

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.

BE 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: 5

“**additional assessment**” is an assessment referred to in section 92;

“**administration of a tax Act**” has the meaning assigned in section 3;

“**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; 10

“**biometric information**” means biological data used to authenticate the identity of a natural person by means of—

(a) facial recognition;

(b) fingerprint recognition;

(c) voice recognition; 15

(d) iris or retina recognition; and

(e) other, less intrusive biological data, as may be prescribed by the Minister in a regulation issued under section 257;

“**business day**” means any 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 and 15 January of the following year, both days inclusive; 20

“**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

“**date of assessment**” means—

(a) in the case of an assessment by SARS, the date of the issue of the notice of assessment; or

(b) in the case of self-assessment by the taxpayer—

(i) if a return is required, the date that the return is submitted; or 35

(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;

“**date of sequestration**” means—

(a) the date of voluntary surrender of an estate, if accepted by a court; or 40

(b) the date of provisional sequestration of an estate, if a final order of sequestration is granted by a court;

“**Diamond Export Levy Act**” means the Diamond Export Levy Act, 2007 (Act No. 15 of 2007);

“**Diamond Export Levy (Administration) Act**” means the Diamond Export Levy (Administration) Act, 2007 (Act No. 14 of 2007); 45

“**document**” means anything that contains a written, sound or pictorial record, or other record of information, whether in physical or electronic form;

“**effective date**” has the meaning assigned in section 187(4) and (5);

“**Estate Duty Act**” means the Estate Duty Act, 1955 (Act No. 45 of 1955); 50

“**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;

“**jeopardy assessment**” is an assessment referred to in section 94; 55

“**judge**” means a judge of the High Court of South Africa, 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 of 2008);
- “**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; 5
- “**original assessment**” is an assessment referred to in section 91;
- “**practice generally prevailing**” has the meaning assigned in section 5;
- “**prescribed rate**” has the meaning assigned in section 189(3);
- “**premises**” includes a building, aircraft, vehicle, vessel or place; 10
- “**presiding officer**” is the person before whom an inquiry referred to in Part C of Chapter 5 is held;
- “**Promotion of Access to Information Act**” means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
- “**public officer**” means an officer referred to in section 246; 15
- “**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 foreseeably relevant for tax risk assessment, assessing tax, collecting tax, showing non-compliance with an obligation under a tax Act or showing that a tax offence was committed; 20
- “**reportable arrangement**” has the meaning assigned in section 35;
- “**representative taxpayer**” has the meaning assigned in section 153;
- “**responsible third party**” has the meaning assigned under section 158;
- “**return**” 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; 25
- “**SARS**” means the South African Revenue Service established under the SARS Act;
- “**SARS Act**” means the South African Revenue Service Act, 1997 (Act No. 34 of 1997); 30
- “**SARS confidential information**” has the meaning assigned under section 68;
- “**SARS official**” means—
- (a) the Commissioner,
 - (b) an employee of SARS; or 35
 - (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 No. 25 of 2007); 40
- “**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—
- (a) submitting a return which incorporates the determination of the tax; or 45
 - (b) if no return is required, making a payment of the tax;
- “**senior SARS official**” means a SARS official referred to in section 6(3);
- “**serious tax offence**” is a tax offence for which a person may be liable on conviction to a fine or to imprisonment for a period exceeding two years;
- “**shareholder**” means a person who holds a beneficial interest in a share in a company as defined in the Income Tax Act; 50
- “**Skills Development Levies Act**” means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);
- “**tax**”, 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; 55
- “**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 the SARS Act, excluding the Customs and Excise Act; 60
- “**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;

- “**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**” means the person appointed by the Minister under section 14;
- “**tax period**” means, in relation to—
- (a) income tax, a year of assessment as defined in section 1 of the Income Tax Act; 5
 - (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; 10
 - (c) value-added tax, a tax period determined under section 27 of the Value-Added 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 Royalty (Administration) Act; 15
 - (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 Transfer Tax Administration Act; 20
 - (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;
- “**taxpayer**” has the meaning assigned under section 151; 25
- “**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); 30
- “**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 1991);
- “**withholding agent**” has the meaning assigned under section 156. 35

CHAPTER 2

GENERAL ADMINISTRATION PROVISIONS

Part A

In general

- Purpose of Act** 40
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 this Act applies;
 - (c) prescribing the powers and duties of persons engaged in the administration of a tax Act; and 45
 - (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 direction of the Commissioner. 50
- (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 55

- (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; 5
 - (d) determine the liability of a person for tax;
 - (e) collect tax and refund any 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 10
 - (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 15
 - (i) give effect to the obligation of the Republic to provide assistance under an arrangement made with the government of any other country by an agreement entered into in accordance with a tax Act.
- (3) If SARS has, in accordance with any arrangement referred to in subsection (2)(i) made with the government of any other country, received a request for— 20
- (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; 25
 - (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 state, 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. 30

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. 35
- (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 40

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— 45
- (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 effective date of the repeal or amendment;
 - (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— 50
 - (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 based was *obiter dicta*; or 55
 - (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 5

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 which are assigned to the Commissioner personally by this Act must be exercised by the Commissioner personally unless he or she delegates such power in accordance with the power to do so. 10

(3) Powers 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 exercise the power; or 15

(c) a SARS official occupying a post designated by the Commissioner for this purpose.

(4) The senior SARS official described in subsection (3) is not prevented from allowing the execution of the power or duty to be done by—

(a) an official under the senior SARS official's control; or 20

(b) the incumbent of a specific post under the senior SARS official's control.

(5) Powers not specifically required by this Act to be exercised by the Commissioner personally or by a senior SARS official, may be exercised or performed by a SARS official employed or contracted to exercise or perform powers or duties for purposes of the administration of a tax Act. 25

(6) The Commissioner may by public notice specify that a power or duty in a tax Act 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 30 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 35

(b) other circumstances present a conflict of interest, 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. 40

(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. 45

Decision or notice by SARS

9. (1) A decision made by a SARS official and a notice to a specific taxpayer issued by 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 50 SARS, until proven to the contrary; and

- (b) may, subject to this Act in the discretion of the SARS official described in subparagraphs (i) to (iii) or at the request of the relevant taxpayer, be withdrawn or amended by—
- (i) the SARS official;
 - (ii) any SARS official to whom the SARS official reports; or 5
 - (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 10
 - (b) date of assessment of the notice of assessment giving effect to the decision (if applicable).

Part C

Delegations

Delegations by the Commissioner 15

- 10.** (1) A delegation by the Commissioner under section 6—
- (a) must be in writing;
 - (b) becomes effective only when signed by the person to whom the delegation is made;
 - (c) is subject to the limitations and conditions the Commissioner may determine 20 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 repealed by the Commissioner. 25

(2) A delegation does not divest the person making the delegation of the responsibility for the 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 30

11. (1) No SARS official other than the Commissioner or a SARS official duly 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. 35

(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 chambers in the tax court or in any other High Court. 40

(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— 45
 - (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— 50
 - (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.

Part E

Powers and duties of Minister 5

Powers and duties of Minister

- 13.** (1) The powers conferred and the duties imposed upon the Minister by or under the provisions of a tax Act may—
- (a) be exercised or performed by the Minister personally; and
 - (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. 10
- (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.

Power of Minister to appoint Tax Ombud 15

- 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 may determine.
- (2) The person appointed under subsection (1) or (3) may be removed by the Minister for misconduct, incapacity or incompetence. 20
- (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.
- (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. 25
- (5) A person appointed as Tax Ombud—
- (a) is accountable to the Minister;
 - (b) must have a good background in customer service as well as tax law; and
 - (c) may not at any time during the preceding five years have been convicted (whether in the Republic or elsewhere) of— 30
 - (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
 - (ii) any offence involving dishonesty, 35
 - 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).

Part F

Powers and duties of Tax Ombud 40

Office of Tax Ombud

- 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 by the Commissioner after consultation with the Tax Ombud.
- (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. 45
- (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.
- (4) The expenditure connected with the functions of the office of the Tax Ombud is paid out of the funds of SARS. 50

Mandate of Tax Ombud

16. (1) The mandate of the Tax Ombud is to, subject to section 18(4), 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. 5

(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;
- (c) follow informal, fair and cost-effective procedures in resolving a complaint; 10
- (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
- (f) identify and review systemic and emerging issues related to service matters or the application of the provisions of this Act or any procedural or administrative provisions of a tax Act that impact negatively on taxpayers. 15

Limitations on authority

17. The Tax Ombud may not review—

- (a) legislation or tax policy; 20
- (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 any administrative matter relating to such objection and appeal; or 25
- (d) any 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.

(2) The Tax Ombud may— 30

- (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—

- (a) the age of the request or issue; 35
- (b) the amount of time that has elapsed since the requester became aware of the issue;
- (c) the nature and seriousness of the issue;
- (d) the question of whether the request was made in good faith; and
- (e) the findings of other redress mechanisms with respect to the request. 40

(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.

(5) To determine whether there are compelling circumstances, the Tax Ombud must consider factors such as whether— 45

- (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 result within a period of time that the Tax Ombud considers reasonable. 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— 55

- (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) report to the Commissioner quarterly or at such other intervals as may be agreed.
- (2) The reports must— 5
- (a) contain a summary of at least ten of the most serious issues encountered by taxpayers, including a description of the nature of the issues;
 - (b) contain an inventory of the issues described in subparagraph (a) for which—
 - (i) action has been taken and the result of such action;
 - (ii) action remains to be completed and the period during which each item has remained on such inventory; or
 - (iii) no action has been taken, the period during which each item has remained on such inventory and the reasons for the inaction; and
 - (c) contain recommendations for such administrative action as may be appropriate to resolve problems encountered by taxpayers. 15

Other reports and recommendations

20. (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 any SARS officials that may be identified by SARS. 20

(2) The Tax Ombud's recommendations are not binding on taxpayers or SARS.

Confidentiality

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. 25

(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. 30

CHAPTER 3

REGISTRATION

Registration requirements

- 22.** (1) A person— 35
- (a) obliged to apply to; or
 - (b) who may voluntarily,
- 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.
- (2) A person referred to in subsection (1) must— 40
- (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 form and manner prescribed by the Commissioner;
 - (b) apply for registration for one or more taxes in the form and manner as the Commissioner may direct; and 45
 - (c) 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.
- (3) A person may be required to submit biometric information upon registration in the form and manner as may be prescribed by the Commissioner if the information is required to ensure— 50
- (a) proper identification of the person; or
 - (b) counteracting identity theft or fraud.

(4) A person who applies for registration in terms of this Chapter and has not provided all particulars and documents required by SARS, is regarded not to have applied for registration until all the particulars and documents have been provided to SARS.

(5) 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. 5

Communication of changes in particulars

23. A person who has been registered under section 22 must communicate to SARS within 21 business days any change that relates to—

- (a) postal address; 10
- (b) physical address;
- (c) representative taxpayer;
- (d) banking particulars used for transactions with SARS;
- (e) electronic address used for communication with SARS; or
- (f) such other details as the Commissioner may require by public notice. 15

Taxpayer reference number

24. (1) SARS may allocate a taxpayer reference number in respect of one or more taxes to each person registered under a tax Act or this Chapter.

(2) SARS may register and allocate a taxpayer reference number to a person who is not registered. 20

(3) A person who has been allocated a taxpayer reference number by SARS must include the relevant reference number in all returns or other documents submitted to SARS.

(4) SARS may consider a return or other document submitted by a taxpayer to be invalid if it does not contain the reference number referred to in subsection (3). 25

CHAPTER 4

RETURNS AND RECORDS

Part A

General

Submission of return 30

25. (1) A person required under a tax Act to submit or who voluntarily submits a return must do so—

- (a) in the form and manner prescribed by the Commissioner; and
- (b) by the due date specified by law or, in its absence, by the due date indicated by the Commissioner in the public notice requiring the submission. 35

(2) A return must contain the information prescribed by a tax Act or the Commissioner and be a full and true return.

(3) A return must be signed by the taxpayer or by the taxpayer's duly authorised representative and the person signing the return is regarded for all purposes in connection with a tax Act to be cognisant of the statements made in the return. 40

(4) Non-receipt by a person of a return form does not affect the obligation to submit a return.

(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. 45

(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. 50

Third party returns

26. The Commissioner may by public notice, at the time and place specified, require a person who employs, pays 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 form specified and in the manner as may be prescribed by the Commissioner in the notice. 5

Other returns required

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.

Statement concerning accounts 10

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 15
- (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). 20

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 25
- (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 30
- (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 is subject to tax or would be subject to tax but for the application of a threshold or exemption. 35

(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. 40

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 45
- (c) in a form specifically authorised by a senior SARS official in terms of subsection (2).

(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. 50

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— 5
- (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— 10
- (a) records are relevant to an audit or investigation under Chapter 5; or
 - (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 audit is concluded or the assessment or the decision becomes final.

