liability to pay that tax under Chapter 9.

(3) A senior SARS official may suspend payment of the disputed tax having regard to—

(a) the compliance history of the taxpayer;

62 (b) the amount of tax involved; the risk of dissipation of assets by the taxpayer concerned during the period of suspension; (d) whether the taxpayer is able to provide adequate security for the payment of the amount involved; 5 whether payment of the amount involved would result in irreparable financial hardship to the taxpayer; whether sequestration or liquidation proceedings are imminent; (g) whether fraud is involved in the origin of the dispute; or (h) whether the taxpayer has failed to furnish information requested under this 10 Act for purposes of a decision under this section. (4) If the payment of tax which the taxpayer intended to dispute was suspended under subsection (3) and subsequently— (a) no objection is lodged; (b) an objection is disallowed and no appeal is lodged; or 15 (c) an appeal to the tax board or court is unsuccessful and no further appeal is noted. the suspension is revoked with immediate effect from the date of the expiry of the relevant prescribed time period or any extension of the relevant time period under this 20 (5) A senior SARS official may deny a request in terms of subsection (2) or revoke a decision to suspend payment in terms of that subsection with immediate effect if satisfied that-(a) after the lodging of the objection or appeal, the objection or appeal is frivolous 25 or vexatious; (b) the taxpayer is employing dilatory tactics in conducting the objection or appeal: (c) on further consideration of the factors referred to in subsection (3), the suspension should not have been given; or there is a material change in any of the factors referred to in subsection (3), 30 upon which the decision to suspend the amount involved was based. (6) During the period commencing on the day that— (a) SARS receives a request for suspension under subsection (2); or (b) a suspension is revoked under subsection (5), and ending 10 business days after notice of SARS' decision or revocation has been 35 issued to the taxpayer, no recovery proceedings may be taken unless SARS has a reasonable belief that there is a risk of dissipation of assets by the person concerned. (7) If an assessment or a decision referred to in section 104(2) is altered in accordance with-40 (a) an objection or appeal; (b) a decision of a court of law pursuant to an appeal under section 133; or (c) a decision by SARS to concede the appeal to the tax board or the tax court or other court of law, a due adjustment must be made, amounts paid in excess refunded with interest at the prescribed rate, the interest being calculated from the date that excess was received by 45 SARS to the date the refunded tax is paid, and amounts short-paid are recoverable with interest calculated as provided in section 187(1). (8) The provisions of section 191 apply with the necessary changes in respect of an amount refundable and interest payable by SARS under this section. Part C 50 Taxpayer Account and Allocation of Payments Taxpayer account

**165.** (1) SARS must maintain one or more taxpayer accounts for each taxpayer.

(2) The taxpayer account must reflect the tax due in respect of each tax type included in the account.

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- (3) The taxpayer account must record details for all tax periods of—
  - (a) the tax owed;
  - (b) any penalty imposed;
  - (c) the interest payable on outstanding amounts due;

<ul> <li>(d) any other amount owed;</li> <li>(e) tax payments made by or on behalf of the taxpayer; and</li> <li>(f) any credit for amounts paid that the taxpayer is entitled to have set off against</li> </ul>	
the taxpayer's tax liability.  (4) From time to time, or when requested by the taxpayer, SARS must send to the taxpayer a statement of account, reflecting the amounts currently due and the details that SARS considers appropriate.	5
Allocation of payments	
166. (1) Despite anything to the contrary contained in a tax Act, SARS may allocate any payment made in terms of a tax Act against the oldest amount of tax outstanding at the time of the payment, other than amounts—  (a) for which payment has been suspended under this Act; or  (b) that are payable in terms of an instalment payment agreement under section 167.	10
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<ul><li>(3) In the event that a payment in subsection (1) is insufficient to extinguish all tax debts of the same age, the amount of the payment may be allocated among these tax debts in the manner prescribed by the Commissioner by public notice.</li><li>(4) The age of a tax debt for purposes of subsection (1) is determined according to the duration from the date the debt became payable in terms of the applicable Act.</li></ul>	20
Part D	
Deferral of Payment	
Instalment payment agreement	25
<ul> <li>167. (1) A senior SARS official may enter into an agreement with a taxpayer in the prescribed form under which the taxpayer is allowed to pay a tax debt in one sum or in instalments, within the agreed period if satisfied that— <ul> <li>(a) criteria or risks that may be prescribed by the Commissioner by public notice have been duly taken into consideration; and</li> <li>(b) the agreement facilitates the collection of the debt.</li> </ul> </li> <li>(2) The agreement may contain such conditions as SARS deems necessary to secure</li> </ul>	30
collection of tax.	
<ul> <li>(3) Except as provided in subsections (4) and (5), the agreement remains in effect for the term of the agreement.</li> <li>(4) SARS may terminate an instalment payment agreement if the taxpayer fails to pay an instalment or to otherwise comply with its terms and a payment prior to the termination of the agreement must be regarded as part payment of the tax debt.</li> <li>(5) A senior SARS official may modify or terminate an instalment payment agreement</li> </ul>	35
the term of the agreement.  (4) SARS may terminate an instalment payment agreement if the taxpayer fails to pay an instalment or to otherwise comply with its terms and a payment prior to the termination of the agreement must be regarded as part payment of the tax debt.  (5) A senior SARS official may modify or terminate an instalment payment agreement if satisfied that—  (a) the collection of tax is in jeopardy;  (b) the taxpayer has furnished materially incorrect information in applying for the	35 40
the term of the agreement.  (4) SARS may terminate an instalment payment agreement if the taxpayer fails to pay an instalment or to otherwise comply with its terms and a payment prior to the termination of the agreement must be regarded as part payment of the tax debt.  (5) A senior SARS official may modify or terminate an instalment payment agreement if satisfied that—  (a) the collection of tax is in jeopardy;	
the term of the agreement.  (4) SARS may terminate an instalment payment agreement if the taxpayer fails to pay an instalment or to otherwise comply with its terms and a payment prior to the termination of the agreement must be regarded as part payment of the tax debt.  (5) A senior SARS official may modify or terminate an instalment payment agreement if satisfied that—  (a) the collection of tax is in jeopardy;  (b) the taxpayer has furnished materially incorrect information in applying for the agreement; or  (c) the financial condition of the taxpayer has materially changed.  (6) A termination or modification—  (a) referred to in subsection (4) or (5)(a) takes effect as at the date stated in the notice of termination or modification sent to the taxpayer; and  (b) referred to in subsection (5)(b) or (c) takes effect 21 business days after notice	40

(a) the taxpayer suffers from a deficiency of assets or liquidity which is reasonably certain to be remedied in the future;

(b) the taxpayer anticipates income or other receipts which can be used to satisfy the tax debt;	
(c) prospects of immediate collection activity are poor or uneconomical but are	
likely to improve in the future; (d) collection activity would be harsh in the particular case and the deferral or	5
instalment agreement is unlikely to prejudice tax collection; or (e) the taxpayer provides the security as may be required by the official.	
CHAPTER 11	
RECOVERY OF TAX	
Part A	10
General	
Debt due to SARS	
<b>169.</b> (1) An amount of tax due or payable in terms of a tax Act is a tax debt due to SARS for the benefit of the National Revenue Fund.	
(2) A tax debt due to SARS is recoverable by SARS under this Chapter, and is recoverable from—	15
(a) in the case of a representative taxpayer who is not personally liable under section 155, any assets belonging to the person represented which are in the representative taxpayer's possession or under his or her management or	
control; or  (b) in any other case, any assets of the taxpayer.  (3) SARS is regarded as the creditor for the purposes of an amount referred to in	20
subsection (1) as well as any other amount if SARS has entered into an agreement under section $4(1)(a)$ (ii) of the SARS Act in terms of which SARS is the creditor for the State or the organ of state or institution concerned.	25
(4) SARS need not recover an amount under this Chapter if the amount is less than R100 or any other amount that the Commissioner may determine by public notice, but the amount must be carried forward in the relevant taxpayer account.	23
Evidence as to assessment	
<b>170.</b> The production of a document issued by SARS purporting to be a copy of or an extract from an assessment is conclusive evidence—  (a) of the making of the assessment; and	30
(b) except in the case of proceedings on appeal against the assessment, that all the particulars of the assessment are correct.	
Period of limitation on collection of tax	35
<b>171.</b> Proceedings for recovery of a tax debt may not be initiated after the expiration of 15 years from the date the assessment of tax, or a decision referred to in section 104(2) giving rise to a tax liability, becomes final.	
Part B	
Judgment Procedure	40
Application for civil judgment for recovery of tax	
<b>172.</b> (1) If a person fails to pay tax when it is payable, SARS may, after giving the person at least 10 business days notice, file with the clerk or registrar of a competent court a certified statement setting out the amount of tax payable and certified by SARS as correct.	45
(2) SARS may file the statement irrespective of whether or not the amount of tax is subject to an objection or appeal under Chapter 9, unless the obligation to pay the amount has been suspended under section 164.	<b>→</b> J
(3) SARS is not required to give the taxpayer prior notice under subsection (1) if SARS is satisfied that giving notice would prejudice the collection of the tax.	50

## Jurisdiction of Magistrates' Court in judgment procedure

**173.** Despite anything to the contrary in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), the certified statement referred to in section 172 may be filed with the clerk of the Magistrate's Court that has jurisdiction over the taxpayer named in the statement.

## Effect of statement filed with clerk or registrar

**174.** A certified statement filed under section 172 must be treated as a civil judgment lawfully given in the relevant court in favour of SARS for a liquid debt for the amount specified in the statement.

# Amendment of statement filed with clerk or registrar

- **175.** (1) SARS may amend the amount of the tax due specified in the statement filed 10 under section 172 if, in the opinion of SARS, the amount in the statement is incorrect.
- (2) The amendment of the statement is not effective until it is initialled by the clerk or the registrar of the court concerned.

#### Withdrawal of statement and reinstitution of proceedings

- **176.** (1) SARS may withdraw a certified statement filed under section 172 by sending a notice of withdrawal to the relevant clerk or registrar upon which the statement ceases to have effect.
- (2) SARS may file a new statement under section 172 setting out tax included in a withdrawn statement.

# **Part C** 20

#### Sequestration, Liquidation and winding-up Proceedings

### Institution of sequestration, liquidation or winding-up proceedings

- **177.** (1) SARS may institute proceedings for the sequestration, liquidation or winding-up of a person for a tax debt.
  - (2) SARS may institute the proceedings whether or not the person—
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- (a) is present in the Republic; or
- (b) has assets in the Republic.
- (3) If the tax debt is subject to an objection or appeal under Chapter 9 or a further appeal against a decision by the tax court under section 129, the proceedings may only be instituted with leave of the court before which the proceedings are brought.

# Jurisdiction of court in sequestration, liquidation or winding-up proceedings

**178.** Despite any law to the contrary, a proceeding referred to in section 177 may be instituted in any competent court and that court may grant an order that SARS requests, whether or not the taxpayer is registered, resident or domiciled, or has a place of effective management or a place of business, in the Republic.

#### Part D

#### Collection of Tax Debt from Third Parties

## Liability of third party appointed to satisfy tax debts

- **179.** (1) A senior SARS official may by notice to a person who holds or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer, require the person to pay the money to SARS in satisfaction of the taxpayer's tax debt.
- (2) A person that is unable to comply with a requirement of the notice, must advise the senior SARS official of the reasons for the inability to comply within the period specified in the notice and the official may withdraw or amend the notice as is appropriate under 45 the circumstances.

- (3) A person receiving the notice must pay the money in accordance with the notice and, if the person parts with the money contrary to the notice, the person is personally liable for the money.
- (4) SARS may, on request by a person affected by the notice, amend the notice to extend the period over which the amount must be paid to SARS, to allow the taxpayer to pay the basic living expenses of the taxpayer and his or her dependants.

# Liability of financial management for tax debts

- **180.** A person is personally liable for any tax debt of the taxpayer to the extent that the person's negligence or fraud resulted in the failure to pay the tax debt if—
  - (a) the person controls or is regularly involved in the management of the overall 10 financial affairs of a taxpayer; and
  - (b) a senior SARS official is satisfied that the person is or was negligent or fraudulent in respect of the payment of the tax debts of the taxpayer.

## Liability of shareholders for tax debts

- **181.** (1) This section applies where a company is wound up other than by means of an involuntary liquidation without having satisfied its tax debt, including its liability as a responsible third party, withholding agent, or a representative taxpayer, employer or vendor.
- (2) The persons who are shareholders of the company within one year prior to its winding up are jointly and severally liable to pay the unpaid tax to the extent that—
  - (a) they receive assets of the company in their capacity as shareholders within one year prior to its winding-up; and

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- (b) the tax debt existed at the time of the receipt of the assets or would have existed had the company complied with its obligations under a tax Act.
- (3) The liability of the shareholders is secondary to the liability of the company.
- (4) Persons who are liable for tax of a company under this section may avail themselves of any rights against SARS as would have been available to the company.
  - (5) This section does not apply—
    - (a) in respect of a "listed company" within the meaning of the Income Tax Act; or
    - (b) in respect of a shareholder of a company referred to in paragraph (a).

#### Liability of transferee for tax debts

- **182.** (1) A person (referred to as a transferee) who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for consideration below the fair market value of the asset is liable for the tax debt of the 35 taxpayer.
  - (2) The liability is limited to the lesser of—
    - (a) the tax debt that existed at the time of the receipt of the asset or would have existed had the transferor complied with the transferor's obligations under a tax Act; and
    - (b) the fair market value of the asset at the time of the transfer, reduced by the fair market value of any consideration paid, at the time of payment.
- (3) Subsection (1) applies only to an asset received by the transferee within one year before SARS notifies the transferee of liability under this section.

#### Liability of person assisting in dissipation of assets

**183.** If a person knowingly assists in dissipating a taxpayer's assets in order to obstruct the collection of a tax debt of the taxpayer, the person is jointly and severally liable with the taxpayer for the tax debt to the extent that the person's assistance reduces the assets available to pay the taxpayer's tax debt.

# Recovery of tax debts from responsible third parties

**184.** (1) SARS has the same powers of recovery against the assets of a person referred to in this Part as SARS has against the assets of the taxpayer and the person has the same rights and remedies as the taxpayer has against such powers of recovery.

- (2) SARS must provide a responsible third party with an opportunity to make representations—
  - (a) before the responsible third party is held liable for the tax debt of the taxpayer in terms of section 180, 181, 182 or 183, if this will not place the collection of tax in jeopardy; or
  - (b) as soon as practical after the responsible third party is held liable for the tax debt of the taxpayer in terms of section 180, 181, 182 or 183.

#### Part E

## Assisting Foreign Governments

## Tax recovery on behalf of foreign governments

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- 185. (1) If SARS has, in accordance with an international tax agreement, received—
  (a) a request for conservancy of an amount alleged to be due by a person under the tax laws of the other country where there is a risk of dissipation or concealment of assets by the person, a senior SARS official may apply for a preservation order under section 163 as if the amount were a tax payable by 15 the person under a tax Act; or
  - (b) a request for the collection from a person of an amount alleged to be due by the person under the tax laws of the other country, a senior SARS official may, by notice, call upon the person to state, within a period specified in the notice, whether or not the person admits liability for the amount or for a lesser 20 amount.
- (2) A request described in subsection (1) must be in the prescribed form and must include a formal certificate issued by the competent authority of the other country stating—

(a) the amount of the tax due;

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- (b) whether the liability for the amount is disputed in terms of the laws of the other country;
- (c) if the liability for the amount is so disputed, whether such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; and

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- (d) whether there is a risk of dissipation or concealment of assets by the person.
- (3) In any proceedings, a certificate referred to in subsection (2) is—
  - (a) conclusive proof of the existence of the liability alleged; and
  - (b) prima facie proof of the other statements contained therein.
- (4) If, in response to the notice issued under subsection (1)(b), the person—
  - (a) admits liability;
  - (b) fails to respond to the notice; or
  - (c) denies liability but a senior SARS official, based on the statements in the certificate described in subsection (2) or, if necessary, after consultation with the competent authority of the other country, is satisfied that—

(i) the liability for the amount is not disputed in terms of the laws of the other country;

- (ii) although the liability for the amount is disputed in terms of the laws of the other country, such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or
- (iii) there is a risk of dissipation or concealment of assets by the person, the official may, by notice, require the person to pay the amount for which the person has admitted liability or the amount specified, on a date specified, for transmission to the competent authority in the other country.
- (5) If the person fails to comply with the notice under subsection (4), SARS may recover the amount in the certificate for transmission to the foreign authority as if it were a tax payable by the person under a tax Act.
- (6) No steps taken in assistance in collection by any other country under an international tax agreement for the collection of an amount alleged to be due by a person under a tax Act, including a judgment given against a person in the other country for the amount in pursuance of the agreement, may affect the person's right to have the liability for the amount determined in the Republic in accordance with the relevant law.

# Part F

# Remedies with respect to foreign assets

# Compulsory repatriation of foreign assets of taxpayer

Compulsory repair and of foreign assets of taxpayer	
<b>186.</b> (1) To collect a tax debt, a senior SARS official may apply for an order referred to in subsection (2), if—	5
(a) the taxpayer concerned does not have sufficient assets located in the Republic	
to satisfy the tax debt in full; and	
(b) the senior SARS official believes that the taxpayer—	
(i) has assets outside the Republic; or	
consideration less than the fair market value,	10
which may fully or partly satisfy the tax debt.	
(2) A senior SARS official may apply to the High Court for an order compelling the	
taxpayer to repatriate assets located outside the Republic within a period prescribed by the court in order to satisfy the tax debt.	15
(3) In addition to issuing the order described in subsection (2), the Court may—	13
(a) limit the taxpayer's right to travel outside the Republic and require the taxpayer to surrender his or her passport to SARS;	
(b) withdraw a taxpayer's authorisation to conduct business in the Republic, if	
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(c) require the taxpayer to cease trading; or	
(d) issue any other order it deems fit.	
(4) An order made under subsection (2) applies until the tax debt has been satisfied or the assets have been repatriated and utilised in satisfaction of the tax debt.	
CHAPTER 12	25
INTEREST	
General interest rules	
<b>187.</b> (1) If a tax debt or refund payable by SARS is not paid in full by the effective date, interest accrues on the amount of the outstanding balance of the tax debt or	
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(a) at the rate provided under section 189; and	
(b) for the period provided under section 188.	
(2) Interest payable under a tax Act is calculated on the daily balance owing and	
compounded monthly, and the Commissioner may prescribe by public notice from	25
which date this method of determining interest will apply to a tax type.  (3) The effective date for purposes of the calculation of interest in relation to—	35
(a) tax other than income tax or estate duty for any tax period, is the date by which	
tax for the tax period is due and payable under a tax Act;	
(b) income tax for any year of assessment, is the date falling seven months after	
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ending on the last day of February, and six months in any other case;	
(c) estate duty for any period, is the earlier of the date of assessment or 12 months	
after the date of death; (d) a fixed amount penalty referred to in section 210, is the date for payment	
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(e) a percentage based penalty referred to in section 214, is the date by which tax	
for the tax period should have been paid; and	
(f) an understatement penalty, is the effective date for the tax understated.	
(4) The effective date in relation to an additional assessment or reduced assessment is	50
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specified in the jeopardy assessment.

(6) If a senior SARS official is satisfied that interest payable by a taxpayer under subsection (1) is payable as a result of circumstances beyond the taxpayer's control, the 55

official may, unless prohibited by a tax Act, direct that so much of the interest as attributable to the circumstances is not payable by the taxpayer.  (7) The circumstances referred to in subsection (6) are limited to—  (a) a natural or human-made disaster;  (b) a civil disturbance or disruption in services; or	is 5
(c) a serious illness or accident.  Period over which interest accrues	
<ul> <li>188. (1) Unless otherwise provided in a tax Act, interest payable under section 187 imposed for the period from the effective date of the tax to the date the tax is paid.</li> <li>(2) Interest payable in respect of the— <ul> <li>(a) first payment of provisional tax, is imposed from the effective date for the fir payment of provisional tax until the earlier of the date on which the payme is made or the effective date for the second payment of provisional tax; an</li> <li>(b) second payment of provisional tax, is imposed from the effective date for the second payment is made or the effective date for income tax for the relevant year assessment.</li> </ul> </li> <li>(3) Unless otherwise provided under a tax Act— <ul> <li>(a) interest on an amount refundable under section 190 is calculated from the lat of the effective date or the date that the excess was received by SARS to the date the refunded tax is paid; and</li> <li>(b) for this purpose, if a refund is offset against a liability of the taxpayer under the date of the date of the taxpayer under the date of the date of the taxpayer under the date of the date of the taxpayer under the date of the date of the taxpayer under the date of the date of the taxpayer under the date of the date of the taxpayer under the date of the date of the date of the taxpayer under the date of the date of the date of the taxpayer under the date of t</li></ul></li></ul>	10 rest and he he he 15 of ter he 20 her
section 191, the date on which the offset is effected is considered to be the da of payment of the refund.  Rate at which interest is charged	25
<b>189.</b> (1) The rate at which interest is payable under section 187 is the prescribed rate. (2) In the case of interest payable with respect to refunds on assessment of provisional tax and employees' tax paid for the relevant year of assessment, the rate payable by SARS is four percentage points below the prescribed rate.  (3) The prescribed rate is the interest rate that the Minister may from time to time fix by notice in the <i>Gazette</i> under section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).	
(4) If the Minister fixes a different interest rate referred to in subsection (3) the ne rate comes into operation on the first day of the second month following the month which the new rate becomes effective for purposes of the Public Finance Manageme Act, 1999.	in ent 35
(5) If interest is payable under this Chapter and the rate at which the interest is payable has with effect from any date been altered, and the interest is payable in respect of at tax period or portion thereof which commenced before the said date, the interest to be determined in respect of—  (a) the tax period or portion thereof which ended immediately before the said date; or	ny be 40
(b) the portion of the tax period which was completed before the said date, must be calculated as if the rate had not been altered.	
CHAPTER 13	45
REFUNDS	
Refunds of excess payments	
<ul> <li>190. (1) A person is entitled to a refund of— <ul> <li>(a) an amount properly refundable under a tax Act and if so reflected in a assessment; or</li> <li>(b) the amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment.</li> </ul> </li> <li>(2) SARS need not authorise a refund as referred to in subsection (1) until such ting the series of the assessment.</li> </ul>	50 he
that a verification, inspection or audit of the refund in accordance with Chapter 5 h. been finalised.	as 55

- (3) SARS must authorise the payment of a refund before the finalisation of the verification, inspection or audit if security in a form acceptable to a senior SARS official is provided by the taxpayer.
- (4) A person is entitled to a refund under subsection (1)(b) only if the refund is claimed by the person within three years, in the case of an assessment by SARS, or five years, in the case of self-assessment, from the date of the assessment.
- (5) If SARS pays to a person by way of a refund any amount which is not properly payable to the person under a tax Act, the amount is regarded as tax that is payable by the person to SARS from the date on which it is paid to the person.
- (6) A decision not to authorise a refund under this section is subject to objection and 10 appeal.

### Refunds subject to set-off and deferral

- **191.** (1) If a taxpayer has an outstanding tax debt, an amount that is refundable under section 190, including interest thereon under section 188(3)(a), must be treated as a payment by the taxpayer that is recorded in the taxpayer's account under section 165, to 15 the extent of the amount outstanding, and any remaining amount must be set off against any outstanding debt under the Customs and Excise Act.
  - (2) Subsection (1) does not apply to a tax debt—
    - (a) that is disputed under Chapter 9 and for which suspension of payment under section 164 exists; or

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- (b) in respect of which an instalment payment agreement under section 167 or a compromise agreement under section 204 applies.
- (3) An amount is not refundable if the amount is less than R100 or any other amount that the Commissioner may determine by public notice, but the amount must be carried forward in the taxpayer account.

#### **CHAPTER 14**

## WRITE OFF OR COMPROMISE OF TAX DEBTS

#### Part A

## General provisions

Definitions 30

- **192.** In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings:
  - 'asset' includes—
  - (a) property of whatever nature, whether movable or immovable, corporeal or incorporeal; and
  - (b) a right or interest of whatever nature to or in the property;
  - 'Companies Act' means the Companies Act, 2008 (Act No. 71 of 2008);
  - 'compromise' means an agreement entered into between SARS and a 'debtor' in terms of which—
  - (a) the 'debtor' undertakes to pay an amount (pursuant to an instalment payment 40 agreement under section 167) which is less than the full amount of the tax debt due by that 'debtor' in full satisfaction of the tax debt; and
  - (b) SARS undertakes to permanently 'write off' the remaining portion of the tax debt on the condition that the 'debtor' complies with the undertaking referred to in paragraph (a) and any further conditions as may be imposed by SARS; 45
  - 'debtor' means a taxpayer with an outstanding tax debt; and
  - 'write off' means to reverse a tax debt either in whole or in part.

## **Purpose of Chapter**

- **193.** (1) As a general rule, it is the duty of SARS to assess and collect all tax debts according to a tax Act and not to forgo any tax debts.
- (2) SARS may, when required by circumstances, deviate from the strictness and rigidity of the general rule referred to in subsection (1) if it would be to the best advantage of the State.

(3) The purpose of this Chapter is to prescribe the circumstances under which SARS may deviate from the general rule and take a decision to 'write off' a tax debt or not to pursue its collection.

# **Application of Chapter**

**194.** This Chapter applies only in respect of a tax debt owed by a 'debtor' if the liability to pay the tax debt is not disputed by the 'debtor'.

#### Part B

## Temporary write off of tax debt

# Temporary write off of tax debt

- **195.** (1) A senior SARS official may decide to temporarily 'write off' an amount of tax debt if satisfied that the tax debt is uneconomical to pursue as described in section 196 at that time
- (2) A decision by the senior SARS official to temporarily 'write off' an amount of tax debt does not absolve the 'debtor' from the liability for that tax debt.
- (3) A senior SARS official may at any time withdraw the decision to temporarily 'write off' a tax debt if satisfied that the tax debt is no longer uneconomical to pursue as referred to in section 196 and that the decision to temporarily 'write off' would jeopardise the general tax collection effort.

## Tax debt uneconomical to pursue

- **196.** (1) A tax debt is uneconomical to pursue if a senior SARS official is satisfied that 20 the total cost of recovery of that tax debt will in all likelihood exceed the anticipated amount to be recovered in respect of the outstanding tax debt.
- (2) In determining whether the cost of recovery is likely to exceed the anticipated amount to be recovered as referred to in subsection (1), a senior SARS official must have regard to—

(a) the amount of the tax debt;

- (b) the length of time that the tax debt has been outstanding;
- (c) the steps taken to date to recover the tax debt and the costs involved in those steps, including steps taken to locate or trace the 'debtor';
- (d) the likely costs of continuing action to recover the tax debt and the anticipated 30 return from that action, including the likely recovery of costs that may be awarded to SARS;

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- (e) the financial position of the 'debtor', including that 'debtor's' 'assets' and liabilities, cash flow, and possible future income streams; and
- (f) any other information available with regard to the recoverability of the tax 35 debt.

#### Part C

## Permanent write off of tax debt

#### Permanent write off of tax debt

- 197. (1) A senior SARS official may authorise the permanent 'write off' of an amount 40 of tax debt—
  - (a) to the extent satisfied that the tax debt is irrecoverable at law as referred to in section 198; or
  - (b) if the debt is 'compromised' in terms of Part D.
  - (2) SARS must notify the 'debtor' in writing of the amount of tax debt 'written off'. 45

## Tax debt irrecoverable at law

- 198. (1) A tax debt is irrecoverable at law if—
  - (a) it cannot be recovered by action and judgment of a court; or

- (b) it is owed by a 'debtor' that is in liquidation or sequestration and it represents the balance outstanding after notice is given by the liquidator or trustee that no further dividend is to be paid or a final dividend has been paid to the creditors of the estate; or
- (c) it is owed by a 'debtor' that is subject to a business rescue plan referred to in Part D of Chapter 6 of the 'Companies Act', to the extent that it is not enforceable in terms of section 154 of that Act.
- (2) A tax debt is not irrecoverable at law if SARS has not first explored action against or recovery from the 'assets' of the persons who may be liable for the debt under Part D of Chapter 11.

## Procedure for writing off tax debt

- 199. (1) Before deciding to 'write off' a tax debt, a senior SARS official must—
  - (a) determine whether there are any other tax debts owing to SARS by the 'debtor';
  - (b) reconcile amounts owed by and to the 'debtor', including penalties, interest 15 and costs;
  - (c) obtain a breakdown of the tax debt and the periods to which the outstanding amounts relate; and
  - (d) document the history of the recovery process and the reasons for deciding to 'write off' the tax debt.

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(2) In deciding whether to support a business rescue plan referred to in Part D of Chapter 6 of the 'Companies Act' or 'compromise' made to creditors under section 155 of the 'Companies Act' a senior SARS official must, in addition to considering the information as referred to in section 150 or 155 of that Act, take into account the information and aspects covered in the provisions of sections 200, 201(1), 202 and 203 25 with the necessary changes.

#### Part D

# Compromise of tax debt

## Compromise of tax debt

- **200.** A senior SARS official may authorise the 'compromise' of a portion of a tax debt 30 upon request by a 'debtor', which complies with the requirements of section 201, if—
  - (a) the purpose of the 'compromise' is to secure the highest net return from the recovery of the tax debt; and
  - (b) the 'compromise' is consistent with considerations of good management of the tax system and administrative efficiency.

## Request by debtor for compromise of tax debt

- **201.** (1) A request by a 'debtor' for a tax debt to be 'compromised' must be signed by the 'debtor' and be supported by a detailed statement setting out—
  - (a) the 'assets' and liabilities of the 'debtor' reflecting their current fair market value;
  - (b) the amounts received by or accrued to, and expenditure incurred by, the 'debtor' during the 12 months immediately preceding the request;
  - (c) the 'assets' which have been disposed of in the preceding three years, or such longer period as a senior SARS official deems appropriate, together with their value, the consideration received or accrued, the identity of the person who acquired the 'assets' and the relationship between the 'debtor' and the person who acquired the 'assets', if any;
  - (d) the 'debtor's' future interests in any 'assets', whether certain or contingent or subject to the exercise of a discretionary power by another person;
  - (e) the 'assets' over which the 'debtor', either alone or with other persons, has a 50 direct or indirect power of appointment or disposal, whether as trustee or otherwise:
  - (f) details of any connected person in relation to that 'debtor';

- (g) the 'debtor's' present sources and level of income and the anticipated sources and level of income for the next three years, with an outline of the 'debtor's' financial plans for the future; and
- (h) the 'debtor's' reasons for seeking a 'compromise'.
- (2) The request must be accompanied by the evidence supporting the 'debtor's' claims for not being able to make payment of the full amount of the tax debt.
- (3) The 'debtor' must warrant that the information provided in the application is accurate and complete.
- (4) A senior SARS official may require that the application be supplemented by such further information as may be required.

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#### Consideration of request to compromise tax debt

- **202.** (1) In considering a request for a 'compromise', a senior SARS official must have regard to the extent that the 'compromise' may result in—
  - (a) savings in the costs of collection;
  - (b) collection at an earlier date than would otherwise be the case without the 15 'compromise';
  - (c) collection of a greater amount than would otherwise have been recovered; or
  - (d) the abandonment by the 'debtor' of some claim or right, which has a monetary value, arising under a tax Act administered by SARS, including existing or future tax benefits, such as carryovers of losses, deductions, credits and 20 rebates.
- (2) In determining the position without the 'compromise', a senior SARS official must have regard to—
  - (a) the value of the 'debtor's' present 'assets';
  - (b) future prospects of the 'debtor', including arrangements which have been 25 implemented or are proposed which may have the effect of diverting income or 'assets' that may otherwise accrue to or be acquired by the 'debtor' or a connected person in relation to the 'debtor';
  - (c) past transactions of the 'debtor'; and
  - (d) the position of any connected person in relation to the 'debtor'.

#### Circumstances where not appropriate to compromise tax debt

- **203.** A senior SARS official may not 'compromise' any amount of a tax debt under section 200 if—
  - (a) the 'debtor' was a party to an agreement with SARS to 'compromise' an amount of tax debt within the period of three years immediately before the 35 request for the 'compromise';
  - (b) the tax affairs of the 'debtor' (other than the outstanding tax debt) are not up to date:
  - (c) another creditor has communicated its intention to initiate or has initiated liquidation or sequestration proceedings;
  - (d) the 'compromise' will prejudice other creditors (unless the affected creditors consent to the 'compromise') or if other creditors will be placed in a position of advantage relative to SARS;
  - (e) it may adversely affect broader taxpayer compliance; or
  - (f) the 'debtor' is a company or a trust and SARS has not first explored action 45 against or recovery from the personal 'assets' of the persons who may be liable for the debt under Part D of Chapter 11.

# Procedure for compromise of tax debt

- **204.** (1) To 'compromise' a tax debt, a senior SARS official and the 'debtor' must sign an agreement setting out—
  - (a) the amount payable by the 'debtor' in full satisfaction of the debt;
  - (b) the undertaking by SARS not to pursue recovery of the balance of the tax debt;
  - (c) the conditions subject to which the tax debt is 'compromised' by SARS.
- (2) The conditions referred to in subsection (1)(c) may include a requirement that the 55 'debtor' must—
  - (a) comply with subsequent obligations imposed in terms of a tax Act;
  - (b) pay the tax debt in the manner prescribed by SARS; or

(c) give up specified existing or future tax benefits, such as carryovers of losses, deductions, credits and rebates.

#### SARS not bound by compromise of tax debt

205.	SARS	is	not	bound	hv a	'comproi	nise'	if—

- (a) the 'debtor' fails to disclose a material fact to which the 'compromise' relates;
- (b) the 'debtor' supplies materially incorrect information to which the 'compromise' relates;
- (c) the 'debtor' fails to comply with a provision or condition contained in the agreement referred to in section 204; or
- (d) the 'debtor' is liquidated or the 'debtor's' estate is sequestrated before the 10 'debtor' has fully complied with the conditions contained in the agreement referred to in section 204.

#### Part E

#### Records and reporting

#### Register of tax debts written off or compromised

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- **206.** (1) SARS must maintain a register of the tax debts 'written off' or 'compromised' in terms of this Chapter.
  - (2) The register referred to in subsection (1) must contain—
    - (a) the details of the 'debtor', including name, address and taxpayer reference number;
    - (b) the amount of the tax debt 'written off' or 'compromised' and the periods to which the tax debt relates; and
    - (c) the reason for 'writing off' or 'compromising' the tax debt.

#### Reporting by Commissioner of tax debts written off or compromised

- **207.** (1) The amount of tax debts 'written off' or 'compromised' during a financial 25 year must be disclosed in the annual financial statements of SARS relating to administered revenue for that year.
- (2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister a summary of the tax debts which were 'written off' or 'compromised' in whole or in part during the period covered by the summary, which must—

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- (a) be in a format which, subject to section 70(5), does not disclose the identity of the 'debtor' concerned;
- (b) be submitted by the end of the month following the end of the fiscal year; and
- (c) contain details of the number of tax debts 'written off' or 'compromised', the amount of revenue forgone, and the estimated amount of savings in costs of 35 recovery, which must be reflected in respect of main classes of taxpayers or sections of the public.

# **CHAPTER 15**

#### ADMINISTRATIVE NON-COMPLIANCE PENALTIES

# Part A

#### General

#### **Definitions**

- **208.** In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings:
  - **'administrative non-compliance penalty'** or **'penalty'** means a "penalty" 45 imposed by SARS in accordance with this Chapter, and excludes an understatement penalty referred to in Chapter 16;
  - **'first incidence'** means an incidence of non-compliance by a person if no 'penalty assessment' under this Part was issued during the preceding 36 months, whether involving an incidence of non-compliance of the same or a different kind, and for 50

purposes of this definition a 'penalty assessment' that was fully remitted under section 218 must be disregarded;

'penalty assessment' means an assessment in respect of-

- (a) a 'penalty' only; or
- (b) tax and a 'penalty' which are assessed at the same time;

'preceding year' means the year of assessment immediately prior to the year of assessment during which a 'penalty' is assessed;

**'remittance request'** means a request for remittance of a 'penalty' submitted in accordance with section 215.

## **Purpose of Chapter**

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209. The purpose of this Chapter is to ensure—

- (a) the widest possible compliance with the provisions of a tax Act and the effective administration of tax Acts; and
- (b) that an 'administrative non-compliance penalty' is imposed impartially, consistently, and proportionately to the seriousness and duration of the 15 non-compliance.

#### Part B

#### Fixed Amount Penalties

#### Non-compliance subject to penalty

- **210.** (1) If SARS is satisfied that non-compliance by a person referred to in subsection 20 (2) exists, excluding the non-compliance referred to in section 213, SARS must impose the appropriate 'penalty' in accordance with the Table in section 211.
- (2) Non-compliance is failure to comply with an obligation that is imposed by or under a tax Act and is listed in a public notice issued by the Commissioner, other than—
  - (a) the failure to pay tax subject to a percentage based penalty under Part C; or 25
  - (b) non-compliance subject to an understatement penalty under Chapter 16.

# Fixed amount penalty table

**211.** (1) For the non-compliance referred to in section 210, SARS must impose a 'penalty' in accordance with the following Table:

**Table: Amount of Administrative Non-Compliance Penalty** 

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Assessed loss or taxable income for 'preceding year'	3 'Penalty'	35
Assessed loss	R250	
R0-R250 000	R250	
R250 001-R500 000	R500	
R500 001-R1 000 000	R1 000	
R1 000 001-R5 000 000	R2 000	40
R5 000 001-R10 000 000	R4 000	
R10 000 001-R50 000 000	R8 000	
Above R50 000 000	R16 000	
	Assessed loss R0-R250 000 R250 001-R500 000 R500 001-R1 000 000 R1 000 001-R5 000 000 R5 000 001-R10 000 000 R10 000 001-R50 000 000	Assessed loss R250 R0-R250 000 R250 R250 001-R500 000 R500 R500 001-R1 000 000 R1 000 R1 000 001-R5 000 000 R2 000 R5 000 001-R10 000 000 R4 000 R10 000 001-R50 000 000 R8 000

- (2) The amount of the 'penalty' in column 3 will increase automatically by the same amount for each month, or part thereof, that the person fails to remedy the 45 non-compliance within one month after—
  - (a) the date of the delivery of the 'penalty assessment', if SARS is in possession of the current address of the person and is able to deliver the assessment, but limited to 35 months after the date of delivery; or
  - (b) the date of the non-compliance if SARS is not in possession of the current 50 address of the person and is unable to deliver the 'penalty assessment', but limited to 47 months after the date of non-compliance.
- (3) The following persons, except those falling under item (viii) of the Table or those that did not trade during the year of assessment, are treated as falling under item (vii) of the Table:

- (a) a company listed on a recognised stock exchange as referred to in paragraph 1 of the Eighth Schedule to the Income Tax Act;
  (b) a company whose gross receipts or accruals for the 'preceding year' exceed R500 million;
  (c) a company that forms part of a "group of companies" as defined in section 1 of the Income Tax Act, which group includes a company described in item (a) or (b); or
  (d) a person or entity, exempt from income tax under the Income Tax Act but liable to tax under another tax Act, whose gross receipts or accruals exceed R30 million.
- (4) SARS may, except in the case of persons referred to in subsections (3)(a) to (c), if the taxable income of the relevant person for the 'preceding year' is unknown or that person was not a taxpayer in that year—
  - (a) impose a 'penalty' in accordance with item (ii) of column 1 of the Table; or
  - (b) estimate the amount of taxable income of the relevant person for the 15 'preceding year' based on available relevant material and impose a 'penalty' in accordance with the applicable subparagraph in column 1 of the Table.
- (5) Where, upon determining the actual taxable income or assessed loss of the person in respect of whom a 'penalty' was imposed under subsection (4), it appears that the person falls within another item in column 1 of the Table, the 'penalty' must be adjusted 20 in accordance with the applicable subparagraph in that column with effect from the date of the imposition of the 'penalty' issued under subsection (4).

#### Reportable arrangement penalty

- **212.** (1) A 'participant' who fails to disclose the information in respect of a reportable arrangement as required by section 37 is liable to a 'penalty', for each month that the 25 failure continues (up to 12 months), in the amount of—
  - (a) R50 000, in the case of a 'participant' other than the 'promoter'; or
  - (b) R100 000, in the case of the 'promoter'.
- (2) The amount of 'penalty' determined under subsection (1) is doubled if the amount of anticipated 'tax benefit' for the 'participant' by reason of the arrangement (within the 30 meaning of section 35) exceeds R5 000 000, and is tripled if the benefit exceeds R10 000 000.

# Part C

# Percentage Based Penalty

#### Imposition of percentage based penalty

- **213.** (1) If SARS is satisfied that an amount of tax was not paid as and when required under a tax Act, SARS must, in addition to any other 'penalty' or interest for which a person may be liable under this Chapter, impose a 'penalty' equal to the percentage of the amount of unpaid tax as prescribed in the tax Act.
- (2) In the event of a change to the amount of tax in respect of which a 'penalty' was 40 imposed under subsection (1), the 'penalty' must be adjusted accordingly with effect from the date of the imposition of the 'penalty'.

#### Part D

#### Procedure

#### Procedures for imposing penalty

- **214.** (1) A 'penalty' imposed under Part B or C is imposed by way of a 'penalty assessment', and if a 'penalty assessment' is made, SARS must give notice of the assessment in the format as SARS may decide to the person, including the following:
  - (a) the non-compliance in respect of which the 'penalty' is assessed and its duration;
  - (b) the amount of the 'penalty' imposed;
  - (c) the date for paying the 'penalty';
  - (d) the automatic increase of the 'penalty'; and
  - (e) a summary of procedures for requesting remittance of the 'penalty'.

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77 (2) A 'penalty' is due upon assessment and must be paid— (a) on or before the date for payment stated in the notice of the 'penalty assessment'; or (b) where the 'penalty assessment' is made together with an assessment of tax, on or before the deadline for payment stated in the notice of the assessment for (3) SARS must give the taxpayer notice of an adjustment to the 'penalty' in accordance with section 211(2) or 213(2). Procedure to request remittance of penalty **215.** (1) A person who is aggrieved by a 'penalty assessment' notice may, on or before 10 the date for payment in the 'penalty assessment', in the prescribed form and manner, request SARS to remit the 'penalty' in accordance with Part E. (2) The 'remittance request' must include-(a) a description of the circumstances which prevented the person from complying with the relevant obligation under a tax Act in respect of which the 15 'penalty' has been imposed; and (b) the supporting documents and information as may be required by SARS in the prescribed form. (3) During the period commencing on the day that SARS receives the 'remittance request', and ending 21 business days after notice has been given of SARS' decision, no 20 collection steps relating to the 'penalty' amount may be taken unless SARS has a reasonable belief that there is-(a) a risk of dissipation of assets by the person concerned; or (b) fraud involved in the origin of the non-compliance or the grounds for 25 (4) SARS may extend the period referred to in subsection (1) if SARS is satisfied that the non-compliance in issue is an incidence of non-compliance referred to in section 216 or 217, and that reasonable grounds exist for the late receipt of the 'remittance request'; or 30 (b) a circumstance referred to in section 218(2) rendered the person incapable of submitting a timely request. Part E Remedies Remittance of penalty for failure to register 35 **216.** If a 'penalty' is imposed on a person for a failure to register as and when required under this Act, SARS may remit the 'penalty' in whole or in part if-(a) the failure to register was discovered because the person approached SARS voluntarily; and 40 (b) the person has filed all returns required under a tax Act. Remittance of penalty for nominal or first incidence of non-compliance **217.** (1) If a 'penalty' has been imposed in respect of— (a) a 'first incidence' of the non-compliance described in section 210, 212 or 213; (b) an incidence of non-compliance described in section 210 if the duration of the 45 non-compliance is less than five business days, SARS may, in respect of a 'penalty' imposed under section 210 or 212, remit the 'penalty', or a portion thereof if appropriate, up to an amount of R2 000 if SARS is satisfied that-50 (i) reasonable grounds for the non-compliance exist; and

(ii) the non-compliance in issue has been remedied.

in subsection (1) is changed to R100 000.

or a portion thereof, if SARS is satisfied that—

(2) In the case of a 'penalty' imposed under section 212, the R2 000 limit referred to

(3) In the case of a penalty imposed under section 213, SARS may remit the 'penalty',

(a) the 'penalty' has been imposed in respect of a 'first incidence' of the non-compliance described in section 210, 212 or 213, or involved an amount	
of less than R2 000;	
(b) reasonable grounds for the non-compliance exist; and	
(c) the non-compliance in issue has been remedied.	5
Remittance of penalty in exceptional circumstances	
<b>218.</b> (1) SARS must, upon receipt of a 'remittance request', remit the 'penalty' or if applicable a portion thereof, if SARS is satisfied that one or more of the circumstances referred to in subsection (2) rendered the person on whom the 'penalty' was imposed incapable of complying with the relevant obligation under the relevant tax Act.	10
<ul> <li>(2) The circumstances referred to in subsection (1) are limited to—</li> <li>(a) a natural or human-made disaster;</li> <li>(b) a civil disturbance or disruption in services;</li> </ul>	
(c) a serious illness or accident;	
(d) serious emotional or mental distress;	15
(e) any of the following acts by SARS:	
(i) a capturing error;	
<ul><li>(ii) a processing delay;</li><li>(iii) provision of incorrect information in an official publication or media</li></ul>	
release issued by the Commissioner;	20
(iv) delay in providing information to any person; or	
<ul><li>(v) failure by SARS to provide sufficient time for an adequate response to a request for information by SARS;</li><li>(f) serious financial hardship, such as—</li></ul>	
(i) in the case of an individual, lack of basic living requirements; or	25
(ii) in the case of a business, an immediate danger that the continuity of business operations and the continued employment of its employees are jeopardised; or	
(g) any other circumstance of analogous seriousness.	
Penalty incorrectly assessed	30
<b>219.</b> If SARS is satisfied that a 'penalty' was not assessed in accordance with this Chapter, SARS may, within three years of the 'penalty assessment', issue an altered assessment accordingly.	
Objection and appeal against decision not to remit penalty	
<b>220.</b> A decision by SARS not to remit a 'penalty' in whole or in part is subject to objection and appeal under Chapter 9.	35
CHAPTER 16	
UNDERSTATEMENT PENALTY	
Part A	
Imposition of Understatement Penalty	40
Definitions	
<b>221.</b> In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings:	
<b>'repeat case'</b> means a second or further case of any of the behaviours listed under items (i) to (v) of the understatement penalty percentage table reflected in section 223 within five years of the previous case;	45
<b>'substantial understatement'</b> means a case where the prejudice to SARS or the <i>fiscus</i> exceeds the greater of five per cent of the amount of 'tax' properly chargeable	
or refundable under a tax Act for the relevant tax period, or R1 000 000;	
'tax' means tax as defined in section 1, excluding a penalty and interest;	50

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640	w nocition? manne en eccu		l	ana compete e	f a tay matuum		
	<b>x position'</b> means an assuctuding whether or not—	impuon under	rying one or ii	iore aspects of	i a tax return,		
(a)		event or item	is taxable;				
(b)							
(c)				to that class	of taxpayer,	5	
/ 1	transaction, event or item applies; or						
(d)	1						
	nderstatement' means ar riod as a result of—	iy prejudice to	o saks or in	e <i>fiscus</i> in res	pect of a tax		
(a.		return:				10	
( /	an omission from a retu						
	an incorrect statement						
. ,	if no return is required,			ect amount of	'tax'.		
						15	
Unders	tatement penalty					13	
222.	(1) In the event of an 'uno	derstatement'	by a taxpayer.	, the taxpayer	must pay, in		
	n to the 'tax' payable for						
	ned under subsection (2).					20	
	he understatement penalt					20	
	ble understatement penalt				ole in section		
	the shortfall determined u		ons (3) and (4	).			
	the shortfall is the sum of-		of 'tox' propo	rlu aharaaahl	a for the toy		
(u)	the difference between period and the amount					25	
	'understatement' were		at would hav	e ocen charg	geable if the		
(b)			operly refund	able for the ta	x period and		
,	the amount that would						
	accepted; and					30	
(c)						50	
	the taxpayer properly c						
	period and the amou						
	'understatement' were	accepted, mul	tiplied by the	tax rate deter	mined under		
(4) I <del>f</del>	subsection (5).  an 'understatement' resul	ts in a differe	nce under hotl	n naragranhe /	(a) and $(b)$ of	35	
	ion (3), the shortfall must						
.1	agraphs.	20120000000		or any dapiton			
	The tax rate is the maxim	num tax rate	applicable to	the taxpayer,	ignoring an		
assesse	assessed loss on any other handft brought forward from a magading tay maried to the tay					40	
period.							
Unders	statement penalty percen	tage table					
223.	(1) The understatement pe	enalty percent	tage table is as	s follows:		45	
1	2	3	4	5	6	]	
Item	Behaviour	Standard	If obstruc-	Voluntary	Voluntary		
		case	tive, or if	disclosure	disclosure		

1 Item	2 Behaviour	3 Standard case	If obstructive, or if it is a 'repeat case'	5 Voluntary disclosure after noti- fication of audit	6 Voluntary disclosure before notifica- tion of audit	50
(i)	'Substantial under- statement'	25%	50%	5%	0%	55
(ii)	Reasonable care not taken in completing return	50%	75%	25%	0%	
(iii)	No reasonable grounds for 'tax position' taken	75%	100%	35%	0%	60
(iv)	Gross negligence	100%	125%	50%	5%	
(v)	Intentional tax evasion	150%	200%	75%	10%	

- (2) An understatement penalty for which provision is made under this Chapter is also chargeable in cases where—
  - (a) an assessment based on an estimation under section 95 is made; or
  - (b) an assessment agreed upon with the taxpayer under section 95(3) is issued.
- (3) SARS must remit a 'penalty' imposed for a 'substantial understatement' if SARS is satisfied that the taxpayer—
  - (a) made full disclosure of the arrangement, as defined in section 34, that gave rise to the prejudice to SARS or the *fiscus* by no later than the date that the relevant return was due; and
  - (b) was in possession of an opinion by a registered tax practitioner, as defined in 10 section 239, that—
    - (i) was issued by no later than the date that the relevant return was due;
    - (ii) took account of the specific facts and circumstances of the arrangement;
    - (iii) confirmed that the taxpayer's position is more likely than not to be 15 upheld if the matter proceeds to court.

#### Objection and appeal against decision not to remit understatement penalty

**224.** A decision by SARS not to remit an understatement penalty is subject to objection and appeal under Chapter 9.

**Part B** 20

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#### Voluntary Disclosure Programme

#### **Definitions**

**225.** In this Part, unless the context indicates otherwise, the following term, if in single quotation marks, has the following meaning:

**'default'** means the submission of inaccurate or incomplete information to SARS, 25 or the failure to submit information or the adoption of a 'tax position', where such submission, non-submission, or adoption resulted in—

- (a) the taxpayer not being assessed for the correct amount of tax;
- (b) the correct amount of tax not being paid by the taxpayer; or
- (c) an incorrect refund being made by SARS.

Qualifying person for voluntary disclosure

- **226.** (1) A person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief, unless that person is aware of—
  - (a) a pending audit or investigation into the affairs of the person seeking relief; or
  - (b) an audit or investigation that has commenced, but has not yet been concluded. 35
- (2) A senior SARS official may direct that a person may apply for voluntary disclosure relief, despite the provisions of subsection (1), where the official is of the view, having regard to the circumstances and ambit of the audit or investigation, that—
  - (a) the 'default' in respect of which the person wishes to apply for voluntary disclosure relief would not otherwise have been detected during the audit or 40 investigation; and
  - (b) the application would be in the interest of good management of the tax system and the best use of SARS' resources.
- (3) A person is deemed to be aware of a pending audit or investigation, or that the audit or investigation has commenced, if—
  - (a) a representative of the person;
  - (b) an officer, shareholder or member of the person, if the person is a company;
  - (c) a partner in partnership with the person;
  - (d) a trustee or beneficiary of the person, if the person is a trust; or
- (e) a person acting for or on behalf of or as an agent or fiduciary of the person, has become aware of a pending audit or investigation, or that the audit or investigation has commenced.

Requirements for valid voluntary disclosure	
<b>227.</b> The requirements for a valid voluntary disclosure are that the disclosure must—	
<ul> <li>(a) be voluntary;</li> <li>(b) involve a 'default' which has not previously been disclosed by the applicant or a person referred to in section 226(3);</li> <li>(c) be full and complete in all material respects;</li> <li>(d) involve the potential imposition of an understatement penalty in respect of the 'default';</li> </ul>	4
(e) not result in a refund due by SARS; and (f) be made in the prescribed form and manner.	10
No-name voluntary disclosure	
<b>228.</b> A senior SARS official may issue a non-binding private opinion, as defined in section 75, as to a person's eligibility for relief under this Part, if the person provides sufficient information to do so, which information need not include the identity of any party to the 'default'.	15
Voluntary disclosure relief	
<ul> <li>229. Despite the provisions of a tax Act, SARS must, pursuant to the making of a valid voluntary disclosure by the applicant and the conclusions of the voluntary disclosure agreement under section 230—</li> <li>(a) not pursue criminal prosecution for a statutory offence under a tax Act arising from the 'default' or a related common law offence;</li> </ul>	20
<ul> <li>(b) grant the relief in respect of any understatement penalty to the extent referred to in column 5 or 6 of the understatement penalty percentage table in section 223; and</li> <li>(c) grant 100 per cent relief in respect of an administrative non-compliance penalty that was or may be imposed under Chapter 15 or a penalty imposed under a tax Act, excluding a penalty imposed under that Chapter or in terms of a tax Act for the late submission of a return or a late payment of tax.</li> </ul>	25
Voluntary disclosure agreement	
<b>230.</b> The approval by a senior SARS official of a voluntary disclosure application and relief granted under section 229, must be evidenced by a written agreement between SARS and the qualifying person who is liable for the outstanding tax in the prescribed format and must include details on—	30
<ul> <li>(a) the material facts of the 'default' on which the voluntary disclosure relief is based;</li> <li>(b) the amount payable by the person, which amount must separately reflect the understatement penalty payable;</li> <li>(c) the arrangements and dates for payment; and</li> <li>(d) relevant undertakings by the parties.</li> </ul>	35
Withdrawal of voluntary disclosure relief	40
<ul> <li>231. (1) In the event that, subsequent to the conclusion of a voluntary disclosure agreement under section 230, it is established that the applicant failed to disclose a matter that was material for purposes of making a valid voluntary disclosure under section 227, a senior SARS official may— <ul> <li>(a) withdraw any relief granted under section 229;</li> <li>(b) regard an amount paid in terms of the voluntary disclosure agreement to constitute part payment of any further outstanding tax in respect of the</li> </ul> </li> </ul>	45
relevant 'default'; and (c) pursue criminal prosecution for a statutory offence under a tax Act or a related common law offence. (2) Any decision by the senior SARS official under subsection (1) is subject to objection and appeal.	50

#### Assessment or determination to give effect to agreement

- **232.** (1) If a voluntary disclosure agreement has been concluded under section 230, SARS may, despite anything to the contrary contained in a tax Act, issue an assessment or make a determination for purposes of giving effect to the agreement.
- (2) An assessment issued or determination made to give effect to an agreement under section 230 is not subject to objection and appeal.

## Reporting of voluntary disclosure agreements

- **233.** (1) The Commissioner must annually provide to the Auditor-General and to the Minister a summary of all voluntary disclosure agreements concluded in respect of applications received during the period.
  - (2) The summary must—
    - (a) subject to section 70(5), not disclose the identity of the applicant, and must be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister, as the case may be; and
    - (b) contain details of the number of voluntary disclosure agreements and the 15 amount of tax assessed, which must be reflected in respect of main classes of taxpayers or sections of the public.

#### **CHAPTER 17**

# CRIMINAL OFFENCES

#### Criminal offences relating to non-compliance with tax Acts

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- **234.** A person who wilfully and without just cause—
  - (a) fails or neglects to register or notify SARS of a change in registered particulars as required in Chapter 3;
  - (b) fails or neglects to appoint a representative taxpayer or notify SARS of the appointment or change of a representative taxpayer as required under 25 section 153 or 249;
  - (c) fails or neglects to register as a tax practitioner as required under section 240;
  - (d) fails or neglects to submit a return or document to SARS or issue a document to a person as required under a tax Act;
  - (e) fails or neglects to retain records as required under this Act;
  - (f) submits a false certificate or statement under Chapter 4;
  - (g) issues an erroneous, incomplete or false document required under a tax Act to be issued to another person;
  - (h) refuses or neglects to—
    - (i) furnish, produce or make available any information, document or thing, 35 excluding information requested under section 46(8);
    - (ii) reply to or answer truly and fully any questions put to the person by a SARS official;
    - (iii) take an oath or make a solemn declaration; or
    - (iv) attend and give evidence,

as and when required in terms of this Act;

(i) fails to comply with a directive or instruction issued by SARS to the person

- under a tax Act;
  (j) fails or neglects to disclose to SARS any material facts which should have
- been disclosed under this Act or to notify SARS of anything which the person 45 is required to so notify SARS under a tax Act;
- (k) obstructs or hinders a SARS official in the discharge of the official's duties;
- (l) refuses to give assistance required under section 49(1);
- (m) holds himself or herself out as a SARS official engaged in carrying out the provisions of this Act;
- (n) fails or neglects to comply with the provisions of sections 179 to 182, if that person was given notice by SARS to transfer the assets or pay the amounts to SARS as referred to in those sections; or
- (o) dissipates that person's assets or assists another person to dissipate that other person's assets in order to impede the collection of any taxes, penalties or 55 interest,

is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.

#### Criminal offences relating to evasion of tax

<b>235.</b> (1) A person who with	intent to evade or to assist another p	person to evade liability
or to obtain an undue refund	under a tax Act—	

- (a) makes or causes or allows to be made any false statement or entry in a return or other document, or signs a statement, return or other document so submitted without reasonable grounds for believing the same to be true;
- (b) gives a false answer, whether orally or in writing, to a request for information made under this Act;
- (c) prepares, maintains or authorises the preparation or maintenance of false books of account or other records or falsifies or authorises the falsification of books of account or other records;
- (d) makes use of, or authorises the use of, fraud or contrivance; or
- (e) makes any false statement for the purposes of obtaining any refund of or 15 exemption from tax,

is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding five years.

- (2) Any person who makes a statement in the manner referred to in subsection (1) must, unless the person proves that there is a reasonable possibility that he or she was 20 ignorant of the falsity of the statement and that the ignorance was not due to negligence on his or her part, be regarded as guilty of the offence referred to subsection (1).
- (3) A senior SARS official may lay a complaint with the South African Police Service or the National Prosecuting Authority regarding an offence contemplated in subsection (1).

#### Criminal offences relating to secrecy provisions

**236.** A person who contravenes the provisions of section 67(2) or (3), 68(2), 69(1) or (6) or 70(5) is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.

# Criminal offences relating to filing return without authority

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237. A person who—

- (a) submits a return or other document to SARS under a forged signature;
- (b) uses an electronic or digital signature of another person in an electronic communication to SARS; or
- (c) otherwise submits to SARS a communication on behalf of another person, without the person's consent and authority, is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.

## Jurisdiction of courts in criminal matters

**238.** A person charged with an offence under this Act may be tried in respect of that offence by a court having jurisdiction within any area in which that person resides or carries on business, in addition to jurisdiction conferred upon a court by any other law.

#### **CHAPTER 18**

## REPORTING OF UNPROFESSIONAL CONDUCT

#### **Definitions**

**239.** In this Chapter, unless the context otherwise indicates, the following terms, if in 45 single quotation marks, have the following meanings:

**'controlling body'** means a body established, whether voluntarily or under a law, with power to take disciplinary action against a person who, in carrying on a profession, contravenes the applicable rules or code of conduct for the profession; and

'registered tax practitioner' means a practitioner registered under section 240.

#### Registration of tax practitioners

- **240.** (1) Every natural person who—
  - (a) provides advice to another person with respect to the application of a tax Act;or
  - (b) completes or assists in completing a document to be submitted to SARS by another person in terms of a tax Act,

must register with SARS as a tax practitioner, in such form as the Commissioner may determine, within 30 days after the date on which that person for the first time provides advice or completes or assists in completing any such document.

- (2) The provisions of this section do not apply in respect of a person who—
  - (a) provides the advice or completes or assists in completing a document solely for no consideration to that person or his or her employer or a connected person in relation to that employer or that person;
  - (b) provides the advice solely in anticipation of or in the course of any litigation to which the Commissioner is a party or where the Commissioner is a 15 complainant;
  - (c) provides the advice solely as an incidental or subordinate part of providing goods or other services to another person;
  - (d) provides the advice or completes or assists in completing a document solely—
    - (i) to or in respect of the employer by whom that person is employed on a 20 full-time basis or to or in respect of that employer and connected persons in relation to that employer; or
    - (ii) under the direct supervision of a person who is registered as a tax practitioner in terms of subsection (1).
- (3) A person may not register as a tax practitioner under subsection (1) if the person— 25
  - (a) during the preceding five years has been removed from a related profession; and
  - (b) during the preceding five years has been convicted (whether in the Republic or elsewhere) of—
    - (i) theft, fraud, forgery or uttering a forged document, perjury or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); or
    - (ii) any offence involving dishonesty,
    - for which the person has been sentenced to a period of imprisonment exceeding two years without the option of a fine or to a fine exceeding the 35 amount prescribed in the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

#### Complaint to controlling body of tax practitioner

- **241.** A senior SARS official may lodge a complaint with a 'controlling body' if a 'registered tax practitioner' or person who carries on a profession governed by the 'controlling body', did or omitted to do anything with respect to the affairs of a taxpayer, including that person's affairs, that in the opinion of the official—
  - (a) was intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer under a tax Act;
  - (b) by reason of negligence on the part of the person resulted in the avoidance or 45 undue postponement of the performance of an obligation imposed on the taxpayer under a tax Act; or
  - (c) constitutes a contravention of a rule or code of conduct for the profession which may result in disciplinary action being taken against the 'registered tax practitioner' or person by the body.

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#### Disclosure of information regarding complaint and remedies of taxpayer

- **242.** (1) Despite section 69, the senior SARS official lodging a complaint under section 241 may disclose the information relating to the person's tax affairs as in the opinion of the official is necessary to lay before the 'controlling body' to which the complaint is made.
- (2) Before a complaint is lodged or information is disclosed, SARS must deliver to the taxpayer and the person against whom the complaint is to be made notification of the intended complaint and information to be disclosed.

- (3) The taxpayer or that person may, within 21 business days after the date of the notification, lodge with SARS an objection to the lodging of the complaint or disclosure of the information.
- (4) If on the expiry of that period of 21 business days no objection has been lodged or, if an objection has been lodged and SARS is not satisfied that the objection should be sustained, a senior SARS official may thereupon lodge the complaint as referred to in section 241.

#### Complaint considered by controlling body

**243.** (1) The complaint is to be considered by the 'controlling body' according to its rules.

(2) A hearing of the matter where details of a person's tax affairs will be disclosed, may be attended only by persons whose attendance, in the opinion of the 'controlling body', is necessary for the proper consideration of the complaint.

(3) The 'controlling body' and its members must preserve secrecy in regard to the information as to the affairs of a person as may be conveyed to them by SARS or as may otherwise come to their notice in the investigation of the complaint and must not communicate the information to a person other than the person concerned or the person against whom the complaint is lodged, unless the disclosure of the information is ordered by a competent court of law.

#### CHAPTER 19

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#### GENERAL PROVISIONS

#### **Deadlines**

**244.** (1) If—

- (a) a day notified by SARS or specified in a tax Act for payment, submission or other action; or
- (b) the last day of a period within which payment, submission or other action under a tax Act must be made,

falls on a Saturday, Sunday or public holiday, the action must be done not later than the last business day before the Saturday, Sunday or public holiday.

- (2) The Commissioner may prescribe the time of day by which a payment, submission or other action must be done, and if it is done after that time on the day it is regarded as done on the first business day following the specified day.
- (3) If SARS is authorised to extend a deadline, the application for extension must be submitted to SARS in the prescribed form before the deadline expires unless—
  - (a) reasonable grounds exist for the delay and the application is submitted within 35 21 days of the deadline; or
  - (b) the delay is due to a circumstance referred to in section 218(2)(a) to (e) or any other circumstance of analogous seriousness and the application is submitted within three years of the deadline.

#### Power of Minister to determine date for submission of returns and payment of tax 40

- **245.** (1) Despite any other provision of a tax Act, if the date for the submission of a return or the payment of tax is the last day of the financial year of the Government, the Minister may by notice in the *Gazette* prescribe any other date for submission of the return and payment of the tax, which date must not fall on a day more than two business days prior to the last day of that year.
- (2) The notice contemplated in subsection (1) must be published at least 21 business days prior to the date so prescribed by the Minister.

#### **Public officers of companies**

- **246.** (1) Every company carrying on business or having an office in the Republic must at all times be represented by an individual residing in the Republic.
  - (2) The individual representative under subsection (1) must be—
    - (a) a person who is a senior official of the company and is approved by SARS;

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- (b) appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purposes of a tax Act;
- (c) called the public officer of the company; and
- (d) appointed within one month after the company begins to carry on business or acquires an office in the Republic.

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- (3) If a public officer is not appointed as required under this section, the public officer is the managing director, director, secretary or other officer of the company that SARS designates for that purpose.
- (4) A company covered by this section that has not appointed a public officer is subject to a tax Act, the same as if a tax Act did not require the public officer to be appointed.
- (5) A public officer is responsible for all acts, matters, or things that the public officer's company must do under a tax Act, and in case of default, the public officer is subject to penalties for the company's defaults.
- (6) A public officer's company is regarded as having done everything done by the public officer in the officer's representative capacity.
- (7) If SARS is of the opinion that a person is no longer suitable to represent the company as public officer SARS may withdraw its approval under subsection (2)(a).

#### Company address for notices and documents

- **247.** (1) A company referred to in section 246(1) must, within the period referred to in section 246(2)(d), appoint a place within the Republic approved by SARS at which SARS may serve, deliver or send the company a notice or other document provided for under a tax Act.
- (2) Every notice, process, or proceeding which under a tax Act may be given to, served upon or taken against a company referred to in section 246(1), may be given to, served upon, or taken against its public officer, or if at any time there is no public officer, 25 any officer or person acting or appearing to act in the management of the business or affairs of the company or as agent for the company.

#### Public officer in event of liquidation or winding-up

**248.** In the event of a company referred to in section 246(1) being placed in voluntary or compulsory liquidation, the liquidator or liquidators duly appointed are required to exercise in respect of the company all the functions and assume all the responsibilities of a public officer under a tax Act during the continuance of the liquidation.

# Default in appointing public officer or address for notices or documents

- **249.** (1) No appointment is deemed to have been made under section 246(2) until notice thereof specifying the name of the public officer and an address for service or 35 delivery of notices and documents has been given to SARS.
  - (2) A company must—
    - (a) keep the office of public officer constantly filled and must at all times maintain a place for the service or delivery of notices in accordance with section 247(1); and
    - (b) notify SARS of every change of public officer or the place for the service or delivery of notices within 21 business days of the change taking effect.

# **Authentication of documents**

- **250.** (1) A form, notice, demand or other document issued or given by or on behalf of SARS or a SARS official under a tax Act is sufficiently authenticated if the name of 45 SARS or the name or official designation of the SARS official is stamped or printed on it.
- (2) A return made or purporting to be made or signed by or on behalf of a person is regarded as duly made and signed by the person affected unless the person proves that the return was not made or signed by the person or on the person's behalf.
- (3) Subsection (2) applies to other documents submitted to SARS by or on behalf of a person.

# Delivery of documents to persons other than companies

documen regarded (a)	f a tax Act requires or authorises SARS to issue, give, send, or serve a notice, at or other communication to a person (other than a company), SARS is as having issued, given, sent or served the communication to the person if—handed to the person; left with another person over 16 years of age apparently residing or employed	5
	at the person's last known residence, office or place of business;	
(c)	sent to the person by post to the person's last known address, which	
	includes— (i) a residence, office or place of business referred to in paragraph (b); or	10
	<ul><li>(ii) the person's last known post office box number or that of the person's employer; or</li></ul>	10
( <i>d</i> )	sent to the person's last known electronic address, which includes—	
	(i) the person's last known email address; or	
	(ii) the person's last known telefax number.	15
Delivery	of documents to companies	
252. If	f a tax Act requires or authorises SARS to issue, give, send or serve a notice,	
	at or other communication to a company, SARS is regarded as having issued,	
given, se	nt or served the communication to the company if—	
	delivered to the public officer of the company;	20
<i>(b)</i>	left with a person older than 16 years apparently residing or employed at—	
	(i) the place appointed by the company under section 247; or	
	(ii) where no such place has been appointed by the company, the last known office or place of business of the company;	
(c)	sent by post addressed to the company or its public officer at the company or	25
(-)	public officer's last known address, which includes—	
	(i) an office or place referred to in paragraph (b); or	
	(ii) the company or public officer's last known post office box number or that	
(1)	of the public officer's employer; or	20
( <i>d</i> )	sent to the company or its public officer's last known electronic address, which includes the—	30
	(i) last known email address; or	
	(ii) last known telefax number.	
Documen	nts delivered deemed to have been received	
	1) A notice, document or other communication issued, given, sent or served in	35
	ner referred to in section 251 or 252, is regarded as received by the person to	
	was delivered or left, or if posted it is regarded as having been received by the	
	whom it was addressed at the time when it would, in the ordinary course of the arrived at the addressed place.	
	bsection (1) does not apply if—	40
(a)		
,	received or was received at some other time; or	
<i>(b)</i>	a court decides that the notice, document or other communication was not	
(O) TC (	received or was received at some other time.	4 ~
` /	SARS is satisfied that—	45
(a)	a notice, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner referred to in section 251	
	or 252 (excluding paragraphs (a) and (b) thereof)—	
	(i) has not been received by the addressee; or	
	(ii) has been received by that person considerably later than it should have	50
	been received; and	

(b) the person has in consequence been placed at a material disadvantage, the notice, document or other communication must be withdrawn and be issued, given, sent or served anew.

#### Defect does not affect validity

- **254.** (1) A notice of assessment or other notice or document issued to a person under a tax Act is not to be considered invalid or ineffective by reason of a failure to comply with the requirements of section 251 or 252 if the person had effective knowledge of the fact of the notice or document and of its content.
- (2) A notice of assessment or other notice or document issued under a tax Act is not to be considered invalid or ineffective by reason of defects if it is, in substance and effect, in conformity with this Act, and the person assessed or affected by the notice or document is designated in it according to common understanding.

#### Rules for electronic communication

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- **255.** (1) The Commissioner may by public notice make rules prescribing—
  - (a) the procedures for submitting a return in electronic format, and for other electronic communications between SARS and other persons; and
  - (b) requirements for an electronic digital signature of a return or communication.
- (2) SARS may, in the case of a return or other document submitted in electronic 15 format, accept an electronic or digital signature as a valid signature for purposes of a tax Act if a signature is required.
- (3) If in any proceedings under a tax Act, the question arises whether an electronic or digital signature of a person referred to in subsection (2) was used with the authority of the person, it must be assumed, in the absence of proof to the contrary, that the signature 20 was so used.

#### Tax clearance certificate

- **256.** (1) A taxpayer may apply to SARS for a tax clearance certificate in the prescribed form and manner.
- (2) SARS must issue or decline to issue the certificate within 21 business days from 25 the date the application is duly filed.
- (3) A senior SARS official may provide a taxpayer with a tax clearance certificate only if satisfied that the taxpayer is registered for tax and does not have any—
  - (a) tax debt outstanding, excluding a tax debt contemplated in section 167 or 204 or a tax debt that has been suspended under section 164 or does not exceed the 30 amount referred to in section 169(4); or
  - (b) outstanding return unless an arrangement acceptable to SARS has been made for the submission of the return.
  - (4) A tax clearance certificate must be in the prescribed form and include at least—
    - (a) the tax clearance certificate reference number assigned to the certificate and 35 reflected in the records of SARS;
    - (b) the name, taxpayer reference number, address and identity number or company registration number of the taxpayer;
    - (c) the date of the application for a certificate;
    - (d) a statement that the taxpayer has no outstanding tax debts as at the date of the 40 certificate; and
    - (e) the expiry date of the certificate.
- (5) Despite the provisions of Chapter 6, SARS may confirm the validity and expiry date of the certificate upon request by a sphere of government or parastatal.
- (6) SARS may withdraw a certificate with effect from the date of the issue thereof if 45 the certificate—
  - (a) was issued in error; or
  - (b) was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts.

## **Regulations by Minister**

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- 257. (1) The Minister may make regulations regarding—
  - (a) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act; and
  - (b) any matter which under this Act is required or permitted to be prescribed.

- (2) The Minister may, after consultation with the Tax Ombud, make regulations regarding-
  - (a) the proceedings of the Tax Ombud; and
  - (b) the limitations on the jurisdiction of the Tax Ombud, having regard to—
    - (i) the factual or legal complexity of any complaint dealt with by the Tax Ombud;
    - (ii) the nature of the taxpayer whose complaint is dealt with by the Tax Ombud; and
    - (iii) the maximum amount involved in the dispute between the taxpayer and SARS.
- (3) For purposes of the regulations referred to in paragraph (e) of the definition of "biometric information" in section 1, the Minister must publish the draft regulations in the Gazette for public comment and submit the draft regulations to Parliament for parliamentary scrutiny at least 30 days before the draft regulations are published.

#### **CHAPTER 20**

#### 15

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#### TRANSITIONAL PROVISIONS

# New taxpayer reference number

258. If a person has been allocated a taxpayer, tax or other reference number for purposes of a tax Act before the promulgation of this Act, the number remains in force until the time that SARS allocates a taxpayer reference number to the person under 20 section 24 for purposes of the relevant tax type.

# **Appointment of Tax Ombud**

- **259.** (1) The Minister must appoint a person as Tax Ombud under section 14 within one year of the commencement date of this Act.
- (2) The first Tax Ombud appointed under this Act may not review a matter that arose more than one year before the day on which the Tax Ombud is appointed, unless the Minister requests the Tax Ombud to do so.

# **Provisions relating to secrecy**

**260.** A person who took and subscribed to an oath or solemn declaration of secrecy under a tax Act before the commencement date of this Act is regarded as having taken 30 and subscribed to the oath or solemn declaration under section 67(2).

# Public officer previously appointed

**261.** A public officer appointed or regarded as appointed under a tax Act and holding office immediately before the commencement date of this Act, is regarded as a public officer appointed under this Act.

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# Appointment of chairpersons of tax board

**262.** An attorney or advocate appointed to the panel of persons who may serve as chairpersons of the tax board under a tax Act, who is on that panel immediately before the commencement date of this Act, is regarded as appointed under the provisions of section 111 until the earlier of-

- (a) the expiry of the attorney or advocate's appointment under the provisions previously in force; or
- (b) termination of the attorney or advocate's appointment under section 111(3).

#### Appointment of members of tax court

263. A member of the tax court appointed under a tax Act who is a member 45 immediately before the commencement date of this Act is regarded as appointed under the provisions of section 120(1) until the expiry of his or her term of office in terms of the provisions previously in force, or until his or her appointment in terms of section 120(4) is terminated or lapses.

#### Continuation of tax board, tax court and court rules

- **264.** (1) A tax board or tax court that was established under a tax Act and exists immediately before the commencement date of this Act, is regarded as established under section 108 or 116, respectively, of this Act.
- (2) Rules of court issued by the Minister under a tax Act that are in force immediately before the commencement date of this Act continue in force as if they were issued under section 103.