Translation 15

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 determined by the official within a reasonable period.
- (2) A translation referred to in subsection (1) must— 20
- (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** 25**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 a transaction, operation, scheme, agreement or understanding (whether enforceable or not); 30
- '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 'participant' that is a company required to submit financial statements in terms of the Companies Act, 2008 (Act No. 71 of 2008), financial reporting standards as defined in section 1 of that Act, or in any other case, the International Financial Reporting Standards; 35
- '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; 40
- 'pre-tax profit'**, in relation to an 'arrangement', means the profit of a 'participant' resulting from that 'arrangement' before deducting any normal tax, which profit must be determined in accordance with Statements of Generally Accepted Accounting Practice 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'; 45
- 'promoter'**, in relation to an 'arrangement', means a person who is principally responsible for organising, designing, selling, financing or managing the reportable arrangement; 50
- 'tax benefit'** includes avoidance, postponement or reduction of a liability for tax.

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 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); 5
 - (b) has any of the characteristics contemplated in section 80C(2)(b) of the Income Tax Act, or substantially similar characteristics; 10
 - (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—
 - (i) a deduction for purposes of the Income Tax Act but not as an expense for purposes of ‘financial reporting standards’; or 15
 - (ii) revenue for purposes of ‘financial reporting standards’ but not as gross income for purposes of the Income Tax Act;
 - (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’ 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’. 20
- (2) The Commissioner may list an ‘arrangement’ by public notice, if satisfied that the ‘arrangement’ may lead to an undue ‘tax benefit’. 25
- (3) This section does not apply to any excluded ‘arrangement’ contemplated in section 36.

Excluded arrangements

- 36.** (1) An ‘arrangement’ is an excluded ‘arrangement’ if it is— 30
- (a) a loan, advance or debt in terms of which—
 - (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
 - (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; 35
 - (b) a lease;
 - (c) a transaction undertaken through an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004); or 40
 - (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).
- (2) Subsection (1) applies only to an ‘arrangement’ that—
- (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 45
 - (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’. 50
- (3) Subsection (1) does not apply to an ‘arrangement’ that is entered into—
- (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’. 55

Disclosure obligation

- 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. 5
- (3) A ‘participant’ need not disclose the information in respect of the ‘arrangement’ if 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’. 10
- (4) The ‘arrangement’ must be disclosed within 45 business days after an amount is 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. 15

Information to be submitted

- 38.** The ‘promoter’ or ‘participant’ must submit, in relation to a reportable arrangement, in the form and manner and at the time or place that may be prescribed by the Commissioner—
- (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’; 20
 - (b) a detailed description of the assumed ‘tax benefits’ for all ‘participants’, including, but not limited to, tax deductions and deferred income;
 - (c) the names, registration numbers, and registered addresses of all ‘participants’; 25
 - (d) a list of all its agreements; and
 - (e) any financial model that embodies its projected tax treatment.

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. 30

CHAPTER 5**INFORMATION GATHERING***Part A****General rules for inspection, verification, audit and criminal investigation*** 35**Selection for inspection, verification or audit**

- 40.** SARS may select a person for inspection, verification or audit on the basis of any 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 40

- 41.** (1) A senior SARS official may grant a SARS official written authorisation to conduct a field audit or criminal investigation, as contemplated in Part B.
- (2) When a SARS official exercises a power or duty under a tax Act in person, the official must produce the authorisation.
- (3) If the official does not produce the authorisation as required under subsection (2), a member of the public is entitled to assume that the person is not a SARS official so authorised. 45

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. 5
- (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
 - (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, 20 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 25 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 30 as to whether a criminal investigation should be pursued.
- (2) Any relevant material gathered during an audit after the referral, must be kept separate from the criminal investigation and may not be used in any 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 40 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 45 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 and conduct an inspection to determine only—
- (a) the identity of the person occupying the premises;
 - (b) whether the person occupying the premises is conducting a trade or an 55 enterprise;

- (c) whether the person occupying the premises is registered for tax; or
- (d) 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. 5

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. 10

(2) A senior SARS official may request 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 another person is limited to the records maintained or that should reasonably be maintained by the person.

(4) A person receiving from SARS a request for relevant material under this section must comply with the requirements of the request, and must submit the relevant material to SARS at the place and within the time specified in the request. 15

(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. 20

(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 for purposes of revenue estimation. 25

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 or another person, if the interview— 30

(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 produce any relevant material under the control of the person during the interview. 35

(3) Relevant material required by SARS under subsection (2) must be referred to in the request with reasonable specificity.

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 any 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. 40

(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 45

(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. 50

(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. 55

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; 5
 - (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 10
 - (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. 15

Part C

Inquiries

Authorisation for inquiry

- 50.** (1) The Commissioner personally or a senior SARS official may authorise any person to conduct an inquiry for the purposes of the administration of a tax Act. 20
- (2) A judge may, on application made *ex parte* by the Commissioner or 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 contemplated in this section.
- (3) An application under subsection (2) must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based. 25

Inquiry order

- 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— 30
 - (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— 35
- (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. 40
- (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. 45
- (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 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. 50

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 5
 - (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 vested in a President of the tax court under sections 127 and 128. 10

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 51*bis* 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 questioning of a person, including the person being questioned. 20
- (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 25

- 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 solemn declaration; 30
 - (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 35

- 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. 40

*Part D**Search and seizure***Application for warrant**

- 59.** (1) The Commissioner personally or a senior SARS official may, if necessary or relevant to administer a tax Act, authorise an application for a warrant authorising SARS 45 to enter a premises where 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). 5

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— 10

(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. 15

(2) A warrant issued under subsection (1) must contain the following information:

(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 the premises. 20

(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 must produce the warrant. 25

(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 which the official suspects to contain relevant material; 30

(b) 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;

(c) make extracts from or copies of relevant material, and require from a person an explanation of relevant material; and 35

(d) 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. 40

(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 searched. 45

(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 warrant or without reasonable excuse refuse to give such assistance as may be reasonably required for the execution of the warrant. 50

(8) Subject to section 66, the SARS official and SARS are not liable for damage to property necessitated by reason of the search.

(9) 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— 55

(a) the investigation into the non-compliance or the offence described under 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
 - (c) the delay in obtaining a warrant would defeat the object of the search and seizure,

SARS 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. 10

(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 in section 61(3)— 15

- (a) if the person who may consent thereto 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; 20
 - (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) Section 61(3) to (9) applies to a search conducted under this section. 25

(3) 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. 30

(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 during the execution of a warrant. 35

(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 receipt of the material and, as soon as is reasonably possible, hand over the material to the attorney. 40

- (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— 45
 - (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 50
 - (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. 55

(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. 5

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 section 92(1)(b) of the Promotion of Access to Information Act; 10
- (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— 15

- (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 the conduct of the search and seizure. 20

(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. 25

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 30
- (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 form as may be prescribed by the Commissioner, must be taken before a magistrate, justice of the peace or commissioner of oaths by— 35

- (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 as contemplated 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 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. 40

(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 if the disclosure is necessary to perform the functions specified in those sections. 45

(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 other person acting under the instructions of the taxpayer and published in the media or in any other manner. 50

SARS confidential information and disclosure

- 68.** (1) SARS confidential information means information relevant to the administration of a tax Act that is—
- (a) personal information about a current or former SARS official, whether deceased or not; 5
 - (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;
 - (d) information related to investigations and prosecutions described in section 39 of the Promotion of Access to Information Act; 10
 - (e) information related to the operations of SARS, including an opinion, advice, report, recommendation or an account of a consultation, discussion or deliberation that has occurred, if—
 - (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 15
 - (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— 20
 - (aa) inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or
 - (bb) frustrating the success of a policy or contemplated policy by the premature disclosure thereof; 25
 - (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;
 - (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; 30 35
 - (h) information supplied in confidence by or on behalf of another state or an international organisation to SARS;
 - (i) a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by SARS; and
 - (j) information relating to the security of SARS buildings, property, structures or systems. 40
- (2) Subject to this Chapter, a person who is a current or former SARS official—
- (a) may not disclose SARS confidential information to a person who is not a SARS official;
 - (b) may not disclose SARS confidential information to a SARS official who is not authorised to have access to the information; and 45
 - (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.
- (3) A person who is a SARS official or former SARS official may disclose SARS confidential information if— 50
- (a) the information is public information;
 - (b) authorised by the Commissioner;
 - (c) disclosure is authorised under any other Act which expressly provides for the disclosure of the information despite the provisions in this Chapter; 55
 - (d) access has been granted for the disclosure of the information in terms of the Promotion of Access to Information Act; or
 - (e) required by order of a High Court.

Secrecy of taxpayer information and general disclosure

- 69.** (1) Subject to this Chapter, 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—
- (a) in the course of performance of duties under a tax Act, including—
 - (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;
 - (ii) as a witness in any civil or criminal proceedings under a tax Act; or
 - (iii) the taxpayer information necessary to enable a person to provide such information as may be required by SARS from that person;
 - (b) under any other Act which expressly provides for the disclosure of the information despite the provisions in this Chapter;
 - (c) subject to subsections (3) and (4), by order of a High Court; or
 - (d) if the information is public information.
- (3) An application to the High Court contemplated 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.
- (4) SARS may oppose the application on the basis that the disclosure may seriously prejudice the taxpayer concerned or impair a civil or criminal tax investigation by SARS, and the court may not grant the order unless satisfied that the following circumstances apply:
- (a) the information cannot be obtained elsewhere;
 - (b) the primary mechanisms for procuring evidence under any Act or rule of court will yield or yielded no or disappointing results;
 - (c) the information is central to the case; and
 - (d) the information does not constitute biometric information.
- (5) Subsection (1) does not prohibit the disclosure of information—
- (a) to the taxpayer; or
 - (b) with the written consent of the taxpayer, to another person.
- (6) Biometric information of a taxpayer may not be disclosed by SARS to any person, except under the circumstances described in subsection (2)(a).
- (7) The Commissioner may, despite the provisions of this section, publish—
- (a) the name and taxpayer reference number of a taxpayer; and
 - (b) a list of approved public benefit organisations for the purposes of the provisions of sections 18A and 30 of the Income Tax Act.

Disclosure to other entities

- 70.** (1) A senior SARS official may provide to the Director-General of the National Treasury taxpayer information or SARS information in respect of—
- (a) a taxpayer which is an—
 - (i) institution referred to in section 3(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
 - (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 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—
- (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;
 - (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);

- (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. 5
- (3) A senior SARS official may disclose to— 10
- (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 Act, 1994 (Act No. 29 of 1994), or those Regulations; 15
- (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 purpose of carrying out the Centre's duties and functions under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and 20
- (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). 25
- (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: 30
- (i) name and taxpayer reference number
- (ii) any identifying number;
- (iii) physical and postal address and other contact details;
- (iv) employer's name, address and contact details; and
- (v) other non-financial information as the organ of state or institution may require for purposes of verifying items (i) to (iv). 35
- (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 is—
- (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 40
- (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). 45
- (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 referred to in subsection (3) or (4), a senior SARS official must disclose the information described in subsection (2) to— 50
- (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 the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998). 55
- (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; 60

- (b) that may be relevant to the investigation or prosecution of an offence referred to in subparagraph (a); 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); 5
 - (b) the information will likely be critical to the prosecution of the offence or avoidance of the risk; and
 - (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). 10
- (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 15
 - (b) of the opinion that SARS may have information that is relevant to that 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), which application requires prior notice to SARS of at least 10 business days unless the judge, based on urgency, allows a shorter period. 20
- (5) SARS may oppose the application referred to in subsection (4) 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. 25

Self-incrimination

72. An admission by the taxpayer of the commission of an offence under a tax Act—
- (a) contained in a return, application, or other document submitted to SARS by a taxpayer; or
 - (b) obtained from a taxpayer under Chapter 5, 30
- 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 obtain— 35
- (a) a copy, certified by SARS, of the recorded particulars of any 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
 - (c) subject to subsection (2), other information relating to the tax affairs of the taxpayer. 40
- (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 any copies in accordance with the fees prescribed in section 92(1)(b) of the Promotion of Access to Information Act. 45

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 50
 - (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 55
 - (c) the particulars of the fine or sentence imposed.

CHAPTER 7

ADVANCE RULINGS

Definitions

75. In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings: 5

‘**advance ruling**’ 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 ruling’ or a ‘binding class ruling’;

‘**application**’ means an ‘application’ for a ‘binding private ruling’ or a ‘binding class 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’;

‘**binding effect**’ means the requirement that SARS interpret or apply the applicable tax Act in accordance with an ‘advance ruling’ under section 82; 15

‘**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;

‘**binding private ruling**’ 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 of the ‘transaction’; 20

‘**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’;

‘**class member**’ and ‘**class members**’ means a member or members of the ‘class’ to which a ‘class ruling’ applies; 30

‘**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 transactions, but which does not have any ‘binding effect’ within the meaning of section 88; 35

‘**proposed transaction**’ 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

‘**transaction**’ means any transaction, deal, business, arrangement, operation or schemes 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 45

77. Subject to section 80, 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. 50

(2) SARS may issue a ‘binding class ruling’ upon ‘application’ by a person in 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 form and manner that the Commissioner may prescribe, must be signed by a senior SARS official and must contain the following: 5

- (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’; 10
- (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 validity of the ruling; 15
- (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 ruling, the issuance, withdrawal or modification of the ruling, or any other information or matter pertaining to the ruling. 20

Applications for advance rulings

79. (1) Subject to the minimum requirements set forth in subsection (4), an ‘application’ must be made in the form and manner prescribed by the Commissioner. 25

(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’. 30

(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; 35
- (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’; 40
- (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’; 45
- (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; 50
- (i) a statement of the ‘applicant’s’ interpretation of the relevant statutory provisions or legal issues, as well as an analysis of any 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; 55
- (j) a statement, to the best of the ‘applicant’s’ knowledge, as to whether the ruling 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’; 60

- (l) the ‘applicant’s’ consent to the publication of the ruling by SARS in 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 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 by the Commissioner pursuant to section 81.
- (7) SARS must provide an ‘applicant’ with a reasonable opportunity to make representations if, based upon the ‘application’ and any additional information received, 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.
- (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—
 - (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;
 - (v) a ‘proposed transaction’ that is hypothetical or not seriously contemplated;
 - (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 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 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’;
 - (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 anti-avoidance provision or doctrine;
 - (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’;
 - (iii) which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation;
 - (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 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;
- (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. 5

(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. 10

Fees for advance rulings

81. (1) In order to defray the cost of the ‘advance ruling’ system, the Commissioner may prescribe fees for the issuance of a ‘binding private ruling’ or ‘binding class ruling’, including— 15

- (a) an ‘application’ fee; and
- (b) a cost recovery fee.