## Continuation of appointment to a post or office or delegation by Commissioner

**265.** (1) A person appointed to a post or office or delegated by the Commissioner under the SARS Act or a tax Act, which appointment or delegation is in force 10 immediately before the commencement date of this Act, is regarded as appointed or delegated under this Act.

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(2) Subsection (1) applies until the person is so appointed or delegated under this Act or the appointment or delegation is withdrawn.

#### Continuation of authority to audit

**266.** If a SARS official was issued a letter authorising the official to audit under a tax Act, and the letter is in force immediately before the commencement date of this Act, the letter is regarded as issued to the official under section 41.

#### Conduct of inquiries and execution of search and seizure warrants

- **267.** (1) If the Commissioner authorised an inquiry under a tax Act and a judge 20 granted an order designating a person to act as presiding officer in the inquiry before the commencement date of this Act, the inquiry is regarded as authorised under sections 50 and 51.
- (2) If a judge issued a search and seizure warrant under a tax Act that has not been executed before the commencement date of this Act, the warrant is regarded as issued 25 under section 60.

# **Application of Chapter 15**

**268.** Chapter 15 applies to non-compliance resulting from a continuous failure by a person to comply with an obligation that exists on the date a notice referred to in section 210(2) comes into effect, in which case the date on which the non-compliance 30 occurred will be regarded as the date that notice came into effect.

#### Continuation of authority, rights and obligations

- **269.** (1) Rules and regulations issued under the provisions of a tax Act repealed by this Act that are in force immediately before the commencement date of this Act, remain in force as if they were issued under section 103 or 257, respectively, to the extent 35 consistent with this Act.
- (2) Forms prescribed under the authority of a tax Act before the commencement date of this Act, and in use immediately before the date of commencement of this Act, are considered to have been prescribed under the authority of this Act, to the extent consistent with this Act.
- (3) Rulings and opinions issued under the provisions of a tax Act repealed by this Act and in force immediately before the commencement date of this Act, which have not been revoked, are regarded as having been issued under the authority of this Act to the extent relevant to and consistent with this Act.
- (4) An order of a court under the authority of a tax Act and in force immediately 45 before the commencement date of this Act, continues to have the same force and effect as if the provisions had not been repealed or amended, subject to any further order of the court
- (5) A right or entitlement enjoyed by, or obligation imposed on, a person under the repealed or amended provisions of a tax Act, that had not been exercised or complied 50 with before the commencement date of this Act, is a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as

from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act.

(6) The commission of an offence before the commencement date of this Act which is a statutory offence under the provisions of a tax Act repealed by this Act, may be investigated by SARS, in the manner referred to in Chapter 5, and prosecuted as if the statutory offence remained in force.

#### Application of Act to prior or continuing action

- **270.** (1) Subject to this Chapter, this Act applies to an act, omission or proceeding taken, occurring or instituted before the commencement date of this Act, but without prejudice to the action taken or proceedings conducted before the commencement date 10 of the comparable provisions of this Act.
- (2) The following actions or proceedings taken or instituted under the provisions of a tax Act repealed by this Act but not completed by the commencement date of the comparable provisions of this Act, must be continued and concluded under the provisions of this Act as if taken or instituted under this Act:
  - (a) a decision by a SARS official in terms of a statutory power to do so;
  - (b) a request by a person for the withdrawal or amendment of a decision or notice by SARS, registration for tax, form of record keeping, information, taxpayer record, advance ruling, refund, reduced assessment, suspension of a disputed tax debt, deferral, write off, compromise or waiver of a tax debt and the 20 remittance of interest or a penalty;

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- (c) an inspection, verification, request for information, audit, criminal investigation, inquiry or search and seizure;
- (d) an objection, appeal to the tax board, tax court or higher court, alternative dispute resolution, settlement discussions or other related High Court 25 application;
- (e) suspension of a disputed tax debt;
- (f) a deferment, write off or compromise of a tax debt; or
- (g) recovery of a tax debt, including the appointment of an agent to satisfy a tax debt, execution of a civil judgment or sequestration, liquidation or winding-up 30 instituted by SARS or any other related court application.
- (3) A form, notice, demand or other document issued, given or received by a person or SARS under the provisions of a tax Act repealed by this Act, must be regarded as issued, given or received in terms of any comparable provision of this Act, as from the date that the form, notice, demand or other document was issued, given or received 35 under the repealed provisions.
- (4) A record kept or retained by a person as required under the provisions of a tax Act repealed by this Act, must be regarded as kept or retained as required under the comparable provisions of this Act from the date that record was kept or retained under the repealed provisions of the tax Act.
- (5) If the period for an application, objection, appeal or prosecution had expired before the commencement date of this Act, nothing in this Act may be construed as enabling the application, appeal or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.
- (6) Additional tax, penalty or interest which but for the repeal of the legislation in Schedule 1 would have been capable of being imposed, levied, assessed or recovered by the commencement date of this Act, and which has not been imposed, levied, assessed or recovered by the commencement date of this Act, may be—
  - (a) imposed or levied as if the repeal had not been effected; and
  - (b) assessed and recovered under this Act.
  - (7) Interest arising before the commencement date of this Act must be—
    - (a) calculated in accordance with the relevant tax Act until the commencement date; and
    - (b) regarded as interest due under this Act from the commencement date of the comparable provisions of this Act.
- (8) Interest arising on or after the commencement date of this Act but before the date prescribed by the Commissioner under section 187(2) must be—
  - (a) calculated in accordance with the relevant tax Act until the date prescribed by the Commissioner; and
  - (b) regarded as interest due under this Act.

## Amendment of legislation

**271.** The Acts listed in Schedule 1 are amended to the extent set out in that Schedule.

#### Short title and commencement

- **272.** (1) This Act is called the Tax Administration Act, 2011, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.
- (2) The President may determine different dates for different provisions of this Act to come into operation.
- (3) Subparagraphs (g), (h), (i) and (j) of paragraph 61 of Schedule 1 come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

- (4) Paragraph 79 of Schedule 1 is deemed to have come into operation on 1 January 2011 and applies in respect of premiums incurred on or after that date.
- (5) Subparagraph (a) of paragraph 83 of Schedule 1 comes into operation on 1 March 2012.
- (6) Subparagraphs (a) and (c) of paragraph 90 of Schedule 1 comes into operation on 15 1 March 2012 and applies in respect of years of assessment commencing on or after that date.
- (7) Paragraph 179 of Schedule 1 is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

# SCHEDULE 1

# **SECTION 271**

No. and Year	Short Title	Extent of amendment or repeal	
Act No. 40 of 1949	Transfer Duty Act,	Amendment of section 1	5
	1949	100 101 700 700	
		1. Section 1 of the Transfer Duty Act,	
		1949, is hereby amended—	
		(a) by the substitution for the definition	
		of "Commissioner" of the following	1.0
		definition: "'Commissioner' means the	10
		Commissioner for the South Afri-	
		can Revenue Service appointed in	
		terms of section 6 of the South	1.5
		African Revenue Service Act, 1997	15
		(Act No. 34 of 1997), or the Acting	
		Commissioner designated in terms	
		of section 7 of that Act;"; (b) by the insertion after the definition of	
		"spouse" of the following definition:	20
		" 'Tax Administration Act' means	20
		the Tax Administration Act, 2011.";	
		(c) by the renumbering of section 1 to	
		section 1(1); and	
		(d) by the insertion after subsection (1) of	2:
		the following subsection:	۷.
		"(2) Unless the context indicates	
		otherwise, a word or expression to	
		which a meaning has been assigned	
		in the Tax Administration Act bears	30
		that meaning for purposes of this	
		Act.".	
		Amendment of section 3	
		<b>2.</b> Section 3 of the Transfer Duty Act,	
		1949, is hereby amended—	
		(a) by the substitution for subsection (1A)	
		of the following subsection:	3
		"(1A) Where a person who ac-	
		quires any property contemplated in	
		paragraph $(d)$ , $(e)$ or $(g)$ of the	
		definition of "property" fails to pay	
		the duty within the period contem-	4
		plated in subsection (1), the public	
		officer [as defined in section 101 of	
		the Income Tax Act, 1962 (Act No.	
		<b>58 of 1962),</b> ] of that company and	
		the person from whom the shares or	4:
		member's interest are acquired shall	
		be jointly and severally liable for	
		such duty: Provided that the public	
		officer or person from whom the	
		shares or member's interest was	50
		acquired, may recover any amount	
		of duty paid [by him or her] in	
		terms of this subsection [from—	

No. and Year	Short Title	Extent of amendment or repeal	
		(a) the person who so acquired	
		that property; or	
		(b) in the case of a public officer,	
		from that company] in ac-	
		cordance with section 160 of	5
		the Tax Administration Act.";	
		(b) by the substitution for subsection	
		(1B) of the following subsection:	
		"(1B) Where a person who ac-	
		quires any property contemplated	10
		in paragraph (f) of the definition of	10
		"property" fails to pay the duty	
		within the period contemplated in	
		subsection (1), the trust and [the	1.5
		trustees] representative taxpayer	15
		of that trust shall be jointly and	
		severally liable for such duty: Pro-	
		vided that the trust or [trustee]	
		representative taxpayer may re-	
		cover any amount of duty paid in	20
		terms of this subsection by the trust	
		or [trustee] representative tax-	
		payer, as the case may be, <b>[from—</b>	
		(a) the person who so acquired	
		that property; or	25
		(b) in the case of the trustee,	
		from that trust] in accordance	
		with section 160 of the Tax	
		Administration Act."; and	
		(c) by the deletion of subsection (3).	30
		Amendment of section 4	30
		3. 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";	35
		(b) by the substitution for subsection (1)	
		of the following subsection:	
		"(1) If any duty in respect of any	
		transaction entered into before	
		1 March 2005, remains unpaid af-	40
		ter the date of the expiration of the	
		period referred to in section 3,	
		[there shall, subject to the provi-	
		sions of subsection (3), in addi-	
		tion to the unpaid duty, be pay-	45
		able] the Commissioner must in	
		accordance with Chapter 15 of the	
		Tax Administration Act impose a	
		Tax Administration Act impose a l	
		penalty, at the rate of 10 per cent	<b>F</b> ^
		penalty, at the rate of 10 per cent per annum on the amount of the	50
		penalty, at the rate of 10 per cent	50

No. and Year	Short Title	Extent of amendment or repeal	
		period from that date to the date of	
		payment[: Provided that if in any	
		case the period referred to in	
		section 3 ended before 1 July	
		1982 and the said penalty is	5
		chargeable or is in part charge-	
		able in respect of any completed	
		month commencing before 1 July	
		1982 the penalty payable in re-	
		spect of such completed month	10
		and any earlier completed month	
		or months shall be the amount of	
		penalty which would have been	
		payable in terms of this subsec-	
			15
		Revenue Laws Amendment Act,	
		1982, if the unpaid amount of	
		such duty had been paid on the	
		day after the end of the only or	
		latest of such completed	20
		months]."; and	
		(c) by the deletion of subsection (1A).	
		Amendment of section 10	
		<b>4.</b> Section 10 of the Transfer Duty Act,	
		1949, is hereby amended—	
		(a) by the substitution for subsection (2)	
		of the following subsection:	25
		"(2) The powers conferred and	
		the duties imposed upon the Com-	
		missioner by this Act may be exer-	
		cised or performed by the Commis-	
		sioner [personally] or by any	30
		[officer acting under a delegation	
		<b>from or</b> ] <u>SARS offical</u> under the	
		control, [or] direction or supervi-	
		sion of the Commissioner."; and	
		(b) by the insertion after subsection (2) of	35
		the following subsection:	
		"(3) Administrative require-	
		ments and procedures for purposes	
		of the performance of any duty,	40
		power or obligation or the exercise	40
		of any right in terms of this Act are,	
		to the extent not regulated in this	
		Act, regulated by the Tax Adminis-	
		tration Act.".	
		Amendment of section 11	
		<b>5.</b> Section 11 of the Transfer Duty Act,	
		1949, is hereby amended by the substitu-	45
		tion in subsection (3) for paragraph (a) of	
		the following paragraph:	

No. and Year	Short Title	Extent of amendment or repeal	
		"(a) Where in terms of [subsection	
		(2) of section three] section 3(2) a	
		deposit on account of the duty payable	
		by any person is made pending the	
		determination by the Commissioner of	5
		the fair value of the property con-	
		cerned, of an amount equal to the duty	
		calculated on the consideration paid or	
		payable in respect of the acquisition of	
		the property or on the declared value	10
		thereof, as the case may be, and there is	
		given to the Commissioner security to	
		his satisfaction for the payment of any	
		balance of transfer duty [or stamp	1.5
		duty] which may still be payable, the	15
		Commissioner may in his or her discre-	
		tion issue to the person liable to pay the duty a certificate that such deposit has	
		been made and that such security has	
		been given.".	20
		Repeal of sections 11A, 11B, 11C, 11D	20
		and 11E	
		<b>6.</b> Sections 11A, 11B, 11C, 11D and	
		11E of the Transfer Duty Act, 1949, are	
		hereby repealed.	
		Amendment of section 13	
		<b>7.</b> Section 13 of the Transfer Duty Act,	
		1949, is hereby amended—	
		(a) by the substitution for subsection (1)	25
		of the following subsection:	
		"(1) Whenever the Commis-	
		sioner is satisfied that the duty	
		payable under this Act in respect of	l .
		the acquisition of any property or	30
		the renunciation of any interest in	
		or restriction upon the use or dis-	
		posal of any property has not been	
		paid in full, the Commissioner shall, notwithstanding that the ac-	25
		quisition has already been regis-	35
		tered in a deeds registry, recover	
		the difference between the amount	
		of the duty payable and the amount	
		paid in accordance with Chapter 11	40
		of the Tax Administration Act.";	
		and	
		(b) by the deletion of subsection (2).	
		Repeal of sections 13A, 13B and 13C	
		8. Sections 13A, 13B and 13C of the	
		Transfer Duty Act, 1949, are hereby	
i e e e e e e e e e e e e e e e e e e e	1	repealed.	45

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of section 14
		<b>9.</b> Section 14 of the Transfer Duty Act,
		1949, is hereby amended—
		(a) by the substitution for subsection (1)
		of the following subsection:
		"(1) [Declarations] A return ap-
		propriate to the manner of the
		acquisition of property in any par-
		ticular case shall be submitted
		[electronically, in the form and
		manner and containing such in-
		formation as may be prescribed
		<b>by the Commissioner</b> ] by the par-
		ties to the transaction whereby the
		property has been acquired and, if
		the Commissioner so directs, also
		by the agent, auctioneer, broker or
		other person who acted for or on
		behalf of either party to the trans-
		action or, if the property has been
		acquired otherwise than by way of
		a transaction, by the person who
		acquired the property."; and
		(b) by the deletion of subsections (4), (6),
		(7) and (8).
		Amendment of section 15
		<b>10.</b> Section 15 of the Transfer Duty Act,
		1949, is hereby amended—
		(a) by the substitution for subsection (1)
		of the following subsection:
		"(1) [Every] In addition to the
		requirements upon a taxpayer con-
		tained in sections 29, 30, 32 and 33
		of the Tax Administration Act,
		every auctioneer or other person
		who has effected a sale of property
		on behalf of some other person
		shall, for a period of five years
		from the date on which the sale was
		effected, keep a record of the sale
		including a description of the prop-
		erty sold, the person by whom and
		the person to whom the property
		has been sold and the price paid for
		the property."; and
		(b) by the deletion of subsections (2) and
		(3).
		Repeal of sections 17, 17A, 17B, 18, 20, 20A, 20C and 20D
		11. Sections 17, 17A, 17B, 18, 20, 20A,
		20C and 20D of the Transfer Duty Act,
		1949, are hereby repealed.

No. and Year	Short Title	Extent of amendment or repeal	
Act No. 45 of 1955	Estate Duty Act, 1955	Amendment of section 1	
		<ul><li>12. Section 1 of the Estate Duty Act, 1955, is hereby amended—</li><li>(a) by the substitution for the definition of "Commissioner" of the following</li></ul>	5
		definition:  "'Commissioner' means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), or the Acting Commissioner designated in terms	10
		of section 7 of that Act;";  (b) by the insertion after the definition of "stocks or shares" of the following definition:  "'Tax Administration Act', means	15
		the Tax Administration Act, 2011."; (c) by the renumbering of section 1 to section 1(1); and (d) by the insertion after subsection (1) of	20
		the following subsection:  "(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears	25
		that meaning for purposes of this Act.".	30
		Amendment of section 6	
		<ul><li>13. Section 6 of the Estate Duty Act,</li><li>1955, is hereby amended—</li><li>(a) by the substitution for subsection (2) of the following subsection:</li><li>"(2) The powers conferred and</li></ul>	
		the duties imposed upon the Commissioner by this Act may be exercised or performed by the Commissioner [personally] or by any [officer acting under a delegation	35
		from or] SARS official under the control, [or] direction or supervision of the Commissioner."; and  (b) by the substitution for subsection (3) of the following subsection:	40
		"(3) Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the	45
		extent not regulated in this Act, regulated by the Tax Administration Act.".	50

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 7	
		14. Section 7 of the Estate Duty Act, 1955, is hereby amended—  (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  "Every executor or, if he is called upon by the Commissioner to do so, any person having the control of or any interest in any property included in the estate, shall submit to the Commissioner a return [in a form, prescribed by him,] disclosing the amount claimed by the person submitting the return to represent the dutiable amount of the estate together with	5 10 15
		full particulars regarding—"; and	
		(b) by the deletion of subsection (2).	
		Repeal of sections 8, 8A, 8B, 8C, 8D and 8E	
		<b>15.</b> Sections 8, 8A, 8B, 8C, 8D and 8E	
		of the Estate Duty Act, 1955, are hereby	20
		repealed.	
		Amendment of section 9	
		16. Section 9 of the Estate Duty Act,	
		1955, is hereby amended—  (a) by the insertion after subsection (1) of the following subsection:  "(1A) If the Commissioner, prior to the issue of a notice of assessment in terms of subsection (1)—  (a) is dissatisfied with any value at which any property is shown in	25
		any return; or  (b) is of the opinion that the amount claimed to represent the dutiable amount as disclosed in any return, does not	30
		represent the correct dutiable amount, the Commissioner shall adjust such value or amount and determine the dutiable amount upon which such	35
		assessment shall be raised accordingly."; and  (b) by the insertion of a new subsection  (5) after subsection (4):  "(5) An assessment contem-	40
		plated in subsection (4)(a) and (b) is deemed to be an assessment by way of self-assessment.".  Repeal of sections 9A and 9B	45
		17. Sections 9A and 9B of the Estate	
		Duty Act, 1955, are hereby repealed.	

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of section 10
		<b>18.</b> Section 10 of the Estate Duty Act,
		1955, is hereby amended by the substitu-
		tion for subsection (1) of the following
		subsection;
		"(1) If [any duty remains unpaid
		at the expiration of a period of thirty
		days from the date of payment noti-
		fied 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 de-
		layed beyond a period of twelve
		months from the date of death, interest
		at the prescribed rate [of six per cent
		<b>per annum</b> ] 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.".
		Substitution of section 12
		19. The Estate Duty Act, 1955, is
		hereby amended by the substitution for
		section 12 of the following section:
		"Duty payable by executor
		<b>12.</b> Notwithstanding anything to
		the contrary contained in section
		[eleven] 11, any duty payable under
		this Act shall be payable by and recov-
		erable from the executor of the estate
		subject to the duty, to the extent con-
		templated in Chapter 10 of the Tax
		Administration Act [: Provided that
		the liability under this section of any
		executor shall be a liability in his or
		her capacity as executor only and for
		an amount not exceeding the avail-
		able assets in the estate, unless the
		liability is due to fraud].".
		Repeal of sections 12A, 12B, 23, 23bis,
		24, 25, 25A, 26 and 27
		<b>20.</b> Sections 12A, 12B, 23, 23bis, 24,
		25, 25A, 26 and 27 the Estate Duty Act,
		1955, are hereby repealed.

No. and Year	<b>Short Title</b>		Extent of amendment or repeal	
			Amendment of section 28	
			<ul><li>21. Section 28 of the Estate Duty Act, 1955, is hereby amended—</li><li>(a) by the substitution for the heading of the following heading:</li></ul>	
			"[PENALTIES] OFFENCES";	
			(b) by the deletion of subsection (1); and (c) by the deletion in subsection (2) of	5
			paragraphs (b) and (b)bis.	-
			Repeal of sections 28A and 30	
			<b>22.</b> Sections 28A and 30 of the Estate Duty Act, 1955, are hereby repealed.	
Act No. 58 of 1962	Income Tax 1962	Act,	Amendment of section 1	
			23. Section 1 of the Income Tax Act, 1962, is hereby amended—  (a) by the substitution for the definition of "assessment" of the following definition:	10
			definition:  "'assessment' [means the] has the meaning assigned under section	15
			1 of the Tax Administration Act, and includes a determination by the Commissioner—[, by way of a	13
			notice of assessment (including a notice of assessment in electronic form) served in a manner con-	20
			templated in section 106(2)— (a) of an amount upon which	
			any tax leviable under this Act is chargeable; or (b) of the amount of any such	25
			tax; or] (c) of any loss ranking for set-off; [or]	
			(d) of any assessed capital loss determined in terms of paragraph 9 of the Eighth Schedule[,]; or	30
			(e) of any amounts to be taken into account in the determination of tax payable on income in future	35
			years [and for the purposes of Part III of Chapter III includes any de-	
			termination by the Commissioner in respect of any of the rebates referred to in section 6 and any decision of the Commission	40
			sioner which is in terms of this Act subject to objection and appeal];"; (b) by the deletion of the definition of	45

No. and Year	Short Title	Extent of amendment or repeal	
		(c) by the substitution for the definition of "Commissioner" of the following	
		definition:	
		"'Commissioner' means the	_
		Commissioner for the South Afri-	5
		can Revenue Service appointed in	
		terms of section 6 of the South	
		African Revenue Service Act, 1997	
		(Act No. 34 of 1997), or the Acting	10
		Commissioner designated in terms	10
		of section 7 of that Act;";	
		(d) by the deletion of the definition of	
		"date of assessment";	
		(e) by the insertion after the definition of	
		"normal retirement age" of the	15
		following definitions: "'normal tax' means income tax	
		referred to in section 5(1);	
		<b>'officer'</b> means, where used in the	
		context of a person who is engaged	20
		by the Commissioner in carrying	20
		out the provisions of this Act, a	
		SARS official as defined in section	
		1 of the Tax Administration Act;";	
		(f) by the substitution for the definition	25
		of "prescribed rate" of the following	23
		definition:	
		" 'prescribed rate' means the rate	
		contemplated in section 189(3) of	
		the Tax Administration Act;";	30
		(g) by the substitution of the words in the	
		definition of "representative tax-	
		payer" preceding paragraph (a) of the	
		following words:	
		"representative taxpayer" means a	35
		natural person who resides in the	
		Republic and—";"	
		(h) by the substitution for paragraph (b)	
		of the definition of "representative	
		taxpayer" of the following paragraph:	40
		"(b) in respect of the income under	
		his <u>or her</u> management, dispo-	
		sition or control, the agent of	
		any person[, including an	15
		agent appointed as such un-	45
		der the provisions of section <i>ninety-nine</i> , and for the pur-	
		_	
		poses of this paragraph the term "agent" includes every	
		person in the Republic having	50
		the receipt, management or	50
		control of income on behalf of	
		any person permanently or	
		temporarily absent from the	
		Republic or remitting or pay-	55
		ing income to or receiving	
		moneys for such person];";	
		moneys for such person], ,	l

No. and Year	Short Title	Extent of amendment or repeal	
		(i) by the deletion of the words in the definition of "representative tax-payer" following paragraph (f) but preceding the proviso;	
		(j) by the insertion after the definition of "retirement interest" of the following	5
		definition:  "'return' means a return as de-	
		fined in section 1 of the Tax Administration Act;";  (k) by the substitution for the definition of "tax" of the following definition:	10
		"'tax' means tax or a penalty imposed in terms of this Act;";	15
		"tax" of the following definition:  "Tax Administration Act' means the Tax Administration Act,	13
		2011;"; (m) by the substitution for the definition	20
		of "taxpayer" of the following defi- nition:  "taxpayer' means any person chargeable with any tax leviable un-	
			25
		(n) by the renumbering of section 1 to section 1(1); and	30
		the following subsection:  "(2) Unless the context indicates otherwise, a word or expression to	
		which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.".	35
		Amendment of section 2	
		<b>24.</b> The Income Tax Act, 1962, is hereby amended by the substitution for section 2 of the following section:	
		"[Act to be administered by Commissioner] Administration of Act	40
		2. (1) The Commissioner [shall be]  is responsible for carrying out the provisions of this Act.	45
		(2) Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated	50
		in this Act, regulated by the Tax Administration Act.".	

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of section 3
		<b>25.</b> Section 3 of the Income Tax Act,
		1962, is hereby amended—
		(a) by the substitution for subsection (1)
		of the following subsection:
		"(1) The powers conferred and
		the duties imposed upon the Com-
		missioner by or under the provi-
		sions of this Act may be exercised
		or performed by the Commissioner
		[personally,] or by any officer [or
		person engaged in carrying out
		the said provisions] under the
		control, direction or supervision of
		the Commissioner.";
		(b) by the deletion of subsections (2) and
		(3);
		(c) by the substitution for subsection (4)
		of the following subsection:
		"(4) Any decision of the Com-
		missioner under the following pro-
		visions of this Act [shall be]is
		subject to objection and appeal in
		accordance with Chapter 9 of the
		<u>Tax Administration Act</u> , namely—
		(a) the definitions of "benefit
		fund", "pension fund", "pen-
		sion preservation fund",
		"provident fund", "provident
		preservation fund", "retire-
		ment annuity fund" and
		"spouse" in section 1;
		(b) [section 6, section $8(4)(b)$ , $(c)$ ,
		(d) and (e), $]$ section $8(5)(b)$ and
		(bA), [section 9D,] section
		$10(1)\underline{(cA)}, \qquad [(e)]\underline{(e)(i)(cc)},$
		[(iA)], (j) and (nB), section
		$\frac{10A(8)}{(2A)(6)}$ , section $11(e)$ , $(f)$ , $(g)$ ,
		$(gA), (j), \underline{\text{and}} (l), [(t), (u)] \text{ and}$
		(w),] section 12B(6), section
		12C, section 12E, section 12G,
		section 12J(6), (6A), and (7),
		section 13, section 14, section
		15, section 22(1)[,] <u>and</u> (3)
		[and (5)], section 23H(2), section 23K, section 24(2), section
		$\frac{\text{tion 23K, section 24(2), section}}{24\Delta(6)}$
		24A(6), section 24C, section
		24D, section $24I(1)$ and $(7)$ ,
		section 24J(9), section 25A,

No. and Year	Short Title	Extent of amendment or repeal	
		[section 25D,], section 27, sec-	
		tion $[28(2)(cA)]28(9)$ , section	
		30, section 30A, section 30B,	
		section 31, section 35(2), sec-	
		tion 37A, section 37H, section	5
		[38(4)]38(2)(a) and $(b)$ and $(4)$ ,	
		section $44(13)(a)$ , section	
		47(6)(c)(i), section 57(2), sec-	
		tion $62(1)(c)(iii)$ and $(d)$ and	
		(2)(a) and $(4)$ , [section 76A,]	10
		section 80B and section [80S]	
		103(2);	
		(c) paragraphs 6, 7, 9, 13, 13A, 14,	
		19 and 20 of the First Schedule;	
		(d) paragraph 4 of the Second	
		Schedule;	15
		(e) paragraphs 14(6), 18, [19(1),]	
		20(1)(a) and (2), 21, 24 and 27	
		of the Fourth Schedule;	
		(f) paragraphs 10(3) and (4), 11(2)	
		and (7), 12(1) and 13 of the	20
		Sixth Schedule;	
		(g) paragraphs $2(h)$ , 3, $6(4)(b)$ ,	
		7(6), (7) and (8), [9 and] 11	
		and 12A(3) of the Seventh	
		Schedule; and	25
		(h) paragraphs $12(5)(c)(i)$ , $29(2A)$ ,	
		29(7), $31(2)$ , $65(1)(d)$ and	
		66(1)(e) of the Eighth Sched-	
		ule."; and	
		(d) by the substitution for subsection (6)	30
		of the following section:	
		"(6) Any person aggrieved by a	
		decision of the executive officer to	
		approve or to withdraw an ap-	
		proval of a fund in terms of subsec-	35
		tion (5) must, notwithstanding sec-	
		tion 26(2) of the Financial Services	
		Board Act, 1990, lodge his or her	
		objection with the Commissioner	
		[in the manner contemplated in	40
		Part III of Chapter III of this	
		<b>Act</b> ] in accordance with the provi-	
		sions of Chapter 9 of the Tax	
		Administration Act.".	
		Repeal of section 4	
		<b>26.</b> Section 4 of the Income Tax Act,	
		1962, is hereby repealed.	45
		1702, is hereby repeated.	73

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 4A	
		27. The Income Tax Act, 1962, is	
		hereby amended by the substitution for	
		section 4A of the following section:	
		"Exercise of powers and performance of duties by Minister	5
		<b>4A.</b> The powers conferred and the duties imposed upon the Minister by or under the provisions of this Act may be exercised or performed by the Minister	10
		personally or, except for the power to issue notices or regulations, delegated by the Minister to the Director-General of the National Treasury and the Director-General may in turn delegate the powers and duties so delegated to him or her to any officer or person under his or her control, direction or supervision."	15
		Amendment of section 5	
		tion for subsection (7) of the following subsection:  "(7) Subject to the provisions of [sections 79 and 102 and the provisions of] the Fourth Schedule, where a taxpayer has been assessed for normal tax in respect of any year of assessment and the rate of the tax payable by [him] the taxpayer has been subsequently fixed	20
		ment for such year shall be adjusted, any amounts paid in excess being refundable to [him] the taxpayer and amounts shortpaid being recoverable from [him] the taxpayer.".	30
		Amendment of section 6quat	
		29. Section 6quat of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:  "(5) Notwithstanding [sections 79]	
			40
			45

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of section 8
		<b>30.</b> Section 8 of the Income Tax Act,
		1962, is hereby amended—
		(a) by the substitution in subsection (5)
		for paragraph (bC) of the following
		paragraph:
		"(bC) Any person who, as a
		former lessor of property referred to
		in paragraph (bA) or as the owner
		thereof, has after the termination of
		the lease of such property consented
		to the former lessee thereof using,
		enjoying or dealing with such prop-
		erty as contemplated in the said paragraph, or is deemed to have so
		consented under the provisions of
		paragraph (bB)(ii), shall not later
		than 14 days after the end of three
		months after the termination of the
		relevant lease advise the former
		lessee of the fair market value of
		such property as determined in ac-
		cordance with paragraph $(bA)$ [, and
		shall furnish the Commissioner
		with a copy of such advice]."; and
		(b) by the deletion in subsection (5) of
		paragraph $(c)$ .
		Amendment of section 10
		<b>31.</b> Section 10 of the Income Tax Act,
		1962, is hereby amended by the deletion in
		the further proviso to subsection $(1)(cA)$ of
		paragraph (c).
		Amendment of section 10A
		<b>32.</b> Section 10A of the Income Tax Act,
		1962, is hereby amended—
		(a) by the deletion of subsection (9); and
		(b) by the substitution for subsection (10)
		of the following subsection:
		"(10) Subject to the provisions of
		section [79] 99 of the Tax Adminis-
		tration Act, the final calculation or
		recalculation of the capital element
		as made in relation to the year of
		assessment referred to in subsec-
		tion (8) shall, subject to the provi-
		sions of subsection $(6)(b)$ , be final
		and conclusive and shall apply in
		respect of all relevant annuity
		amounts which become due to any
		person under the annuity contract in
		question in any succeeding years of
		assessment.".

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 11	
		<b>33.</b> Section 11 of the Income Tax Act, 1962, is hereby amended by the deletion in paragraph ( <i>l</i> ) of paragraph (vi) of the proviso.	
		Amendment of section 11D	
		34. Section 11D of the Income Tax Act, 1962, is hereby amended—  (a) by the substitution for subsection (14) of the following subsection:	5
		"(14) Notwithstanding [section 4] Chapter 6 of the Tax Administration Act, the Commissioner may disclose to the Minister of Science and Technology information in re-	10
		lation to research and development as may be required by that Minister for purposes of submitting a report to Parliament in terms of subsec- tion (17)."; and	15
		(b) by the addition after subsection (18) of the following subsection:  "(19) For the purposes of subsection (1), the Commissioner may,	20
		notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment with respect to a deduction in respect of research and	25
		development which has been allowed, where approval has been withdrawn in terms of subsection (10).".	30
		Amendment of section 12G  35. Section 12G of the Income Tax Act, 1962, is hereby amended—  (a) by the substitution for subsection (11) of the following subsection:	
		"(11) For purposes of subsections (9) and (10), the Commissioner may, notwithstanding the provisions of sections [79, 81(5) and 83(18)] 99 and 100 of the Tax Administration Act, raise an addi-	35
		tional assessment for any year of assessment where an additional industrial investment allowance which has been allowed in any previous year must be disallowed	40
		in terms of subsection (9) or (10)."; and (b) by the deletion of subsection (12).	45

No. and Year	<b>Short Title</b>	Extent of amendment or repeal	
		Amendment of section 12I	
		<b>36.</b> Section 12I of the Income Tax Act,	
		1962, is hereby amended—	
		(a) by the substitution for the words	
		preceding paragraph (a) in subsection	
		(13) of the following words:	5
		"(13) The Commissioner may,	
		notwithstanding the provisions of	
		[section 4] Chapter 6 of the Tax	
		Administration Act—";	
		(b) by the substitution for subsection (14)	10
		of the following subsection:	
		"(14) The Commissioner may,	
		notwithstanding the provisions of	
		[section 79, 81(5) and 83(18)]	1.5
		sections 99 and 100 of the Tax	15
		Administration Act, raise an additional assessment for any year of	
		tional assessment for any year of assessment where an additional in-	
		vestment allowance which has	
		been allowed in any previous year	20
		must be disallowed in terms of	20
		subsection (12) or (13).";	
		(c) by the deletion of subsection (15); and	
		(d) by the substitution for subsection (21)	
		of the following subsection:	25
		"(21) Notwithstanding the pro-	
		visions of [section 4] Chapter 6 of	
		the Tax Administration Act, the	
		Commissioner must disclose to the	
		Minister of Trade and Industry and	30
		the adjudication committee, includ-	
		ing any person whose assistance	
		has been obtained by that commit-	
		tee, such information relating to the	
		affairs of any company carrying on	35
		an industrial policy project as is	
		necessary to enable the Minister of	
		Trade and Industry and the adjudi-	
		cation committee to perform their	
		functions in terms of this section.".	40
		Amendment of section 12J	
		<b>37.</b> Section 12J of the Income Tax Act,	
		1962, is hereby amended by the deletion	
		of subsection (9).	

38. Section 23 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (d) of the following paragraph:  "(d) any tax [, duty, levy, interest or penalty] imposed under this Act, [any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the KwaZulu and Natal Joint Services
1962, is hereby amended by the substitution for paragraph (d) of the following paragraph:  "(d) any tax [, duty, levy, interest or penalty] imposed under this Act, [any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
tion for paragraph (d) of the following paragraph:  "(d) any tax [, duty, levy, interest or penalty] imposed under this Act, [any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
paragraph:  "(d) any tax [, duty, levy, interest or penalty] imposed under this Act,  [any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
"(d) any tax [, duty, levy, interest or penalty] imposed under this Act, [any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
penalty] imposed under this Act, [any additional tax imposed under section 60 of the Value- Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
[any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
der section 60 of the Value- Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
quence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
tion payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the
Services Councils Act, 1985 (Act No. 109 of 1985), the
(Act No. 109 of 1985), the
` ' '
Kwazulu aliu Natai Juliit Sti-
vices Act, 1990 (Act No. 84 of 20
1990), the Skills Development
Levies Act, 1999 (Act No. 9 of
1999), and the Unemployment
Insurance Contributions Act,
2002 (Act No. 4 of 2002)];". 25
Amendment of section 23H
<b>39.</b> Section 23H of the Income Tax Act,
1962, is hereby amended by the deletion
of subsection (4).
Amendment of section 24J
<b>40.</b> Section 24J of the Income Tax Act,
1962, is hereby amended by the deletion
of subsection (11).
Amendment of section 25A
<b>41.</b> Section 25A of the Income Tax Act,
1962, is hereby amended by the deletion 30
of subsection (2).

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of section 35
		<b>42.</b> Section 35 of the Income Tax Act,
		1962, is hereby amended—
		(a) by the substitution in subsection
		(2)(a) for the words preceding the
		proviso of the following words:
		"Any person who incurs a liabil-
		ity to pay to any other person who is
		not a resident any amount referred to
		in subsection (1), or who receives
		payment of any such amount on
		behalf of such other person, shall
		within 14 days after the end of the
		-
		month during which the said liabil-
		ity is incurred or the said payment is
		received, as the case may be, or
		within such further period as the
		Commissioner may approve, make
		a payment (which shall be a final
		payment made on behalf of such
		other person) to the Commissioner
		in respect of such other person's
		liability for tax in terms of subsec-
		tion (1), and shall submit to the
		Commissioner at the time of such
		tax payment a [declaration in such
		form as the Commissioner may
		prescribe] return;";
		(b) by the substitution in subsection (2) for
		paragraph (b) of the following para-
		graph:
		"(b) Any person making a payment
		to the Commissioner in terms of para-
		graph (a) shall, notwithstanding any
		agreement to the contrary, be entitled
		to deduct or withhold the amount of
		such payment from the amount which
		[he] that person is liable to pay to the
		aforesaid other person [, or to recover
		the amount so paid from such other
		person or to retain out of any money
		that may be in his possession or may
		come to him as the agent of such
		other person an amount equal to the
		amount of such payment].";
		(c) by the deletion in subsection (2) of
		paragraphs (d) and (e); and
		(d) by the deletion of subsection (3).
		(a) by the deterior of subsection (3).