(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. 20

(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’. 25

Binding effect of advance rulings

82. (1) Subject to sections 84, 85 and 86, 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. 30

(2) An ‘advance ruling’ does not have ‘binding effect’ upon SARS in respect of a person unless it applies to the person in accordance with section 83.

(3) A ‘binding general ruling’ may be cited by SARS or any person in any proceedings, including court proceedings. 35

(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 ‘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’. 40

Applicability of advance rulings

83. A ‘binding private ruling’ or ‘binding class ruling’ applies to a person only if—

- (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; 45
- (c) the person’s set of facts or ‘transaction’ fall entirely within the effective period 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; 50
- (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.

(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 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 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 ‘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 withdrawal or modification.

Withdrawal or modification of advance rulings

86. (1) SARS may withdraw or modify an ‘advance ruling’ at any time, subject to the requirements of this section.

(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 and a reasonable opportunity to object to the decision.

(3) SARS may specify the effective date of the decision to withdraw or modify the ruling, which date may not be earlier than the date—

- (a) the ruling 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 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 edited ruling for review and comment.

(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

(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’.

(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. 10

(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 requirements as the publication of the original ruling. 15

(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 publish it. 20

(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

88. (1) A ‘non-binding private opinion’ does not have ‘binding effect’ upon SARS. 25

(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.

Binding general rulings

89. (1) A senior SARS official may issue a ‘binding general ruling’ that is effective for either— 30

(a) a particular tax period or other definite period; or

(b) an indefinite period.

(2) A ‘binding general ruling’ must state—

(a) that it is a ‘binding general ruling’ made under this section; 35

(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

(ii) in the case of a ‘binding general ruling’ for an indefinite period, that it is 40
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 considered or treated as a ‘binding general ruling’ unless it contains the information 45
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.

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 based on the return submitted by the taxpayer or other information available or obtained in respect of the taxpayer. 5

(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. 10

(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. 15

(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 return. 20

Additional assessments

92. If at any time SARS is satisfied that any 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. 25

Reduced assessments

93. (1) SARS may make a reduced assessment if—

(a) the taxpayer successfully disputed the assessment under Chapter 9; 30

(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 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— 35

(i) SARS; or

(ii) the taxpayer in a return.

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

Jeopardy assessments 40

94. (1) SARS may make a jeopardy assessment in advance of the date on which the return is normally due, if a senior SARS official is satisfied that it is required to secure the 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— 45

(a) its amount is excessive; or

(b) circumstances that justify a jeopardy assessment do not exist.

Estimation of assessments

95. (1) SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate if the taxpayer— 50

(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. 5

Notice of assessment

- 96.** (1) SARS must issue to the taxpayer assessed a notice of the assessment made by SARS stating—
- (a) the name of the taxpayer;
 - (b) the taxpayer's taxpayer reference number, or if one has not been allocated, any other form of identification; 10
 - (c) the date of the assessment;
 - (d) the amount of the assessment;
 - (e) the tax period in relation to which the assessment is made;
 - (f) the date for paying the amount assessed; and 15
 - (g) a summary of the procedures for lodging an objection to the assessment.
- (2) In addition to the information provided in terms of subsection (1) SARS must give the person 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 20
 - (b) in the case of a jeopardy assessment, the grounds for believing that the tax would otherwise be in jeopardy.

Recording of assessments

- 97.** (1) The particulars of an assessment and the amount of tax payable thereon must be recorded and kept by SARS. 25
- (2) A notice of assessment issued by SARS is regarded as made by a SARS official authorised to do so or duly issued by SARS, until proven to the contrary.
- (3) The record of an assessment is not open to public inspection.
- (4) The record of an assessment, whether in electronic format or otherwise, may be destroyed by SARS after five years from the date of assessment or the expiration of a further period that may be required by the Auditor-General. 30

Withdrawal of assessments

- 98.** (1) SARS may, despite the fact that no objection has been lodged or appeal noted, withdraw an assessment which— 35
- (a) was issued to the incorrect taxpayer;
 - (b) was issued in respect of the incorrect tax period; or
 - (c) was issued as a result of an incorrect payment allocation.
- (2) An assessment withdrawn under this section is regarded not to have been issued.

Period of limitations for issuance of assessments 40

- 99.** (1) SARS may not make an assessment in terms of this Chapter—
- (a) three years after the date of assessment of an original assessment by SARS;
 - (b) in the case of self-assessment for which a return is required, five years after the date of assessment of an original assessment— 45
 - (i) by way of self-assessment by the taxpayer; or
 - (ii) if no return is received, by SARS;
 - (c) in the case of a self-assessment for which no return is required, after the expiration of five years from the—
 - (i) date of the last payment of the tax for the tax period; or
 - (ii) if no payment was made in respect of the tax for the tax period, the effective date; 50
 - (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; 5
- (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 10
- (e) in respect of a dispute that has been resolved under Chapter 9.
- (2) Subsection (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— 15
 - (i) fraud;
 - (ii) misrepresentation; or
 - (iii) non-disclosure of material facts;
- (b) in the case of self-assessment, the fact that the full amount of tax chargeable was not assessed, was due to— 20
 - (i) fraud;
 - (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; 25
- (c) SARS and the taxpayer so agree prior to the expiry of the limitations period; or
- (d) it is necessary to give effect to—
 - (i) the resolution of a dispute under Chapter 9; or 30
 - (ii) a judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal.

Finality of assessment or decision

- 100.** (1) An assessment or a decision referred to in section 104(2) is final if, in relation to the assessment or decision— 35
- (a) it is an assessment described—
 - (i) in section 95(1) and no return described in section 91(5)(b) has been received by SARS; or
 - (ii) in section 95(3);
 - (b) no objection has been made, or an objection has been withdrawn; 40
 - (c) after decision of an objection, no notice of appeal has been filed;
 - (d) the dispute has been settled under part F of Chapter 9;
 - (e) an appeal has been determined by the tax board and there is no referral to the tax court under section 115;
 - (f) an appeal has been determined by the tax court and there is no right of further appeal; or 45
 - (g) an appeal has been determined by a higher court and there is no right of further appeal.
- (2) Subsection (1) does not prevent SARS from making an additional assessment, but in respect of an amount of tax that has been dealt with in a disputed assessment referred to in— 50
- (a) subsection (1)(d), (e) and (f), SARS may only make an additional assessment under the circumstances referred to in section 99(2)(a) and (b); and
 - (b) subsection (1)(g), SARS may not make an additional assessment.

CHAPTER 9

DISPUTE RESOLUTION

Part A

General

Definitions 5

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

- ‘**appellant**’, except in Part E of this Chapter, means a person who has noted an appeal against an assessment or ‘decision’ as referred to in section 107;
- ‘**decision**’ means a decision referred to in section 104(2); 10
- ‘**registrar**’ means the registrar of the tax court; and
- ‘**rules**’ mean the rules made under section 103.

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; 15
- (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;
- (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 20
incorrect.

(2) The burden of proving whether an estimate under section 95 is reasonable or the facts on which SARS based the imposition of an understatement penalty under Chapter 16, is upon SARS.

Rules for dispute resolution 25

103. (1) The Minister may, after consultation with the Minister of Justice and Constitutional Development, by public notice make ‘rules’ governing the procedures to 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. 30

Part B

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. 35

(2) The following decisions may be objected to and appealed against in the same manner as an assessment:

- (a) a decision under subsection (4) not to extend the period for lodging an objection; 40
- (b) a decision under section 107(2) not to extend the period for lodging an appeal;
- (c) a decision not to authorise a refund under section 190; and
- (d) 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’. 45

(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 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 lodging the objection;
- (b) if more than three years have lapsed from the date of assessment or the 'decision'; or 5
- (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. 10

Decision on objection

106. (1) SARS must consider a valid objection in the manner and within the period prescribed under this Act and the 'rules'. 15

(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.

(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'. 20

(5) The notice must state the basis for the decision and a summary of the procedures 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— 25

(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, 30
in the manner, under the terms, and within the periods prescribed in the 'rules'.

Appeal against assessment or decision

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'. 35

(2) A senior SARS official may extend the period within which an appeal must be lodged for—

(a) 21 business days, if satisfied that reasonable grounds exist for the delay; or 40

(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 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. 45

(5) By mutual agreement, SARS and the taxpayer making the appeal may attempt to resolve the dispute through alternative dispute resolution under procedures specified in the 'rules'. 50

(6) Proceedings on the appeal are suspended while the alternative dispute resolution procedure is ongoing.

Part C**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 5
 - (b) abolish an existing tax board or establish an additional tax board as 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 10

- 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
 - (b) a senior SARS official and the ‘appellant’ so agree. 15
- (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 20 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 heard by the tax court rather than the tax board, the chairperson may direct that the 25 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 appointed under section 111; and 30
 - (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 35 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 40 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 45 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. 50
- (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 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'. 5

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 jurisdiction. 10

(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. 15

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. 20

(3) The chairperson may, when the proceedings open, formulate the issues in the appeal.

(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'. 25

(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. 30

(8) The 'appellant' may, together with the notice of appeal, or within the further 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 lodged— 35

(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. 40

(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. 45

(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. 50

Decision of tax board

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114. (1) The tax board, after hearing the 'appellant's' appeal against a SARS 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'.

5

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.

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

Part D

15

Tax court

Establishment of tax court

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.

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

Jurisdiction of tax court

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'.

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(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) Subject to subsections (2), (3), (4) and (5), a tax court established under this Act consists of—

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(a) a judge or an acting judge of the High Court, who is the president of the tax court;

(b) a registered accountant selected from the panel of members appointed in terms of section 120; and

(c) a representative of the commercial community selected from the panel of members appointed in terms of section 120.

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(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 (1)(c) must—

(a) if the appeal relates to the business of mining, be a registered mining engineer; or

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(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 condonation or an interlocutory application, the president of the court alone must decide the appeal.

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(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 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—

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(a) the amount in dispute exceeds R50 million; or

(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. 5

(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. 10

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. 15

(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. 20

(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 25

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, favour or prejudice. 30

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 the member’s ability to remain objective for the duration of the case. 35

(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. 40

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 novo*. 45

(2) If the 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 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 50

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) or (3) is the judgment of the court.

Sitting of tax court not public 5

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. 10

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’. 15

(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. 20

Non-attendance by witness or failure to give evidence

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; 25

(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. 30

(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 subsection (1) upon being satisfied by—

(a) oath or solemn declaration; or

(b) the return of the person by whom the subpoena was served, 35

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. 40

(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 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). 45

(6) The president of the tax court may order the costs of a postponement or adjournment resulting from the default of a witness, or any portion of the costs, to be paid out of a fine imposed under subsection (2).

Contempt of tax court

128. (1) If, during the sitting of a tax court, a person— 50

(a) wilfully insults a judge or member of the tax court;

(b) wilfully interrupts the tax court proceedings; or

(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 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). 5

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 of proof as described in section 102 is upon the taxpayer. 10

(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. 15

(4) If SARS alters an assessment as a result of a referral under subsection (2)(c), the assessment is subject to objection and appeal. 20

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—

- (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; 25
- (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' 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. 30

(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. 35

Publication of judgment of tax court

132. A judgment of the tax court dealing with an appeal under this Chapter must be 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. 40

Part E

Appeal against tax court decision

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. 45

(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 jurisdiction in the area in which the tax court sitting is held; or
- (b) to the Supreme Court of Appeal, without any intermediate appeal to the Provincial Division, if— 50

- (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).

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 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 purposes of private transcription, the appellant must pay the fees prescribed by the Commissioner in the public notice.

(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 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 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 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

- (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— 5
- (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). 10

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

- 138.** (1) If a person has—
- (a) appealed to the Supreme Court of Appeal from a court established under section 118(5); 15
- (b) been granted leave to appeal to the Supreme Court of Appeal under section 135; or
- (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. 20
- (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 Division of the High Court. 25
- (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 relevant higher court. 30

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. 35
- (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— 40
- (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. 45

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. 50

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 in the party’s favour. 55
- (2) A notice of abandonment becomes part of the record.