No. and Year Short Title Extent of amendment of	or repeal	
Amendment of section	35A	
43. Section 35A of the	Income Tax Act.	
1962, is hereby amended	<i>'</i>	
(a) by the substitution f		
of the following sub		
	chaser must, to-	5
gether with the p		
plated in subsection		
the Commissione		
in the form and	-	
information as	the Commis-	10
sioner may presc		10
(b) by the substitution f		
of the following sub		
ally liable under t	rchaser is person-	15
contemplated in s		15
Tax Administration of the state		
amount that must		
der subsection (1)		20
chaser knows or s have known that t		20
resident and [fails	•	
amount as requ	•	
tion (1), that pur		25
(a) is personally		25
	the amount	
	r she failed to	
withhold; an		
(b)] must pay that		
	r not later than the	30
	h payment should	
	ade if the amount	
	en withheld.";	
(c) by the substitution for	` '	
the following subsecti		35
_	er fails to pay any	
amount contempla		
(1) to the Commis		
period allowed for		
of subsection (4), the	-	40
[(a) is liable for		
_	te on any amount	
	calculated from	
	ving the last date	
	to the date that	45
	s received by the	
Commissione		1
(b)] must pay a pe	r; and	
per cent of Ith		
per cent of <b>[th</b>		
	nalty equal to ten	50
addition to an	nalty equal to ten at] the amount, in	50

No. and Year	Short Title	Extent of amendment or repeal
		(d) by the deletion of subsection (10);
		and
		(e) the substitution for subsection (13) of
		the following subsection:
		"(13) The [purchaser,] estate
		agent or conveyancer [, as the case
		may be, may recover any amount
		paid in terms of subsection (7) or]
		(12) from the seller] who paid an
		amount in terms of subsection (12)
		is deemed to be a withholding
		agent for purposes of the Tax Ad-
		ministration Act.".
		Amendment of section 37H
		<b>44.</b> Section 37H of the Income Tax Act,
		1962, is hereby amended—
		(a) by the substitution in subsection (21)
		for the words following paragraph (b)
		of the following words:
		"the Commissioner may, notwith-
		standing the provisions of section
		[79] 99 of the Tax Administration
		Act, raise assessments in respect of
		the company as if such company
		were not a qualifying company.";
		and
		(b) by the deletion of subsection (22).
		Repeal of section 40
		45. Section 40 of the Income Tax Act,
		1962, is hereby repealed.
		Amendment of section 47C
		46. Section 47C of the Income Tax Act,
		1962, is hereby amended by the substitu-
		, , , , , , , , , , , , , , , , , , ,
		tion for subsection (2) of the following
		subsection:
		"(2) This section does not apply to
		any amounts received by or accrued to
		the taxpayer—
		(a) from which the full amount of tax
		has been withheld by a resident in
		terms of section 47D; or
		(b) [in respect of which the tax has]
		which have been recovered from a
		resident [in his or her personal
		capacity] who is personally liable
		for the amount in terms of
		section 47G(1).".

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 47F	
		47. Section 47F of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:	_
		"(1) A taxpayer must, together with the payment contemplated in section 47C(1), submit to the Commissioner a return [in the manner and form and	5
		containing the information as may be prescribed by the Commissioner].  (2) A resident who pays to the Commissioner any amount in terms of	10
		section 47E, must together with that payment submit to the Commissioner a return [in the manner and form and	15
		containing the information as may be	
		prescribed by the Commissioner].".	-
		<b>Amendment of section 47G 48.</b> Section 47G of the Income Tax Act, 1962, is hereby amended—	
		(a) by the substitution in subsection (1) for the words following paragraph (b)	20
		of the following words:  "is personally liable for payment of that amount of tax [, which may	
		be recovered from that resident	
		in terms of this Act as if it is a tax	25
		due by that resident] in accordance with Part A of Chapter 10 of the Tax Administration Act."; and	
		(b) by the deletion of subsection (2).	
		Repeal of sections 47H and 47I	1
		<b>49.</b> Sections 47H and 47I of the Income Tax Act, 1962, are hereby repealed.	30
		Amendment of section 60	
		50. Section 60 of the Income Tax Act, 1962, is hereby amended—  (a) by the substitution for subsection (1) of the following subsection:	
		"(1) Donations tax shall be paid to the Commissioner [within three months] by the end of the month following the month during which	35
		a donation takes effect or such longer period as the Commissioner may allow from the date upon which the donation in question takes effect."; and	40
		(b) by the substitution for subsection (4) of the following subsection:  "(4) The payment of the tax in terms of subsection (1) shall be	45

No. and Year	Short Title	Extent of amendment or repeal	
		accompanied by a return [in such	
		form as may be prescribed by the	
		Commissioner].".	
		Amendment of section 61	
		<b>51.</b> Section 61 of the Income Tax Act,	
		1962, is hereby amended—	
		(a) by the substitution for paragraph (a)	5
		of the following paragraph:	
		"(a) any reference in [subsection	
		(1) or (2) of section seventy-	
		four, paragraph $(c)$ or $(d)$ of	
		subsection (1) of section	10
		seventy-five or] paragraph	
		(a) or (e) of the definition of	
		'representative taxpayer' in	
		section [one] 1 to the income	1.5
		of any person or to the gross	15
		income received by or ac-	
		crued to or in favour of any	
		person shall be deemed to include a reference to prop-	
		erty disposed of by any per-	20
		son under a donation or to the	20
		value of such property, as the	
		context may require;"; and	
		(b) by the deletion of paragraphs $(b)$ , $(c)$ ,	
		(e), (f) and (h).	25
		Amendment of section 62	
		<b>52.</b> Section 62 of the Income Tax Act,	
		1962, is hereby amended by the substitu-	
		tion for subsection (4) of the following	
		subsection:	
		"(4) If the Commissioner is of the	
		opinion that the amount shown in any	30
		return as the fair market value of any	
		property is less than the fair market	
		value of that property, he or she may fix	
		the fair market value of that property,	2 -
		and the value so fixed is[, subject to	35
		the provisions of section 63,] deemed	
		for the purposes of this Part to be the	
		fair market value of such property.".	
		Repeal of section 63	
		<b>53.</b> Section 63 of the Income Tax Act, 1962, is hereby repealed.	
		Amendment of section 64B	
		<b>54.</b> Section 64B of the Income Tax Act,	
		1962, is hereby amended by the deletion	40
		of subsections (9) and (11).	40
		Amendment of section 64K  55. Section 64K of the Income Tax Act,	
		1962, is hereby amended by the deletion of subsections (3), (5), (6), (7) and (8).	
		or subsections (3), (3), (6), (7) and (8).	

No. and Year	<b>Short Title</b>	Extent of amendment or repeal	
		Amendment of section 64L	
		56. Section 64L of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:  "[If] Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—".	5
		Amendment of section 64M	
		57. Section 64M of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:  "[If] Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—".	10
		Amendment of section 64R	
		<b>58.</b> Section 64R of the Income Tax Act, 1962, is hereby amended by deletion of subsections (3), (4) and (5).	15
		Repeal of section 65	
		<b>59.</b> Section 65 of the Income Tax Act, 1962, is hereby repealed.	
		Amendment of section 66	
		<ul><li>60. Section 66 of the Income Tax Act, 1962, is hereby amended—</li><li>(a) by the substitution for the heading of the following heading:</li></ul>	
		"Notice by Commissioner requiring returns for assessment of [taxes] normal tax under this Act [and manner of furnishing returns and interim returns]";	20
		(b) by the substitution for subsection (1) of the following subsection:  "(1) The Commissioner must annually give public notice [that all] of the persons who [are per-	25
		sonally or in a representative capacity liable to taxation under this Act or who] are required by	30
		the Commissioner to furnish returns for the assessment of <u>normal</u> tax[, must furnish returns] within the period prescribed in that notice[, or such longer period as the Commissioner may allow, for the	35
		purposes of assessments in respect of the years of assessment specified in that notice]."; (c) by the deletion of subsections (1A), (2), (3) and (5);	40

No. and Year	Short Title	Extent of amendment or repeal	
		(d) by the substitution for subsection (5A) of the following subsection:  "(5A) Any person who is not in terms of this section required to furnish a return in respect of any year of assessment may for the purpose of having [his] that person's liability for [taxation] normal tax determined on assessment furnish such a return within three years after the end of such year of	5
		assessment.";  (e) by the deletion of subsections (6), (7), (7A), (7B), (7C), (7D), (7E), (8), (9), (10) and (11);  (f) by the substitution in subsection (13) for the words preceding paragraph (a) of the following words:  "(13) The return [of income] for	15
		normal tax to be made by any person in respect of any year of assessment shall be a [full and true] return—";	20
		<ul> <li>(g) by the deletion in the proviso to subsection (13)(a) of the word "or" at the end of paragraph (b)(ii);</li> <li>(h) by the addition to the proviso to subsection (13)(a) of the following</li> </ul>	25
		paragraph:  "(c) a person ceases to be a resident, a return shall be made for the period commencing on the first day of that year of assessment and ending on the day preceding the	30
		date that the person ceases to be a resident; or";  (i) by the addition of the following proviso to subsection (13)(b):	35
		": Provided that where a company ceases to be a resident, a return shall be made for the period commencing on the first day of that financial year and ending on the day	40
		preceding the date that the company ceases to be a resident".  (j) by the substitution for subsection (13B) of the following subsection:  "(13B) For the purposes of	45
		subsections [(13),] (13A)[,] and (13C) [and (14)], the word 'income' must be construed as including any aggregate capital gain or aggregate capital loss."; and (k) by the deletion of subsections (14)	50
		and (15).	55

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 67	
		61. Section 67 of the Income Tax Act, 1962, is hereby amended—  (a) by the substitution for subsection (1) of the following subsection:  "(1) Every person who at any time becomes liable for any normal tax or who becomes liable to submit any return contemplated in section 66 must[, within 60 days after so becoming a taxpayer,] apply to the Commissioner to be registered as a taxpayer in accordance with Chapter 3 of the Tax Administration Act."; and  (b) by the deletion of subsections (1A) and (2).	
		Repeal of sections 67A, 69, 70, 70A, 70B and 71	
		<b>62.</b> Sections 67A, 69, 70, 70A, 70B and 71 of the Income Tax Act, 1962, are hereby repealed.	
		Amendment of section 72A	
		63. Section 72A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:  "(1) Every resident who on the last	20
		day of the foreign tax year of a controlled foreign company or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any	25
		connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissionary [graph] as well as a person has	30
		sioner [such] <u>a</u> return [as may be prescribed by the Commissioner].".	33
		Repeal of sections 73 to 80	
		<b>64.</b> Sections 73, 73A, 73B, 73C, 74, 74A, 74B, 74C, 74D, 75, 75A, 75B, 76, 76B, 76C, 76D, 76E, 76F, 76G, 76H. 76I, 76J, 76K, 76L, 76M, 76N, 76O, 76P, 76Q, 76R, 76S, 77, 78, 79, 79A, 79B and 80 of the Income Tax Act, 1962, are hereby repealed.	40
		Amendment of section 80B	
		<b>65.</b> Section 80B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:	45

No. and Year	Short Title	Extent of amendment or repeal	
		"(2) Subject to the time limits imposed by [section 79, 79A(2)(a) and 81(2)(b)] sections 99, 100 and 104(5)(b) of the Tax Administration Act, the Commissioner must make compensating adjustments that he or she is satisfied are necessary and appropriate to ensure the consistent treatment of all parties to the impermissible avoidance arrangement."	5
		Repeal of sections 80K and 80M to 89sept	
		66. Sections 80K, 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, 89bis, 89ter, 89quat, 89quin, 89sex and 89sept of the Income Tax Act, 1962, are hereby repealed.	15
		Amendment of section 90	
		67. Section 90 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:  "Subject to the provisions of this Act and the Tax Administration Act, any normal tax [(other than donations tax) and any interest payable in terms of section 89(2) or 89quat, shall be] is payable[—  (a) by any representative taxpayer, liable to assessment or for the payment of such tax or interest under this Act or under any previous Income Tax Act;  (c) in respect of any other income and in all other cases,] by the person by whom [the] any taxable	25
		income is received or to whom or in whose favour it accrues or who is legally entitled to the receipt thereof".	35
		Amendment of section 91	
		68. Section 91 of the Income Tax Act, 1962, is hereby amended—  (a) by the deletion of subsections (1) and (2); and  (b) by the substitution for subsection (5) of the following 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	

No. and Year	Short Title	Extent of amendment or repeal	
		terms of subsection (4) recoverable	
		from the assets referred to in that	
		subsection may also be recovered	
		from such assets.".	
		Repeal of sections 91A to 101	
		<b>69.</b> Sections 91A, 92, 93, 94, 95, 96, 97,	
		98, 99, 100 and 101 of the Income Tax	5
		Act, 1962, are hereby repealed.	
		Amendment of section 102	
		<b>70.</b> Section 102 of the Income Tax Act,	
		1962, is hereby amended—	
		(a) by the deletion of subsection (1);	
		(b) by the substitution for subsection	
		(1A) of the following subsection:	10
		"(1A) The Commissioner may	10
		refuse to authorise a refund under	
		[subsection (1)] section 190 of the	
		Tax Administration Act, if <b>[that</b> ]	
		person]—	15
			13
		(a) that person has failed to fur-	
		nish a return [for any year of	
		assessment] as required [by]	
		in terms of this Act, until that	20
		person has furnished such re-	20
		turn as required; or	
		(b) [has failed to furnish the	
		Commissioner in writing	
		with particulars of that per-	
		son's banking account or	25
		account with a similar insti-	
		tution to enable the Commis-	
		sioner to transfer a refund, if	
		any, to that account] the re-	
		fund is claimed by that person	30
		after a period of three years	
		after the end of the year of	
		assessment, in the case where	
		that person was not required by	
		any provision of this Act to	35
		furnish a return of income for	
		that year of assessment and did	
		not render such a return during	
		the period of three years since	
		the end of that year of assess-	40
		ment."; and	
		(c) by the deletion of subsections (2), (3)	
		and (4).	
		Repeal of section 102A	
		<b>71.</b> Section 102A of the Income Tax	
		Act, 1962, is hereby repealed.	
		Amendment of section 103	
		<b>72.</b> Section 103 of the Income Tax Act,	
		1962, is hereby amended—	45
		(a) by the substitution for subsection (4)	
		of the following subsection:	
		or and romo wing buobection.	

No. and Year	Short Title	Extent of amendment or repeal	
		"(4) [Any decision of the Com-	ĺ
		missioner under subsection (2)	
		shall be subject to objection and	
		appeal, and whenever] If in any	
		objection and appeal proceedings	5
		relating [thereto] to a decision un-	
		der subsection (2) it is proved that	
		the agreement or change in	ĺ
		shareholding or members' interests	
		or trustees or beneficiaries of the	10
		trust in question would result in the	
		avoidance or the postponement of	
		liability for payment of any tax,	
		duty or levy imposed by this Act or	1.5
		any previous Income Tax Act or any	15
		other law administered by the Com-	
		missioner, or in the reduction of the	ĺ
		amount thereof, it shall be pre-	
		sumed, until the contrary is proved in the case of any such agreement or	20
		change in shareholding or mem-	20
		bers' interests or trustees or benefi-	ĺ
		ciaries of such trust, that it has been	
		entered into or effected solely or	
		mainly for the purpose of utilising	25
		the assessed loss, balance of as-	
		sessed loss, capital loss or assessed	ĺ
		capital loss in question in order to	
		avoid or postpone such liability or	
		to reduce the amount thereof."; and	30
		(b) by the deletion of subsection (6).	
		Repeal of sections 104, 105, 105A, 106,	
		107A and 110	
		<b>73.</b> Sections 104, 105, 105A, 106, 107A	ĺ
		and 110 of the Income Tax Act, 1962, are	
		hereby repealed.	
		Amendment of paragraph 13 of First	
		Schedule	35
		<b>74.</b> Paragraph 13 of the First Schedule	
		to the Income Tax Act, 1962, is hereby	ĺ
		amended by the substitution for subpara-	ĺ
		graph (3) of the following subparagraph:	
		"(3) Every farmer who desires to	
		claim a deduction in terms of subpara-	40
		graph (1), shall [with his return of	ĺ
		income] for the year of assessment in	
		which he sold livestock on account of	ĺ
		conditions of drought or stock disease or	4 ~
		by reason of his participation in a live-	45
		stock reduction scheme organized by the	ĺ
		Government[, or within such period as	ĺ
		the Commissioner may allow,] notify	ĺ
		the Commissioner accordingly and [fur-	
		nish] obtain and retain full particulars in	50
		regard to the livestock so sold.".	1

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of paragraph 19 of First Schedule	
		75. Paragraph 19 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:  "(3) Where the taxpayer's assessment for a relevant period has in terms of section [81(5) of this Act] 100 of the	5
		Tax Administration Act, become final and conclusive, the Commissioner shall not, merely by reason of the fact that the amount determined under subparagraph $(2)(a)$ , as the taxpayer's an-	10
		nual average taxable income from farming in relation to such period is incorrect, be required to make a further assessment upon the taxpayer for such period in terms of section [79 of this	15
		Act] 99 of that Act or to authorize a refund under section [102 of this Act] 190 of that Act of any tax overpaid in respect of such period, unless it appears that such annual average taxable income from farming should be increased	20
		or reduced by at least six hundred rand.".	25
		Amendment of paragraph 20 of First Schedule	
		<b>76.</b> Paragraph 20 of the First Schedule to the Income Tax Act, 1962, is hereby amended—	
		(a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:  "If [any] a taxpayer (other than	30
		a company) who derives income from farming operations [submits an application to the Commissioner] makes an election as provided in subparagraph (6) and if so	35
		required proves to the satisfaction of the Commissioner—";  (b) by the substitution in subparagraph	40
		(6) for item (a) of the following item: "(a) Any taxpayer (other than a company) may[, at his option,	
		make written application to the Commissioner] elect for the normal tax payable by [him] the taxpayer to be determined under this paragraph;"; and	45

No. and Year	Short Title	Extent of amendment or repeal	
		(c) by the substitution in subparagraph (6)(b) for the words preceding	
		subitem (i) of the following words:	
		"[Any] For purposes of such	_
		[application shall be submitted to the Commissioner and shall be	5
		accompanied by] election the fol-	
		lowing records must be obtained	
		and retained—".	
		Amendment of paragraph 1 of Fourth	
		Schedule	10
		<b>77.</b> Paragraph 1 of the Fourth Schedule	
		to the Income Tax Act, 1962, is hereby	
		amended—	
		(a) by the substitution in the definition of	
		"representative employer" for para-	
		graph (b) of the following paragraph:	15
		"(b) in the case of any [divi-	
		sional council, municipal council,	
		village management board or	
		like authority] <u>municipality</u> or any body corporate or unincorporated	20
		(other than a company or a partner-	20
		ship), any manager, secretary, of-	
		ficer or other person responsible	
		for paying remuneration on behalf	
		of such [council, board, author-	25
		ity] municipality or body;"; and	
		(b) by the substitution in the definition of	
		"representative employer" for the	
		words following paragraph (d) of the	
		following words:	30
		"who [is a resident] resides in	
		the Republic, but nothing in this	
		definition shall be construed as	
		relieving any person from any li-	25
		ability, responsibility or duty im-	35
		posed upon him by this Schedule; and".	

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of paragraph 2 of Fourth Schedule	
		78. Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion in subparagraph (4) of the following item after item ( <i>c</i> ):  "( <i>c</i> A) any premium paid by an employer of the taxpayer directly or indirectly for the benefit or	5
		on behalf of the taxpayer to the extent that the policy of insurance in respect of which the premium is paid covers the taxpayer against the loss of income as a result of illness, injury, disability or unemployment;	10
		and".  Amendment of paragraph 5 of Fourth	
		79. Paragraph 5 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:  "(1) Subject to the provisions of sub-paragraph (6) [any], if an employer [who fails to deduct or withhold the full amount of employees' tax as provided in paragraph 2 shall be] is personally liable for the payment [to the Commissioner of the amount] of employees' tax under Chapter 10 of the Tax Administration Act, [which he or she fails to deduct or withhold, and] the employer shall [, subject to the provisions of sub-paragraph (2),] pay that amount to the Commissioner not later than the date on which payment should have been made if the employees' tax had in fact been deducted or withheld in terms of paragraph 2.".	20 25 30 35
		Amendment of paragraph 6 of Fourth Schedule	
		80. Paragraph 6 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) If an employer fails to pay any amount of employees' tax for which he is liable within the period allowable for payment thereof in terms of paragraph 2 [he shall, in addition to any other penalty or charge for which he may be liable	40 45

No. and Year	<b>Short Title</b>	Extent of amendment or repeal	
		under this Act, pay] SARS must in accordance with Chapter 15 of the Tax Administration Act, impose a penalty equal to ten per cent[.] of such amount."; and  (b) by the deletion of subparagraphs (2), (2A), (2B), (3) and (4).	5
		Repeal of paragraph 8 of Fourth Schedule	
		81. The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 8.	10
		Amendment of paragraph 11B of Fourth Schedule	
		<b>82.</b> Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (4A).	
		Amendment of paragraph 11C of Fourth Schedule	15
		83. Paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:  "(2) Subject to subparagraph (6), every private company shall on a 2	20
		monthly basis, in respect of every director of that company, pay to the Commissioner an amount determined in accordance with subparagraph (3),	
		tions 79, 89bis, 89ter, 89quat,] section 90 [, 102 and 102A] of the Act, [and] paragraphs 1, 4, 6, 11[, 12], 13 and 14	25
		and Parts III and IV of this Schedule[,] and Chapters 8, 12 and 13 of the Tax Administration Act, be deemed to be an amount of employees' tax which was required to be deducted or withheld by the company as an employer in terms of	30
			35

No. and Year	Short Title	Extent of amendment or repeal	
		Repeal of paragraph 12 of Fourth	
		Schedule	
		<b>84.</b> The Fourth Schedule to the Income	
		Tax Act, 1962, is hereby amended by the	
		repeal of paragraph 12.	
		Amendment of paragraph 14 of Fourth	
		Schedule	5
		<b>85.</b> Paragraph 14 of the Fourth Sched-	
		ule to the Income Tax Act, 1962, is hereby amended—	
		(a) by the substitution in subparagraph	
		(1) for the words preceding item (a)	1.0
		of the following words:	10
		"[Every] In addition to the	
		records required in accordance with Part A of Chapter 4 of the Tax	
		Administration Act, every em-	
		ployer shall in respect of each	15
		employee maintain a record show-	
		ing—";	
		(b) by the substitution for subparagraph	
		(2) of the following subparagraph:	
		"(2) Every employer shall when	20
		making any payment of employees'	
		tax submit to the Commissioner	
		[such declaration containing such	
		information as the Commissioner	
		may prescribe] a return.";	25
		(c) by the substitution in subparagraph (3)	
		for the words following item (b) of the	
		following words:	
		"or within such longer time as the	
		Commissioner may approve, render	30
		to the Commissioner [such] a return	
		[as the Commissioner may pre- scribe].";	
		(d) by the deletion of subparagraph (4);	
		and	3:
		(e) by the substitution for subparagraph	J.
		(6) of the following subparagraph:	
		"(6) If an employer fails to ren-	
		der to the Commissioner a return	
		referred to in subparagraph (3)	4
		within the period prescribed in that	4
		subparagraph, the Commissioner	
		may impose under Chapter 15 of	
		the Tax Administration Act on that	4.
		employer [shall be required to	4:
		pay] a percentage based penalty	
		[equal to] for each month that the	
		employer fails to submit a complete	
		return which in total may not ex-	
		<u>ceed</u> 10 per cent of the total amount	50
		of employees' tax deducted or with-	
		held or which should have been	

No. and Year	Short Title	Extent of amendment or repeal	
		deducted or withheld by the em-	
		ployer from the remuneration of	
		employees for the period [relating	
		to the return required in terms	
		of] described in that subparagraph	5
		[: Provided that the Commis-	
		sioner may remit that penalty or	
		portion thereof if he or she is	
		satisfied that the circumstances	
		warrant it].".	10
		Amendment of paragraph 15 of Fourth	
		Schedule	
		<b>86.</b> Paragraph 15 of the Fourth Sched-	
		ule to the Income Tax Act,1962, is hereby	
		amended—	
		(a) by the substitution for subparagraph	
		(1) of the following subparagraph:	15
		"(1) Every person who is an em-	
		ployer shall apply to the Commis-	
		sioner [in such form as the Com-	
		missioner may prescribe] in ac-	20
		cordance with Chapter 3 of the Tax	20
		Administration Act for registration	
		[as an employer within 14 days	
		after becoming an employer, or	
		within such further period as the	
		Commissioner may approve]:	25
		Provided that where no one of such	
		employer's employees is liable for	
		normal tax, the provisions of this	
		paragraph shall not apply to such	
		employer.";	30
		(b) by the deletion of subparagraph (2);	
		(c) by the substitution for subparagraph	
		(3) of the following subparagraph:	
		"(3) Every person who <b>[has</b>	
		applied or is deemed to have	35
		applied for registration under	
		subparagraph (1)] is registered as	
		an employer shall within fourteen	
		days after [changing his address	
		or] ceasing to be an employer,	40
		notify the Commissioner in writing	
		of [his new address or of] the fact	
		of [his] the employer having	
		ceased to be an employer[, as the	
		case may be]."; and	45
		(d) by the deletion of subparagraph (4).	
		Repeal of paragraph 16 of Fourth Schedule	
		87. Paragraph 16 of the Fourth Sched-	
		ule to the Income Tax Act, 1962, is hereby	
		repealed.	
		repeared.	

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of paragraph 17 of Fourth Schedule	
		<b>88.</b> Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—	
		(a) by the substitution for subparagraph (5) of the following subparagraph:  "(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by	5
		Parliament or foreshadowed by the Minister in his budget statement or as varied by the Minister under section 5(3) of this Act, to the rebates applicable in terms of section	10
		6(2) and (3)(a) and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by	15
		provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such tax-	20
		payers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied together with the period for which such tables shall remain in force.";	25
		<ul><li>(b) by the deletion of subparagraph (6); and</li><li>(c) by the substitution for subparagraph (8) of the following subparagraph:</li><li>"(8) Every person who is a provi-</li></ul>	30
		sional taxpayer shall [within 30 days after the date upon which he becomes a provisional taxpayer,] apply to the Commissioner for registration as a provisional taxpayer in	35
		accordance with Chapter 3 of the Tax  Administration Act.".	40

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of paragraph 18 of Fourth Schedule
		89. Paragraph 18 of the Fourth Sched-
		ule to the Income Tax Act, 1962, is hereby
		amended by the substitution in subpara-
		graph $(1)(d)$ for the words preceding
		subitem (i) of the following words:
		"any natural person [(other than a
		director of a private company)] who
		on the last day of the year of assessment
		will be <b>[over the age of]</b> 65 years or
		older, if the Commissioner is satisfied
		that such person's taxable income for
		that year—".
		Amendment of paragraph 19 of Fourth
		Schedule
		<b>90.</b> Paragraph 19 of the Fourth Sched-
		ule to the Income Tax Act, 1962, is hereby
		amended—
		(a) by the substitution in subparagraph
		(1) for item $(a)$ of the following item:
		"(a) Every provisional taxpayer
		(other than a company) [or a per-
		son contemplated in paragraph
		<b>18</b> )] shall, during every period
		within which provisional tax is or
		may be payable by [him] that provisional taxpayer as provided in
		this Part, [or any extension of
		such period granted in terms of
		paragraph 25(2),] submit to the
		Commissioner [, in such form as
		the Commissioner may pre-
		scribe,] (should the Commissioner
		so require) a return of an estimate
		of the total taxable income which
		will be derived by the taxpayer in
		respect of the year of assessment in
		respect of which provisional tax is
		or may be payable by [him] the
		taxpayer.";
		(b) by the substitution in subparagraph
		(1) for item $(b)$ of the following item:
		"(b) Every company which is a
		provisional taxpayer shall, during
		every period within which provi-
		sional tax is or may be payable by it
		as provided in this Part [or any
		extension of such period granted
		in terms of paragraph 25(2),]
		submit to the Commissioner [, in

No. and Year	Short Title	Extent of amendment or repeal	
		such form as the Commissioner	
		may prescribe,] (should the Com-	
		missioner so require) a return of an	
		estimate of the total taxable income	
		which will be derived by the com-	5
		pany in respect of the year of	
		assessment in respect of which	
		provisional tax is or may be pay-	
		able by the company.";	
		(c) by the substitution in subparagraph	10
		(1) for item (c) of the following item:	10
		"(c) The amount of any estimate	
		1	
		so submitted by a provisional tax-	
		payer (other than a company) during	1.5
		the period referred to in paragraph	15
		21(1)(a) [or any extension of such	
		period granted in terms of para-	
		graph 25(2)], or by a company (as a	
		provisional taxpayer) during the pe-	
		riod referred to in paragraph 23(a)	20
		[or any extension of such period	
		granted in terms of paragraph	
		25(2)], shall, unless the Commis-	
		sioner, having regard to the circum-	
		stances of the case, agrees to accept	25
		an estimate of a lower amount, not	
		be less than the basic amount appli-	
		cable to the estimate in question, as	
		contemplated in item $(d)$ .";	
		(d) by the substitution in subparagraph (1)	30
		for subsubitem $(bb)$ of item $(d)(i)$ of	
		the following subsubitem:	
		"(bb) [the taxable portion of any	
		lump sum] any amount con-	
		templated in [section	35
		7A(4A) and] paragraph $(d)$	
		of the definition of 'gross	
		income' in section 1; and";	
		(e) by the substitution in subparagraph (1)	
		for the proviso to item (d) of the	40
		following proviso:	
		"Provided that, if an estimate under	
		item (a) or (b) must be made	
		(a) more than 18 months; and	
		(b) in respect of a period that ends	45
		more than one year, after the end	
		of the latest preceding year of	
		assessment in relation to such	
		estimate, the basic amount de-	
		termined in terms of subitem (i)	50
		and (ii) shall be increased by an	
		amount equal to eight per cent	
		per annum of that amount, from	
		the end of such year to the end of	
		the year of assessment in respect	55
		of which the estimate is made.";	
		,	l

No. and Year	Short Title	Extent of amendment or repeal	
		(f) by the substitution in subparagraph (1) for subitem (ii) of item (e) of the	
		following subitem:	İ
		"(ii) in respect of which a notice of	ĺ
		assessment relevant to the es-	5
		timate has been issued by the	ĺ
		Commissioner not less than	İ
		[60]14 days before the date	ĺ
		on which the estimate is sub-	10
		mitted to the Commissioner: Provided that where the Com-	10
		missioner has in respect of	ĺ
		any estimate required to be	İ
		made by a provisional tax-	ĺ
		payer issued to the taxpayer a	15
		return for the payment of	İ
		provisional tax upon which	ĺ
		the Commissioner has indi-	ĺ
		cated the taxpayer's taxable	20
		income for the latest preceding year of assessment, in	20
		respect of which a notice of	ĺ
		assessment was issued prior	
		to the issue of such return,	
		such [taxable income] year	25
		of assessment shall at the	ĺ
		option of the taxpayer be deemed to be [the basic	ĺ
		amount applicable to such	ĺ
		estimate] that latest preced-	30
		ing year of assessment.";	
		(g) by the substitution for subparagraph	ĺ
		(2) of the following subparagraph:	ĺ
		"(2) If any provisional taxpayer	25
		fails to submit any estimate as required by subparagraph (1), the	35
		Commissioner may estimate the	ĺ
		taxable income which is required to	ĺ
		be estimated [, and such estimate	ĺ
		shall be final and conclusive].";	40
		and	ĺ
		(h) by the substitution for subparagraph	ĺ
		(3) of the following subparagraph: "(3) The Commissioner may call	ĺ
		upon any provisional taxpayer to	45
		justify any estimate made by him in	
		terms of subparagraph (1), or to	ĺ
		furnish particulars of his income	ĺ
		and expenditure or any other par-	
		ticulars that may be required, and, if	50
		the Commissioner is dissatisfied	
		with the said estimate, he may increase the amount thereof to such	
		amount as he considers reasonable	
		[, and the estimate as increased	55
I		i, and the estimate as mereased	

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of paragraph 20 of Fourth Schedule	
		<b>91.</b> Paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, is hereby	
		amended— (a) by the substitution for the heading of	5
		the following heading: "[ADDITIONAL TAX] PEN-	
		ALTY IN THE EVENT OF TAX- ABLE INCOME BEING UN-	
		DERESTIMATED";	10
		(b) by the substitution in subparagraph (1) for items (a) and (b) of the	
		following items: "(a) more than R1 million and	
		such estimate is less than 80 per cent of the amount of the	15
		actual taxable income the Commissioner may, if he or	
		she is not satisfied that the amount of such estimate was seriously calculated with due	20
		regard to the factors having a bearing thereon or was not	
		deliberately or negligently understated, subject to the provisions of subparagraph	25
		(3), impose, in addition to the normal tax chargeable in re-	
		spect of the taxpayer's tax- able income for such year of assessment, a [an amount by	30
		way of additional tax] pen- alty [up] equal to 20 per cent	
		of the difference between the	
		amount of normal tax as cal- culated in respect of such	35
		estimate and the amount of normal tax calculated, at the rates applicable in respect of	
		such year of assessment, in respect of a taxable income	40
		equal to 80 per cent of such actual taxable income; and	
		(b) in any other case, less than 90 per cent of the amount of such	45
		actual taxable income and is also less than the basic amount applicable to the estimate in	
		question, as contemplated in paragraph $19(1)(d)$ , the tax-payer shall, subject to the pro-	50
		visions of subparagraphs (2) and (3), be liable to pay to the	

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		Commissioner, in addition to	
		the normal tax chargeable in	
		respect of his or her taxable	
		income for such year of as-	
		sessment, a [an amount by	5
		way of additional tax] pen-	
		alty equal to 20 per cent of the	
		difference between the	
		amount of normal tax as cal-	
		culated in respect of such	10
		estimate and the lesser of the	
		following amounts,	
		namely—	
		(i) the amount of normal tax	
		calculated, at the rates	15
		applicable in respect of	
		such year of assessment,	
		in respect of a taxable	
		income equal to 90 per	
		cent of such actual tax-	20
		able income; and	
		(ii) the amount of normal tax	
		calculated in respect of a	
		taxable income equal to	
		such basic amount, at the	25
		rates applicable in respect	
		of such year of assess-	
		ment.";	
		(c) by the substitution for subparagraph	
		(2) of the following subparagraph:	30
		"(2) Where the Commissioner is	
		satisfied that the amount of any	
		estimate referred to in subpara-	
		graph $(1)(b)$ was seriously calcu-	
		lated with due regard to the factors	35
		having a bearing thereon and was	
		not deliberately or negligently un-	
		derstated, or if the Commissioner is	
		partly so satisfied, the Commis-	
		sioner may in his or her discretion	40
		remit the [additional tax] penalty	
		or a part thereof."; and	
		(d) by the deletion of subparagraph (4).	
		Amendment of paragraph 20A of	]
		Fourth Schedule	
		92. Paragraph 20A of the Fourth Sched-	
		ule to the Income Tax Act, 1962, is hereby	45
		amended—	
		(a) by the substitution for the heading of	
		the following heading:	
		"[ADDITIONAL TAX] PEN-	
		ALTY IN THE EVENT OF	50
		FAILURE TO SUBMIT AN ES-	
		TIMATE OF TAXABLE IN-	
		COME TIMEOUSLY";	
L	1		1

No. and Year	Short Title	Extent of amendment or repeal	
		(b) by the substitution for subparagraph	
		(1) of the following subparagraph:	
		"(1) Subject to the provisions of	
		subparagraphs (2) and (3), where	
		any provisional taxpayer is liable	5
		for the payment of normal tax in	
		respect of any amount of taxable	
		income derived by that provisional	
		taxpayer during any year of assess-	
		ment and the estimate of his or her	10
		taxable income for that year re-	
		quired to be submitted by him or	
		her under paragraph 19(1) during	
		the period contemplated in para-	
			15
		graph 21(1)(b), 22(1) or 23(b), as	15
		the case may be, was not submitted	
		by him or her on or before the last	
		day of that year [or, if the period	
		for the payment of provisional	
		tax due by him or her in respect	20
		of such period has under para-	
		graph 25(2) been extended to a	
		date later than the end of such	
		year, on or before such date,] the	
		taxpayer shall, unless the Commis-	25
		sioner has estimated the said tax-	
		able income under paragraph 19(2)	
		or has increased the amount thereof	
		under paragraph 19(3), be required	
		to pay to the Commissioner, in	30
		addition to the normal tax charge-	
		able in respect of such taxable	
		income, [an amount by way of	
		additional tax] a penalty equal to	
		20 per cent of the amount by which	35
		the normal tax payable by him or	
		her in respect of such taxable in-	
		_	
		come exceeds the sum of any	
		amounts of provisional tax paid by	40
		him or her in respect of such	40
		taxable income within any period	
		allowed for the payment of such	
		provisional tax under this Part [or	
		within any extension of such pe-	
		riod under paragraph 25(2)] and	45
		any amounts of employees' tax	
		deducted or withheld from his or	
		her remuneration by his or her	
		employer during such year.";	
		(c) by the substitution for subparagraph	50
		(2) of the following subparagraph:	
		"(2) The Commissioner may, if	
		he or she is satisfied that the provi-	
		sional taxpayer's failure to submit	
		such an estimate timeously was not	55
		Satir an obtilities timeously was not	1