Part F**Settlement of disputes****Definitions**

142. In this Part, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings: 5

‘**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. 10

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. 15

(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’. 20

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. 25

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— 30

(i) the action by the person concerned that relates to the ‘dispute’ constitutes 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 35

(iii) the person concerned has not complied with the provisions of a tax Act 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. 40

Circumstances where settlement is appropriate

146. The Commissioner personally or a senior SARS official 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— 45

(a) whether the ‘settlement’ would be in the interest of good management of the 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; 50

(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 resolution through the alternative ‘dispute’ resolution procedures or the courts; 5
- (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 unwind existing structures and arrangements; or 10
- (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’. 15

(2) A ‘settlement’ is conditional upon full disclosure of material facts known to the person concerned at the time of ‘settlement’.

(3) Disputes ‘settled’ in whole or in part must be evidenced by an agreement in writing between the parties in the format prescribed by the Commissioner and must include details on— 20

- (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. 25

(4) The agreement must be signed by a senior SARS official.

(5) The agreement represents the final agreed position between the parties and is in full and final ‘settlement’ of all or the specified aspects of the ‘dispute’ in question between the parties.

(6) SARS must, if the ‘dispute’ is not ultimately ‘settled’, explain to the person concerned the further rights of objection and appeal. 30

(7) 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.

(8) SARS must adhere to the terms of the agreement, unless material facts were not disclosed as required by subsection (1) or there was fraud or misrepresentation of the facts. 35

(9) If the person concerned fails to pay the amount due pursuant to the agreement or otherwise fails to adhere to the agreement, the Commissioner or a senior SARS official may— 40

- (a) regard the agreement as void and proceed with the matter in respect of the original disputed amount; or
- (b) decide to enforce collection of the ‘settlement’ amount under the collection provisions of this Act in full and final ‘settlement’ of the ‘dispute’.

Register of settlements and reporting 45

148. (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. 50

(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. 55

Alteration of assessment or decision on settlement

149. (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 objection and appeal. 5

CHAPTER 10**TAX LIABILITY AND PAYMENT***Part A**Taxpayers* 10**Definitions**

150. In this Chapter and Chapter 11, unless the context indicates otherwise, the following term, if in single quotation marks, has the following meaning:

‘**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. 15

Taxpayer

151. In this Act, taxpayer means—

- (a) a person chargeable to tax;
- (b) a representative taxpayer; 20
- (c) a withholding agent;
- (d) a responsible third party; or
- (e) a person who is the subject of a request to provide assistance under an arrangement made with the government of any other country by an agreement entered into in accordance with a tax Act. 25

Person chargeable to tax

152. A person chargeable to tax is a person upon whom the liability for tax due under any tax Act is imposed and who is personally liable for the tax.

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— 30

- (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 35
- (c) is a representative vendor in terms of section 46 of the Value-Added Tax Act.

(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. 40

(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—

- (a) failed to perform such responsibilities or duties; or
- (b) is liable for the tax payable by the taxpayer.

Liability of representative taxpayer 45

154. (1) A representative taxpayer is, as regards—

- (a) the income to which the representative taxpayer is entitled;

- (b) moneys to which the representative taxpayer is entitled or has the management or control;
 - (c) transactions concluded by the representative taxpayer; and
 - (d) anything else done by the representative taxpayer,
- in such capacity— 5
- (i) subject to the duties, responsibilities and liabilities of the taxpayer represented;
 - (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
 - (iii) liable for the amount of tax specified by a tax Act. 10
- (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.

Personal liability of representative taxpayer

- 155.** A representative taxpayer is personally liable for tax payable in the representative taxpayer's representative capacity, if, while it remains unpaid— 15
- (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. 20

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. 25

Personal liability of withholding agent

- 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) Any 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 her liability under the relevant tax Act. 30

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. 35

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 40

- 160.** (1) A representative taxpayer, withholding agent or responsible third party who, 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. 45
- (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 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; 5
 - (b) has been convicted of a tax offence;
 - (c) has frequently failed to pay amounts of tax due;
 - (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). 10
- (2) If security is required, SARS must by written notice to the taxpayer require the 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. 15
- (3) The security must be of the nature, amount and form that the senior SARS official directs.
- (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; 20
 - or
 - (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. 25

Part B**Payment of tax****Determination of time and manner of payment of tax** 30

- 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 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— 35
- (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— 40
- (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 appropriate under the circumstances; or
 - (ii) provide such security as the official deems necessary.

Preservation of assets order 45

- 163.** (1) A senior SARS official may authorise an *ex parte* application to the High Court for an order for the preservation of the assets of a taxpayer or other person prohibiting any person, subject to the conditions and exceptions as may be specified in the order or as described in subsection (7), from dealing in any manner with any assets to which the order relates. 50
- (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 of assets order described in subsection (1), 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. 55

- (b) Until a preservation order is made in respect of the seized assets, SARS must take reasonable steps to preserve and safeguard the assets.
- (3) A preservation of assets 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) from the person by whom it was held; 5
 - (b) the realisable assets as may be specified in the order and which are held by the 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 10
 - (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 is made in terms of subsection (1) 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 15
 - (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. 20
- (5) A preservation of assets order must provide for notice to be given to the taxpayer and a person from whom the assets were seized.
- (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 directs some other mode of service. 25
- (7) The court, in granting a preservation order, may make any ancillary orders regarding how the assets must be dealt with, including— 30
- (a) authorising the seizure of all movable assets;
 - (b) appointing a *curator bonis* in whom the assets of that taxpayer or another 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 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 35
 - (e) any other order that the court considers appropriate for the proper, fair and effective execution of the order. 40
- (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. 45
- (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— 50
- (a) the operation of the order concerned will cause the applicant undue hardship; and
 - (b) the hardship that the applicant will suffer as a result of the order outweighs the risk that the assets concerned may be destroyed, lost, damaged, concealed or transferred. 55
- (10) A preservation order remains in force—
- (a) pending the setting aside thereof on appeal, if any, against the preservation order; or
 - (b) until the assets subject to the preservation order are no longer required for purposes of the satisfaction of the tax debt. 60
- (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,

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 subsection (2) or (11) 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 5

164. (1) Unless a senior SARS official otherwise directs in terms of subsection (3)—
 (a) the obligation to pay tax chargeable under a tax Act; and
 (b) the right of SARS to receive and recover tax chargeable under a tax Act,
 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. 10

(2) A taxpayer may request a senior SARS official to suspend the payment of any 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— 15

- (a) the compliance history of the taxpayer;
- (b) the amount of tax involved;
- (c) 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; 20
- (e) whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;
- (f) whether sequestration or liquidation proceedings are imminent;
- (g) whether fraud is involved in the origin of the dispute; or 25
- (h) whether the taxpayer has failed to furnish any information requested under this 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— 30

- (a) no objection is lodged;
- (b) an objection is disallowed and no appeal is lodged; or
- (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 Act. 35

(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 or vexatious; 40
- (b) the taxpayer is employing dilatory tactics in conducting the objection or appeal;
- (c) on further consideration of the factors contemplated in subsection (3), the suspension should not have been given; or 45
- (d) there is a material change in any of the factors described in subsection (3), 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), 50

and ending 10 business days after notice of SARS' decision or revocation has been 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— 55

- (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

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 any amount refundable and any interest payable by SARS under this section.

Part C

5

Taxpayer Account and Allocation of Payments

Taxpayer account

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

(2) A taxpayer account referred to in subsection (1) must reflect the tax due in respect of each tax type included in the account. 10

(3) The taxpayer account referred to in subsection (1) must record details for all tax types and tax periods of—

- (a) the tax owed;
- (b) any penalty imposed;
- (c) the interest payable on outstanding amounts due; 15
- (d) any other amount owed;
- (e) tax payments made by or on behalf of the taxpayer; and
- (f) any credit for amounts paid that the taxpayer is entitled to have set off against 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 the account, reflecting the amounts currently due and any details that SARS considers appropriate. 20

Allocation of payments

166. (1) Despite anything to the contrary contained in a tax Act, SARS may, subject to subsection (3), 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— 25

- (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.

(2) SARS may apply the first-in-first-out principle described in subsection (1) in respect of a specific tax type or a group of tax types in the manner that may be determined by the Commissioner by public notice. 30

(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 determined by the Commissioner by public notice. 35

(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.

Part D

Deferral of Payment

Instalment payment agreement 40

167. (1) A senior SARS official may enter into an agreement with a taxpayer in the form prescribed by the Commissioner under which the taxpayer is allowed to pay a tax debt in one sum after a prescribed period or in instalments, if satisfied that—

- (a) criteria or risks that may be prescribed by the Commissioner by public notice have been duly taken into consideration; and 45
- (b) the agreement facilitates the collection of the debt.

(2) The agreement may contain such conditions as SARS deems necessary to secure collection of tax.

(3) Except as provided in subsections (4) and (5), the agreement remains in effect for the term of the agreement. 50

(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 5
 - (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 10 of the termination or modification is sent to the taxpayer.

Criteria for instalment payment agreement

- 168.** A senior SARS official may enter into an instalment payment agreement only if—
- (a) the taxpayer suffers from a deficiency of assets or liquidity which is 15 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 20 likely to improve in the future;
 - (d) collection activity would be harsh in the particular case and the deferral or 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 25

Part A

General

Debt due to SARS

- 169.** (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. 30
- (2) A tax debt due to SARS is recoverable by SARS under this Chapter, and is recoverable from—
- (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 35 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 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 40 or the organ of state or institution concerned.
- (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.

Evidence as to assessment 45

- 170.** 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
 - (b) except in the case of proceedings on appeal against the assessment, that all the 50 particulars of the assessment are correct.

Period of limitation on collection of tax

171. 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

5

Judgment Procedure**Application for civil judgment for recovery of tax**

172. (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. 10

(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.

(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. 15

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. 20

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

25

175. (1) SARS may amend the amount of the tax due specified in the statement filed 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 reinstatement of proceedings

30

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. 35

Part C**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. 40

(2) SARS may institute the proceedings whether or not the person—

(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. 45

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. 5

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. 10

(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 the circumstances. 15

(3) 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.

(4) SARS may, on request by a person affected by a 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. 20

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— 25

- (a) the person controls or is regularly involved in the management of the overall 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 30

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— 35

- (a) they receive assets of the company in their capacity as shareholders within one year prior to its winding-up; and
- (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. 40

(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; 45
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 taxpayer. 50

- (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 at the time of any consideration paid. 5
- (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. 10

Recovery of tax debts from responsible third parties

184. 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. 15

Part E

Assisting Foreign Governments

Tax recovery on behalf of foreign governments

- 185.** (1) If SARS has, in accordance with any arrangements made with the government of any other country by an agreement entered into in accordance with a tax Act, received— 20
- (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 the person under a tax Act; or 25
 - (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 any lesser amount. 30
- (2) A request described in subsection (1) must be in the form prescribed by the Commissioner and must include a formal certificate issued by the competent authority of the other country stating— 35
- (a) the amount of the tax due;
 - (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 40
 - (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. 45
- (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— 50
 - (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
- (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. 10
- (6) No steps taken in assistance in collection by any other country under any arrangements referred to in subsection (1), for the collection of an amount alleged to be due by any person under a tax Act, and no judgment given against any person in pursuance of arrangements in that other country for any such amount, may affect the person's right to have the liability for any such amount determined in the Republic in accordance with the relevant tax Act. 15

Part F

Remedies with respect to foreign assets

Compulsory repatriation of foreign assets of taxpayer

- 186.** (1) To collect a tax debt, a senior SARS official may apply for an order referred to in subsection (2), if— 20
- (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— 25
 - (i) has assets outside the Republic; or
 - (ii) has transferred assets outside the Republic for no consideration or for consideration less than the fair market value, 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. 30
- (3) In addition to issuing the order described in subsection (2), the Court may—
- (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 applicable; 35
 - (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. 40

CHAPTER 12

INTEREST

General interest rules

- 187.** (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 refund— 45
- (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 when this method of determining interest will apply to a tax type and from which date. 50
- (3) The effective date for purposes of the calculation of interest in relation to—
- (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 the last day of that year in the case of a taxpayer that has a year of assessment 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; 5
 - (d) a fixed amount penalty, is the date for payment specified in the notice of assessment of the penalty, and in relation to any increment of the penalty under section 211(2), the date of the increment; and
 - (e) a percentage based penalty, is the date by which tax for the tax period should have been paid. 10
- (4) 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.
- (5) 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 official may, unless prohibited by a tax Act, direct that so much of the interest as is attributable to the circumstances is not payable by the taxpayer. 15
- (6) 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
 - (c) a serious illness or accident. 20

Period over which interest accrues

- 188.** (1) Unless otherwise provided in a tax Act, interest payable under section 187 is imposed for the period from the effective date of the tax to the date the tax is paid.
- (2) Interest payable in respect of the—
- (a) first payment of provisional tax, is imposed from the effective date until the earlier of the date on which the payment is made or the effective date for the second provisional tax payment; and 25
 - (b) second payment of provisional tax, is imposed from the effective date until the earlier of the date on which the payment is made or the effective date referred to in section 187(4)(b); 30
- (3) Unless otherwise provided under a tax Act—
- (a) interest on an amount refundable under section 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; and
 - (b) for this purpose, if a refund is offset against a liability of the taxpayer under section 191, the date on which the offset is effected is considered to be the date of payment of the refund. 35

Rate at which interest is charged

- 189.** (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 within six months after the last date of that year of assessment, the rate payable by SARS is four percentage points below the prescribed rate. 40
- (3) The prescribed rate is the interest rate that the Minister may from time to time fix by notice in the *Gazette* under section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 45
- (4) If the Minister fixes a different interest rate referred to in subsection (3) the new rate comes into operation on the first day of the second month following the month in which the new rate becomes effective for purposes of the Public Finance Management Act, 1999. 50
- (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 any tax period or portion thereof which commenced before the said date, the interest to be determined in respect of—
- (i) the tax period or portion thereof which ended immediately before the said date; or
 - (ii) the portion of the tax period which was completed before the said date, must be calculated as if the rate had not been altered. 55

CHAPTER 13

REFUNDS

Refunds of excess payments

- 190.** (1) Subject to section 191, a person is entitled to a refund of—
- (a) an amount properly refundable under a tax Act and if so reflected in an assessment; or
 - (b) the amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment.
- (2) SARS need not authorise a refund as referred to in subsection (1) until such time that a verification, inspection or audit of the refund in accordance with Chapter 5 has been finalised.
- (3) SARS must authorise the payment of a refund before the finalisation of the verification, inspection or audit referred to in subsection (2) 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 any person by way of a refund any amount which was not properly payable to that person or which was in excess of the amount due to the person by way of a refund under a tax Act, the amount of the excess must forthwith be repaid by the person concerned to SARS and is recoverable by SARS under this Act as if it were a tax.

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 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
 - (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 40

Definitions

- 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 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; 5
- ‘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. 10

(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. 15

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’. 20

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 contemplated in section 196 at that time. 25

(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. 30

Tax debt uneconomical to pursue

196. (1) A tax debt is uneconomical to pursue if a senior SARS official is satisfied that 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. 35

(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; 40
- (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 return from that action, including any likely recovery of costs that may be awarded to SARS; 45
- (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 debt. 50

*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 of tax debt— 5
- (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 any amount of tax debt ‘written off’.

Tax debt irrecoverable at law 10

- 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 15
 - (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. 20

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’; 25
 - (b) reconcile amounts owed by and to the ‘debtor’, including penalties, interest and costs;
 - (c) obtain a breakdown of the tax debt and the periods to which the outstanding amounts relate; and 30
 - (d) document the history of the recovery process and the reasons for deciding to ‘write off’ the tax debt.
- (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 with the necessary changes. 35

*Part D**Compromise of tax debt* 40**Compromise of tax debt**

- 200.** A senior SARS official may authorise the ‘compromise’ of a portion of a tax debt 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 45
 - (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 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 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.

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 '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 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 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 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; 5
- (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 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 10

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; and 15
- (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 '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 20
- (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 by a 'compromise' if—

- (a) the 'debtor' fails to disclose a material fact to which the 'compromise' relates; 25
- (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 'debtor' has fully complied with the conditions contained in the agreement referred to in section 204. 30

Part E

Records and reporting

Register of tax debts written off or compromised 35

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; 40
- (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 year must be disclosed in the annual financial statements of SARS relating to administered revenue for that year. 45

(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— 50

- (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 recovery, which must be reflected in respect of main classes of taxpayers or sections of the public.

5

CHAPTER 15

ADMINISTRATIVE NON-COMPLIANCE PENALTIES

Part A

General

Definitions 10

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’ imposed by SARS in accordance with this Chapter, and excludes an understatement penalty referred to in Chapter 16; 15

‘**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 purposes of this definition a ‘penalty assessment’ that was fully remitted under section 218 must be disregarded; 20

‘**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; 25

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

Purpose of Chapter

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 30

(b) that an ‘administrative non-compliance penalty’ is imposed impartially, consistently, and proportionately to the seriousness and duration of the non-compliance.

Part B

35

Fixed Amount Penalties

Non-compliance subject to penalty

210. (1) If SARS is satisfied that non-compliance by a person referred to in subsection (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. 40

(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

(b) non-compliance subject to an understatement penalty under Chapter 16.

Fixed amount penalty table 45

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

1 Item	2 Assessed loss or taxable income for 'preceding year'	3 'Penalty'	
(i)	Assessed loss	R250	5
(ii)	R0-R250 000	R250	
(iii)	R250 001-R500 000	R500	
(iv)	R500 001-R1 000 000	R1 000	10
(v)	R1 000 001-R5 000 000	R2 000	
(vi)	R5 000 001-R10 000 000	R4 000	
(vii)	R10 000 001-R50 000 000	R8 000	
(viii)	Above R50 000 000	R16 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 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 20
- (b) the date of the non-compliance if SARS is not in possession of the current 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: 25

- (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; 30
- (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. 35

(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 40
- (b) estimate the amount of taxable income of the relevant person for the '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 in accordance with the applicable subparagraph in that column with effect from the date of the imposition of the 'penalty' issued under subsection (4). 45

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 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 meaning of section 35) exceeds R5 000 000, and is tripled if the benefit exceeds R10 000 000. 55

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. 5

(2) In the event of any change to the amount of tax in respect of which a ‘penalty’ was imposed under subsection (1), the ‘penalty’ must be adjusted accordingly with effect from the date of the imposition of the ‘penalty’. 10

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: 15

- (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’; 20
- (d) the automatic increase of the ‘penalty’; and
- (e) a summary of procedures for requesting remittance of the ‘penalty’.

(2) Subject to subsection (3), a ‘penalty’ is due upon assessment and must be paid—

- (a) on or before the due date for payment stated in the notice of the ‘penalty assessment’; or 25
- (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 tax.

(3) SARS must give the taxpayer notice of any adjustment to the ‘penalty’ in accordance with sections 211(2), 212(2) or 213(2). 30

(4) To the extent not otherwise provided for in this Chapter, procedures for assessment, objection, payment and recovery of tax, and other provisions of a procedural nature relating to tax in a tax Act, apply to penalties assessed under this Chapter.

Procedure to request remittance of penalty 35

215. (1) A person who is aggrieved by a ‘penalty assessment’ notice may, on or before the date for payment in the ‘penalty assessment’, in the form or manner as may be prescribed by the Commissioner, request SARS to remit the ‘penalty’ in accordance with Part E.

(2) The ‘remittance request’ must include— 40

- (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 ‘penalty’ has been imposed; and
- (b) the supporting documents and information as may be required by SARS in the prescribed form. 45

(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 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 50
- (b) fraud involved in the origin of the non-compliance or the grounds for remittance.

(4) SARS may extend the period referred to in subparagraph (1) if SARS is satisfied that—

- (a) the non-compliance in issue is an incidence of non-compliance referred to in section 216 or 217, and that reasonable circumstances exist for the late receipt of the 'remittance request'; or
- (b) a circumstance referred to in section 218(2) rendered the person incapable of submitting a timely request. 5

Part E

Remedies

Remittance of penalty for failure to register

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— 10

- (a) the failure to register was discovered because the person approached SARS voluntarily; and
- (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— 15

- (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 non-compliance is less than five business days; or
- (c) an incidence of non-compliance described in section 213 involving an amount of less than R2 000 or the duration of the non-compliance is less than five business days, 20

SARS may, in respect of a 'penalty' imposed under section 210, 212 or 213, remit the 'penalty', or a portion thereof if appropriate, up to an amount of R2 000 if SARS is satisfied that—

- (i) reasonable circumstances for the non-compliance exist; and 25
- (ii) the non-compliance in issue has been remedied.

(2) In the case of a 'penalty' imposed under section 212, the R2 000 limit referred to in subsection (1) is changed to R100 000.

Remittance of penalty in exceptional circumstances

218. (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. 30

(2) The circumstances referred to in subsection (1) are limited to—

- (a) a natural or human-made disaster; 35
- (b) a civil disturbance or disruption in services;
- (c) a serious illness or accident;
- (d) serious emotional or mental distress;
- (e) any of the following acts by SARS: 40
 - (i) a capturing error;
 - (ii) a processing delay;
 - (iii) provision of incorrect information in an official publication or media release issued by the Commissioner;
 - (iv) delay in providing information to any person; or
 - (v) failure by SARS to provide sufficient time for an adequate response to a request for information by SARS; 45
- (f) serious financial hardship, such as—
 - (i) in the case of an individual, lack of basic living requirements; or
 - (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 50
- (g) any other circumstance of analogous seriousness.

Penalty incorrectly assessed

219. 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 penalty assessment 5

220. The following decisions by SARS are subject to objection and appeal:

- (a) a ‘penalty assessment’; or
- (b) a decision by SARS not to remit a ‘penalty’ in whole or in part.

CHAPTER 16**UNDERSTATEMENT PENALTY** 10*Part A**Imposition of Understatement Penalty***Definitions**

221. In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings: 15

‘**repeat case**’ 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;

‘**substantial understatement**’ means a case where the prejudice to SARS or the *fiscus* exceeds the lesser of 10 per cent of the amount of ‘tax’ properly chargeable or refundable under a tax Act for the relevant tax period, or R1 000 000; 20

‘**tax**’ means tax as defined in section 1, excluding a penalty and interest;

‘**tax position**’ means an assumption underlying one or more aspects of a tax return, including whether or not—

- (a) an amount, transaction, event or item is taxable; 25
- (b) an amount or item is deductible or may be set-off;
- (c) a lower rate of tax than the maximum applicable to that class of taxpayer, transaction, event or item applies; or
- (d) an amount qualifies as a reduction of tax payable; and

‘**understatement**’ means any prejudice to SARS or the *fiscus* in respect of a tax 30 period as a result of—

- (a) a default in rendering a return;
- (b) an omission from a return;
- (c) an incorrect statement in a return; or
- (d) if no return is required, the failure to pay the correct amount of ‘tax’. 35

Understatement penalty

222. (1) In the event of any ‘understatement’ by a taxpayer, the taxpayer must pay, in addition to the ‘tax’ payable for the relevant tax period, the understatement penalty determined under subsection (2).

(2) The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table in section 223 to the shortfall determined under subsections (3) and (4).

(3) The shortfall is the sum of—

- (a) the difference between the amount of ‘tax’ properly chargeable for the tax period and the amount of ‘tax’ that would have been chargeable if the ‘understatement’ were accepted; 45
- (b) the difference between the amount properly refundable for the tax period and the amount that would have been refundable if the ‘understatement’ were accepted; and
- (c) the difference between the amount of an assessed loss or any other benefit to the taxpayer properly carried forward from the tax period to a succeeding tax period and the amount that would have been carried forward if the 50

'understatement' were accepted, multiplied by the tax rate determined under subsection (5).

(4) If an 'understatement' results in a difference under both paragraphs (a) and (b) of subsection (3), the shortfall must be reduced by the amount of any duplication between the paragraphs.

(5) The tax rate is the maximum tax rate applicable to the taxpayer, ignoring an assessed loss or any other benefit brought forward from a preceding tax period to the tax period.

Understatement penalty percentage table

223. (1) The understatement penalty percentage table is as follows:

1 Item	2 Behaviour	3 Standard case	4 If obstructive, or if it is a 'repeat case'	5 Voluntary disclosure after notification of audit	6 Voluntary disclosure before notification of audit
(i)	'Substantial understatement'	25%	50%	5%	0%
(ii)	Reasonable care not taken in completing return	50%	75%	25%	12%
(iii)	No reasonable grounds for 'tax position' taken	75%	100%	37%	18%
(iv)	Gross negligence	100%	125%	50%	25%
(v)	Intentional 'tax' evasion	150%	200%	75%	37%

(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.

Payment and recovery of understatement penalty

224. (1) If SARS assesses the understatement penalty imposed under section 222 the taxpayer must pay the understatement penalty within the period that SARS prescribes.

(2) The same procedures for objection, appeal and dispute resolution apply as for an assessment of tax.

Part B

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, 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.

- (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 investigation; and 5
 - (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— 10
- (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, 15
- has become aware of a pending audit or investigation, or that the audit or investigation has commenced.

Requirements for valid voluntary disclosure

- 227.** The requirements for a valid voluntary disclosure are that the disclosure must—
- (a) be voluntary; 20
 - (b) involve a ‘default’ which has not previously been disclosed by the applicant or a person referred to in section 226(3);
 - (c) be full and complete in all material respects;
 - (d) involve the potential imposition of an understatement penalty in respect of the ‘default’; 25
 - (e) not result in a refund due by SARS; and
 - (f) be made in the prescribed form and manner.

No-name voluntary disclosure

- 228.** A senior SARS official may issue a non-binding private opinion as to a person’s eligibility for relief under this Part, if the person provides sufficient information to do so, 30 which information need not include the identity of any party to the ‘default’.

Voluntary disclosure relief

- 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— 35
- (a) not pursue criminal prosecution for a statutory offence under a tax Act arising from the ‘default’ or a related common law offence;
 - (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 40
 - (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.