No. and Year	Short Title	Extent of amendment or repeal	
		due to an intent to evade or post- pone the payment of provisional tax or normal tax, remit the whole or any part of the [additional tax] penalty imposed under subpara- graph (1)."; and (d) by the deletion of subparagraph (3).	5
		Amendment of paragraph 23A of Fourth Schedule	
		93. Paragraph 23A of the Fourth Schedule to the Income Tax Act, 1962, is hereby	10
		est which may become payable by him in respect of any year of	15
		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."; and  (b) by the deletion of subparagraph (2).	20
		Amendment of paragraph 25 of Fourth	
		Schedule	
		amended— (a) by the substitution for subparagraph (1) of the following subparagraph:	25
		"(1) If after the end of any period within which provisional tax is payable in terms of this Schedule the Commissioner has under the provisions of subparagraph (3) of paragraph 19 in-	30
			35
		Commissioner having made such increase shall, notwithstanding the provisions of paragraphs 21[, 22] and 23, be payable within such period as the Commissioner may	40 45
		(b) by the deletion of subparagraph (2).	
		Amendment of paragraph 27 of Fourth	
		Schedule  95. Paragraph 27 of the Fourth Sched-	
		ule to the Income Tax Act, 1962, is hereby amended—	

No. and Year	Short Title	Extent of amendment or repeal	
		(a) by the substitution for subparagraph	
		(1) of the following subparagraph:	
		"(1) If any provisional taxpayer	
		fails to pay any amount of provi-	
		sional tax for which he or she is	4
		liable within the period allowed for	
		_	
		payment thereof in terms of para-	
		graph 21 or 23, or paragraph 25(1),	
		[or within such extended period	
		as the Commissioner may allow	1(
		in terms of paragraph 25(2), he	
		or she must, in addition to any	
		other penalty or charge incurred	
		by him or her under this Act, pay	
		to the Commissioner] the Com-	15
		missioner must, under Chapter 15	
		of the Tax Administration Act, im-	
		pose a penalty equal to ten per cent	
		of the amount not paid."; and	
		(b) by the deletion of subparagraph (2).	20
		Insertion of paragraph 28A of Fourth Schedule	
		<b>96.</b> The Fourth Schedule to the Income	
		Tax Act, 1962, is hereby amended by the	
		insertion of the following paragraph after	
		paragraph 28:	
		"28A. Payments by way of employ-	25
		ees' tax and provisional tax must, for	
		the purposes of this Act and subject to	
		the provisions of paragraph 28, be	
		regarded as having been made in re-	
		spect of the taxpayer's liability for tax	3(
		whether or not the liability has been	
		ascertained or determined at the date of	
		any payment.".	
		Amendment of paragraph 30 of Fourth Schedule	
		<b>97.</b> Paragraph 30 of the Fourth Sched-	
			24
		ule to the Income Tax Act, 1962, is hereby	35
		amended—	
		(a) by the substitution in subsection (1)	
		for the words preceding subparagraph	
		(a) of the following words:	
		"Any person who wilfully and	40
		without just cause—";	
		(b) by the deletion in subparagraph (1) of	
		items $(c)$ , $(d)$ , $(e)$ and $(i)$ ;	
		(c) by the substitution for item (j) in sub-	
		paragraph (1) of the following item:	45
			4.
		"(j) [fails or neglects to apply to	
		the Commissioner for regis-	
		tration as an employer as	
		tration as an employer as required by subparagraph	
		tration as an employer as	50
		tration as an employer as required by subparagraph	50

No. and Year	Short Title	Extent of amendment or repeal	
		[or having so applied] fails or neglects to notify the Com- missioner of [any change of	
		his address or the fact of his] having ceased to be an employer as required by [sub-	5
		<pre>paragraph (3) of that para- graph] paragraph 15(3); or"; and</pre>	
		(d) by the deletion of item (k) in subparagraph (1).	10
		Repeal of paragraphs 31 and 32 of Fourth Schedule	
		<b>98.</b> Paragraphs 31 and 32 of the Fourth Schedule to the Income Tax Act, 1962, are hereby repealed.	
		Amendment of paragraph 11 of Sixth Schedule	15
		<b>99.</b> Paragraph 11 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended—	
		<ul><li>(a) by the deletion of subparagraph (3);</li><li>(b) by the substitution for subparagraph</li><li>(6) of the following subparagraph:</li><li>"(6) Where the estimate de-</li></ul>	20
		scribed in subparagraph 4(a) is less than 80 per cent of the taxable turnover for the year of assessment, [additional tax] a penalty equal to	25
		20 per cent of the difference be- tween the tax payable on 80 per cent of the taxable turnover for the	
		year of assessment and the tax payable on that estimate must be charged."; and	30
		(c) by the substitution for subparagraph (8) of the following subparagraph: "(8) Where the Commissioner	
		has issued an assessment in respect of the payment required in terms of subparagraph (4), a penalty must not be imposed in terms of subparagraph (6).".	35
		Repeal of paragraph 12 of Sixth Schedule	40
		<b>100.</b> Paragraph 12 of the Sixth Schedule to the Income Tax Act, 1962, is hereby repealed.	
		Amendment of paragraph 14 of Sixth Schedule	
		<b>101.</b> Paragraph 14 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding subparagraph ( <i>a</i> ) of the following words:	45

No. and Year	Short Title	Extent of amendment or repeal	
		"[A]Notwithstanding the provisions of Part A of Chapter 4 of the Tax Administration Act, a registered micro business must only retain a record of—".	5
		Repeal of paragraph 15 of Sixth Schedule  102. Paragraph 15 of the Sixth Sched-	
		ule to the Income Tax Act, 1962, is hereby repealed.	
		Amendment of paragraph 12A of Seventh Schedule	
		103. Paragraph 12A of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (4).	10
		Amendment of paragraph 17 of Seventh Schedule	
		104. Paragraph 17 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—  (a) by the deletion of the proviso in subparagraph (4); and  (b) by the deletion of subparagraph (5).	15
		Amendment of paragraph 18 of Seventh Schedule	
		105. Paragraph 18 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:	20
		"(1) Every employer shall on the	25
		ees' tax certificates delivered to such employees or on [the] any other return [to be furnished in terms of section 69] as may be required by the Commis-	30
		Repeal of paragraph 19 of Seventh Schedule	
		<b>106.</b> Paragraph 19 of the Seventh Schedule to the Income Tax Act, 1962, is hereby repealed.	

No. and Year	Short Title	Extent of amendment or repeal	]
Act No. 89 of 1991	Value-Added Tax Act, 1991	Amendment of Act 89 of 1991	
		107. The Value-Added Tax Act, 1991, is hereby amended by the substitution for the term 'officer', where used in the context of a person who is engaged by the Commissioner in carrying out the provisions of	5
		that Act, of the term 'SARS official'.	
		Amendment of section 1	
		108. Section 1 of the Value-Added Tax Act, 1991, is hereby amended—  (a) by the deletion of the definition of "business day";	10
		(b) by the substitution for the definition of "Commissioner" of the following definition:	
		"'Commissioner' means the	15
		Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997	
		(Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act;";	20
		(c) by the substitution for the definition of "prescribed rate" of the following definition:	25
		"'prescribed rate' means the rate contemplated in section 189(3) of the Tax Administration Act;";  (d) by the insertion after the definition of	
		"tax" of the following definition:  "Tax Administration Act' means the Tax Administration Act, 2011;";	30
		(e) by the deletion of the definition of "tax period"; and	35
		(f) by the substitution for the definition of "VAT registration number" of the following definition:  "'VAT registration number', in	
		relation to any vendor, means the number allocated to that vendor by the Commissioner [for the purposes of this Act] in terms of section	40
		24 of the Tax Administration Act;"; (g) by the renumbering of section 1 to section 1(1); and	45
		(h) by the insertion after subsection (1) of the following subsection:  "(2) Unless the context indicates	
		otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this	50
		<u>Act.</u> ".	

No. and Year	Short Title	Extent of amendment or repeal	
		Substitution of section 4	
		<b>109.</b> The Value-Added Tax Act, 1991,	
		is hereby amended by the substitution for	
		section 4 of the following section:	
		"[Act to be administered by Com-	5
		missioner] Administration of Act	
		<b>4.</b> (1) The Commissioner [shall be]	
		is responsible for carrying out the	
		provisions of this Act.	10
		(2) Administrative requirements and	
		procedures for purposes of the perfor-	
		mance of any duty, power or obligation	
		or the exercise of any right in terms of	
		this Act are, to the extent not regulated	15
		in this Act, regulated by the Tax Ad-	
		ministration Act.".	
		Amendment of section 5	
		<b>110.</b> Section 5 of the Value-Added Tax	
		Act, 1991, is hereby amended—	
		(a) by the substitution for subsection (1)	
		of the following subsection:	20
		"(1) The powers conferred and	
		the duties imposed upon the Com-	
		missioner by or in terms of the	
		provisions of this Act or any amend-	
		ment thereof may be exercised or	25
		performed by the Commissioner	
		[personally], or by any [officer en-	
		gaged in carrying out the said	
		provisions under the control, di-	
		rection or supervision of the Com-	30
		missioner] SARS official."; and	
		(b) by the deletion of subsection (2).	
		Repeal of section 6	
		111. Section 6 of the Value-Added Tax	
		Act, 1991, is hereby repealed.	
		Amendment of section 13	
		112. Section 13 of the Value-Added Tax	
		Act, 1991, is hereby amended by the	
		substitution in subsection (5) for paragraph	35
		(a) of the following paragraph:	
		"(a) for the collection (in such manner	
		as the Commissioner may deter-	
		mine) by a SARS official, or the[—	
		(i) any officer performing his or	40
		her duties under the control,	
		direction or supervision of	
		the Commissioner; or	
		(ii)] Managing Director of the	
		South African Post Office	45
		Limited on behalf of the Com-	
		missioner, of the tax payable in	
		terms of this Act in respect of	
		the importation of any goods	
		into the Republic; and".	50
		and the republic, that .	1

No. and Year	<b>Short Title</b>	Extent of amendment or repeal	
		Amendment of section 14	
		113. Section 14 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:	
		"(a) furnish the Commissioner with a	5
		[declaration (in such form as	
		the Commissioner may pre-	
		scribe) containing such infor-	
		mation as may be required]	
		return; and".	10
		Amendment of section 15	
		<b>114.</b> Section 15 of the Value-Added Tax	
		Act, 1991, is hereby amended by the	
		substitution for subsection (8) of the	
		following subsection:	
		"(8) If, in relation to any particulars required to be furnished under subsection (4)[,]—	15
		(a) the amount referred to in subsec-	
		tion $(6)(b)$ exceeds the amount	
		referred to in subsection $(6)(a)$ ; or	
		(b) the amount referred to in subsec-	20
		tion $(7)(b)$ exceeds the amount	
		referred to in subsection $(7)(a)$ ,	
		the amount of the excess shall be refund-	
		able to the vendor by the Commissioner in	25
		respect of the changeover period as provided in [section 44(1)] Chapter 13 of the	25
		Tax Administration Act, read with section	
		16(5).".	
		Amendment of section 16	
		115. Section 16 of the Value-Added Tax	
		Act, 1991, is hereby amended—	
		(a) by the substitution for the proviso to	30
		subsection (2) of the following pro-	
		viso:	
		"Provided that where a tax invoice	
		or debit note or credit note in relation to that supply has been	35
		provided in accordance with this	33
		Act, or a bill of entry or other	
		document has been delivered in	
		accordance with the Customs and	
		Excise Act, as the case may be, the	40
		Commissioner may determine that	
		no deduction for input tax in rela-	
		tion to that supply or importation	
		shall be made unless that tax in-	
		voice or debit note or credit note or	45
		that bill of entry or other document	
		is retained in accordance with the	
		provisions of section 55[(3)] and	
		Part A of Chapter 4 of the Tax Administration Act."; and	50
		Administration Act., and	50

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		(b) by the substitution for subsection (5)	
		of the following subsection:	
		"(5) If, in relation to any tax	
		period of any vendor, the aggregate	
		of the amounts that may be de-	5
		ducted under subsection (3) from	
		the sum referred to in that subsec-	
		tion, the amount (if any) refundable	
		to the vendor under section 15(8),	
		[the amount (if any) brought	10
		forward from the tax period pre-	
		ceding the first-mentioned tax	
		period as provided in paragraph	
		(ii) of the proviso to section 44(1)	
		and the amount (if any) credited	15
		under section 44(4) to the ven-	
		dor's account during the first-	
		mentioned tax period] and any	
		other amount refundable under	
		Chapter 13 of the Tax Administra-	20
		tion 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 provided in [sec-	25
		tion 44(1)] Chapter 13 of the Tax	
		Administration Act.".	
		Amendment of section 17	
		<b>116.</b> Section 17 of the Value-Added Tax	
		Act, 1991, is hereby amended—	
		(a) by the substitution for the words	
		preceding the proviso to subsection	30
		(1) of the following words:	
		"Where goods or services are	
		acquired or imported by a vendor	
		partly for consumption, use or sup-	
		ply (hereinafter referred to as the	35
		intended use) in the course of mak-	
		ing taxable supplies and partly for	
		another intended use, the extent to	
		which any tax which has become	
		payable in respect of the supply to	40
		the vendor or the importation by the	
		vendor, as the case may be, of such	
		goods or services or in respect of	
		such goods under section 7(3) or any	
		amount determined in accordance	45
		with paragraph (b) or (c) of the	
		definition of 'input tax' in section 1,	
		is input tax, shall be an amount	
		which bears to the full amount of	
		such tax or amount, as the case may	50
		be, the same ratio (as determined by	
		the Commissioner in accordance	
		with a ruling as contemplated in	
		Chapter 7 of the Tax Administration	
		Act or section [41A or] 41B) as the	55
		intended use of such goods or ser-	
		vices in the course of making taxable	
		supplies bears to the total intended	
		use of such goods or services"; and	
	•	,	•

No. and Year	Short Title	Extent of amendment or repeal	
		(b) by the substitution for paragraph (iii)	1
		in subsection (1) of the following	
		paragraph:	
		"(iii) where a method for deter-	
		mining the ratio referred to	5
		in this subsection has been	
		approved by the Commis-	
		sioner, that method may	
		only be changed with effect	
		from a future tax period, or	10
		from such other date as the	
		Commissioner may consider	
		equitable and such other	
		date must fall—	
		$\frac{aac}{(aa)}$ in the case of a vendor	15
		who is a taxpayer as	
		defined in section 1 of	
		the Income Tax Act,	
		within the year of as-	
		sessment as defined in	20
		that Act, or	20
		(bb) in the case of a vendor	
		who is not a taxpayer	
		as defined in section 1	
		of the Income Tax Act,	25
		within the period of	23
		twelve months ending	
		on the last day of Feb-	
		ruary, or if such vendor	
		draws up annual finan-	30
		cial statements in re-	
		spect of a year ending	
		other than on the last	
		day of February, within	
		that year,	35
		during which the application	
		for the aforementioned	
		method was made by the	
		vendor.".	
		Amendment of section 23	
		<b>117.</b> Section 23 of the Value-Added Tax	
		Act, 1991, is hereby amended—	40
		(a) by the substitution in subsection (3)	
		for the words following paragraph (d)	
		of the following words:	
		"(2) Every person who is not a	
		resident of the Republic, and who in	45
		terms of subsection (1) or section	
		50A, becomes liable to be registered	
		[shall not later than 21 days after	
		becoming so liable apply to the	
		Commissioner for registration in	50
L		9	1

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		such form as the Commissioner	
		may direct and provide the Com-	
		missioner with such further par-	
		ticulars and any documentation	
		as the Commissioner may re-	5
		quire in such form for the pur-	
		_	
		pose of registering that person: Provided that where—	
		(i) a person who applies for reg-	
		istration under this subsec-	10
		tion has not provided all par-	
		ticulars and documentation	
		as required by the Commis-	
		sioner, that person shall be	
		deemed not to have applied	15
		for registration until he has	
		provided all such particulars	
		and documentation to the	
		Commissioner;	
		(ii) such person is not a resident	20
		of the Republic, such person]	
		in accordance with Chapter 3	
		of the Tax Administration Act,	
		shall be deemed not to have	
		applied for registration, in ad-	25
		dition to section 22(4) of the	
		Tax Administration Act, until	
		[he] such person has—	
		[(aa)](a) appointed a repre-	
		sentative vendor as	30
		contemplated in sec-	
		tion <b>[48(1)]</b> 46 in the	
		Republic and fur-	
		nished the Commis-	
		sioner with the par-	35
		ticulars of such re-	
		presentative vendor;	
		$[(bb)]\underline{(b)}$ opened a banking ac-	
		count with any bank,	
		mutual bank or other	40
		similar institution,	
		registered in terms of	
		the Banks Act, 1990	
		(Act No. 94 of	
		1990), for the pur-	45
		poses of his enter-	
		prise carried on in	
		the Republic and fur-	
		_	
		nished the Commis-	
		sioner with the par-	50
		ticulars of such	
		banking account.";	
		(b) by the substitution for subsection (2)	
		of the following subsection:	
		"may apply to the Commissioner	55
1		maj appij to the commissioner	1

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		for registration [in such form as	
		the Commissioner may direct	
		and provide the Commissioner	
		with such further particulars and	_
		any documentation as the Com-	5
		missioner may require in such	
		form for the purpose of register-	
		ing that person]."; and	
		(c) by the substitution in subsection (4)	
		1	10
		following paragraphs:	
		"(a) applied for registration in ac-	
		cordance with Chapter 3 of	
		the Tax Administration Act or	
		( ) ( ) ( )	15
		Commissioner is satisfied	
		that that person is eligible to	
		be registered in terms of this	
		Act, that person shall be a	20
		I I I	20
		this Act with effect from such	
		date as the Commissioner	
		may determine; or	
		(b) not applied for registration in	o =
			25
		Chapter 3 of the Tax Admin-	
		istration Act and the Com-	
		missioner is satisfied that that	
		person is liable to be regis-	20
			30
		person shall be a vendor for	
		the purposes of this Act with	
		effect from the date on which	
		that person first became liable	25
		to be registered in terms of this Act: Provided that the	35
		Commissioner may, having	
		regard to the circumstances of the case, determine that	
			40
		such later date as the Com-	40
		missioner may consider equit-	
		able".	
		Amendment of section 25	
		118. Section 25 of the Value-Added Tax	
		Act, 1991, is hereby amended—	4.5
			45
		preceding paragraph (a) of the fol-	
		lowing words:	
		"[Subject to this Act] In addition	
		to any requirement under the Tax	50
			50
		shall within 21 days [and in such	
		form as the Commissioner may	
		<b>prescribe</b> ] notify the Commis-	
		sioner in writing of—";	

of the following paragraph:  "(a) any change in the [name, address,] constitution or nature of the principal enterprise or enterprises of that vendor;";  (c) by the deletion of paragraph (f); (d) by the addition after paragraph (g) of the following paragraph:  "(h) any changes in the majority ownership of any company"; and  (e) by the deletion of the proviso.  Substitution of section 26  119. The Value-Added Tax Act, 1991, is hereby amended by the substitution for section 26 of the following section:  "Liabilities not affected by person ceasing to be vendor  26. The obligations and liabilities under this Act or the Tax Administration Act of any person in respect of anything done, or omitted to be done, by that person while that person is a vendor shall not be affected by the fact that that person ceases to be a vendor, or by the fact that, being registered as a vendor, the Commissioner cancels that person's registration as a vendor."  Amendment of section 27  120. Section 27 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (6) of the following subsection:  "(6) The tax periods applicable under this Act to any vendor shall be the tax periods applicable to the Category within which the vendor falls as contemplated in this section: Provided that—  (i) the first such period shall commence on the commencement date or, where any person becomes a vendor on a later date, such later date;  (ii) any tax period ending on the last day of a month, as applicable in respect of the relevant Category, may, instead of ending on such last	No. and Year	Short Title	Extent of amendment or repeal	
"(a) any change in the [name, address,] constitution or nature of the principal enterprise or enterprises of that vendor,";  (c) by the deletion of paragraph (f); (d) by the addition after paragraph (g) of the following paragraph:  "(h) any changes in the majority ownership of any company"; and  (e) by the deletion of the proviso.  Substitution of section 26  119. The Value-Added Tax Act, 1991, is hereby amended by the substitution of section:  "Liabilities not affected by person ceasing to be vendor  26. The obligations and liabilities under this Act or the Tax Administration Act of any person in respect of anything done, or omitted to be done, by that person while that person is a vendor, and that that person ceases to be a vendor, or by the fact that that person ceases to be a vendor, or by the fact that, being registered as a vendor, the Commissioner cancels that person's registration as a vendor."  Amendment of section 27  120. Section 27 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (6) of the following subsection:  "(6) The tax periods applicable under this Act to any vendor shall be the substitution for subsection for or subsection for the following subsection:  "(6) The tax periods applicable under this Act to any vendor shall be that person applicable in the category within which the vendor falls as contemplated in this section: Provided that—  (i) the first such period shall commence on the commencement date or, where any person becomes a vendor on a later date, such later date;  (ii) any tax period ending on the last day of a month, as applicable in respect of the relevant Category, may, instead of ending on such last day of a month, as applicable in respect of the relevant Category, may, instead of ending on such last			(b) by the substitution for paragraph (a)	
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templated in this section: Provided that—  (i) the first such period shall commence on the commencement date or, where any person becomes a vendor on a later date, such later date;  (ii) any tax period ending on the last day of a month, as applicable in respect of the relevant Category, may, instead of ending on such last				
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respect of the relevant Category, may, instead of ending on such last				45
may, instead of ending on such last			_ = =	
day, end on a fixed day approved				
by the Commissioner, which day 50				50
shall fall within 10 days before or			shall fall within 10 days before or	

No. and Year	Short Title	Extent of amendment or repeal	
		after such last day: Provided that	
		the future tax period so approved	
		by the Commissioner must be	
		used by the vendor for a minimum	
		period of 12 months commencing	5
		from the tax period the change is	
		made;	
		(iii) the first day of any tax period of	
		the vendor subsequent to the ven-	1.0
		dor's first tax period shall be the	10
		first day following	
		(a) the last day of the vendor's preceding tax period; or	
		(b) the fixed day as approved by	
		the Commissioner in terms of	15
		paragraph (ii).".	13
		Amendment of section 28	
		121. Section 28 of the Value-Added	
		Tax Act, 1991, is hereby amended—	
		(a) by the deletion in subsection (1) of	
		paragraph (i) of the proviso;	
		(b) by the substitution in subsection (1)	20
		for paragraph (iii) of the proviso of	
		the following paragraph:	
		"(iii) a vendor registered with the	
		Commissioner to submit re-	
		turns [and payments] elec-	25
		tronically [(other than by	
		means of a debit order), must	
		furnish the return] is deemed	
		to have made payment within	20
		the period contemplated in	30
		subsection (1) [and make] if	
		the vendor makes full payment	
		of the amount of tax within the	
		period ending on the last business day of the month during	35
		which that twenty-fifth day	33
		falls;	
		(c) by the deletion in subsection (1) of	
		paragraphs (iv) and (v) of the proviso;	
		and	40
		(d) by the deletion of subsections (3), (4),	
		(5), (6), (7), (8) and (9).	
		Amendment of section 29	
		<b>122.</b> Section 29 of the Value-Added	
		Tax Act, 1991, is hereby amended by the	
		substitution in paragraph (a) for the words	
		preceding subparagraph (i) of the follow-	45
		ing words:	
		"furnish the Commissioner with a re-	
		turn [(in such form as the Commissioner may prescribe)] reflecting—".	
		Repeal of section 30	
		<b>123.</b> Section 30 of the Value-Added	
		Tax Act, 1991, is hereby repealed.	50
		Tan Tier, 1771, is hereby repeated.	] 50

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 31	
		<b>124.</b> Section 31 of the Value-Added	
		Tax Act, 1991, is hereby amended—	
		(a) by the substitution for subsection (1)	
		of the following subsection:	
		"(1) [Where]The Commission-	5
		er may make an assessment of the	
		amount of tax payable by—	
		[(a) any person fails to furnish	
		any return as required by	
			10
		furnish any declaration as	
		required by section 14; or	
		(b) the Commissioner is not sat-	
		isfied with any return or	
			15
		son is required to furnish	10
		under a section referred to	
		in paragraph (a); or	
		(c) the Commissioner has rea-	
		` '	20
		son to believe that any per-	20
		payment of any amount of	
		tax but has not paid such	
		amount; or]	
		, -	25
		vendor, that supplies goods or	23
		services and represents that	
		tax is charged on that supply;	
		or	
			30
		goods or services and such	50
		supply is not a taxable supply	
		or such supply is a taxable	
		supply in respect of which tax	
		11.7	35
		per cent, and in either case	33
		_	
		that vendor represents that tax is charged on such supply at a	
		rate in excess of zero per cent;	40
		U) 1 1	40
		out as a person entitled to a	
		refund or who produces, fur-	
		nishes, authorises, or makes	
		use of any tax invoice or	15
			45
		has obtained any undue tax	
		benefit or refund under the	
		provisions of an export incen-	
		tive scheme referred to in	<b>.</b> -
		1 0 1 1	50
		of "exported" in section 1, to	
		which such person is not en-	
		titled[,	

No. and Year	Short Title	Extent of amendment or repeal	
		the Commissioner may, not- withstanding the provisions of	
		section 32 (5) of this Act and	
		section 83 (18) and 83A (12) of	_
		the Income Tax Act, make an assessment of the amount of tax	5
		payable by the person liable for	
		the payment of such amount of	
		tax, and the amount of tax so	
		assessed shall be paid by the	10
		person concerned to the Com-	
		missioner]."; (b) by the deletion in subsection (2) of	
		paragraph (a);	
		(c) by the deletion of subsection (3);	15
		(d) by the substitution for the words that	
		precede paragraph (a) in subsection	
		(4) of the following words:	
		"The Commissioner [shall give the person concerned a written	20
		notice of such assessment, stating	20
		the amount upon which tax is	
		payable, the amount of tax pay-	
		able, the amount of any addi-	
		tional tax payable in terms of	25
		section 60 and the tax period (if any) in relation to which the	
		assessment is made] must give a	
		notice of assessment, and—"; and	
		(e) by the deletion of subsections (5) and	30
		(5A).	
		Repeal of sections 31A and 31B	
		<b>125.</b> Sections 31A and 31B of the	
		Value-Added Tax Act, 1991, are hereby repealed.	
		Amendment of section 32	
		<b>126.</b> Section 32 of the Value Added Tax	
		Act, 1991, is hereby amended—	
		(a) by the substitution for the heading of	35
		the following heading:	
		"Objections to certain decisions	
		[or assessments]"; (b) by the substitution for subsection (1)	
		of the following subsection:	40
		"(1) [Any person who is dissat-	
		isfied with—]The following deci-	
		sions of the Commissioner are	
		subject to objection and appeal:	1.5
		(a) any decision given in writing by the Commissioner—	45
		(i) in terms of section 23(7)	
		notifying that person of the	
		Commissioner's refusal to	
		register that person in	50
		terms of this Act; [or]	

No. and Year	Short Title	Extent of amendment or repeal	
		(ii) in terms of section 24(6) or (7) notifying that person of the Commission-	
		er's decision to cancel any registration of that person in terms of this	5
		Act or of the Commissioner's refusal to cancel	
		such registration; or	10
		[(iii) in terms of section 44(8) of the Commissioner's	10
		refusal to make a re-	ĺ
		fund; or]	İ
		(iv) refusing to approve a	ĺ
		method for determining	15
		the ratio contemplated in	İ
		section 17(1); or [(v) in terms of section 43(5)	İ
		and (6) notifying a mem-	İ
		ber, shareholder or	20
		trustee of a vendor that	
		he is required to provide	İ
		surety in respect of the	İ
		vendor's liability for tax	İ
		from time to time; or	25
		(vi) refusing to remit, in	İ
		whole or in part, any interest or penalty in	İ
		terms of section 39(7); or	İ
		(b) any assessment made upon	30
		him under the provisions of section 31, 60 or 61; or]	
		(c) any [direction or supplemen-	İ
		tary direction] decision made	İ
		by the Commissioner and	35
		served on that person in terms	
		of section 50A(3) or (4)[, may lodge an objection thereto with	İ
		the Commissioner]."; and	İ
		(c) by the deletion of subsections (2), (2A), (3), (4) and (5).	40
			ĺ
		Repeal of sections 33 to 37	ĺ
		<b>127.</b> Sections 33, 33A, 34, 35, 36 and 37 of the Value-Added Tax Act, 1991, are	
		hereby repealed.	ĺ
		Amendment of section 39	ĺ
		<b>128.</b> Section 39 of the Value Added Tax Act, 1991, is hereby amended—	ĺ
		(a) by the substitution for the heading of	45
		the following heading:	43
		"Penalty [and interest] for failure	İ
		to pay tax when due";	
		(b) by the substitution for subsection (1)	
		of the following subsection:	50
		"(1) [(a)] If any person who is	ĺ
		liable for the payment of tax and is	
		'	1

No. and Year	Short Title	Extent of amendment or repeal	
		required to make such payment [in	
		the manner prescribed in] in ac-	
		cordance with the provisions of	
		section 14, 28(1) or 29, fails to pay	
		any amount of such tax within the	5
		period for the payment of such tax	
		specified in the said [provision he	
		shall] provisions, the Commis-	
		sioner must, in [addition to such	
			10
		amount of tax, pay] accordance	10
		with Chapter 15 of the Tax Admin-	
		istration Act, impose[—	
		(i) Ja penalty equal to 10 per cent	
		of the said amount of tax[; and	
		(ii) where payment of the said	15
		amount of tax is made on or	
		after the first day of the	
		month following the month	
		during which the period al-	
		lowed for payment of the tax	20
		ended, interest on the said	
		amount of tax, calculated at	
		the prescribed rate (but sub-	
		ject to the provisions of sec-	
		tion 45A) for each month or	25
		part of a month in the period	
		reckoned from the said first	
		day.	
		(b) Where any amount of tax	
		has in relation to any tax period	30
		of any vendor been refunded to	
		the vendor in terms of the provi-	
		sions of section 44(1), read with	
		section 16(5), or has in relation to	
		that period been set off against	35
		unpaid tax in terms of the provi-	
		sions of section 44(6), and such	
		amount was in whole or in part	
		not properly refundable to the	
		vendor under section 16(5), so	40
		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 to be paid by the vendor	45
		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].";	50
		(c) by the deletion of subsection (2);	
		(d) by the substitution for subsection (4)	
		of the following subsection:	
		"(4) Where any importer of	
		goods which are required to be	55
		entered under the Customs and	

No. and Year	Short Title	Extent of amendment or repeal
		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 con-
		sumption 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 [shall, in addition to
		such amount of tax pay—
		(a)] a penalty equal to 10 per cent
		of the said amount of tax[; and
		(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 al-
		lowed for payment of the tax
		ended, interest on the said
		amount of tax, calculated at
		the prescribed rate (but sub-
		ject to the provisions of sec-
		tion 45A) for each month or
		part of a month in the period
		reckoned from the said first
		day].";
		(e) by the substitution for subsection (5)
		1
		"(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 Commis-
		sioner must, in accordance with
		Chapter 15 of the Tax Administra-
		tion Act, impose on that person
		[shall, in addition to such amount
		of tax, pay—
		(a)] a penalty equal to 10 per cent
		of the said amount of tax[;
		and
		(b) where payment of the said
		amount of tax is made on or
		after the first day of the
		month following the month

No. and Year	Short Title	Extent of amendment or repeal	
		during which the period allowed for payment of the tax ended, interest on that	
		amount of tax, calculated at the prescribed rate (but sub-	5
		ject to the provisions of	
		section 45A) for each month	
		or part of a month in the	
		period reckoned from the	10
		said first day]."; and (f) by the deletion of subsections (6),	10
		(6A), (7) and (8).	
		Repeal of section 40	
		129. Section 40 of the Value-Added	
		Tax Act, 1991, is hereby repealed.	
		Repeal of section 41A	
		130. Section 41A of the Value-Added	
		Tax Act, 1991, is hereby repealed.	
		Amendment of section 41B	
		<b>131.</b> Section 41B of the Value-Added	
			15
		substitution for subsection (1) of the	
		following subsection:	
		"(1) The Commissioner may issue a	
		VAT class ruling or a VAT ruling and in applying the provisions [relating to	20
		Part IA of Chapter III of the Income	20
		Tax Act] of Chapter 7 of the Tax	
		Administration Act, a VAT class ruling or a VAT ruling must be dealt with as if	
			25
		binding private ruling, respectively: Provided that—	
		(i) the provisions of <b>[subsections</b> ]	
		(2)(k), $(2)(l)$ and $(5)$ of section 76E and section 76F of the In-	30
		<b>come Tax Act</b> ] section $79(4)(f)$ and	
		(k) and (6) of the Tax Administra-	
		tion Act shall not apply to any VAT	
		class ruling or VAT ruling;	
			35
		or a VAT ruling in terms of this section shall not be accepted by the	
		Commissioner if the application—	
		(aa) is for an advance tax ruling	
			40
		terms of [section 41A] Chap-	
		ter 7 of the Tax Administration	
		Act; and	
		(bb) falls within a category of rul-	45
		ings prescribed by the Minister by regulation for which appli-	43
		cations for rulings in terms of	
		this section may not be ac-	
		cepted.".	