Voluntary disclosure agreement 45

- 230.** 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 format as may be prescribed by the Commissioner and must include details on— 50
- (a) the material facts of the ‘default’ on which the voluntary disclosure relief is based;
 - (b) the amount payable by the person, which amount must separately reflect the understatement penalty payable;
 - (c) the arrangements and dates for payment; and
 - (d) relevant undertakings by the parties. 55

Withdrawal of voluntary disclosure relief

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— 5

- (a) withdraw any relief granted under section 229;
- (b) regard any amount paid in terms of the voluntary disclosure agreement to constitute part payment of any further outstanding tax in respect of the relevant 'default'; and
- (c) pursue criminal prosecution for any statutory offence under a tax Act or a related common law offence. 10

(2) Any decision by the senior SARS official under subsection (1) is subject to objection and appeal or internal review.

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. 15

(2) Any assessment issued or determination made to give effect to an agreement under section 230 is not subject to objection and appeal or internal review.

Reporting of voluntary disclosure agreements 20

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 25
- (b) contain details of the number of voluntary disclosure agreements and the amount of tax assessed, which must be reflected in respect of main classes of taxpayers or sections of the public. 30

CHAPTER 17**CRIMINAL OFFENCES****Criminal offences relating to non-compliance with tax Acts**

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; 35
- (b) fails or neglects to appoint a representative taxpayer or notify SARS of the appointment or change of a representative taxpayer as required under section 153 or 249;
- (c) fails or neglects to register as a tax practitioner as required under section 240; 40
- (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; 45
- (h) refuses or neglects to—
 - (i) furnish, produce or make available any information, document or thing, 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; 50
 - (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 is required to so notify SARS under a tax Act; 5
 - (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 10
 - (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 interest, 15
- 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

- 235.** (1) A person who with intent to evade or to assist another person to evade liability or to obtain an undue refund under a tax Act— 20
- (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; 25
 - (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 exemption from tax, 30
- 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 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). 35

(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). 40

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 45

- 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, 50
- 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

5

REPORTING OF UNPROFESSIONAL CONDUCT

Definitions

239. In this Chapter, unless the context otherwise indicates, the following terms, if in 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; 10
- and
- ‘**registered tax practitioner**’ means a practitioner registered under section 240.

Registration of tax practitioners

15

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, 20

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; 25
- (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 complainant; 30
- (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— 35
 - (i) to or in respect of the employer by whom that person is employed on a 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—

- (a) during the preceding five years has been removed from a related profession; and 40
- (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 45
 - (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 amount prescribed in the Adjustment of Fines Act, 1991 (Act No. 101 of 1991). 50

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 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.

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

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) Subject to subsection (4), 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 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

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. 5

(2) The notice contemplated in subsection (1) must be published at least 21 business days prior to the date so prescribed by the Minister. 10

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— 15

- (a) a person who is a senior official of the company and is approved by SARS;
- (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. 20

(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. 25

(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. 30

(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. 35

(2) Every notice, process, or proceeding which under a tax Act may be given to, served upon or taken against any 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, 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. 40

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. 45

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 delivery of notices and documents has been given to SARS. 50

(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. 5

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 or official designation of SARS or 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. 10

(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 15

251. If a tax Act requires or authorises SARS to issue, give, send, or serve a notice, document or other communication to a person (other than a company), SARS is regarded as issued, given, sent or served the communication to the person if—

- (a) handed to the person;
- (b) left with another person over 16 years of age apparently residing or employed at the person's last known residence, office or place of business; 20
- (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
 - (ii) the person's last known post office box number or that of the person's employer; or 25
- (d) 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.

Delivery of documents to companies 30

252. If a tax Act requires or authorises SARS to issue, give, send or serve a notice, document or other communication to a company, SARS is deemed to have issued, given, sent or served the communication to the company if—

- (a) delivered to the public officer of the company;
- (b) left with a person older than 16 years apparently residing or employed at— 35
 - (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's or public officer's last known address, which includes— 40
 - (i) an office or place referred to in paragraph (b); or
 - (ii) the last known post office box number of the company or public officer or that of the public officer's employer; or
- (d) sent to the person's last known electronic address, which includes— 45
 - (i) the person's last known email address; or
 - (ii) the person's last known telefax number.

Documents delivered deemed to have been received

253. (1) A notice, document or other communication issued, given, sent or served in the manner referred to in section 251 or 252, is regarded as received by the person to whom it was delivered or left, or if posted it is regarded as having been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the addressed place. 50

(2) Subsection (1) does not apply if—

- (a) SARS is satisfied that the notice, document or other communication was not received or was received at some other time; or 55

- (b) a court decides that the notice, document or other communication was not received or was received at some other time.
- (3) If SARS is satisfied that—
- (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 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

255. (1) The Commissioner may by public notice make rules prescribing the procedures for submitting a return in electronic format, and for other electronic communications between SARS and other persons.

(2) SARS may, in the case of a return or other document submitted in electronic format, accept an electronic or digital signature as a valid signature for purposes of any 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 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 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 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 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 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 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

- 257.** (1) The Minister may make regulations regarding— 5
- (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 10 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; 15
 - (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. 20

CHAPTER 20

TRANSITIONAL PROVISIONS 25

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 section 24 for purposes of the relevant tax type. 30

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. 35

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 and subscribed to the oath or solemn declaration under section 67(2). 40

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.

Appointment of chairpersons of tax board 45

- 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 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. 5

Continuation of tax board, tax court and court rules 10

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. 15

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 immediately before the commencement date of this Act, is regarded as appointed or delegated under this Act. 20

(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. 25

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 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. 30

(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 under section 60. 35

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 occurred will be regarded as the date that notice came into effect. 40

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 consistent with this Act. 45

(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 to have 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 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

(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 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. 10

(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. 15

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 of the comparable provisions of this Act. 20

(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: 25

- (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 remittance of interest or a penalty; 30
- (c) an inspection, verification, request for information, audit, criminal investigation, inquiry or search and seizure; 35
- (d) an objection, appeal to the tax board, tax court or higher Court, alternative dispute resolution, settlement discussions or other related High Court application;
- (e) suspension of a disputed tax debt;
- (f) a deferment, write off or compromise of a tax debt; or 40
- (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 instituted by SARS or any other related court application. 45

(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 under the repealed provisions. 45

(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. 50

(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. 55

(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— 60

- (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. 5

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*. 10

(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. 15

(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. 20

(6) Subparagraphs (a) and (c) of paragraph 90 of Schedule 1 comes into operation on 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. 25

SCHEDULE 1

SECTION 271

No. and Year	Short Title	Extent of amendment or repeal	
Act No. 40 of 1949	Transfer Duty Act, 1949	Amendment of section 1	5
		<p>1. Section 1 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p style="padding-left: 40px;">“‘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 of section 7 of that Act;”;</p> <p>(b) by the insertion after the definition of “spouse” of the following subsection:</p> <p style="padding-left: 40px;">“‘Tax Administration Act’ means the Tax Administration Act, 2011.”;</p> <p>(c) by the renumbering of section 1 to section 1(1); and</p> <p>(d) by the insertion after subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(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.”.</p>	10 15 20 25 30
		Amendment of section 3	
		<p>2. Section 3 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (1A) of the following subsection:</p> <p style="padding-left: 40px;">“(1A) Where a person who acquires any property contemplated in paragraph (d), (e) or (g) of the definition of “property” fails to pay the duty within the period contemplated in subsection (1), the public officer [as defined in section 101 of the Income Tax Act, 1962 (Act No. 58 of 1962),] of that company and the person from whom the shares or 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 acquired, may recover any amount of duty paid [by him or her] in terms of this subsection [from—</p>	35 40 45 50

No. and Year	Short Title	Extent of amendment or repeal
		<p>(a) the person who so acquired that property; or</p> <p>(b) in the case of a public officer, from that company] in accordance with section 160 of the Tax Administration Act.”; 5</p> <p>(b) by the substitution for subsection (1B) of the following subsection:</p> <p>“(1B) Where a person who acquires any property contemplated in paragraph (f) of the definition of “property” fails to pay the duty within the period contemplated in subsection (1), the trust and [the trustees] representative taxpayer of that trust shall be jointly and severally liable for such duty: Provided that the trust or [trustee] representative taxpayer may recover any amount of duty paid in terms of this subsection by the trust or [trustee] representative taxpayer, as the case may be, [from—</p> <p>(a) the person who so acquired that property; or 25</p> <p>(b) in the case of the trustee, from that trust] in accordance with section 160 of the Tax Administration Act.”; and</p> <p>(c) by the deletion of subsection (3). 30</p>
		Amendment of section 4
		<p>3. Section 4 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading:</p> <p>“Penalty [and interest] on late payment of duty”; 35</p> <p>(b) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If any duty in respect of any transaction entered into before 1 March 2005, remains unpaid after the date of the expiration of the period referred to in section 3, [there shall, subject to the provisions of subsection (3), in addition to the unpaid duty, be payable] <u>the Commissioner must in accordance with Chapter 15 of the Tax Administration Act impose a penalty, at the rate of 10 per cent per annum on the amount of the unpaid duty, calculated in respect of each completed month in the</u> 40 45 50</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>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 chargeable or is in part chargeable in respect of any completed month commencing before 1 July 1982 the penalty payable in respect of such completed month and any earlier completed month or months shall be the amount of penalty which would have been payable in terms of this subsection before its amendment by the 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 months].”; and</p> <p>(c) by the deletion of subsection (1A).</p>
		<p>Amendment of section 10</p>
		<p>4. Section 10 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The powers conferred and 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 from or] SARS official under the control, [or] direction or supervision of the Commissioner.”; and</p> <p>(b) by the insertion after subsection (2) of the following subsection:</p> <p>“(3) <u>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 in this Act, regulated by the Tax Administration Act.</u>”.</p>
		<p>Amendment of section 11</p>
		<p>5. Section 11 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>“(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 the fair value of the property concerned, 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 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 duty] which may still be payable, the Commissioner may in his or her discretion issue to the person liable to pay the duty a certificate that such deposit has been made and that such security has been given.”.</p>
		<p>Repeal of sections 11A, 11B, 11C, 11D and 11E</p>
		<p>6. Sections 11A, 11B, 11C, 11D and 11E of the Transfer Duty Act, 1949, are hereby repealed.</p>
		<p>Amendment of section 13</p>
		<p>7. Section 13 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Whenever the Commissioner is satisfied that the duty payable under this Act in respect of the acquisition of any property or the renunciation of any interest in or restriction upon the use or disposal of any property has not been paid in full, the Commissioner shall, notwithstanding that the acquisition has already been registered in a deeds registry, recover the difference between the amount of the duty payable and the amount paid in accordance with Chapter 11 of the Tax Administration Act.”;</p> <p>and</p> <p>(b) by the deletion of subsection (2).</p>
		<p>Repeal of sections 13A, 13B and 13C</p>
		<p>8. Sections 13A, 13B and 13C of the Transfer Duty Act, 1949, are hereby repealed.</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>Amendment of section 14</p> <p>9. Section 14 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) [Declarations] A return appropriate to the manner of the acquisition of property in any particular case shall be submitted [electronically, in the form and manner and containing such information as may be prescribed by the Commissioner] by the parties 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 transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.”; and</p> <p>(b) by the deletion of subsections (4), (6), (7) and (8).</p>	5 10 15 20
		<p>Amendment of section 15</p> <p>10. Section 15 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) [Every] <u>In addition to the requirements upon a taxpayer contained in sections 29, 30, 32 and 33 of the Tax Administration Act,</u> 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 property sold, the person by whom and the person to whom the property has been sold and the price paid for the property.”; and</p> <p>(b) by the deletion of subsections (2) and (3).</p>	25 30 35 40
		<p>Repeal of sections 17, 17A, 17B, 18, 20, 20A, 20C and 20D</p>	45
		<p>11. Sections 17, 17A, 17B, 18, 20, 20A, 20C and 20D of the Transfer Duty Act, 1949, are hereby repealed.</p>	

No. and Year	Short Title	Extent of amendment or repeal
Act No. 45 of 1955	Estate Duty Act, 1955	Amendment of section 1
		<p>12. Section 1 of the Estate Duty Act, 1955, is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“‘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 of section 7 of that Act;”;</p> <p>(b) by the insertion after the definition of “stocks or shares” of the following definition:</p> <p>“‘Tax Administration Act’, means the Tax Administration Act, 2011.”;</p> <p>(c) by the renumbering of section 1 to section 1(1); and</p> <p>(d) by the insertion after subsection (1) of the following subsection:</p> <p>“(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.”.</p>
		Amendment of section 6
		<p>13. Section 6 of the Estate Duty Act, 1955, is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The powers conferred and 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 from or] SARS official under the control, [or] direction or supervision of the Commissioner.”; and</p> <p>(b) by the substitution for subsection (3) of the following subsection:</p> <p>“(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 extent not regulated in this Act, regulated by the Tax Administration Act.”.</p>

No. and Year	Short Title	Extent of amendment or repeal	
		Amendment of section 7	
		<p>14. Section 7 of the Estate Duty Act, 1955, is hereby amended—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">“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 full particulars regarding—”; and</p> <p>(b) by the deletion of subsection (2).</p>	5 10 15
		Repeal of sections 8, 8A, 8B, 8C, 8D and 8E	
		<p>15. Sections 8, 8A, 8B, 8C, 8D and 8E of the Estate Duty Act, 1955, are hereby repealed.</p>	20
		Amendment of section 9	
		<p>16. Section 9 of the Estate Duty Act, 1955, is hereby amended by the insertion after subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1A) If the Commissioner, prior to the issue of a notice of assessment in terms of subsection (1)—</p> <p style="padding-left: 40px;">(a) is dissatisfied with any value at which any property is shown in any return; or</p> <p style="padding-left: 40px;">(b) is of the opinion that the amount claimed to represent the dutiable amount as disclosed in any return, does not represent the correct dutiable amount,</p> <p style="padding-left: 40px;">the Commissioner shall adjust such value or amount and determine the dutiable amount upon which such assessment shall be raised accordingly.”.</p>	25 30 35
		Repeal of section 9B	
		<p>17. Section 9B of the Estate Duty Act, 1955, is hereby repealed.</p>	40
		Amendment of section 10	
		<p>18. Section 10 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:</p>	

No. and Year	Short Title	Extent of amendment or repeal
		<p>“(1) If [any duty remains unpaid at the expiration of a period of thirty days from the date of payment notified in accordance with subsection (2) of section nine, there shall be payable, in addition to the unpaid duty, interest at the rate of six per cent per annum on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment: Provided that, where] the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the <u>prescribed</u> rate [of six per cent per annum] shall be payable as from a date twelve months after the date of death on the difference (if any) between the duty assessed and any deposit (if any) made on account of the duty payable within the said period of twelve months.”.</p>
		Substitution of section 12
		<p>19. The Estate Duty Act, 1955, is hereby amended by the substitution for section 12 of the following section:</p> <p>“Duty payable by executor</p> <p>12. Notwithstanding anything to the contrary contained in section [eleven] <u>11</u>, any duty payable under this Act shall be payable by and recoverable from the executor of the estate subject to the duty, <u>to the extent contemplated in Chapter 10 of the Tax Administration Act</u> [: 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 available assets in the estate, unless the liability is due to fraud.”.</p>
		Repeal of sections 12A, 12B, 23, 23bis, 24, 25, 25A, 26 and 27
		<p>20. Sections 12A, 12B, 23, 23bis, 24, 25, 25A, 26 and 27 the Estate Duty Act, 1955, are hereby repealed.</p>
		Amendment of section 28
		<p>21. Section 28 of the Estate Duty Act, 1955, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading:</p>

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

No. and Year	Short Title	Extent of amendment or repeal
		<p>(c) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“‘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 of section 7 of that Act;”;</p> <p>(d) by the deletion of the definition of “date of assessment”;</p> <p>(e) by the insertion after the definition of “normal retirement age” of the following definitions:</p> <p>“‘normal tax’ means income tax referred to in section 5(1);</p> <p>‘officer’ means, where used in the context of a person who is engaged by the Commissioner in carrying out the provisions of this Act, a SARS official as defined in section 1 of the Tax Administration Act;”;</p> <p>(f) by the substitution for the definition of “prescribed rate” of the following definition:</p> <p>“‘prescribed rate’ means the rate contemplated in section 189(3) of the Tax Administration Act;”;</p> <p>(g) by the substitution for paragraph (b) of the definition of “representative taxpayer” of the following paragraph:</p> <p>“(b) in respect of the income under his or her management, disposition or control, the agent of any person[, including an agent appointed as such under the provisions of section ninety-nine, and for the purposes of this paragraph the term “agent” includes every person in the Republic having the receipt, management or control of income on behalf of any person permanently or temporarily absent from the Republic or remitting or paying income to or receiving moneys for such person];”;</p> <p>(h) by the deletion of the words in the definition of “representative taxpayer” following paragraph (f) but preceding the proviso;</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>(i) by the insertion after the definition of “retirement interest” of the following definition: “‘return’ means a return as defined in section 1 of the Tax Administration Act;”;</p> <p>(j) by the substitution for the definition of “tax” of the following definition: “‘tax’ means tax or a penalty imposed in terms of this Act;”;</p> <p>(k) by the insertion after the definition of “tax” of the following definition: “‘Tax Administration Act’ means the Tax Administration Act, 2011;”;</p> <p>(l) by the substitution for the definition of “taxpayer” of the following definition: “‘taxpayer’ means any person chargeable with any tax leviable under this Act [and includes every person required by this Act to furnish any return]”;</p> <p>(m) by the renumbering of section 1 to section 1(1); and</p> <p>(n) 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 Act.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>
		Amendment of section 2	
		<p>24. The Income Tax Act, 1962, is hereby amended by the substitution for section 2 of the following section:</p> <p>“[Act to be administered by Commissioner] <u>Administration of Act</u></p> <p>2. (1) The Commissioner [shall be] is responsible for carrying out the provisions of this Act.</p> <p>(2) <u>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 in this Act, regulated by the Tax Administration Act.</u>”.</p>	<p>35</p> <p>40</p> <p>45</p>
		Amendment of section 3	
		<p>25. Section 3 of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p>	<p>50</p>

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		<p>“(1) The powers conferred and the duties imposed upon the Commissioner by or under the provisions 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.”;</p> <p>(b) by the deletion of subsections (2) and (3);</p> <p>(c) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Any decision of the Commissioner under the following provisions of this Act [shall be]is subject to objection and appeal <u>in accordance with Chapter 9 of the Tax Administration Act, namely—</u></p> <p>(a) the definitions of “benefit fund”, “pension fund”, “pension preservation fund”, “provident fund”, “provident preservation fund”, “retirement annuity fund” and “spouse” in section 1;</p> <p>(b) [section 6, section 8(4)(b), (c), (d) and (e),] <u>section 8(5)(b) and (bA), section 9D(10), section 10(1)(cA), [(e)](e)(i)(cc), [(iA)], (j) and (nB), section 10A(8), section 11(e), (f), (g), (gA), (j), and (l), [(t), (u) and (w),]</u> 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 (3) [and (5)],</u> section 24(2), section 24A(6), section 24C, section 24D, section 24I(1) and (7), <u>section 24J(9), section 25A, [section 25D],</u> section 27, section [28(2)(cA)]28(9), section 30, section 30A, section 30B, section 31, section 35(2), section 37A, <u>section 37H,</u> section [38(4)]38(2)(a) and (b) and (4), section 44(13)(a), section 47(6)(c)(i), section 57(2), <u>section 62(1)(c)(iii) and (d) and (2)(a) and (4), [section 76A,]</u> section 80B and section [80S] 103(2);</p>

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		<p>(c) paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule;</p> <p>(d) paragraph 4 of the Second Schedule;</p> <p>(e) paragraphs 14(6), 18, [19(1),] 20(1)(a) and (2), 21, 24 and 27 of the Fourth Schedule; 5</p> <p>(f) paragraphs 10(3) and (4), 11(2) and (7), 12(1) and 13 of the Sixth Schedule; 10</p> <p>(g) paragraphs 2(h), 3, 6(4)(b), 7(6), (7) and (8), [9 and] 11 and 12A(3) of the Seventh Schedule; and</p> <p>(h) paragraphs 12(5)(c)(i), 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(e) of the Eighth Schedule.”; and 15</p> <p>(d) by the substitution for subsection (6) of the following section: 20</p> <p>“(6) Any person aggrieved by a decision of the executive officer to approve or to withdraw an approval of a fund in terms of subsection (5) must, notwithstanding section 26(2) of the Financial Services Board Act, 1990, lodge his or her objection with the Commissioner [in the manner contemplated in Part III of Chapter III of this Act] in accordance with the provisions of Chapter 9 of the Tax Administration Act.”. 25 30</p>
		Repeal of section 4
		26. Section 4 of the Income Tax Act, 1962, is hereby repealed.
		Amendment of section 4A
		<p>27. The Income Tax Act, 1962, is hereby amended by the substitution for section 4A of the following section: 35</p> <p>“Exercise of powers and performance of duties by Minister 40</p> <p>4A. 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 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.”. 45 50</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p data-bbox="807 244 1166 271">Amendment of section 5</p> <p data-bbox="807 282 1251 400">28. Section 5 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (7) of the following subsection:</p> <p data-bbox="831 412 1251 808">“(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] <u>the taxpayer</u> has been subsequently fixed or varied, [his] <u>the taxpayer’s</u> assessment for such year shall be adjusted, any amounts paid in excess being refundable to [him] <u>the taxpayer</u> and amounts shortpaid being recoverable from [him] <u>the taxpayer.</u>”.</p>
		<p data-bbox="807 831 1134 857">Amendment of section 6quat</p> <p data-bbox="807 869 1251 1048">29. Section 6quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for the words following paragraph (b) but preceding the proviso of the following words:</p> <p data-bbox="831 1059 1251 1525">“the Commissioner may, notwithstanding the provisions of section [79 or section 81(5)] 99 or 100 of the Tax Administration Act, but subject to subsections (1B)(a) and (1D) issue a reduced or additional assessment, as the case may be, reflecting the amount of the rebate or deduction in respect of that amount of tax actually payable in that other currency translated to the currency of the Republic at the average exchange rate applicable for that previous year of assessment, which shall be allowed against normal tax or as a deduction”.</p>
		<p data-bbox="807 1543 1086 1570">Amendment of section 8</p> <p data-bbox="807 1581 1251 1637">30. Section 8 of the Income Tax Act, 1962, is hereby amended—</p> <p data-bbox="807 1648 1251 1727">(a) by the substitution in subsection (5) for paragraph (bC) of the following paragraph:</p> <p data-bbox="831 1738 1251 1980">“(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 property as contemplated</p>

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		<p>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 accordance with paragraph (bA)[, and shall furnish the Commissioner with a copy of such advice].”; and</p> <p>(b) by the deletion in subsection (5) of paragraph (c).</p>
		Amendment of section 9D
		<p>31. Section 9D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (10) for paragraph (b) of the following paragraph:</p> <p>“(b) Any ruling issued in terms of paragraph (a) will be subject to the same procedures, terms and conditions as a ‘binding private ruling’ as contemplated in [Part IA of Chapter III] Chapter 7 of the Tax Administration Act, but disregarding—</p> <p>(i) section [76G(1)(a)(ii)] 80(1)(a)(ii) of that Act; and</p> <p>(ii) the requirement that the transaction must be a proposed transaction.”.</p>
		Amendment of section 10
		<p>32. 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).</p>
		Amendment of section 10A
		<p>33. Section 10A of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the deletion of subsection (9); and</p> <p>(b) by the substitution for subsection (10) of the following subsection:</p> <p>“(10) Subject to the provisions of section [79] 99 of the Tax Administration Act, the final calculation or recalculation of the capital element as made in relation to the year of assessment referred to in subsection (8) shall, subject to the provisions 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.”.</p>

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		Amendment of section 11 of Act 58 of 1962	
		<p>34. Section 11 of the Income Tax Act, 1962, is hereby amended by the deletion in paragraph (l) of paragraph (vi) of the proviso.</p>	5
		Amendment of section 11D	
		<p>35. Section 11D of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (14) of the following subsection:</p> <p>“(14) Every person employed or engaged as contemplated in subsection (13) shall, before acting under this section, take and subscribe [before a magistrate or justice of the peace or a commissioner of oaths, such] <u>the</u> oath or solemn declaration [, as the case may be, of fidelity or secrecy as may be prescribed as contemplated in section 4(2)(a)] <u>prescribed</u> under section 67(2) of the Tax Administration Act.”.</p>	10 15
		Amendment of section 12G	
		<p>36. Section 12G of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subsection (11) of the following subsection:</p> <p>“(11) For purposes of subsections (9) and (10), the Commissioner may, notwithstanding the provisions of sections [79, 81(5) and 83(18)] <u>99 and 100 of the Tax Administration Act</u>, raise an additional assessment for any year of assessment where an additional industrial investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (9) or (10).”; and</p> <p>(b) by the deletion of subsection (12).</p>	20 25 30 35
		Amendment of section 12I	
		<p>37. Section 12I of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subsection (14) of the following subsection:</p> <p>“(14) The Commissioner may, notwithstanding the provisions of [section 79, 81(5) and 83(18)] <u>sections 99 and 100 of the Tax Administration Act</u>, raise an additional assessment for any year of assessment where an additional investment allowance which has been</p>	40 45

No. and Year	Short Title	Extent of amendment or repeal	
		allowed in any previous year must be disallowed in terms of subsection (12) or (13).”; and (b) by the deletion of subsection (15).	
		Amendment of section 12J	
		38. Section 12J of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (9).	5
		Amendment of section 23	
		39. 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 any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable under any Act administered by the Commissioner, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), the Skills Development Levies Act, 1999 (Act No. 9 of 1999), and the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002)] imposed under the Tax Administration Act or the Customs and Excise Act, 1964 (Act No. 91 of 1964);”.	10 15 20 25 30
		Amendment of section 23H	
		40. Section 23H of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (4).	35
		Amendment of section 24J	
		41. Section 24J of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (11).	
		Amendment of section 25A	
		42. Section 25A of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (2).	