No. and Year	<b>Short Title</b>	Extent of amendment or repeal	İ
		Repeal of sections 42 and 43	
		132. Sections 42 and 43 of the Value-	ĺ
		Added Tax Act, 1991, are hereby re-	İ
		pealed.	İ
		Amendment of section 44	İ
		133. Section 44 of the Value-Added Tax Act, 1991, is hereby amended—	
		(a) by the deletion of subsections (1) and (2);	5
		(b) by the substitution in subsection (3) for the words preceding paragraph (a)	
		of the following words: "The Commissioner shall not	10
		make a refund under [subsection (2)] Chapter 13 of the Tax Admin-	
		istration Act unless—"; (c) by the deletion in subsection (3) of	1.5
		paragraphs (a) and (b); (d) by the deletion of subsections (4), (5) and (6);	15
		(e) by the substitution for subsection (7) of the following subsection:	
		"(7) Where the vendor has failed to furnish a return for any tax period	20
		as required by this Act, the Commissioner may withhold payment	
		of any amount refundable to the vendor under [subsection (1) or any amount of interest payable to	25
		the vendor in terms of section 45] section 190 of the Tax Administra-	
		tion Act, until the vendor has furnished such return as so required.";	30
		<ul><li>(f) by the deletion of subsection (8); and</li><li>(g) by the addition after subsection (9) of</li></ul>	
		the following subsection:  "(10) The amount determined	
		under section 191(3) of the Tax Administration Act must be accounted for as provided in section	35
		16(5), but any refundable amount (irrespective of the quantum	
		thereof) is refundable in full to a vendor in respect of its final tax	40
		period on the cancellation of its registration as a vendor.".	
		Substitution of section 45	
		<b>134.</b> The Value-Added Tax Act, 1991, is	İ
		hereby amended by the substitution for	
		section 45 of the following section:	45
		"Interest on delayed refunds	ĺ
		45. (1) Where the Commissioner	ĺ
		does not within the period of 21 busi-	ĺ
		ness days after the date on which the	
		vendor's return in respect of a tax	50

No. and Year	<b>Short Title</b>	Extent of amendment or repeal
		period is received by a SARS office
		refund any amount refundable under
		the Tax Administration Act, interest
		will be paid on such amount in accord-
		ance with Chapter 12 of that Act.
		(2) Despite the provisions of Chapter
		12 of the Tax Administration Act, if a
		person fails to—
		(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 Admin-
		istration Act; or
		(b) furnish SARS in writing with par-
		ticulars of the account required in
		terms of section 44(3)(d) to enable
		SARS to transfer a refund to that
		account,
		no interest accrues on the amount
		refundable for the period from the date
		<u>that—</u>
		(i) in respect of subparagraph (a), the
		relevant material was required to
		be submitted; or
		(ii) in respect of subparagraph (b), the
		refund is authorised,
		until the date that the person submits
		the relevant material or bank account
		particulars.".
		Repeal of section 45A
		135. Section 45A of the Value-Added
		Tax Act, 1991, is hereby repealed.
		Amendment of section 46
		<b>136.</b> Section 46 of the Value-Added
		Tax Act, 1991, is hereby amended—
		(a) by the substitution for the words
		(a) by the substitution for the words
		preceding paragraph (a) of the fol-
		preceding paragraph (a) of the following words:
		preceding paragraph (a) of the following words:  "The natural person who [is a
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a)
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a) of the following paragraph:
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a) of the following paragraph:  "(a) on any company shall be the
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a) of the following paragraph:  "(a) on any company shall be the public officer thereof [con-
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a) of the following paragraph:  "(a) on any company shall be the public officer thereof [contemplated in section 101 of
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a) of the following paragraph:  "(a) on any company shall be the public officer thereof [contemplated in section 101 of the Income Tax Act] or, in
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a) of the following paragraph:  "(a) on any company shall be the public officer thereof [contemplated in section 101 of
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a) of the following paragraph:  "(a) on any company shall be the public officer thereof [contemplated in section 101 of the Income Tax Act] or, in
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a) of the following paragraph:  "(a) on any company shall be the public officer thereof [contemplated in section 101 of the Income Tax Act] or, in the case of any company which is placed in liquida-
		preceding paragraph (a) of the following words:  "The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—";  (b) by the substitution for paragraph (a) of the following paragraph:  "(a) on any company shall be the public officer thereof [contemplated in section 101 of the Income Tax Act] or, in the case of any company

Short Title	Extent of amendment or repeal	
	Repeal of sections 47, 48 and 49	ĺ
	<b>137.</b> Sections 47, 48 and 49 of the	İ
	Value-Added Tax Act, 1991, are hereby	ĺ
	repealed.	İ
	Amendment of section 50	İ
	<b>138.</b> Section 50 of the Value-Added	ĺ
		ĺ
		5
	following subsection:	ĺ
	"(6) Notwithstanding the preceding	İ
	provisions of this section, any [direc-	ĺ
	tion] decision or determination of the	ĺ
	Commissioner made under section 15	10
	or 27 in respect of the vendor referred	ĺ
	to in subsection (1) of this section shall,	ĺ
	for the purposes of this Act, apply	ĺ
	equally to each separate enterprise,	
	branch or division of the vendor which	15
	is separately registered under this sec-	ĺ
	tion: Provided that where a [direction]	
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	from the date of the <b>[direction]</b>	45
1	me and of the [allection]	1 .5
	decision or, if the [direction] deci-	1
	<u>decision</u> or, if the [direction] <u>decision</u> so provides, from such date as	
	Short Title	Repeal of sections 47, 48 and 49  137. Sections 47, 48 and 49 of the Value-Added Tax Act, 1991, are hereby repealed.  Amendment of section 50  138. Section 50 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (6) of the following subsection:  "(6) Notwithstanding the preceding provisions of this section, any [direction] decision or determination of the Commissioner made under section 15 or 27 in respect of the vendor referred to in subsection (1) of this section shall, for the purposes of this Act, apply equally to each separate enterprise, branch or division of the vendor which is separately registered under this section: Provided that where a [direction] decision or determination is made by the Commissioner under subsection (2) of section 27 which applies in respect of any such separate enterprise, branch or division, this subsection shall not be construed as preventing the Commissioner from making a separate [direction] decision or determination under subsection (4) of the said section in the circumstances contemplated in that subsection in respect of any other separate enterprise, branch or division of the said vendor."  Amendment of section 50A  139. Section 50A of the Value-Added Tax Act, 1991, is hereby amended—  (a) by the substitution for subsection (1) of the following subsection:  "(1) Notwithstanding the provisions of section 23, if the Commissioner makes a [direction] decision shall be deemed to be a single person carrying on the activities of an enterprise described in the [direction] decision and that person shall be liable to be registered in terms of section 23 with effect

No. and Year	Short Title	Extent of amendment or repeal	
		(b) by the substitution in subsection (2) for the words preceding paragraph (a)	
		of the following words: "The Commissioner shall not	
		make a [direction] decision under this section naming any person unless he is satisfied—	-
		(a) that such person is making or has made taxable supplies; and	1/
		of which he makes or made those taxable supplies form	1(
		only part of certain activities which should properly be re- garded as those of the enter-	1.5
		prise described in the [direction] decision, the other activities of that enterprise be-	
		ing carried on at that time or previously by one or more	20
		other persons; and"; (c) by the substitution for subsection (3) of the following subsection:	
		served on each of the persons	2:
		named in it.";  (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:  "Where, after a [direction] de-	30
		1	35
		was not named in that [direction] decision is making taxable supplies in the course or furtherance of	
		activities which should properly be regarded as part of the activities of that enterprise, the Commissioner may make and serve on him a	40
		supplementary [direction] decision referring to the earlier [direction] decision and the description of the enterprise specified in it and adding that person's name to those	45
		of the persons named in the earlier [direction] decision with effect from—";	50
		(e) by the substitution for subsections (5) and (6), respectively, of the following subsections:	
		"(5) If, immediately before a [direction] decision (including a	55

No. and Year	Short Title	Extent of amendment or repeal	
		supplementary [direction] decision) is made under this section, any person named in the [direction] decision is registered in respect of the taxable supplies made	5
		by him as contemplated in subsection (2) or (4), he shall cease to be liable to be so registered with effect from—	
		(a) the date with effect from which the single person concerned became liable to be registered; or	10
		(b) the date of the [direction] decision, whichever date is the later.  (6) In relation to an enterprise	15
		specified in a [direction] decision (including a supplementary [direction] decision) under this section, the persons named in such [direction], decision who together are deemed to be the liable person, are	20
		in subsections (7) and (8) referred to as the members.";  (f) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:	25
		"For the purposes of this Act, where a <b>[direction]</b> decision is made under this section—"; and (g) by the substitution for paragraph (a) of subsection (7) of the following	30
		paragraph:  "(a) the person carrying on the enterprise specified in the [direction] decision shall be registrable in such name as the members may jointly	35
		nominate upon compliance with the provisions of section 23(2);".	40
		Amendment of section 55	
		140. Section 55 of the Value-Added Tax Act, 1991, is hereby amended—  (a) by the substitution for the words preceding paragraph (a) of the following words:	45
		"[Every vendor shall keep such books of account (which books of account, where gener-	
		ated by means of a computer, shall be retained in the form of a computer print-out) or other records as may enable him to observe the requirements of this	50

Act and enable the Commissioner to satisfy himself that the vendor has observed such requirements, and] In addition to the records required under Part Aof Chapter 4 of the Tax Administration Act, every vendor [shall] must, in particular, keep the following records and documents—"; and  (b) by the deletion of subsections (2), (3) and (4).  Repeal of sections 57 to 57D  141. Sections 57, 57A, 57B, 57C and 57D of the Value-Added Tax Act, 1991, are hereby repealed.  Amendment of section 58  142. Section 58 of the Value-Added Tax Act, 1991, is hereby amended— (a) by the substitution for the words preceding paragraph (a) of the following words:  "Any person who wilfully and without just cause—"; (b) by the deletion of paragraphs (a), (b) and (c); (c) by the substitution for paragraph (d) of the following paragraph:  "(d) fails to comply with the provisions of section 14, [or section] 28(1) or (2) or [section] 28(1) or (2) or [section] 28(1) or (2) or [section] 29 [or section] 29 [or section] 29 [or section] 29 [or section] 29 [or section] 20 [or section] 29 [or section] 20 [or section] 29 [or section] 20 [or "; (d) by the deletion of paragraph (b) (or subparagraphs (ii) and (iii) of the following subparagraphs;  "(ii) [knowingly and without lawful excuse (the burden of proof of which shall be upon him)] includes in or adds to the price or amount charged to the recipient in relation to such supply any tax, where in fact no tax is payable in terms of this Act; or  (iii) [knowingly and without lawful excuse (the burden of proof of which shall be upon him)] includes in or adds to the price or amount charged to the recipient in relation to such supply any tax in excess of the tax properly leviable under this Act; trespect of the value of such supply; or ";  50	No. and Year	<b>Short Title</b>	Extent of amendment or repeal	
vendor has observed such requirements, and] In addition to the records required under Part A of Chapter 4 of the Tax Administration Act, every vendor [shall] must. in particular, keep the following records and documents—"; and (b) by the deletion of subsections (2), (3) and (4).  Repeal of sections 57 to 57D  141. Sections 57, 57A, 57B, 57C and 57D of the Value-Added Tax Act, 1991, are hereby repealed.  Amendment of section 58  142. Section 58 of the Value-Added Tax Act, 1991, is hereby amended— (a) by the substitution for the words preceding paragraph (a) of the following words:  "Any person who wilfully and without just cause—"; (b) by the deletion of paragraphs (a), (b) and (c); (c) by the substitution for paragraph (d) of the following paragraph:  "(d) fails to comply with the provisions of section 14, [or section] 28(1) or (2) or [section] 29 [or section 30]; or"; (d) by the deletion of paragraphs (i) for subparagraphs (ii) and (iii) of the following subparagraphs:  "(ii) [knowingly and without lawful excuse (the burden of proof of which shall be upon him)] includes in or adds to the price or amount charged to the recipient in relation to such supply any tax, where in fact no tax is payable in terms of this Act; or  (iii) [knowingly and without lawful excuse (the burden of proof of which shall be upon him)] includes in or adds to the price or amount charged to the recipient in relation to such supply any tax, where in fact no tax is payable in terms of this Act; or  (iii) [knowingly and without lawful excuse (the burden of proof of which shall be upon him)] includes in or adds to the price or amount charged to the recipient in relation to such supply any tax in excess of the tax properly leviable under this Act in respect of the value of				
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Tax Act, 1991, is hereby amended—  (a) by the substitution for the words preceding paragraph (a) of the following words:  "Any person who wilfully and without just cause—";  (b) by the deletion of paragraphs (a), (b) and (c);  (c) by the substitution for paragraph (d) of the following paragraph:  "(d) fails to comply with the provisions of section 14, [or section] 28(1) or (2) or [section] 28(1) or (2) or [section] 29 [or section] 79 [or section] 29 [or section] 90 [or section] 90 [or sect				
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supply any tax in excess of the tax properly leviable under this Act in respect of the value of			_	
Act in respect of the value of			_	
Act in respect of the value of				
such supply; or"; 50				
			such supply; or";	50

No. and Year	Short Title	Extent of amendment or repeal	1
		(f) by the substitution for paragraph (k)	
		of the following paragraph:	
		"(k) [knowingly and without	
		lawful excuse (the burden	
		of proof of which shall be	5
		<b>upon him</b> )] fails to comply	
		with the provisions of para-	
		graph (i) of the proviso to	
		section 20(1) or paragraph	
		(A) of the proviso to section	10
		21(3); or"; and	
		(g) by the deletion of paragraphs $(l)$ , $(n)$ ,	
		(o), (p) and (q).	
		Repeal of sections 59 and 60	
		143. Sections 59 and 60 of the Value-	
		Added Tax Act, 1991, are herey repealed.	
		Amendment of section 61	
		<b>144.</b> Section 61 of the Value-Added	
		Tax Act, 1991, is hereby amended—	15
		(a) by the substitution for subsection (1)	
		of the following subsection:	
		"(1) Where in respect of any	
		supply made by a vendor, the vendor	20
		has, in consequence of any fraudu-	20
		lent action or any misrepresentation	
		by the recipient of the supply, incor-	
		rectly applied a rate of zero per cent or treated such supply as being	
		exempt from tax, the Commissioner	25
		may, notwithstanding anything to	23
		the contrary contained in this Act,	
		raise an assessment upon the recipi-	
		ent for the amount of tax payable,	
		together with any interest and pen-	30
		alty [or interest that has become	
		payable in terms of section 39] that	
		has become payable in terms of	
		Chapter 12, 15 or 16 of the Tax	
		Administration Act, as the case may	35
		<u>be</u> , in respect of such amount[, and,	
		in raising such assessment, the	
		Commissioner may estimate the	
		amount on which the tax is pay-	
		able]."; and	40
		(b) by the deletion of subsection (2).	
		<b>Repeal of sections 62, 63, 70 and 71 145.</b> Sections 62, 63, 70 and 71 of the	
		Value-Added Tax Act, 1991, are hereby	
		repealed.	
		Amendment of section 72	
		<b>146.</b> The Value-Added Tax Act, 1991, is hereby amended by the substitution for	
		hereby amended by the substitution for section 72 of the following section:	45
		section 72 of the following section.	+3

No. and Year	Short Title	Extent of amendment or repeal	
		"Arrangements and [directions] decisions to overcome difficulties, anomalies or incongruities	
		72. If in any case the Commissioner is satisfied that in consequence of the manner in which any vendor or class of vendors conducts his, her or their busi-	5
		ness, trade or occupation, difficulties, anomalies or incongruities have arisen or may arise in regard to the application of any of the provisions of this Act, the	10
		Commissioner may make an arrangement or [give a direction] decision as to—  (a) the manner in which such provisions shall be applied; or	15
		(b) the calculation or payment of tax or the application of any rate of zero per cent or any exemption from tax provided in this Act,	20
		in the case of such vendor or class of vendors or any person transacting with such vendor or class of vendors as appears to overcome such difficulties,	25
		anomalies or incongruities: Provided that such [direction] decision or arrangement shall not have the effect of	
		substantially reducing or increasing the ultimate liability for tax levied under this Act.".	30
Act No. 34 of 1997	South African Revenue Service Act, 1997	Amendment of section 1	
		<b>147.</b> Section 1 of the South African Revenue Service Act, 1997, is hereby amended by the substitution for the definition of "revenue" of the following definition:	35
		"'revenue' means income derived from taxes, duties, levies, fees[, charges, additional tax] and any other moneys imposed in terms of legislation, including penalties and interest in connection with such moneys;".	40
Act No. 9 of 1999	Skills Development Levies Act, 1999	Amendment of section 1	45
	Levies Act, 1999	148. Section 1 of the Skills Development Levies Act, 1999, is hereby amended—  (a) by the substitution for the definition of  "Commissioner" of the following definition:  "'Commissioner' means the  Commissioner for the South African  Revenue Service appointed in	50

No. and Year	Short Title	Extent of amendment or repeal	
		African Revenue Service Act, 1997  (Act No. 34 of 1997), or the Acting Commissioner designated in terms	
		of section 7 of that Act;";	5
		(b) by the insertion after the definition of	
		"Skills Development Act" of the	
		following definition: "'Tax Administration Act'	
		means the Tax Administration Act,	10
		<u>2011</u> ";	
		(c) by the renumbering of section 1 to section 1(1); and	
		(d) by the insertion after subsection (1) of	
		the following subsection:	15
		"(2) Unless the context indicates	
		otherwise, a word or expression to	
		which a meaning has been assigned in the Tax Administration Act,	
		bears that meaning for purposes of	20
		this Act.".	20
		Amendment of section 2	
		<b>149.</b> Section 2 of the Skills Develop-	
		ment Levies Act, 1999, is hereby	
		amended—	
		(a) by the substitution for subsection (2)	2.5
		of the following subsection: "(2) The Commissioner must	25
		administer the provisions of the	
		Act in so far as it relates to the	
		collection of the levy payable to the	
		Commissioner in terms of this Act <sub>2</sub>	30
		in accordance with the provisions	
		of the Tax Administration Act.";	
		and	
		(b) by the insertion after subsection (2) of the following subsection:	35
		"(2A) Administrative require-	
		ments and procedures for purposes	
		of the performance of any duty,	
		power or obligation or the exercise	
		of any right in terms of this Act are,	40
		to the extent not regulated in this	
		Act, regulated by the Tax Administration Act.".	
		Amendment of section 6	
		<b>150.</b> Section 6 of the Skills Develop-	
		ment Levies Act, 1999, is hereby	
		amended—	45
		(a) by the substitution for subsection (1)	
		of the following subsection:	
		"(1) Subject to section 7, every	
		employer must, not later than seven days, or such longer period as the	50
		Commissioner determines, after	30
		Commissioner determines, after	

the end of each month in respect which the levy is payable, pay the levy to the Commissioner [in the manner and] within the periodetermined in this Act."; and	e e
levy to the Commissioner [in the manner and] within the period	e
levy to the Commissioner [in the manner and] within the period	e
manner and] within the period	
<u> </u>	1
ueternined in this Act. : and	4
(b) by the substitution for subsection (	
of the following subsection:	<b>′</b>
"(2) An employer must[, n	<b>.</b>
later than seven days, or such	
longer period as the Commi	
sioner determines, after the en	
of each month in respect of which	
the levy is payable, pay the lev	
to the Commissioner and] t	
gether with [such] payment of the	
levy in terms of subsection ()	2
submit a [statement—	
(a) in such form as the Commi	-
sioner may require; and	
(b) reflecting the amount of the	
levy due by that employ	
and containing such oth	
information as the Commi	-
sioner may require] return.	.
Repeal of section 7A	
<b>151.</b> Section 7A of the Skills Develo	-
ment Levies Act, 1999, is hereby repeale	. 25
Amendment of section 11	1
<b>152.</b> Section 11 of the Skills Develo	_
ment Levies Act, 1999, is herel	
amended—	
(a) by the substitution for subsection (	)
of the following subsection:	<b>′</b>
"(1) If an employer fails to pay	a 30
levy or any portion thereof on the	
last day for payment thereof,	
contemplated in section 6(2)	
7(4), interest is payable on the	
outstanding amount [at the ra	
contemplated paragraph (b)	
the definition of 'prescribed rat	
in section 1 of the Income Tax A	´
calculated from the day following	-
that last day for payment to the	
day that payment is received l	
1	-
the Commissioner, SETA or a	
proved body, as the case may b	
proved body, as the case may be in accordance with the provision	<u>s</u>
proved body, as the case may be in accordance with the provision of Chapter 12 of the Tax Admini	<u>s</u>
proved body, as the case may be in accordance with the provision	<u>s</u>

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 12	
		153. Section 12 of the Skills Development Levies Act, 1999, is hereby	
		amended—  (a) by the substitution for subsection (1)  of the following subsection:  "(1) Subject to subsection (2), if  any levy remains unpaid after the  last day for payment thereof as	
		contemplated in section 6 (2) or 7 (4), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty of 10 per cent of that unpaid amount [is payable in addition to the	10
			1:
		11].";	
		(b) by the substitution for subsection (2) of the following subsection:	
		"(2) The Commissioner or the executive officer of the SETA or	2
		approved body, as the case may be,	
		may[, having due regard to the	
		circumstances of the case,] remit	
		dance with the provisions of Chapter 15 of the Tax Administration  Act."; and  (c) by the deletion of subsections (3), (4)	2.
		Repeal of section 13	
		<b>154.</b> Section 13 of the Skills Development Levies Act, 1999, is hereby repealed.	
		Amendment of section 15	
		"(3) An inspector has the same powers afforded to a senior SARS official, a SARS official or SARS under Chapter 5 of the Tax Administration Act.".	3:
		Repeal of sections 16, 17, 20, 20A and 21	
		<b>156.</b> Sections 16, 17, 20, 20A and 21 of the Skills Development Levies Act, 1999, are hereby repealed.	

No. and Year	Short Title	Extent of amendment or repeal	
Act No. 4 of 2002	Unemployment Insurance Contributions Act, 2002	Amendment of section 1	
		157. Section 1 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—  (a) by the substitution for the definition of "Commissioner" of the following	5
		definition:  "'Commissioner' means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997	10
		(Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act;"; (b) by the insertion after the definition of	15
		"seasonal worker" of the following definition:	20
		"'Tax Administration Act' means the Tax Administration Act, 2011";	
		(c) by the renumbering of section 1 to section 1(1); and (d) by the insertion of the following	25
		subsection after subsection (1):  "(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.".	30
		Amendment of section 3	]
		158. Section 3 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—  (a) by the substitution for subsection (1) of the following subsection:	35

No. and Year	Short Title	Extent of amendment or repeal	
		"(1) This Act must be adminis-	
		tered by the Commissioner, in ac-	
		cordance with the provisions of the	
		Tax Administration Act.";	
		(b) by the insertion after subsection (1) of	5
		the following subsection:	
		"(1A) Administrative require-	
		ments and procedures for purposes	
		of the performance of any duty,	
		power or obligation or the exercise	10
		of any right in terms of this Act are,	10
		to the extent not regulated in this	
		Act, regulated by the Tax Adminis-	
		tration Act."; and	
		(c) by the substitution for subsection (2)	15
			13
		of the following subsection:	
		"(2) [The] In addition to section	
		9 of the Tax Administration Act,	
		and in accordance with section 10	2.
		of that Act, the Commissioner may	20
		delegate any power or assign any	
		duty which relates to the collection	
		of—	
		(a) contributions payable to the	
		Unemployment Insurance	25
		Commissioner in terms of sec-	
		tion 9; and	
		(b) any information to be submit-	
		ted by employers in terms of	
		this Act, to the Unemployment	30
		Insurance Commissioner.".	
		Amendment of section 8	
		<b>159.</b> Section 8 of the Unemployment	
		Insurance Contributions Act, 2002, is	
		hereby amended—	
		(a) by the substitution for subsection (2)	
		of the following subsection:	35
		"(2) An employer must, together	
		with the payment [contemplated]	
		referred to in subsection (1), sub-	
		mit a [statement in such form as	
		the Commissioner may require	40
		and] return reflecting the amount	+0
		of the payment and such other	
		particulars as the Minister may	
		prescribe [by regulation]."; and	
		(b) by the deletion of subsection (3).	45
		Amendment of section 9A	
		<b>160.</b> Section 9A of the Unemployment	
		Insurance Contributions Act, 2002, is	
		hereby amended by the substitution for	
		subsection (1) of the following subsec-	
		tion:	
		"(1) Where any employer who is	50
		required to pay the amount of all	
		The second of the	J

No. and Year	Short Title	Extent of amendment or repeal	
		employees' contributions and the em-	
		ployer's contributions in respect of	
		every employee in the employment of	
		that employer to [the Commissioner in	
		terms of section 8 or to] the Unem-	5
		ployment Insurance Commissioner in	
		terms of section 9—	
		(a) has failed to submit a statement as	
		required in terms of [section 8(2)]	
		or] section 9(2);	10
		(b) has furnished a return as required	
		in terms of [section 8(2A) or]	
		section [9(2A)] 9(2) but the Com-	
		missioner is not satisfied with the	
		return;	15
		(c) has failed to deduct or withhold	
		employees' contributions; or	
		(d) has failed to pay over any contribu-	
		tions deducted or withheld,	
			20
		solved from his or her liabilities in	
		terms of the provisions of this Act, the	
		[Commissioner or the] Unemploy-	
		ment Insurance Commissioner[, as the	
			25
		estimate of the amount of any contribu-	
		tions due in terms of section 6 and issue	
		to the employer a notice of assessment	
		for the unpaid amount.".	
		Amendment of section 10	
		<b>161.</b> Section 10 of the Unemployment	
		1	30
		hereby amended—	
		(a) by the substitution for subsection (1)	
		of the following subsection:	
		"(1) An employer to whom this	
		Act applies must apply for registra-	35
		tion to the Commissioner, in accord-	
		ance with Chapter 3 of the Tax	
		Administration Act, or the Unem-	
		ployment Insurance Commis-	
			40
		to such employer in terms of	
		section 8 or 9,] in such manner and	
		within such period as may be pre-	
		scribed by the [Commissioner or]	
		Unemployment Insurance Com-	45
		missioner[, respectively]."; and	.5
		(b) by the deletion of subsection (2).	
		Repeal of section 12	
		162. Section 12 of the Unemployment	
		Insurance Contributions Act, 2002, is	
		hereby repealed.	

No. and Year	<b>Short Title</b>	Extent of amendment or repeal	
		Amendment of section 13	
		<b>163.</b> Section 13 of the Unemployment	
		Insurance Contributions Act, 2002, is	
		hereby amended—	
		(a) by the substitution for subsection (1)	
		of the following subsection:	5
		"(1) If any contribution remains	
		unpaid after the last day for pay-	
		ment thereof as contemplated in	
		section 8(1) or 9(1), the Commis-	
		sioner must, under Chapter 15 of	10
		the Tax Administration Act, impose	
		a penalty of 10 per cent of the	
		unpaid amount [is payable in ad-	
		dition to the interest contem-	
		plated in section 12,] but the	15
		Commissioner or the Unemploy-	
		ment Insurance Commissioner, as	
		the case may be, may[, having due	
		regard to the circumstances of	
		1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	20
		portion thereof in accordance with	
		the provisions of Chapter 15 of the	
		Tax Administration Act."; and	
		(b) by the deletion of subsections (2), (3)	
		. ,	25
		Repeal of section 14	
		<b>164.</b> Section 14 of the Unemployment	
		Insurance Contributions Act, 2002, is	
		hereby repealed.	
		Amendment of section 15	
		<b>165.</b> Section 15 of the Unemployment	
		Insurance Contributions Act, 2002, is	
		hereby amended by the addition after	
		subsection (1) of the following subsec-	30
		tion:	
		"(2) An inspector has the same pow-	
		ers afforded to a senior SARS official, a	
		SARS official or SARS under Chapter	
		5 of the Tax Administration Act."	35
		Repeal of section 17	
		<b>166.</b> Section 17 of the Unemployment	
		Insurance Contributions Act, 2002, is	
		hereby repealed.	

No. and Year	Short Title	Extent of amendment or repeal	
Act No. 14 of 2007	Diamond Export Levy (Administra- tion) Act, 2007	Amendment of section 1	
		167. Section 1 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended—  (a) by the substitution for the definition of "Commissioner" of the following	5
		definition:  "'Commissioner' means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South	10
		African Revenue Service Act, 1997 (Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act;";  (b) by the insertion after the definition of	15
		"registered person" of the following definition:  "'Tax Administration Act' means the Tax Administration Act,	20
		2011.";  (c) by the renumbering of section 1 to section 1(1); and  (d) by the insertion after subsection (1) of the following subsection:	25
		"(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.".	30
		Amendment of section 7	
		168. Section 7 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended— (a) by the substitution in subsection (1)	35
		for the words preceding paragraph (a) of the following words:  "[Every] In addition to the records required under the Tax	40
		Administration Act, every registered person must retain [records necessary to observe the require-	
		ments of this Act and the Levy Act, including] the following records—"; and (b) by the deletion of subsections (2) and (3).	45

No. and Year	Short Title	Extent of amendment or repeal	
		Repeal of sections 10 to 15	
		<b>169.</b> Sections 10, 11, 12, 13, 14 and 15	
		of the Diamond Export Levy (Adminis-	
		tration) Act, 2007, are hereby repealed.	
		Amendment of section 16	
		<b>170.</b> Section 16 of the Diamond Export	
		Levy (Administration) Act, 2007, is	
		hereby amended—	5
		(a) by the substitution for subsection (1)	
		of the following subsection:	
		"(1) The Commissioner will be	
		responsible for administering this	10
		Act and the Levy Act, in accordance with the provisions of the Tax	10
		Administration Act, together with	
		the assistance of the Regulator as	
		described in subsection (2).";	
		(b) by the insertion after subsection (1) of	15
		the following subsection:	
		"(1A) Administrative require-	
		ments and procedures for purposes	
		of the performance of any duty,	
		power or obligation or the exercise	20
		of any right in terms of this Act are,	
		to the extent not regulated in this	
		Act, regulated by the Tax Adminis-	
		tration Act."; and	25
		(c) by the deletion of subsection (3).	25
		Repeal of section 17	
		171. Section 17 of the Diamond Export	
		Levy (Administration) Act, 2007, is hereby repealed.	
Act No. 26 of 2007	Securities Transfer	* *	
Act 110. 20 01 2007	Tax Administration	Amendment of section 1	
	Act, 2007		30
		<b>172.</b> Section 1 of the Securities Trans-	
		fer Tax Administration Act, 2007, is	
		hereby amended—	
		(a) by the substitution for subsection (1)	
		of the following subsection:	
		"(1) The Commissioner must ad-	35
		minister this Act and the Securities	
		Transfer Tax Act, 2007, in accord-	
		ance with the provisions of the Tax	
		Administration Act, 2011.";	

No. and Year	Short Title	Extent of amendment or repeal	
		(b) by the insertion after subsection (1) of	İ
		the following subsection:	
		"(1A) Administrative require-	
		ments and procedures for purposes	
		of the performance of any duty,	5
		power or obligation or the exercise	
		of any right in terms of this Act are,	
		to the extent not regulated in this	
		Act, regulated by the Tax Adminis-	
		tration Act, 2011.";	10
		(c) by the substitution for subsection (2)	
		of the following subsection:	
		"(2) Unless the context indicates	
		otherwise, a word or expression to	1.5
		which a meaning has been assigned	15
		in the Tax Administration Act,	
		2011, and any word or expression	
		to which a meaning has been as-	
		signed in the Securities Transfer	20
		Tax Act, 2007, bears the meaning	20
		so assigned for the purposes of this Act."; and	
		(d) by the deletion of subsection (3).	
		Amendment of section 3	İ
			İ
		173. Section 3 of the Securities Transfer	
		Tax Administration Act, 2007, is hereby	25
		amended by the deletion of subsection (4) thereof.	25
		Amendment of section 4	
		174. Section 4 of the Securities Trans-	İ
		fer Tax Administration Act, 2007, is	
		hereby amended—	
		(a) by the substitution for subsection (1)	İ
		of the following subsection:	30
		"(1) The Commissioner must	
		refund the amount of any overpay-	
		ment of tax or of any interest or	
		penalty properly chargeable in re-	
		spect of the transfer of any security,	35
		[if application for the refund is	
		made within two years after the	
		date of that overpayment] in ac-	
		cordance with sections 190 and 191	
		of the Tax Administration Act,	40
		<u>2011</u> ."; and	
		(b) by the deletion of subsections (2) and	
		(4).	
		Repeal of sections 5, 6 and 7	
		175. Sections 5, 6 and 7 of the Securi-	
		ties Transfer Tax Administration Act,	4.7
		2007, are hereby repealed.	45

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of section 8
		176. The Securities Transfer Tax Admin-
		istration Act, 2007, is hereby amended by
		the substitution for section 8 of the
		following section:
		"8. Interest on overdue payments
		and penalty on default recoverable
		from person to whom security is
		<b>transferred.</b> —(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]
		or 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—
		(a) to whom a listed security is trans-
		ferred; or
		(b) who cancels or redeems a listed security,
		to the extent that the action or inaction
		of that person resulted in the interest or
		penalty.
		(2) In the case of an unlisted security,
		the company which issued that security
		may recover the amount of [the] inter-
		est [referred to in section 5, penalty
		on default referred to in section 6 or
		the] or 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 person resulted in the
		interest or penalty.".
		Repeal of sections 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19
		<b>177.</b> Sections 9, 10, 11, 12, 14, 15, 16,
		17, 18 and 19 of the Securities Transfer
		Tax Administration Act, 2007, are hereby repealed.".

No. and Year	Short Title	Extent of amendment or repeal	
		Substitution of section 20	
		178. The Securities Transfer Tax Ad-	
		ministration Act, 2007, is hereby	
		amended by the substitution for section 20	
		of the following section:	
		"Offences [and penalties]	5
		20. [Any] In addition to the offences	
		contained in sections 235 and 236 of	
		the Tax Administration Act, 2011, any	
		person who [—	
		(a) fails or neglects to furnish, file or	10
		submit any declaration or docu-	
		ment as and when required by or	
		under this Act;	
		(b) without just cause shown, refuses	
		or neglects to furnish any infor-	15
		mation, document or thing re-	
		ferred to in section 12;	
		(c) fails to disclose any material fact	
		in the declaration referred to in	
		section 2 or 3;	20
		(d) obstructs or hinders any person	20
		in the performance of his or her	
		functions under or in terms of	
		this Act;	
		(e) submits or furnishes a false cer-	25
		tificate or statement; or	23
		(f)] acquires an unlisted security and	
		*: *	
		fails to inform the company of the	
		transfer within the period referred	20
		to in section 2, is guilty of an offence and liable on conviction to	30
		a fine or to imprisonment for a	
		period not exceeding [12 months]	
		two years.".	
		Repeal of section 21	
		179. Section 21 of the Securities Trans-	
		fer Tax Administration Act, 2007, is	35
		hereby repealed.	
Act No. 36 of 2007	Revenue Laws Sec-	Repeal of sections 33 and 36	
	ond Amendment		
	Act, 2007		
	Act, 2007	<b>180.</b> Sections 33 and 36 of the Revenue	
	Act, 2007	<b>180.</b> Sections 33 and 36 of the Revenue Laws Second Amendment Act, 2007, are	40

No. and Year	Short Title	Extent of amendment or repeal	
Act No. 4 of 2008	Taxation Laws Second Amendment Act, 2008	Repeal of sections 16 and 18	
		<b>181.</b> Sections 16 and 18 of the Taxation Laws Second Amendment Act, 2008, are hereby repealed.	5
		Amendment of section 23	
		<b>182.</b> Section 23 of the Taxation Laws Second Amendment Act, 2008, is hereby amended by the deletion of subsection (1).	
Act No. 29 of 2008	Mineral and Petro- leum Resources Royalty (Adminis- tration) Act, 2008	Amendment of section 1	10
		183. Section 1 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—  (a) by the substitution for the definition of "Commissioner" of the following	15
		definition:  "'Commissioner' means the Commissioner for the South Afri-	20
		can Revenue Service appointed in terms of section 6 of the South  African Revenue Service Act, 1997	
		(Act No. 34 of 1997), or the Acting  Commissioner designated in terms of section 7 of that Act;";  (b) by the deletion of the definition of "nonbinding private opinion";  (c) by the substitution for the definition	25
		of a "notice of assessment" of the following definition:  "'notice of assessment' means a notice of assessment [mentioned]	30
		in section 9] as described in section 96 of the Tax Administration Act;"; and	35
		(d) by the insertion after the definition of "Royalty Act" of the following definition:  "'Tax Administration Act' means	40
		the Tax Administration Act, 2011;"; and  (e) by the insertion after subsection (2) of	
		the following subsection:  "(3) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act, bears	45
		that meaning for purposes of this Act.".	50

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 4	ĺ
		<b>184.</b> Section 4 of the Mineral and	ĺ
		Petroleum Resources Royalty (Adminis-	İ
		tration) Act, 2008, is hereby amended by	İ
		the substitution in subsection (1) for	İ
		paragraph (b) of the following paragraph:	5
		"(b) of which one or more members	İ
		[of that unincorporated body] hold a	İ
		prospecting right, retention permit, ex-	İ
		ploration right, mining right, mining	10
		permit or production right granted pur- suant to the Mineral and Petroleum	10
		Resources Development Act (or a lease	İ
		or sublease mentioned in section 11 of	İ
		[the Mineral and Petroleum Re-	ĺ
		sources Development] that Act in re-	15
		spect of such a right); and".	
		Amendment of section 5	ĺ
		<b>185.</b> Section 5 of the Mineral and Petro-	İ
		leum Resources Royalty (Administration)	İ
		Act, 2008, is hereby amended—	İ
		(a) by the substitution for subsection (1)	ĺ
		of the following subsection:	20
		"A registered person must submit	ĺ
		an estimate of the royalty payable	ĺ
		in respect of a year of assessment	ĺ
		within six months after the first day	İ
		of that year and must make a	25
		payment (together with [such] a	ĺ
		return for that payment[as the	İ
		Commissioner may prescribe])	İ
		equal to one-half of the amount of	30
		the royalty so estimated."; and (b) by the substitution for subsection (2)	30
		of the following subsection:	ĺ
		"A registered person must submit	İ
		an estimate of the royalty payable	İ
		in respect of a year of assessment	35
		by the last day of that year and	ĺ
		submit a payment (together with	İ
		[such] a return for that payment [as	İ
		the Commissioner may pre-	ĺ
		scribe]) equal to the amount of the	40
		royalty so estimated less the	ĺ
		amount paid as mentioned in sub-	ĺ
		section (1).".	
		Repeal of section 7	
		<b>186.</b> Section 7 of the Mineral and	ĺ
		Petroleum Resources Royalty (Adminis-	
		tration) Act, 2008, is hereby repealed.	45

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 8	
		<b>187.</b> Section 8 of the Mineral and	
		Petroleum Resources Royalty (Adminis-	
		tration) Act, 2008, is hereby amended—	
		(a) by the substitution in subsection (1)	
		for the words preceding paragraph (a)	5
		of the following words:	
		"[A] In addition to the records	
		required under the Tax Administra-	
		tion Act, a registered person must	
		retain [such records as are neces-	10
		sary to satisfy the require-	
		ments of this Act and the Royalty	
		Act, including—]the following	
		records:"; and	
		(b) by the deletion of subsection (2).	15
		Amendment of section 9	
		188. Section 9 of the Mineral and	
		Petroleum Resources Royalty (Administration) Act. 2008, is baraby amanded by	
		tration) Act, 2008, is hereby amended by	
		the deletion of subsections (1), (2), (3)	
		and (5).	
		Repeal of sections 10, 11, 12, 13 and 16	
		<b>189.</b> Sections 10, 11, 12, 13 and 16 of	
		the Mineral and Petroleum Resources	20
		Royalty (Administration) Act, 2008, are	
		hereby repealed.	
		Amendment of section 17	
		<b>190.</b> Section 17 of the Mineral and	
		Petroleum Resources Royalty (Adminis-	
		tration) Act, 2008, is hereby amended—	
		(a) by the substitution for subsection (1)	
		of the following subsection:	25
		"(1) The Commissioner is respon-	
		sible for administering this Act and	
		the Royalty Act, in accordance with	
		the provisions of the Tax Administra-	
		tion Act."; and	30
		(b) $\overline{\text{by the substitution for subsection (2)}}$	
		of the following subsection:	
		"(2) Administrative require-	
		ments and procedures for purposes	
		of the performance of any duty,	35
		power or obligation or the exercise	
		of any right in terms of this Act are,	
		to the extent not regulated in this	
		Act, regulated by the Tax Adminis-	
		tration Act.".	40
		Repeal of section 18	
		<b>191.</b> Section 18 of the Mineral and	1
		Petroleum Resources Royalty (Adminis-	
		tration) Act, 2008, is hereby repealed.	1

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 18A	
		<b>192.</b> Section 18A of the Mineral and	
		Petroleum Resources Royalty (Adminis-	
		tration) Act, 2008 is hereby amended—	
		(a) by the substitution for subsection (1)	
		of the following subsection:	5
		"(1) [The] For purposes of this	
		Act, the Commissioner may only	
		issue a non-binding private opinion	
		[to a person regarding the tax treatment of a particular set of	10
		facts and circumstances or a par-	10
		ticular transaction] in terms of	
		Chapter 7 of the Tax Administration	
		Act."; and	
		(b) by the deletion of subsections (2) and	15
		(3).	
Act No. 61 of 2008	Revenue Laws Sec-	Repeal of sections 3, 13 and 14	
	ond Amendment		
	Act, 2008		
		<b>193.</b> Sections 3, 13 and 14 of the	
		Revenue Laws Second Amendment Act,	20
		2008, are hereby repealed.	
		Amendment of section 16	
		<b>194.</b> Section 16 of the Revenue Laws	
		Second Amendment Act, 2008, is hereby	
		amended by the deletion in subsection (1)	
		of paragraph (b).	
		Repeal of section 20	
		<b>195.</b> Section 20 of the Revenue Laws	
		Second Amendment Act, 2008, is hereby	25
		repealed.	
Act No. 18 of 2009	<b>Taxation Laws Sec-</b>	Repeal of sections 12, 13, 14, 33, 34 and	
	ond Amendment	38	30
	Act, 2009		
		<b>196.</b> Sections 12, 13, 14, 33, 34 and 38	
		of the Taxation Laws Second Amendment	
		Act, 2009, are hereby repealed.	

# MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION BILL, 2011

## 1. PURPOSE OF BILL

The Bill consolidates, as detailed in paragraph 2 below, the common administrative provisions of the Transfer Duty Act, 1949 (Act No. 40 of 1949), Estate Duty Act, 1955 (Act No. 45 of 1955), Income Tax Act, 1962 (Act No. 58 of 1962), Value-Added Tax Act, 1991 (Act No. 89 of 1991), Skills Development Levies Act, 1999 (Act No. 9 of 1999), the Unemployment Insurance Contributions Act, 2002 (Act No 4 of 2002), Diamond Export Levy (Administration) Act, 2007 (Act No. 14 of 2007), Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007) and the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008).

## 2. OBJECTS OF BILL

#### 2.1 General

The drafting of the Tax Administration Bill (the "TAB") was announced in the 2005 Budget Review as a project to incorporate into one piece of legislation certain generic administrative provisions, which are currently duplicated in the different tax Acts.

The scope of the project has since been extended so that it can now be seen as a preliminary step to the re-write of the Income Tax Act. The TAB project will assist in dividing the work of the re-write into more manageable parts, since the administrative part of the Income Tax Act comprises about 25% of the Act.

Tax legislation typically comprises two aspects: tax liability provisions or "tax charging" provisions, and tax administration provisions. The TAB only deals with tax administration. The drafting of the TAB focused on reviewing the current administrative provisions of the tax Acts administered by SARS, but excludes the Customs and Excise Act, 1964, since that Act operates in a somewhat different context and is the subject of a separate rewrite process.

The current administrative provisions in tax legislation are outdated. Although the provisions have been amended over the years, the tax Acts have become fragmented and disparate provisions arose in the different tax Acts. The current framework is outdated and needs to be aligned with modern approaches, business practices, accounting practices and constitutional rights.

In essence, therefore, the rationale for a tax administration review in South Africa is to adapt to a fast developing world, and lower the cost and burden of tax administration.

A new and modern legislative framework is accordingly required for:

- (a) The modern administration of the collection of revenue.
- (b) The consolidation of duplicate provisions.
- (c) The alignment of disparate requirements in existing law.

To achieve the above, the TAB incorporates into one piece of legislation certain administrative provisions that are generic to all tax Acts and administrative provisions currently duplicated in the different tax Acts, excluding the Customs and Excise Act, 1964. The TAB also seeks to remove redundant administrative provisions. It seeks to provide a simplified and single body of law that outlines common procedures, rights and remedies and to achieve a balance between the rights and obligations of both SARS and taxpayers in a transparent relationship.

Importantly, the TAB seeks to achieve a balance between the powers and duties of SARS, on the one hand, and the rights and obligations of taxpayers, on the other. This balance will contribute to the equity and fairness of tax administration. International experience has demonstrated that if taxpayers perceive and experience the tax system as fair and equitable, they will be more inclined to fully and voluntarily comply with it.

The TAB takes account of the constitutional rights of taxpayers, but does not seek to re-codify them, because all legislation, including the TAB, must be read together with the provisions of the Constitution. Particularly the right to administrative justice as well as the application of the fairness requirements are very fact and context specific. Codifying these rights in respect of every administrative action by SARS will be an almost impossible task and may only serve to unnecessarily limit or modify them. The TAB rather seeks to effect protection of administrative fairness rights through affording taxpayers more effective and overarching remedies, such as the creation of a Tax Ombud's Office, and specific procedural rights in the clauses dealing with SARS'

powers, such as the right to an audit findings report after finalisation of an audit and providing reasons for assessments.

In drafting the TAB, due regard was given to the following principles of international best practice in tax administration:

- (a) Equity and fairness to ensure that the tax system is fair and also perceived to be fair, which should in turn enhance compliance.
- (b) Certainty and simplicity so that tax administration is not seen as arbitrary but transparent, clear and as simple as the complexity of the system allows.
- (c) Efficiency, where compliance and administration costs are kept to a minimum and payment of tax is as easy as possible.
- (d) Effectiveness, so that the right amount of tax is collected, active or passive non-compliance is kept to a minimum, and the system remains flexible and dynamic to keep pace with technological and commercial development.

For example, to ensure consistent treatment of taxpayers in comparable circumstances, and consequently greater equity and fairness in tax administration, certain discretionary powers of SARS are now linked to objective criteria. Open-ended discretions on important matters have been fettered.

Apart from consolidating and harmonising existing provisions, the TAB seeks to provide a foundation for further modernisation of the administration of the tax Acts and to close certain identified gaps.

The TAB also extends SARS' powers, for example its information gathering, assessment and collection powers to enhance tax compliance. In this regard:

- (a) The TAB gives recognition to the fact that the majority of taxpayers are compliant and want a more modern and responsive revenue administration, but that there is a minority that seeks to evade tax or defraud the government.
- (b) SARS has a duty to actively pursue tax evaders to maintain confidence in the integrity of the tax system.
- (c) Tax evasion undermines compliant taxpayers' morale and places an unfair burden on them if it is not countered effectively.
- (d) Over the years, it became apparent that stricter enforcement powers are required to target increasingly sophisticated tax evaders and tax evasion schemes.

The purpose of the TAB in the context of these extended powers, therefore, is the extension of powers to more effectively target tax evaders, who demonstrate certain behaviour. The drafting of the TAB was informed by international best practice and a comparative evaluation of the tax administration laws of other countries with practical experience with tax administrative laws over long periods, such as Australia, Botswana, Canada, New Zealand, the United Kingdom and the USA.

The layout of the TAB largely follows the administrative life cycle of a taxpayer, commonly referred to as a step-by-step approach. This is reflected in the Chapter headings.

## 2.2 Summary of proposed changes to current law and purpose thereof

## 2.2.1 Chapter 1: Definitions

## Interpretation

Terms used in the TAB which are defined in the tax Acts retain their defined meaning in the TAB, unless the context in which they are used in the TAB indicates otherwise, or if they are specifically defined in the TAB. Terms defined in the TAB apply to tax Acts unless the context in the tax Act indicates otherwise, or if they are specifically defined in the relevant tax Act.

### **New definitions**

2.2.1.1 The term "assessment" is defined to ensure that it includes both the determination of the amount of a tax liability or a refund by way of self-assessment by the taxpayer and assessment by SARS. It does not include, as is currently the case in the Income Tax Act, any decision which in terms of a tax Act (including the TAB) is subject to objection and appeal. These decisions are now separated from the concept of an assessment for purposes of the TAB.

- 2.2.1.2 "Biometric information", which may be required by SARS for registration, means specified biological data but also caters for the inclusion, by way of regulation, of other, less intrusive biological data that may become available in the future. It is not envisaged that this will include, for example, DNA data as this is generally regarded as more intrusive.
- 2.2.1.3 The term "date of assessment" is defined to refer to the date of the issue of an assessment by SARS or date of the submission of a return which constitutes a self-assessment.
- 2.2.1.4 The definition of the term "**effective date**" is important as this determines the date from which interest due to or payable by SARS accrues. Interest is generally determined from this date until the date of actual payment.
- 2.2.1.5 For purposes of the TAB "income tax" means normal tax referred to in section 5 of the Income Tax Act, 1962, but excludes provisional tax and employees' tax. This distinction is particularly relevant for the purposes of the definition of "tax period", the effective date for the payment of interest determined under Chapter 12 and the determination of the amount of an administrative non-compliance penalty under Chapter 15 in respect of a person who is exempt from income tax.
- 2.2.1.6 The definition of "official publication", which means a binding general ruling, interpretation note, practice note, or public notice issued by a senior SARS official or the Commissioner, is particularly relevant for purposes of what constitutes a "practice generally prevailing" under clause 5 and what constitutes exceptional circumstances that may warrant the remittance of an administrative non-compliance penalty in Chapter 15.
- 2.2.1.7 The concept of an "original assessment", i.e. the first assessment in respect of a tax period, is now a defined term that relates to a specific type of assessment, in the same way as "additional assessment" and "reduced assessment" are individually defined. The term "estimated assessment" previously used in tax Acts, is replaced by the concept of an original, reduced or additional assessment based on an estimation.
- 2.2.1.8 The term "relevant material" is important for information gathering under Chapter 5 and means any information, document, or thing that is forseeably relevant for tax risk assessment, assessing tax, collecting tax, or showing noncompliance with an obligation under a tax Act or showing that a tax offence was committed.

The standard of foreseeable relevance, which is *inter alia* regarded by the OECD as the standard in the context of specifying the information that should be exchanged between countries, is intended to provide for the procurement of information in tax matters to the widest possible extent and, at the same time, to clarify that revenue authorities are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. This is a narrower term than "may be relevant", which is the standard used in some tax jurisdictions.

Risk assessment, as reflected in clause 44, is one of the premises of SARS' audit selection process and involves assessing the risk profile of taxpayers ("risk assessment") and then allocating resources in accordance with the risk profiles ("risk-led resource allocation") which should result in more targeted audits. Risk assessment also assists in addressing emerging tax risks in real-time, which should enable SARS to provide tax certainty to taxpayers sooner and quicker guidance on tax matters and to reduce the need for protracted forensic audits (typically some years after targeted transactions occurred). Risk-driven processes should also limit disputes and reduce the incidence of tax underpayments and understatement penalties or administrative non-compliance penalties. Obtaining real-time "relevant material" from taxpayers is key to effective risk management of taxpayers.

- 2.2.1.9 "**Return**" is defined to include the submission of a prescribed form to SARS for purposes of both self-assessment and assessment by SARS.
- 2.2.1.10 "Self-assessment", in turn, is defined as a determination of the amount of tax payable under a tax Act by a taxpayer and submitting a return which incorporates the determination or, if no return is required, the act of making payment of the tax. Throughout the TAB, provision is made for the transition to a full self-assessment system, which system can be described as follows:
  - (a) Self-assessment is a mechanism applied as part of a tax collection system.
  - (b) Under self-assessment, the taxpayer is required to report the basis of assessment (for example taxable income), to submit a calculation of the tax due and, usually, to simultaneously pay any outstanding tax due as calculated by the taxpayer. The onus is on the taxpayer to calculate the correct amount of tax payable.

- (c) The role of SARS in this system is to verify the correctness of the assessment by the taxpayer by means of a combination of risk based and random audits.
- (d) It contrasts with the role of SARS in an assessment system where the taxpayer is called upon to submit the information to SARS. The onus on the taxpayer is to submit a true and complete return of the information required. SARS is responsible for establishing the tax due, normally by means of an assessment, the assessment specifies the period within which the tax must be paid.
- 2.2.1.11 The term "serious tax offence" means a tax offence for which a person may be liable on conviction to a fine or to imprisonment for a period exceeding two years, and is relevant for purposes of the referral of an audit for separate criminal investigation under clause 45.
- 2.2.1.12 "Tax" for purposes of the administration of the TAB is widely defined as a tax, duty, levy, royalty, fee, contribution, penalty, interest and any other moneys imposed under a tax Act. This wide definition is to ensure the application of the TAB across taxes.
- 2.2.1.13 The term "taxable event" means an occurrence which affects or may affect the liability of a person to tax, and is important to determine the "tax period" for purposes of transaction based taxes, as well as the meaning of administration of a tax Act in clause 3(2) in that context.
- 2.2.1.14 A "tax Act" is an important definition in the TAB, as it serves to include the Tax Administration Act, an Act and a portion of an Act administered by the Commissioner, but excludes the Customs and Excise Act, 1964.

### 2.2.2 Chapter 2: General administration provisions

### New provisions

- 2.2.2.1 Purpose of the Tax Administration Act: Clause 2 describes the purpose of the Tax Administration Act, which essentially is to provide for the effective and efficient collection of tax, the alignment of the administration provisions of tax Acts, to the extent practically possible. Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of a tax Act is, to the extent not regulated in a tax Act, now regulated by the TAB. Administrative provisions that are specific to a tax Act or the relevant tax type remain in that Act.
- 2.2.2.2 Administration of tax Acts: Clause 3 determines that SARS is responsible for the administration of this Act under the control or direction of the Commissioner, and describes the ambit of administration of the tax Acts. As mentioned, it is unnecessary to include references to the constitutional provisions and obligations that guide the exercising of administrative authority within the TAB.
- 2.2.2.3 Application of the Tax Administration Act: In terms of clause 4, the TAB applies to every person who is liable to comply with a provision of a tax Act (whether personally or on behalf of another person). This clause also deals with the resolution of any inconsistencies between the TAB and a tax Act, if any should arise, by providing that in the event of any inconsistency between the TAB and another tax Act, the tax Act prevails.
- 2.2.2.4 Practice generally prevailing: In terms of clause 5 the sources of SARS' "binding" practices will be official publications i.e. a binding general ruling, interpretation note, practice note, or public notice issued by a senior SARS official or the Commissioner that deals with the application or interpretation of a tax Act. Taxpayers are often unsure of the existence of a practice generally prevailing as a result of reliance on publications such as the "Income Tax Practice Manual" published by LexisNexis<sup>TM</sup>, "hear-say", media releases or published articles, operational practices or procedures and guides. None of these necessarily reflect the application or interpretation of a tax Act that is binding on and generally applied by the whole of SARS.

This concept is used in the TAB in the context of both defining and limiting SARS' power to issue an additional or reduced assessment (clause 99) and placing limitations upon taxpayers in claiming refunds (clause 190(3)(a)). Where the grounds of objection are based on a change in the practice generally prevailing which applied on the date of the disputed assessment, the period for objection may not be extended (clause 104(5)(c)).

Clause 5(2) deals with a situation where a practice generally prevailing ceases to be one, for example, legislative amendments or judgments that are amended to an extent material to the practice.

2.2.2.5 *Limitation of administrative powers*: Clause 6 provides that the exercise of any power or duty under a tax Act by a SARS official, including whatever may be fairly regarded as incidental to or consequential to such powers or obligations, must be related to and within the ambit of the purpose and ambit of the administration of the tax Acts.

Generally in a tax administration Act the administration provisions place the day-to-day administration of the tax laws in the hands of a statutory body (SARS) or a specific office holder (the Commissioner). In terms of current law, unless a power is specifically assigned to the Commissioner personally, any SARS official acting under the direction, supervision and control of the Commissioner may exercise the powers, duties and obligations under the tax Acts. To ensure the reservation of more serious powers for the Commissioner or senior SARS officials, the TAB departs from this common approach by dividing the "Administration of the Act" into three tiers. In terms of the new "three tier decision making levels" powers, duties or functions may be exercised by:

- (a) The Commissioner personally, where powers are assigned to him personally, unless he or she specifically delegates such powers.
- (b) Senior SARS officials authorised by the Commissioner to exercise more serious and impactful powers or functions.
- (c) SARS officials in general.

material facts were known.

This new approach is aligned with what happens in practice.

- 2.2.2.6 Further limitations on SARS' powers: The TAB imposes limitations on the powers of SARS officials in administering tax to further counteract potential abuse. These include:
  - (a) Conflict of interest provisions (clause 7): These provisions, for example, prohibit a SARS official from becoming involved in the administration of a tax Act matter relating to a person with whom the official has or had, in the previous three years, a personal, family, social, business, employment or financial relationship. The provisions will be supplemented by more specific internal policy guidelines.
  - (b) Identity Cards (clause 8): This provision compels a SARS official exercising powers and duties for purposes of the administration of a tax Act to carry a SARS identification card, which card must be shown upon request.
  - (c) Decision or notice by SARS (clause 9): The withdrawal or amendment of a decision or notice (to a specific taxpayer—not general notices), excluding a decision given effect to in an assessment or notice of assessment, made by a SARS official is largely similar to current law, except that it is clarified that a taxpayer may request such withdrawal or amendment.
    In the case of withdrawals or amendments adverse to the taxpayer, procedural fairness is implicit. SARS may not withdraw or amend a decision with retrospective effect more than three years after the date of the written notice of the decision or the date of the assessment giving effect to the decision if all the
  - (d) Delegations (clause 10): A SARS official acting under a delegation must be so delegated in writing with the mandate or authority specified.
- 2.2.2.7 Authority to act in legal proceedings (clauses 11 and 12): These provisions place limitations on SARS as to who may deal with and the manner in which legal proceedings to which the Commissioner or SARS is a party must be dealt with (for example, the laying of criminal charges). Clause 12 deals with which senior SARS officials have the right of appearance on behalf of the Commissioner in proceedings before the tax court or High Courts.
- 2.2.2.8 Powers and duties of the Minister: Clause 13 provides that the Minister may delegate his or her powers, except for the power to appoint the Tax Ombud and to issue regulations, to the Deputy-Minister and the Director-General of National Treasury. The Director-General may in turn delegate the powers and duties delegated to him or her by the Minister to a person under the control, direction, or supervision of the Director-General.
- 2.2.2.9 *Establishment of Office of Tax Ombud*: Clauses 14 to 21 establish the office of the Tax Ombud, the creation of which was foreshadowed in 2003 at the launch of the current tax dispute resolution process and SARS Service Monitoring Office (the "SSMO").

The steps in the tax dispute resolution process of objection, alternative dispute resolution, appeal to the tax board, in simple cases, or the tax court, in more complex cases, and finally access to the normal court system serve as a check on SARS' powers

to assess tax. The SSMO was intended as the first step in the creation of a mechanism to serve as a check on SARS' administrative powers by addressing SARS' failures to follow procedures or respect taxpayer's rights. It was not, however, intended to be the last step. As the then Minister of Finance noted at the launch of the SSMO: "Once SARS' processes and procedures have improved sufficiently, the next important step that will be taken in emulating international standards will entail an important role for an Ombud." An independent Tax Ombud will fill a gap in the mechanism that currently exists between SARS' internal processes and access to the normal court system.

Public comments on the first draft TAB confirmed the public's desire for the establishment of a separate and independent Tax Ombud's Office. The Tax Ombud's office should, it was proposed, provide accessible and affordable remedies for taxpayers affected by non-adherence to procedures or failure to respect taxpayers' rights.

The introduction of a Tax Ombud is, therefore, proposed in view of the fact that:

- (a) The creation of an independent and effective recourse for taxpayers would be in line with the objective of the TAB to achieve a balance between SARS' powers and duties and taxpayer obligations, remedies and rights.
- (b) It would be in line with international best practice, particularly the framework of the Canadian "Taxpayer Ombudsman" and the UK "Revenue Adjudicator".
- (c) It would also be consistent with what the Constitutional Court has had to say on the valuable role played by effective internal remedies, namely that although courts play a vital role in providing litigants with access to justice, the importance of more readily available and cost-effective internal remedies cannot be gainsaid.

To ensure the necessary independence from SARS, the Minister of Finance must appoint the Tax Ombud and determine his or her terms of office. In line with the Canadian, UK and USA models, SARS employees will be seconded to the Ombud's office after consultation with the Ombud.

The mandate of the Tax Ombud will be 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, generally only after the taxpayer has exhausted the available complaints resolution mechanisms within SARS.

There are also specific limitations on the mandate of the Tax Ombud, such as that the Ombud may not review legislation, tax policy, SARS policy or practice generally prevailing. The Ombud may deal with a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS. In the context of matters subject to objection and appeal, the Ombud may only deal with any administrative matter relating to such objection and appeal.

The Tax Ombud must also identify and review systemic and emerging issues related to service matters or the application of the provisions of this Act and the tax Acts relating to administrative matters that impact negatively on taxpayers. The Tax Ombud will have review and mediatory powers and report directly to the Minister of Finance.

Chapter 6, Confidentiality of Information, applies *mutatis mutandis* to the Tax Ombud's office. The Ombud or any person on the Ombud's behalf, may not disclose information obtained under Part F of Chapter 2, including to SARS, except to the extent required for purposes of the performance of functions and duties under Part F. SARS, however, must allow the Ombud access to the information that relates to the Ombud's powers and duties under Part F.

# 2.2.3 Chapter 3: Registration

#### New provisions

2.2.3.1 Registration requirements for all taxes (clause 22): A person obliged to apply or who may voluntarily apply for registration under a tax Act must do so in accordance with this clause.

The TAB, in clause 22(2)(b), in pursuit of creating a single view of a taxpayer in SARS' systems, provides a framework for the single registration for all taxes by a taxpayer. In this regard:

- (a) Single registration may be effected using a single form.
- (b) In the absence of a specific period for registration in a tax Act, a registration period of 21 "business days" applies across taxes from the date that a taxpayer becomes liable or entitled to register under a tax Act.

A person who fails to provide all particulars and documents required for a specific registration will be regarded as not having applied for registration until those particulars and documents are provided. Also, where a taxpayer that is obliged to register with SARS under a tax Act fails to do so, SARS may register the taxpayer for one or more tax types as is appropriate under the circumstances, for example, turnover tax if that is more appropriate to the circumstances of the taxpayer.

Biometric information (which may include fingerprints; facial recognition; vocal recognition and iris or retina recognition) may be required for registration, essentially to ensure proper identification and counteracting identity theft and fraud. The main advantages of biometrics over standard identification and validation systems are:

- (a) Biometric traits cannot be lost or forgotten (while identity documents and passwords can).
- (b) Biometric traits are difficult to copy (while passwords and reference numbers, once disclosed, are not).
- (c) Biometrics require the person being authenticated to be present at the time and point of authentication.

Furthermore, in view of the highly private nature of biometric information, additional protection in the context of the disclosure thereof is afforded in the confidentiality of information Chapter to the extent that not even a High Court may order the disclosure thereof. It may, however, be disclosed for purposes of criminal prosecution.

- 2.2.3.2 Communication of change in particulars (clause 23): The provision of updated information, such as any change in postal or physical address, representative taxpayer, banking particulars used for transactions with SARS and electronic address used for communication with SARS, is required under this clause. The Commissioner may also prescribe additional information required for registration by public notice, and specific notifications may still be required in a tax Act, for example section 25 of the Value-Added Tax Act, 1991.
- 2.2.3.3 Taxpayer reference number (clause 24): SARS may allocate a taxpayer reference number in respect of one or more taxes to each person already registered under a tax Act or Chapter 3. The use of a taxpayer reference number allocated by SARS is compulsory in all correspondence with SARS. This is aimed at ensuring more efficient processing of taxpayer communication, particularly once a single registration number for all taxes is implemented.

### 2.2.4 Chapter 4: Returns and records

In this Chapter more generic return provisions have been drafted to cater for future modernisation of the tax system, for example a full self-assessment system.

# New provisions

2.2.4.1 Submission of return (clause 25): If the obligation to submit a return is imposed in a tax Act, the taxpayer must do so in accordance with the requirements of the TAB. Specific returns required under current law, for example income tax returns by companies, will now be regulated under this general clause and the specific information required will be set out in the prescribed form.

Under this clause, SARS may also request or allow a person, prior to the issue of an original assessment, to submit an amended return to correct an undisputed error in a return. This will typically apply in the eFiling environment as a measure to avoid the issue of an incorrect assessment, pursuant to bona fide errors made in the return, which once an assessment had been issued can then only be rectified through more formal dispute resolution processes.

- 2.2.4.2 Third party returns (clause 26): The concept of listing specific types of information required from third parties in tax legislation (for example interest returns by banks or certain returns required from companies) is replaced by a duty on third parties to automatically submit returns of information as may be prescribed by the Commissioner when called on to do so by way of a public notice. The notice will prescribe the type of information and the frequency of submission.
- 2.2.4.3 Other returns required (clause 27): SARS may require a person to submit further or more detailed returns regarding any matter for which a return is required or prescribed by a tax Act, for example returns relating to income from controlled foreign companies or certain representative vendors.

2.2.4.4 Statement concerning account (clause 28): If a taxpayer submits financial statements or accounts prepared by another person in support of the taxpayer's submitted return, SARS may require a certificate or statement as to the extent of the examination and verification of the correctness of the transactions, receipts, accruals, payments, or debits reflected in the financial statements. This is not a requirement for audited financial statements, but the certificate or statement allows SARS to evaluate the degree of reliance that may be placed on the financial statements and potentially avoid further verification or audit by SARS.

2.2.4.5 Record retention (clauses 29 to 33): The TAB imposes a general record keeping requirement on taxpayers as well as third parties obliged to submit returns, for example under clause 26, in respect of the records that enable a person to demonstrate to the satisfaction of SARS that the requirements of a tax Act have been observed. Specific records may still be required under a tax Act, for example section 55 of the Value-Added Tax Act, 1991.

Records must be kept in their original form or a form generally prescribed by the Commissioner. A senior SARS official may, upon request by a specific taxpayer, authorise the retention of information contained in records or documents by that taxpayer in a different but acceptable form.

Regarding the manner of keeping records, a new requirement that records must be kept in an orderly fashion and in a safe place, is added. This is to ensure the orderly and safe retention of the records and efficient access thereto by SARS, for purposes of an inspection or audit, during the required five year retention period (subject to the qualification described in the paragraph below). To ensure that records are kept in the correct form, provision is made that SARS may inspect the records for this purpose, in addition to an examination, audit or investigation under Chapter 5.

Clause 32 deals with matters subject to an audit or objection or appeal, and provides that records must be retained until the conclusion of the audit, objection or appeal even if this means records are retained for longer than 5 years. If the information is not in one of the official languages of the Republic, a senior SARS official may require a translation by the taxpayer, a sworn translator or other person approved by the official.

2.2.4.6 Reportable arrangements (clauses 34 to 39): No significant changes were made to reportable arrangements, except that all listed arrangements likely to lead to an undue tax benefit are to be identified by the Commissioner by public notice, and the Commissioner may determine an arrangement to be an excluded arrangement by public notice. Failure to report a reportable arrangement will not constitute a criminal offence, but is subject to an administrative non-compliance penalty under Chapter 15.

# 2.2.5 Chapter 5: Information gathering

SARS' information gathering powers are substantially supplemented or extended by the TAB. This is essentially to address the problem that too many requests for information by SARS result in protracted debates as to SARS' entitlement to certain information. This is contrary to the internationally established principle that a revenue agency's resources or energy should not be wasted on disputes over whether or not it is entitled to have access to a particular item of information, but should rather be focused on ensuring that all taxpayers pay the correct amount of tax on time based on timely available information. However, taxpayer's rights are amplified and made more explicit to counterbalance SARS' new information gathering powers.

Chapter 5 comprises two parts, i.e. Part A which deals with "General rules for inspection, verification, audit and criminal investigation" and Part B which deals with "Inspection, request for relevant material, audit and criminal investigation".

## New provisions

2.2.5.1 Selection for inspection, verification or audit (clause 40): The basis upon which a person may be selected for an inspection, verification (for example through a 'desk audit') or audit is prescribed as either on a random or risk assessment basis. This is not the basis for criminal investigations, which are triggered by indications of the commission of an offence under the tax Acts.

## SARS' new powers:

- 2.2.5.2 *Inspections (clause 45)*: SARS may, without prior notice, arrive at and inspect a premises to determine the identity of the person occupying the premises, whether the person occupying the premises is conducting a trade or an enterprise and is registered for tax and keeps the required records. These inspections will typically be used for tax base broadening purposes or verification, for example, of the existence of an enterprise for purposes of VAT registration.
- 2.2.5.3 Requests for relevant material (clause 46): The ambit of such requests by SARS is extended to identifiable taxpayers. This includes, for example, where a taxable event demonstrates that a taxpayer exists, but SARS does not have such person's name or other details. Information procurement from third parties in respect of identified classes of taxpayers, for example taxpayers involved in certain types of potential tax avoidance structures, is now specifically included. Provision is also made that SARS may extend the period within which the relevant material must be submitted on good cause shown. A request for information for purposes of revenue estimation is limited to information that the requested person has available.
- 2.2.5.4 Informal examination at a SARS office (clause 47): SARS may require a person to attend a meeting at a SARS office for purposes of being interviewed regarding the taxpayer's own or another person's tax affairs. The aim of the meeting is to clarify issues of concern to SARS to render further examinations or an audit unnecessary. The interview cannot be used to conduct a criminal investigation.
- 2.2.5.5 Field audits or criminal investigations (clause 48): These provisions are largely aligned with current law, except for clarifying that both on-site audits and criminal investigations require prior notice.
- 2.2.5.6 Search and seizure (clause 63): SARS may under certain narrow circumstances conduct a search without a warrant. This power may only be invoked if the person affected consents thereto or if a senior SARS official on reasonable grounds is satisfied that:
  - (a) There may be an imminent removal or destruction of relevant material likely to be found on the premises;
  - (b) If SARS applies for a search warrant under the relevant empowering section of the Act, a search warrant will be issued; and
  - (c) The delay in obtaining a warrant would defeat the object of the search and seizure.

This power is consistent with that found in other legislation in South Africa, some of which has been reviewed and accepted by the courts in that context and is comparatively supported. This power should *inter alia* assist in tax base broadening and addressing the reality that tax evaders who, upon approach by SARS, waste no time in destroying all records and evidence of their fraudulent activities and details of income derived.

### Taxpayers' new rights and obligations:

- 2.2.5.7 Authority for SARS official to conduct an audit or criminal investigation (clause 41): A SARS official must demonstrate his or her authority to conduct audits or criminal investigations, as these powers may only be exercised by duly authorised officials, failing which a taxpayer may lawfully refuse to allow the audit or investigation until such official shows that this authority exists.
  - 2.2.5.8 *Keeping taxpayer informed (clause 42)*:
    - (a) A taxpayer is entitled to a report on the progress of an ongoing audit in the form and manner as may be prescribed by the Commissioner by public notice.
    - (b) A taxpayer must receive notification of the final outcome of an audit or criminal investigation whether conclusive or not. If an audit identified potential adjustments of a material nature, an audit findings letter must be sent to the taxpayer unless the taxpayer waives this right, for example where a taxpayer has been sufficiently informed during the audit or is aware of the audit findings.
    - (c) The taxpayer may respond to the audit findings in writing and within the prescribed period before the assessment based on the audit is issued. An extension of time to respond to the audit findings may be given by SARS if reasonably required.
    - (d) Exception: SARS need not comply with the above where a senior SARS official has reasonable belief that the audit progress report, audit findings letter

or response to the audit findings by the taxpayer may impede or prejudice the purpose, progress (for example prescription) or outcome of the audit. However, SARS is then required to provide the grounds of the assessment within 21 business days of the assessment or the further period that may be required based on the complexities of the audit. This does not affect the right of the taxpayer to request further reasons or to object to the assessment.

- 2.2.5.9 Separation of audit and criminal investigation (clauses 43 and 44): Audits and criminal investigations of serious tax offences by SARS are separated to ensure that the rights of taxpayers who are suspects in a criminal investigation are given proper effect to. The use of audit information in criminal proceedings may be inadmissible if a taxpayer has not been informed that he or she was also being investigated for criminal offences.
- 2.2.5.10 Field audit or criminal investigation notice (clause 48): Prior notice of an audit or criminal investigation at the premises of a taxpayer must be given at least 10 business days before the audit or investigation, and the taxpayer must revert at least 5 business days before the audit or investigation if the date is not suitable. Although the notice must *inter alia* indicate the initial basis and scope of the audit or investigation, this may obviously change or extend as the audit or investigation progresses. A taxpayer may waive the right to notice, for example, if it is convenient for the taxpayer to resolve an audit issue without delay.
- 2.2.5.11 Assistance during field audit or investigation (clause 49): Taxpayers are now obliged to give SARS reasonable assistance during field audits or investigations and execution of search and seizure warrants. The aim of this requirement is to ensure the effective and efficient conclusion of field audits or investigations without impediments as a result of obstructive taxpayers refusing reasonable assistance. Assistance may include actions such as answering questions or practical assistance such as providing working space and facilities. For example, if the taxpayer has a photocopier on the premises, it should be made available to SARS for use at SARS' cost. Failure to provide such reasonable assistance may constitute non-compliance for purposes of the imposition of an administrative non-compliance penalty under Chapter 15 and a criminal offence under Chapter 17.
- 2.2.5.12 *Inquiries* (clauses 50 to 58): No significant changes to the proceedings under current law were effected.
- 2.2.5.13 Application for and issuance of a search and seizure warrant and the carrying out of a search (clauses 59 to 66): No significant changes to the proceedings under current law were made, except for affording further protection of taxpayers subjected to a search and seizure, including:
  - (a) A provision making explicit the duty on SARS to conduct a search with strict regard to decency and order.
  - (b) A requirement that SARS must make an inventory of seized material in the form, manner and time that is reasonable under the circumstances.
  - (c) If the removal of original documents or computers may prejudice the continuance of a taxpayer's business, SARS has a discretion to make and remove copies if appropriate.
  - (d) A provision that a taxpayer may request SARS to pay or, if SARS declines, for a Court to order payment of the costs of physical damage caused during the conduct of a search and seizure.
- 2.2.5.14 Protection of legal professional privilege during execution of search and seizure (clause 64): This clause is aimed at ensuring that assertions of legal professional privilege in respect of relevant material subject to search and seizure during the execution thereof, whether under a warrant or not, are dealt with fairly and expeditiously. The documents must be secured or sealed and handed to an attorney who must make a determination of whether the privilege applies. The attorney must be an attorney from the panel from which the chairpersons of the tax board must be selected under clause 111, i.e. an attorney appointed by the Minister of Finance in consultation with the relevant Judge-President to act as chairperson of the tax board.

If this attorney is not available to attend at the premises and seal the information, he or she may appoint a substitute attorney to be present on the appointing attorney's behalf during the execution of a warrant. The determination may, however, only be made by the attorney from the panel appointed under clause 111 and must be made within 21 business days. If the determination is not made or a party is not satisfied with the determination by the attorney, the attorney must retain the documents pending final resolution of the dispute by the parties or an order of court. A substitute attorney and the

attorney making the determination must be paid in the same manner as if acting as chairperson of the tax board.

Where the need to search for material over which the taxpayer may claim legal professional privilege is foreseeable, SARS must arrange for the attendance of the attorney before execution of the warrant. If an attorney is not present and the issue arises during execution of the warrant, the material must be sealed and handed over to the attorney, who must then make the determination of whether privilege applies.

## 2.2.6 Chapter 6: Confidentiality of information

The information protection laws of most countries are based on the basic principle that personal information should not be used for purposes incompatible with the purpose for which it was collected. In South Africa a citizen's right to privacy is entrenched in a constitution that regulates the right to protection of privacy. Taxpayers have a right to expect that any information provided by them is treated in confidence and used for tax purposes only and that their affairs will not be disclosed to third parties, including other organs of state. This form of data protection is reinforced by the mandatory protection of SARS' records by section 35(1) of the Promotion of Access to Information Act, 2000, and further underpinned by case law wherein strict requirements are laid down before a court will order disclosure of tax information.

However, in several developed jurisdictions it is recognised that it is important that tax information is available to other organs of state within proper limits. Specifically, it is recognised that in the context of law enforcement:

- (a) Where certain information is likely to be of value to a criminal investigation, it is in the public interest that tax information is available to law enforcement agencies within certain limits.
- (b) Such limited disclosure will ensure that there is a potential for information flow in two directions, i.e. between a revenue authority and law enforcement agencies and *vice versa*.

# New provisions

The secrecy provisions are now aligned across taxes, are more explicit as to who is subject thereto and when disclosure is permitted. In the context of disclosure to organs of state and related agencies, disclosure for non tax administration purposes is widened.

- 2.2.6.1 *General prohibition of disclosure (clause 67)*:
  - (a) SARS information is distinguished from taxpayer information and different disclosure rules apply.
  - (b) The provision, read with the definition of SARS official, is now specifically applicable to the Commissioner, an employee of SARS or a person contracted by SARS for purposes of the administration of a tax Act, whether formerly or currently so employed or contracted.
  - (c) All SARS officials, including a person contracted by SARS, are obliged to take an oath of secrecy. Failure to take the oath before commencing duties is a statutory offence.
  - (d) The general prohibition of disclosure rule is now specifically applicable to information unlawfully obtained by any person. This would apply, for example, where a current or former SARS official discloses information contrary to the secrecy provisions to the media, in which case the media would be prohibited from publishing the information.
  - (e) A new exception to the general prohibition of disclosure rule is that the Commissioner may, for purposes of protecting the integrity and reputation of SARS as an organisation, disclose information to counter or rebut false allegations or information disclosed in the media or in any other public manner by a taxpayer, the taxpayer's representative or another person acting under the instructions of the taxpayer. The proposed checks and balances for the exercise of this power are:
    - Only the Commissioner personally may approve such disclosure;
    - The disclosure must be for the protection of the integrity and reputation of SARS as an organisation;
    - The disclosure must be limited to taxpayer information that is necessary to rebut the false allegations;

- The false allegations must have been made by the taxpayer personally or someone authorised to do so by the taxpayer; and
- Prior notice of at least 24 hours before publication should be given to the taxpayer.
- 2.2.6.2 SARS confidential information (clause 68): A new definition of SARS confidential information is included and the disclosure of SARS confidential information is regulated and unauthorised disclosure criminalised. SARS confidential information is information that is relevant to the administration of a tax Act that is, for example, confidential information such as internal policies, legal opinions and memorandums. The concept is narrowly defined and only information relevant to tax administration is included. The disclosure of SARS confidential information to a SARS official who is not authorised to have access to the information is also prohibited.
- 2.2.6.3 Secrecy of taxpayer information and general disclosure (clause 69): The general rule in this regard, i.e. that a person who is a current or former SARS official may not disclose taxpayer information to a person who is not a SARS official, has the following exceptions:
  - (a) In the course of performance of duties under a tax Act, which includes disclosure—
    - to the South African Police Service or the National Prosecuting Authority
      of information relating to tax offences for purposes of the prosecution
      thereof;
    - as a witness in any civil or criminal proceedings under a tax Act; or
    - subject to section 69(3) and (4), by order of a High Court.
  - (b) Disclosure under any other Act, including a tax Act, which expressly provides for the disclosure of the information notwithstanding the secrecy provisions, for example section 71(1) of the Prevention of Organised Crime Act, 2000, and sections 36 and 37 of the Financial Intelligence Centre Act, 2001.
  - (c) Disclosure "by order of the High Court":
    - The current law provides that a competent Court may order disclosure of taxpayer information. This includes a Magistrate's Court, Maintenance Court and a section 205 enquiry by a Magistrate under the Criminal Procedure Act, 1977. This power is now limited to the High Court to ensure better protection of taxpayer information.
    - An application procedure is prescribed which requires at least 15 business days notice to SARS, as well as the criteria which a judge must consider before granting a disclosure order.
  - (d) Disclosure is also permitted if the information is public information.
- 2.2.6.4 Disclosure to other entities (clause 70): This clause generally provides for disclosure to organs of state and other institutions of information to the extent required for purposes of the performance of legislative functions under the legislation regulating such institutions. However, despite the provisions in this clause permitting disclosure, a senior SARS official has an 'overriding discretion' not to disclose information that may otherwise be disclosed under this clause if the official is satisfied that the disclosure would seriously impair a civil or criminal investigation under a tax Act.

Under current tax law the disclosure of certain information to the following entities is permitted:

- The Director-General of the National Treasury;
- The Statistician General;
- The Board administering the National Student Financial Aid Scheme;
- The Governor of the SARB (only information required for functions under the Exchange Control Regulations); and

The Auditor-General, for purposes of his or her functions, has full access to SARS' records and information.

Also, the current disclosure to an employer of the income tax reference number, identity number, physical or postal address of an employee and such other non-financial information as that employer may require in order to comply with its obligations in terms of a tax Act, is now included under this clause. This disclosure, *inter alia*, is aimed at ensuring the correctness of employees' tax certificates (IRP5's).

Disclosure to a Commission of Enquiry established by the President of the Republic of South Africa is now included under this clause.

In addition to disclosures and the extent thereof permitted under current law, a new legislative framework for the disclosure of financial regulatory or basic information to specified organs of state, related agencies and certain other institutions is proposed in this clause.

- (a) Disclosure to financial regulatory agencies: The TAB proposed the disclosure of specific information under prescribed conditions to the following agencies:
  - Financial Services Board (FSB);
  - South African Reserve Bank (SARB);
  - Financial Intelligence Centre (FIC); and
  - National Credit Regulator (NCR).

This follows the proposal in the 2010 Budget Review that the secrecy provisions of the various "regulatory and enforcement agencies under the umbrella of the Minister of Finance" be revised to allow for exchange of information within a legislative framework.

A review of the taxpayer secrecy provisions was undertaken for purposes of proposing a mechanism to effect such information exchanges between SARS and other organs of state and its agencies and other institutions. This review was also necessitated by the fact that the current legislative mechanisms for allowing disclosure of taxpayer information to such entities are disjointed and inconsistent.

The Bill proposes to consolidate the current legislative frameworks for the disclosure of taxpayer information into a single framework in the TAB setting out the general criteria for and extent of such disclosure. Essentially, it is proposed that the framework should only permit disclosure to the extent that the disclosure is—

- necessary to exercise a power or perform a function or duty under the legislation of that particular organ of state or agency; and
- relevant and appropriate to what the disclosure is intended to achieve as
  determined under the legislation governing the functions of the
  applicable organ of state or agency.
- (b) Disclosure for purposes of verification of basic information: The accuracy of identifying and other basic information relating to a taxpayer is essential to SARS and organs of state. Therefore, the TAB in this clause provides for the disclosure of information for purposes of the verification of the correctness thereof to an organ of state or institution listed in a public notice issued by the Minister of Finance. An "institution" may include a private institution.

The information that may be disclosed is limited to the name and taxpayer reference number of a taxpayer, any identifying number assigned to a taxpayer (e.g. an identity or passport number or company registration number), the physical address, postal address and other contact details of a taxpayer (e.g. telephone number and email address.), the name, address and contact details of the taxpayer's employer; and other non-financial information as the organ of state or institution may require for purposes of the verification of the above information.

2.2.6.5 Disclosure to SAPS or NPA of information regarding non-tax offences (clause 71): An application for a court order for the disclosure of information regarding specified types of serious offences may be brought by means of *ex parte* Court application by SARS, or by the South African Police Service ("SAPS") or the National Prosecuting Authority ("NPA").

Under current law only SARS may initiate such proceedings, but this does not adequately cater for circumstances where the SAPS or the NPA has reason to believe that such information is in the possession of SARS and wishes to apply for the disclosure thereof. As the application is *ex parte* no notice to the taxpayer concerned is required, but an application procedure as between SARS and the NPA or SAPS is prescribed which requires at least 10 business days notice to SARS by the NPA or SAPS when initiating the application.

- 2.2.6.6 Disclosure to taxpayer of own records (clause 73): A taxpayer is entitled to:
  - (a) Access to information which the taxpayer provided to SARS.
  - (b) A certified copy of the recorded particulars of an assessment or a decision subject to objection and appeal under clause 104(2) of the TAB.
  - (c) Information obtained by SARS, from third parties or other sources, provided that a request for this information is made under the Promotion of Access to Information Act, 2000 (PAIA). This would entitle SARS, where necessary, to refuse disclosure on an applicable basis of refusal listed in PAIA, for example

where disclosure is premature and will prejudice the outcome of an investigation, or reveal the identity of an informant.

2.2.6.7 Publication of names of offenders (clause 74): The information regarding a convicted tax offender which may be published, after all appeal rights have been exhausted, excludes such offender's address and may now only refer to the area of residence of the person concerned.

#### 2.2.7 Chapter 7: Advance rulings

Clauses 75 to 90: The advance ruling system currently regulated in the Income Tax Act and the Value-Added Tax Act is incorporated in the TAB. The provisions establish the framework for the system and set out basic rules regarding the application process, fees, exclusions and refusals, the effect of rulings, the impact of subsequent law changes, retrospectivity and the publication of rulings. They also provide for specific rules in respect of the three primary types of rulings, i.e. binding general rulings, binding private rulings and binding class rulings.

### 2.2.8 Chapter 8: Assessments

In general, more generic terms regarding assessments are used to include future modernisation initiatives such as a full self-assessment system.

#### **New provisions**

2.2.8.1 Original assessments (clause 91): The concept of an "original assessment", i.e. the first assessment in respect of a tax period, is now a defined term that relates to a specific type of assessment, similar to other types i.e. "reduced assessment" and "additional assessment". Generally, an assessment by SARS may be based on the return information or other information available or obtained in respect of the taxpayer.

In the context of self-assessment, the submission of a return which incorporates a determination of the amount of a tax liability constitutes an original assessment. If a tax Act requires a taxpayer to make a determination of the amount of a tax liability and no return is required, the payment of the amount of tax due is an original assessment. If no return or payment is made, SARS may issue an original assessment based on an estimation. If the taxpayer thereafter submits the return or makes the required payment, it would constitute an additional or reduced assessment, as the case may be.

- 2.2.8.2 Additional assessments (clause 92): Provision is made for simplified grounds on which additional assessments may be issued to achieve alignment across taxes. A new simplified concept "prejudice to SARS or the fiscus" will be used as a basis for the issue of additional assessments, for example a previous understatement of income prejudices SARS or the fiscus in that the correct amount of tax was not assessed. This general concept is used essentially to cater for all circumstances in the tax Acts which may give rise to an additional assessment.
- 2.2.8.3 Reduced assessments (clause 93): Changes were effected to current law to clarify that a reduced assessment will also be issued in the case of an undisputed error made by the taxpayer in a return, for example the omission of deductions to which the taxpayer would otherwise be entitled to. If the error is disputed, for example where SARS is not satisfied than an understatement was purely erroneous, the taxpayer will need to object against the disputed assessment.
- 2.2.8.4 Jeopardy assessments (clause 94): Jeopardy assessments, also known as a "protective assessments", are introduced and may be issued in advance of the date on which the return is normally due in order to secure the early collection of tax that would otherwise be in jeopardy or where there is some danger of tax being lost by delay. A jeopardy assessment may be issued where the taxpayer, for example, tries to place assets beyond the reach of SARS' collection powers when an investigation into the taxpayer's tax affairs is initiated. In addition to the power to object and appeal the assessment, an affected taxpayer may apply to a High Court for a review of the assessment on the basis that the amount thereof is excessive or that the circumstances on which SARS relied to justify a jeopardy assessment do not exist.
- 2.2.8.5 Estimation of assessments (clause 95): In the TAB the concept of an "estimated assessment" is replaced with the concept of an assessment based on an "estimation". To counteract non-, late or inadequate filing, SARS may issue an

assessment on an estimation based on information readily available to it. Provision is still made for an agreed assessment, if a taxpayer is unable to submit an accurate return.

- 2.2.8.6 *Notice of assessment and recording of an assessments (clauses 96 and 97)*: The requirements for a valid assessment are set out. Also, the following additional information must be provided by SARS:
  - (a) In the case of an assessment based on an estimation or an assessment that is not fully based on a return submitted by the taxpayer, a statement of the grounds for the assessment.
  - (b) In the case of a jeopardy assessment, the grounds for believing that the tax would otherwise be in jeopardy.
- 2.2.8.7 Withdrawal of assessments (clause 98): In addition to the circumstances under current law as to when assessments may be withdrawn, provision is made for the withdrawal of an assessment issued as a result of an incorrect payment allocation by SARS, which may inter alia occur in the case of self-assessment for which no return is required.
- 2.2.8.8 Period of limitations for issuance of an assessments (clause 99): The periods of limitation for the issue of an assessment by SARS is:
  - (a) In the case of an assessment by SARS, three years after the date of the original assessment.
  - (b) In the case of self-assessment for which a return is required, five years after the date of the actual submission of the return (i.e. the "original assessment") by the taxpayer or, if no return is submitted by the taxpayer, the date of the issue of the original assessment by SARS.
  - (c) In the case of a tax for which no return is required, five years from the date of the actual payment of the tax. If only a portion of the tax was paid, for example under an instalment payment agreement, the period will run from the date of the last payment prior to defaulting under such an agreement. If no payment was made in respect of the tax for the tax period, it is five years after the effective date, as referred to in clause 187(4).
  - (d) In the case of an additional or reduced assessment, no further assessment may be issued if the preceding assessment was issued in accordance with a practice generally prevailing at the date of the assessment.
  - (e) In the case of self-assessment for which no return is required and payment is made, which payment constitutes an original assessment, no further assessment may be issued if the payment was made in accordance with the practice generally prevailing at the date of that payment.
  - (f) If a dispute has been resolved under Chapter 9 of the TAB, no further assessment may be issued.

The above limitations on the issue of assessments by SARS do not apply to the extent that:

- In the case of assessment by SARS, the fact that the full amount of tax chargeable was not assessed was due to fraud, misrepresentation or non-disclosure of material facts.
- (ii) In the case of self-assessment, the fact that the full amount of tax chargeable was not assessed was due to fraud, intentional or negligent misrepresentation, intentional or negligent non-disclosure of material facts or the failure to submit a return or, if no return is required, the failure to make the required payment of tax.
- (iii) SARS and the taxpayer agree prior to the expiry of the limitation period that the limitations do not apply.
- (iv) An assessment must be issued to give effect to the resolution of a dispute under Chapter 9 or a final judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal. Particularly in the latter regard, if a dispute is pursued to the Supreme Court of Appeal, judgment is often given more than three to five years after the "date of assessment", as defined in clause 1, of the original assessment.
- 2.2.8.9 Finality of assessment or a 'decision referred to in clause 104(2)' (clause 100): All instances where an assessment or 'decision' which is subject to objection and appeal will become final and conclusive are listed in this clause. This is done for the sake of clarity, as under current law the provisions are dispersed throughout the tax Acts.

Although the finality of an assessment or "decision" under clause 100(1) does not prevent SARS from making an additional assessment, reduced assessment or making a "decision", this will not be possible after the expiry of the limitation periods referred to

in clause 99, unless the exceptions to the limitation apply, for example fraud, misrepresentation or non-disclosure of material facts.

In the case of an assessment that is final pursuant to a judgment by the tax court, SARS may only make an additional assessment, even within the limitation period, in respect of an amount of tax that has been dealt with in the disputed assessment, in the event that the fact that the full amount of tax chargeable was not assessed was due to fraud, misrepresentation, non-disclosure of material facts or the failure to submit a return or, if no return is required, the failure to make the required payment of tax. However, if the assessment became final in consequence of a judgment by a higher court, no additional assessment or reduced assessment may be issued.

# 2.2.9 Chapter 9: Dispute Resolution

Only specific clauses in this Chapter will be discussed, as the remainder are largely based on current law.

### **New provisions**

- 2.2.9.1 *Definitions (clause 101)*: An important definition for purposes of Chapter 9 is a "decision", which if used in single quotation marks means a decision which is subject to objection and appeal under clause 104(2). The word assessment, as explained above, does not include a 'decision' as is the case in current law.
- 2.2.9.2 Burden of proof (clause 102): The rule has been changed to align it across taxes.
  - (a) Burden of proof on taxpayers: These provisions have been amended to align the general burden of proof on taxpayers across taxes.
  - (b) Burden of proof on SARS: The burden of proving whether an estimation on which an assessment is based is reasonable, and the grounds for the imposition of an understatement penalty, is on SARS.
- 2.2.9.3 Rules for dispute resolution (clause 103): The current enabling provision for these rules, i.e. section 107A of the Income Tax Act, 1962, will be deleted in the Schedule of Amendments to the TAB and new, revised rules will be issued under this clause.
- 2.2.9.4 *Objection against assessment or decision (clause 104)*: A taxpayer may object against:
  - (a) Any assessment where the taxpayer is aggrieved by the assessment.
  - (b) A decision by SARS not to extend the period for objection or appeal where the taxpayer requested such extension.
  - (c) A decision not to authorise a refund under clause 190.
  - (d) Any decision that may be objected to or appealed against under a tax Act. Such decisions in the Income Tax Act will be included in section 3 of that Act pursuant to the amendment thereof by the Schedule of Amendments to the TAB. In the Value-Added Tax Act, 1991, these decisions are mostly to be found in section 32 of that Act.
- 2.2.9.5 Decision on objection (clause 106): This clause specifically provides that the notice by SARS informing a taxpayer of the disallowance or partial allowance of an objection, must state the basis for the decision and a summary of the procedures for appeal.

Clause 106(6) inserts a new test case provision, under which a senior SARS official may designate an objection or appeal as a test case if the official considers that the determination of the objection or appeal, whether on a question of law only or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections. The official may then stay the other objections or appeals by reason of the taking of a test case on a similar objection or appeal before the tax court. The test case procedure will be regulated by the rules to be issued under clause 103, which will *inter alia* provide for remedies for taxpayers who do not wish their objections or appeals to be stayed or subject to the outcome of a test case.

2.2.9.6 Appointment of chairpersons of the tax board (clause 111): This clause inter alia obliges a chairperson of the tax board to withdraw where there is a conflict of interest which may give rise to bias, whether on own volition or upon application by either of the parties. Such application may also be made in the event of other indications of bias.

- 2.2.9.7 Decision of tax board (clause 114): The tax board is available as a more informal forum to resolve tax disputes involving tax in dispute of, currently, less than R500 000 and should be a more expeditious process than an appeal to the tax court. The tax board's decision period (60 business days) is prescribed to avoid current problems where chairpersons take, for example, up to 2 years to deliver the decision. If the chairperson fails to deliver the decision within the 60 day period, the taxpayer may require that the appeal be referred to the tax court to be considered afresh.
- 2.2.9.8 Conflict of interests of tax court members (clause 122): This clause inter alia obliges a member of the tax court to withdraw where there is a conflict of interest which may give rise to bias, whether on own volition or upon application by either of the parties. Such application may also be made in the event of other indications of bias.
- 2.2.9.9 Sittings of tax court not public (clause 124): A new exception to this rule is inserted, namely that the court may direct on application by any party and under exceptional circumstances that a sitting be held in public. This was inserted as a result of the concern that a constitutional difficulty may arise if only the taxpayer concerned may request that a sitting be held in public, as this may conflict with the open justice principle.
- 2.2.9.10 Order for costs by tax court (clause 130): Where a cost order is granted in favour of SARS in the tax court or a higher court, these amounts would constitute funds of SARS within the meaning of section 24 of the SARS Act. The main reason for this is that cost orders are intended to reimburse a party for its legal costs—this is not achieved if SARS uses its own money to pay for legal proceedings and the money pursuant to a costs order in favour of SARS is then paid into the National Revenue Fund.
- 2.2.9.11 Publication of judgments of tax court (clause 132): All tax court judgments must be published for general information, whether marked reportable or not, in a format that does not reveal the identity of the taxpayer (unless the sitting of the tax court was public under the circumstances referred to in clause 124(2)). The reason for providing that *all* judgments be published, is essentially to address complaints that currently only SARS has the benefit of access to unreported and unpublished judgments.
- 2.2.9.12 Settlement of disputes (clauses 142 to 149): These provisions are changed to cater more clearly for the implications for SARS and rights of SARS where the taxpayer defaults after conclusion of the settlement. The change essentially enables SARS to choose between regarding the settlement agreement as breached as a result of which the full disputed amount remains due (and the dispute must continue) or enforcing specific performance of the settled amount in which event the dispute is regarded as finalised.

It is also clarified that a settlement can only be concluded after the issue of an assessment. When the section 88A settlement procedures were introduced in 2003 in the Income Tax Act, 1962, the underlying assumption was that the settlement of disputes would only commence after the relevant assessment. This assumption is reinforced by the fact the section 88H of Income Tax Act, 1962, provides for "a revised assessment" to give effect to a settlement i.e. section 88H is based on the assumption that the dispute would be based on an existing assessment that needs to be revised.

Operational uncertainty, however, arose after 2003 as to whether settlements may be concluded prior to assessments. Settlement procedures under the TAB are accordingly limited to post-assessment disputes which should, *inter alia*, avoid the possibility of "negotiated assessments" and ensure proper reporting of settlements to the Auditor-General and Minister of Finance.

# 2.2.10 Chapter 10: Tax liability and payment

## **New provisions**

- 2.2.10.1 New categories of persons liable to tax (clauses 151 to 159): This Chapter includes new categories of persons liable to tax in order to simplify and clarify the tax liability of different persons, and the capacity in which they may be liable for tax debts. The circumstances when a tax liability in respect of each category of person will arise both in representative capacities and personal capacities are then described. The categories are:
  - (a) Persons chargeable to tax (primary liability)
  - (b) Representative taxpayers
  - (c) Withholding agents
  - (d) Responsible third parties

- (e) A person who is the subject of a request to provide assistance under an arrangement made with a foreign government by an agreement entered into in accordance with a tax Act (for example section 108 of the Income Tax Act).
- 2.2.10.2 Right to recovery of taxpayers (clause 160): A representative taxpayer, withholding agent and responsible third party who pays a tax in that capacity is entitled to recover the amount so paid from the taxpayer on whose behalf it is paid, or to retain an equivalent amount out of money or assets of the taxpayer in that person's possession. A taxpayer, on whose behalf an amount was withheld and paid by a withholding agent under the agent's statutory obligation to do so, may not recover the amount from the withholding agent.
- 2.2.10.3 Security by taxpayer (clause 161): Under certain circumstances a taxpayer, in any of the listed situations, may be required to provide security for purposes of safeguarding the collection of tax, for example, where the taxpayer is a withholding agent who has frequently failed to withhold or pay the tax due. In addition, in the case of a taxpayer which is not a natural person and cannot provide the required security, any or all of the members, shareholders or trustees who control or are involved in the management of the taxpayer may be required to enter into a contract of suretyship in respect of the taxpayer's liability for tax which may arise from time to time. As security provided by a taxpayer under this clause is aimed at securing the recovery of tax that may, in future, be in jeopardy a decision to require security is not subject to objection and appeal, but is otherwise reviewable by, for example, requesting SARS to review the decision internally under clause 9(1)(b) or by pursuing external remedies. Security in the form of a cash deposit may be recovered under the recovery provisions contained in the TAB
- 2.2.10.4 Determination of time and manner of payment of tax (clause 162): The TAB provides for enabling provisions allowing SARS to determine the time and manner of payment of tax. Provision is also made for an expedited due date for payment or the provision of security where there is a risk of dissipation of assets to evade or frustrate the collection of tax.
- 2.2.10.5 Preservation of assets order (clause 163): SARS may apply for a preservation of assets order by a High Court and may, in anticipation of such order, seize assets about to be dissipated. Where SARS seizes the assets first, the order must be applied for within 24 hours of seizure. This power is also available as a conservancy measure for purposes of mutual assistance in the recovery of tax on behalf of foreign governments under clause 185. Assets seized under this clause must be dealt with in accordance with the directions of the High Court which made the preservation order.
  - 2.2.10.6 Payment of tax pending objection or appeal (clause 164):
    - (a) Clarity is provided that the obligation to pay tax, which arises upon the issue of an assessment, is not "automatically" suspended by an objection or appeal. The obligation can only be suspended by SARS upon request by the taxpayer.
    - (b) In view of the fact that the due date for the payment of tax under an assessment is normally before the due date for lodging an objection and to cater for pre-objection requests for adequate reasons, a suspension request may be made before an objection is lodged. However, such suspension will be automatically revoked if no objection is lodged. If the objection is lodged but is based on frivolous or vexatious grounds, the suspension of the obligation to pay may be revoked by SARS.
    - (c) The discretion to suspend payment or to revoke it is based on criteria specified in the TAB, to enable a taxpayer to understand what criteria will be considered in reviewing a request for suspension.
    - (d) A new obligation is placed on the senior SARS official to periodically review the suspension (on a risk basis) during the dispute, and to revoke the suspension in the case of dissipation of asset risks or delaying tactics employed by the taxpayer.
    - (e) No recovery proceedings by SARS may commence during the period commencing on the day SARS issues its decision not to suspend payment or a notice of revocation, and 10 business days thereafter. This is to enable a taxpayer to consider its rights, for example whether to bring a review application against the decision not to suspend or to revoke.
    - (f) A taxpayer who pays and whose objection is upheld, is entitled to interest from the date of payment of the disputed amount to the date on which such amount is refunded. This rule applies across all taxes.

- 2.2.10.7 Taxpayer account and allocation of payments (clauses 165 and 166): A framework to support the modernisation of SARS' accounting system is created, within which:
  - (a) A single taxpayer account with a rolling balance may be created.
  - (b) Payment allocation rules may be applied in respect of a specific tax type or a group of tax types, for example, the application of the first-in-first-out rule.
- 2.2.10.8 Deferral of payment (clauses 167 and 168): Where a taxpayer is unable to pay a tax debt in a single amount within the prescribed payment period, provision is made for a formal instalment payment arrangement in accordance with prescribed criteria and procedures. This is essentially a debt relief mechanism but is only applicable if the criteria to qualify for such an arrangement are met. A senior SARS official may enter into such an agreement with a taxpayer, under which the taxpayer may be allowed to pay a tax debt in a single amount after a prescribed period or in instalments. SARS may terminate an agreement if the taxpayer fails to pay an instalment or fails to otherwise comply with its terms, and payments made prior to the termination will be retained by SARS as part payment of the tax debt.

### 2.2.11 Chapter 11: Recovery of tax

Generally, the strengthening of rights to collect tax from responsible third parties effected in this Chapter is aimed at strengthening SARS' collection powers:

- (a) In respect of transactions involving the transfer of assets offshore.
- (b) Where certain events result in the limitation or frustration of the collection of tax debts by SARS.

In addition, the potential personal liability of parties involved in the financial affairs of a company should serve as encouragement to comply with the tax laws by ensuring correct and timely payment of tax.

No major changes were effected in respect of the provisions enabling SARS to assist in the collection of foreign taxes.

#### **New provisions**

- 2.2.11.1 Period of limitation on collection of outstanding tax debts (clause 171): The current 30 year prescription period for tax according to the Prescription Act, 1969, is now prescribed in the TAB and is reduced to 15 years. This will ensure a more practical and realistic approach to SARS' debt book management and is more aligned with international best practice.
- 2.2.11.2 Application for civil judgment for recovery of tax (clause 172): To ensure alignment with the "pay now argue later" rule under which SARS may recover a disputed amount of tax as contemplated in clause 164, clause 172(2) provides that SARS may file a statement, that has the effect of civil judgment for debt, irrespective of whether or not the amount of tax is subject to an objection or appeal under Chapter 9, unless the obligation to pay the amount has been suspended under clause 164.
- 2.2.11.3 Liability of third party appointed to satisfy tax debts (clause 179): Under current law, this is an "agent appointment" effected under, for example, section 99 of the Income Tax Act, 1962. The use of the term "agent" was considered unnecessary under this clause any third party who holds or owes or will hold or owe monies to the taxpayer, may by notice by a senior SARS official be required to pay the amounts to SARS. If that person is unable to comply with a requirement of the notice the person must advise the senior SARS official of the reasons for not complying within the period specified in the notice, and SARS may withdraw or amend the notice as is appropriate under the circumstance.

A person receiving a notice must pay the money in accordance with the notice and, if the person parts with the money contrary to the notice, the person is personally liable for the money.

If SARS under this recovery power requires a third party, for example, an employer to pay amounts to SARS in satisfaction of the taxpayer's tax debt, provision is made that SARS may, on request by a person affected, extend the period over which the amount must be paid to SARS to allow the taxpayer to cover his or her and legitimate dependant's basic living expenses.

2.2.11.4 Personal liability of person involved in financial management (clause 180): A person who controls or is regularly involved in the management of the overall financial affairs of a taxpayer with outstanding tax debts may be held personally liable

for such debts where a senior SARS official is satisfied of negligence or fraud on the part of such person in the payment of tax debts of the taxpayer. Liability is proportional to the extent that the negligence or fraud resulted in the non-payment of the tax debt.

- 2.2.11.5 Liability of shareholders and liability of transferees (clauses 181 and 182): Provision is made for the liability of shareholders who receive assets from an unlisted company with outstanding tax debts within one year of its winding-up, as well as the liability of transferees who are connected persons in relation to the transferor with an outstanding tax debt and who receive property for no consideration or below fair market value.
- 2.2.11.6 Liability of person assisting in dissipation of assets (clause 183): A person who knowingly assists a taxpayer in the dissipation of assets to avoid or frustrate the collection of tax may be held jointly and severally liable with the taxpayer for the tax debt. The person's liability is, however, limited to the extent that the assistance reduces the assets available to pay the taxpayer's tax debt i.e. the actual amount by which the assets are reduced as a result of the person's assistance.
- 2.2.11.7 Recovery powers against responsible third parties (clause 184): SARS has the same powers of recovery referred to in Part D of Chapter 11 against the assets of a responsible third party as SARS has against the assets of the taxpayer.
- 2.2.11.8 Compulsory repatriation of foreign assets of taxpayer (clause 186): Where a taxpayer has offshore assets which could be utilised to satisfy tax debts, provision is made that SARS may apply to the High Court for an order to compel the repatriation of these assets. The Court may impose certain sanctions where the taxpayer fails to comply, for example imprisonment based on contempt of court, or the imposition of other limitations (for example requiring the taxpayer to cease trading), until the taxpayer has complied with the court order.

## 2.2.12 Chapter 12: Interest

Chapter 12 creates *inter alia* a framework to support the modernisation of SARS' accounting system regarding interest, within which interest provisions may be aligned across taxes and interest due or payable calculated on the daily balance owing and compounded monthly.

The general rule is that that interest accrues from the "effective date", as described in clause 187(4), to the date of payment.

Interest on an amount refundable under clause 190 is calculated from the later of the effective date, or the date that the excess was received by SARS to the date the refunded tax is paid by SARS. In other words, if the overpayment only occurred after the effective date, interest will be calculated from such "out of pocket" date and not the earlier "effective date". If a refund is offset under clause 191 against an existing tax debt of the taxpayer, the date on which the offset is effected is considered to be the date of payment of the refund. Exceptions to this rule may remain in some tax Acts, for example section 45 of the Value-Added Tax Act, 1991. The effective date in relation to an additional assessment or reduced assessment is the effective date in relation to the tax payable under the original assessment.

Separate provision is made for interest payable in respect of the first and second payment of provisional tax in clause 188(2).

The discretion to remit interest is retained, but limited to specified circumstances beyond the taxpayer's control.

# 2.2.13 Chapter 13: Refunds

This Chapter caters for the payment of refunds by SARS to a taxpayer. A taxpayer is generally entitled to a refund of:

- (a) an amount properly refundable under a tax Act and reflected in an assessment (i.e. including a return which is a self-assessment such as a VAT return); or
- (b) the amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment (for example, where a taxpayer while making an EFT payment erroneously pays more than what is required in the assessment).

Provision is made for a refund paid into a wrong account by SARS to be collected as if it was a tax. In the absence of such a provision SARS, pursuant to paying amounts into incorrect accounts, will only be able to recover the amounts through protracted common law remedies such as unjust enrichment.

Furthermore, a refund need not be authorised by SARS until such time that a verification, inspection or audit of the refund has been finalised. A taxpayer will remain entitled to interest from the later of the effective date or date that the overpayment was made, to the date of the payment of the refund by SARS after finalisation of the verification, inspection or audit. SARS must authorise the payment of a refund before the finalisation of the verification, inspection or audit if security in a form acceptable to a senior SARS official is provided by the taxpayer.

# 2.2.14 Chapter 14: Write off or compromise of tax debts

These provisions provide for what is essentially a form of tax debt relief which may be afforded to taxpayers under certain prescribed circumstances. No major changes were made to current law, except that the circumstances where it is appropriate to compromise a tax debt were made less restrictive, by removing some of the factors that disqualify the tax debtor from a compromise agreement.

## 2.2.15 Chapter 15: Administrative Non-Compliance Penalties

The administrative penalties introduced under section 75B of the Income Tax Act are included in the TAB so as to apply across taxes, but are referred to as an 'administrative non-compliance penalty' to distinguish it from an 'understatement penalty' imposed under Chapter 16 (referred to under current law as 'additional tax'). These penalties relate to failures to comply with administrative requirements of the tax Acts. Non-compliance that results in an understatement of tax due, is addressed under the understatement penalty regime in Chapter 16.

### **New provisions**

- 2.2.15.1 Fixed amount administrative penalties may only be imposed in respect of non-compliance listed in a public notice by the Commissioner, and not any non-compliance with an obligation under a tax Act. The purpose of the notice is to only target impactful or more serious non-compliance and only when SARS' systems are in place to do so effectively.
- 2.2.15.2 In terms of clause 213, percentage based penalties are imposed under the TAB if SARS is satisfied that an amount of tax was not paid as and when required under a tax Act. SARS may impose a "penalty" equal to the percentage, as prescribed in the relevant tax Act, of the amount of unpaid tax. The procedures for the imposition and remittance of a percentage based penalty are regulated by the TAB, but the circumstances that trigger the imposition of the penalty remain in the tax Act.
- 2.2.15.3 The current administrative non-compliance penalty of R1 million or more for failure to report a reportable arrangement has been included in this Chapter and changed to ensure that the amount of the penalty is imposed on a more proportionate basis. The basis, amount and procedure for the imposition and remittance of this penalty are, therefore, regulated by the TAB.

#### 2.2.16 Chapter 16: Understatement penalty

Provision is made that the current open-ended discretion to impose an understatement penalty (under current law referred to as 'additional tax') of up to 200% is now limited by a new structure whereby the percentage of the understatement penalty will be determined by the taxpayer's behaviour and objective criteria listed in a table. This is aimed at ensuring consistent treatment of taxpayers in comparable circumstances.

The rationale for replacing the concept of 'additional tax' with the term 'understatement penalty' is:

- (a) It would remove any uncertainty as to whether 'additional tax' is a tax that may only be imposed under a money bill as contemplated in section 77 of the 1996 Constitution.
- (b) The South African courts have held on more than one occasion that additional tax is in essence a penalty, and not a tax on, for example, income as the name suggest.

### **New provisions**

- 2.2.16.1 Understatement penalties under the TAB now predominantly target more serious non-compliance, such as conduct that includes elements of tax evasion. An understatement penalty is triggered by an "understatement" as defined in clause 221, and the percentage of the understatement penalty imposed will be based on specified behaviour. A table of understatement penalty percentages based on specified and defined (where required) behaviour is included.
- 2.2.16.2 The onus to prove the grounds for imposition of an understatement penalty and the applicable percentage now rests on SARS.
- 2.2.16.3 Voluntary Disclosure Programme ("VDP") (clauses 225 to 233): A permanent legislative framework for voluntary disclosure applicable across all tax types, excluding customs and excise, is included in this Chapter. The main purpose of such a framework will be to enhance voluntary compliance and is in the interest of the good management of the tax system and the best use of SARS' resources. The permanent framework in the TAB will not provide interest or exchange control relief but will on a permanent basis provide the following relief:
  - (a) If the taxpayer has remedied all non-compliance with any obligation under a tax Act, 100% relief in respect of an administrative non-compliance penalty that was or may be imposed under Chapter 15, excluding a penalty imposed under that Chapter or in terms of a tax Act for the late submission of a return.
  - (b) The relief in respect of any understatement penalty referred to in column 5 or 6 of the Understatement Penalty Percentage Table in clause 223.
  - (c) SARS will not pursue criminal prosecution.

# 2.2.17 Chapter 17: Criminal offences

General statutory offences are now included in the TAB but tax type specific offences may remain in the other tax Acts. Provision is made for non-compliance offences, tax evasion and contravention of secrecy provisions. Criminal sanction under this Chapter may be pursued by SARS in addition to imposing an administrative non-compliance penalty or an understatement penalty.

#### New provisions

2.2.17.1 Tax evasion "reverse onus" (clause 235(2)): The reverse onus on a taxpayer under current law has been removed. SARS has been advised that this onus in its current form will not survive a constitutional challenge and should be replaced by a "lesser onus", in terms of which the taxpayer will only need to prove that there is a reasonable possibility that the taxpayer was ignorant of the falsity of the fraudulent statement and that such ignorance was not due to negligence.

2.2.17.2 Decision to lay a complaint of statutory tax evasion (clause 235(3)): The decision to lay a complaint for tax evasion must be taken by a senior SARS official.

# 2.2.18 Chapter 18: Reporting of unprofessional conduct

No major changes were effected, except that a condition has been added to the existing requirement that a person who gives tax advice must register as a tax practitioner with SARS. A person who during the five years before his application for registration has been removed from a related profession or professional body for dishonesty, or convicted for a crime involving dishonesty, may not be so registered.

# 2.2.19 Chapter 19: General provisions

These provisions are predominantly based on current law, except for clause 244 that limits the period within which a taxpayer may request the extension of a deadline after the expiry of the deadline as well as the circumstances under which such extension will be considered. Also a new provision is inserted in clause 254 which caters for non-material defects in procedural requirements for the issue of documents, for example, assessment. Such defects do not affect the validity of the procedure provided the taxpayer concerned has effective knowledge of the fact of the notice or document and of its content. The procedures and the requirements for the issue of a tax clearance certificate are now regulated in the TAB under this Chapter.

## 2.2.20 Chapter 20: Transitional provisions

These provisions are aimed at ensuring a smooth transition from current law to the Tax Administration Act, upon commencement of that Act.

Clause 272, which provides for the commencement of the Tax Administration Act, makes provision for different commencement dates including the commencement of certain amendments to the Tax Acts in Schedule 1.

#### 3. CONSULTATION

The TAB involved an extensive review of the existing position in South Africa, an analysis of the international situation to establish best practice and a detailed discussion of a proposed South African model. SARS was also assisted by international tax experts from the IMF and local constitutional experts.

The drafting process involved input from internal stakeholders, and discussions were also held with the National Treasury. During March 2009 a conceptual draft TAB was submitted to the then Minister of Finance, who approved the holding of a closed workshop with external tax experts in May 2009.

Pursuant to the closed workshop, discussions and internal workshops, the commentary received was considered during an extensive internal review of the draft and resulted in certain changes.

A first draft of the TAB was released for public comment on 29 October 2009.

Another workshop was held with external stakeholders at the beginning of March 2010 after the close of the public comment cycle on 26 February 2010, which gave the commentators a further opportunity to debate substantial issues and to raise any additional concerns.

All comments were duly considered and changes where considered necessary were affected to the draft Bill submitted to the State Law Advisers for pre-certification.

A workshop with the Economic Sectors, Employment and Infrastructure Development Cluster was held in August 2010, whereafter the draft TAB was submitted for Cabinet approval for the introduction thereof in Parliament, which was given at the end of September 2010.

A second draft of the Bill, including the schedule of amendments to the other tax Acts, was published for public comment on 29 October 2010 and the comment period closed on 15 December 2010.

During February, two further workshops were held with commentators, again to give them a further opportunity to debate substantial issues and to raise any additional concerns

Comments and input during the above process were received from *inter alia* the following institutions and interested parties in the tax arena:

- ACCA (Association of Chartered Certified Accountants)
- ASISA (Association for Savings and Investment South Africa)
- BASA (Banking Association of South Africa)
- Cape Bar Council
- Cliffe Dekker Hofmeyr Inc. Attorneys
- Deloitte
- Edward Nathan Sonnenbergs
- Ernst & Young
- KZN Law Society
- LSNP (Law Society of the Northern Provinces)
- LSSA (The Law Society of South Africa)
- PAG (Payroll Authors Group)
- PricewaterhouseCoopers
- SAICA (South African Institute of Chartered Accountants)
- SAIPA (South African Institute for Professional Accountants)
- SAIT (South African Institute of Tax Practitioners)
- Werksmans Attorneys

Changes arising from the commentary period and the consultative workshops were effected to the Bill and the Bill was submitted for final certification by the State Law Advisers.

# 4. CONSTITUTIONAL IMPLICATIONS

The TAB focuses on compliance with a number of broad constitutional principles that should apply to each administrative rule, such as equity, fairness, and efficiency. Where fundamental rights are affected, remedial rights of taxpayers or mitigation of the impact are addressed. The TAB was reviewed by external constitutional experts, which review was provided to the Office of the Chief State Law Adviser for consideration during the pre-certification of the TAB for submission to Cabinet.

### 5. IMPLICATIONS FOR VULNERABLE GROUPS

The simplification of tax administration should assist smaller taxpayers to understand and comply more easily with the tax laws, thereby reducing their compliance burden.

#### 6. IMPLICATIONS FOR PROVINCES

None.

#### 7. FINANCIAL IMPLICATIONS FOR STATE

One of the primary objectives of the TAB is to reduce the costs of tax administration in the medium to longer term. In the short term, however, implementation costs may arise from system changes, changes to prescribed forms, staff training etc., which will be covered from existing funds in SARS' budget.

#### 8. PARLIAMENTARY PROCEDURE

- 8.1 The State Law Advisers and SARS are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 8.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.