No. and Year	Short Title	Extent of amendment or repeal
		<p data-bbox="804 239 1254 273">Amendment of section 35</p> <p data-bbox="804 280 1254 340">43. Section 35 of the Income Tax Act, 1962, is hereby amended—</p> <p data-bbox="804 347 1254 439"><i>(a)</i> by the substitution in subsection (2)<i>(a)</i> for the words preceding the proviso of the following words: 5</p> <p data-bbox="874 445 1254 1137">“Any person who incurs a liability 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 liability 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 subsection (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;”;</p> <p data-bbox="804 1144 1254 1236"><i>(b)</i> by the substitution in subsection (2) for paragraph <i>(b)</i> of the following paragraph: 30</p> <p data-bbox="874 1243 1254 1711">“<i>(b)</i> Any person making a payment to the Commissioner in terms of paragraph <i>(a)</i> 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].”; 40 45</p> <p data-bbox="804 1718 1254 1778"><i>(c)</i> by the deletion in subsection (2) of paragraphs <i>(d)</i> and <i>(e)</i>; and</p> <p data-bbox="804 1785 1254 1807"><i>(d)</i> by the deletion of subsection (3).</p>

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		<p>Amendment of section 35A</p> <p>44. Section 35A of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subsection (6) of the following subsection:</p> <p style="padding-left: 40px;">“(6) The purchaser must, together with the payment contemplated in subsection (4), submit to the Commissioner a [declaration in the form and containing the information as the Commissioner may prescribe] return.”;</p> <p>(b) by the substitution for subsection (7) of the following subsection:</p> <p style="padding-left: 40px;">“(7) [If a] A purchaser is personally liable under the circumstances contemplated in section 157 of the Tax Administration Act, for the amount that must be withheld under subsection (1) only if the purchaser knows or should reasonably have known that the seller is not a resident and [fails to withhold any amount as required by subsection (1), that purchaser—</p> <p style="padding-left: 40px;">(a) is personally liable for the payment of the amount which he or she failed to withhold; and</p> <p style="padding-left: 40px;">(b)] must pay that amount to the Commissioner not later than the date on which payment should have been made if the amount had in fact been withheld.”;</p> <p>(c) by the substitution for subsection (9) of the following subsection:</p> <p style="padding-left: 40px;">“(9) If a purchaser fails to pay any amount contemplated in subsection (1) to the Commissioner within the period allowed for payment in terms of subsection (4), that purchaser—</p> <p style="padding-left: 40px;">[(a) is liable for interest at the prescribed rate on any amount outstanding calculated from the day following the last date for payment to the date that the amount is received by the Commissioner; and</p> <p style="padding-left: 40px;">(b)] must pay a penalty equal to ten per cent of [that] the amount, in addition to any other penalty or charge for which he or she may be liable under this Act.”;</p>

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		Amendment of section 47F
		<p data-bbox="804 277 1257 405">48. Section 47F of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:</p> <p data-bbox="831 409 1257 595">“(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 containing the information as may be prescribed by the Commissioner].</p> <p data-bbox="831 600 1257 813">(2) A resident who pays to the Commissioner any amount in terms of section 47E, must together with that payment submit to the Commissioner a return [in the manner and form and containing the information as may be prescribed by the Commissioner].”.</p>
		Amendment of section 47G
		<p data-bbox="804 864 1257 925">49. Section 47G of the Income Tax Act, 1962, is hereby amended—</p> <p data-bbox="804 929 1257 1016"><i>(a)</i> by the substitution in subsection (1) for the words following paragraph <i>(b)</i> of the following words:</p> <p data-bbox="874 1021 1257 1240">“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 due by that resident] <u>in accordance with Part A of Chapter 10 of the Tax Administration Act.</u>”; and</p> <p data-bbox="804 1245 1257 1274"><i>(b)</i> by the deletion of subsection (2).</p>
		Repeal of sections 47H and 47I
		<p data-bbox="804 1319 1257 1379">50. Sections 47H and 47I of the Income Tax Act, 1962, are hereby repealed.</p>
		Amendment of section 60
		<p data-bbox="804 1429 1257 1489">51. Section 60 of the Income Tax Act, 1962, is hereby amended—</p> <p data-bbox="804 1494 1257 1554"><i>(a)</i> by the substitution for subsection (1) of the following subsection:</p> <p data-bbox="874 1559 1257 1834">“(1) Donations tax shall be paid to the Commissioner [within three months] <u>by the end of the month following the month during which a donation takes effect</u> or such longer period as the Commissioner may allow from the date upon which the donation in question takes effect.”; and</p> <p data-bbox="804 1839 1257 1899"><i>(b)</i> by the substitution for subsection (4) of the following subsection:</p> <p data-bbox="874 1904 1257 1964">“(4) The payment of the tax in terms of subsection (1) shall be</p>

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		accompanied by a return [in such form as may be prescribed by the Commissioner].” .
		Amendment of section 61
		<p>52. Section 61 of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for paragraph (a) of the following paragraph:</p> <p style="padding-left: 40px;">“(a) any reference in [subsection (1) or (2) of section seventy-four, paragraph (c) or (d) of subsection (1) of section seventy-five or] paragraph (a) or (e) of the definition of ‘representative taxpayer’ in section [one] <u>1</u> to the income of any person or to the gross income received by or accrued to or in favour of any person shall be deemed to include a reference to property disposed of by any person under a donation or to the value of such property, as the context may require;”;</p> <p>(b) by the deletion of paragraphs (b), (c), (e), (f) and (h).</p>
		Amendment of section 62
		<p>53. Section 62 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:</p> <p style="padding-left: 40px;">“(4) If the Commissioner is of the opinion that the amount shown in any 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, and the value so fixed is, subject to the provisions of section 63, deemed for the purposes of this Part to be the fair market value of such property.”.</p>
		Repeal of section 63
		54. Section 63 of the Income Tax Act, 1962, is hereby repealed.
		Amendment of section 64B
		55. Section 64B of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (9) and (11).
		Amendment of section 64K
		56. Section 64K of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (3), (5), (6), (7) and (8).

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		Amendment of section 64L	
		<p>57. Section 64L of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:</p> <p>“[If] <u>Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—</u>”.</p>	5
		Amendment of section 64M	
		<p>58. Section 64M of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:</p> <p>“[If] <u>Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—</u>”.</p>	10
		Amendment of section 64R	
		<p>59. Section 64R of the Income Tax Act, 1962, is hereby amended by deletion of subsections (3), (4) and (5).</p>	15
		Repeal of section 65	
		<p>60. Section 65 of the Income Tax Act, 1962, is hereby repealed.</p>	
		Amendment of section 66	
		<p>61. Section 66 of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading:</p> <p>“Notice by Commissioner requiring returns for assessment of [taxes] normal tax under this Act [and manner of furnishing returns and interim returns]”;</p> <p>(b) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Commissioner must annually give public notice [that all] <u>of the persons who [are personally or in a representative capacity liable to taxation under this Act or who]</u> are required by the Commissioner to furnish returns for the assessment of <u>normal tax</u> [, must furnish returns] within the period prescribed in that notice [, or such longer period as the Commissioner may allow, for the purposes of assessments in respect of the years of assessment specified in that notice.]”;</p> <p>(c) by the deletion of subsections (1A), (2), (3) and (5);</p>	20 25 30 35 40

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		<p>(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 assessment.”;</p> <p>(e) by the deletion of subsections (6), (7), (7A), (7B), (7C), (7D), (7E), (8), (9), (10) and (11);</p> <p>(f) by the substitution in subsection (13) for the words preceding paragraph (a) of the following words: “(13) The return [of income] for normal tax to be made by any person in respect of any year of assessment shall be a [full and true] return—”;</p> <p>(g) by the deletion in the proviso to subsection (13)(a) of the word “or” at the end of paragraph (b)(ii);</p> <p>(h) by the addition to the proviso to subsection (13)(a) of the following paragraph: “(c) <u>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 date that the person ceases to be a resident; or</u>”;</p> <p>(i) by the addition of the following proviso to subsection (13)(b): “: <u>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 preceding the date that the company ceases to be a resident</u>”.</p> <p>(j) by the substitution for subsection (13B) of the following subsection: “(13B) For the purposes of subsections [(13),] (13A)[,] and (13C) [and (14)], the word ‘income’ must be construed as including any aggregate capital gain or aggregate capital loss.”; and</p> <p>(k) by the deletion of subsections (14) and (15).</p>

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		Amendment of section 67
		<p>62. Section 67 of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(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</p> <p>(b) by the deletion of subsections (1A) and (2).</p>
		Repeal of sections 67A, 69, 70, 70A, 70B and 71
		<p>63. Sections 67A, 69, 70, 70A, 70B and 71 of the Income Tax Act, 1962, are hereby repealed.</p>
		Amendment of section 72A
		<p>64. Section 72A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) Every resident who on the last 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 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 Commissioner [such] a return [as may be prescribed by the Commissioner].”.</p>
		Repeal of sections 73 to 80
		<p>65. 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.</p>
		Amendment of section 80B
		<p>66. Section 80B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:</p>

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		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	
		70. Sections 91A, 92, 93, 94, 95, 96, 97, 98, 99, 100 and 101 of the Income Tax Act, 1962, are hereby repealed.	5
		Amendment of section 102	
		<p>71. Section 102 of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the deletion of subsection (1);</p> <p>(b) by the substitution for subsection (1A) of the following subsection:</p> <p style="padding-left: 40px;">“(1A) The Commissioner may refuse to authorise a refund under [subsection (1)] section 190 of the Tax Administration Act, if [that person]—</p> <p style="padding-left: 40px;">(a) that person has failed to furnish a return [for any year of assessment] as required [by] in terms of this Act, until that person has furnished such return as required; or</p> <p style="padding-left: 40px;">(b) [has failed to furnish the Commissioner in writing with particulars of that person’s banking account or account with a similar institution to enable the Commissioner to transfer a refund, if any, to that account] the refund is claimed by that person 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 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 assessment.”; and</p> <p>(c) by the deletion of subsections (2), (3) and (4).</p>	10 15 20 25 30 35 40
		Repeal of section 102A	
		72. Section 102A of the Income Tax Act, 1962, is hereby repealed.	
		Amendment of section 103	
		<p>73. Section 103 of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subsection (4) of the following subsection:</p>	45

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		<p>“(4) [Any decision of the Commissioner under subsection (2) shall be subject to objection and appeal, and whenever] <u>If in any objection and appeal proceedings relating [thereto] to a decision under subsection (2)</u> it is proved that the agreement or change in shareholding or members’ interests or trustees or beneficiaries of the 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 any previous Income Tax Act or any other law administered by the Commissioner, or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved in the case of any such agreement or change in shareholding or members’ interests or trustees or beneficiaries of such trust, that it has been entered into or effected solely or mainly for the purpose of utilising the assessed loss, balance of assessed loss, capital loss or assessed capital loss in question in order to avoid or postpone such liability or to reduce the amount thereof.”; and (b) by the deletion of subsection (6).</p>
		<p>Repeal of sections 104, 105, 105A, 106, 107A and 110</p>
		<p>74. Sections 104, 105, 105A, 106, 107A and 110 of the Income Tax Act, 1962, are hereby repealed.</p>
		<p>Amendment of paragraph 13 of First Schedule</p>
		<p>75. Paragraph 13 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph: “(3) Every farmer who desires to claim a deduction in terms of subparagraph (1), shall [with his return of income] for the year of assessment in which he sold livestock on account of conditions of drought or stock disease or by reason of his participation in a livestock reduction scheme organized by the Government[, or within such period as the Commissioner may allow,] notify the Commissioner accordingly and [furnish] <u>obtain and retain</u> full particulars in regard to the livestock so sold.”.</p>

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of paragraph 19 of First Schedule
		<p>76. 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: 5</p> <p>“(3) Where the taxpayer’s assessment for a relevant period has in terms of section [81(5) of this Act] 100 of the <u>Tax Administration Act</u>, 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 annual 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 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 or reduced by at least six hundred rand.”. 10 15 20 25</p>
		Amendment of paragraph 20 of First Schedule
		<p>77. Paragraph 20 of the First Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words: 30</p> <p>“If [any] a taxpayer (other than a company) who derives income from farming operations [submits an application to the Commissioner] <u>makes an election</u> as provided in subparagraph (6) and <u>if so required</u> proves to the satisfaction of the Commissioner—”; 35 40</p> <p>(b) by the substitution in subparagraph (6) for item (a) of the following item: 45</p> <p>“(a) Any taxpayer (other than a company) may[, at his option, make written application to the Commissioner] <u>elect</u> for the normal tax payable by [him] <u>the taxpayer</u> to be determined under this paragraph;”; and</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>(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 accompanied by] election the following records must be obtained and retained—”.</p>	5
		Amendment of paragraph 1 of Fourth Schedule	10
		<p>78. Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution in paragraph 1 for paragraph (cc) of the exclusion in the definition of “provisional taxpayer” of the following paragraph: “(cc) any body <u>corporate, share block company or association of persons</u> contemplated in section 10(1)(e);”;</p> <p>(b) by the substitution in the definition of “remuneration” for the words preceding the proviso in paragraph (cB) of the following words: “80 per cent of the amount of the [fringe] taxable benefit as determined in terms of paragraph 7 of the Seventh Schedule”;</p> <p>(c) by the substitution in the definition of “representative employer” for paragraph (b) of the following paragraph: “(b) in the case of any [divisional council, municipal council, village management board or like authority] <u>municipality</u> or any body corporate or unincorporated (other than a company or a partnership), any manager, secretary, officer or other person responsible for paying remuneration on behalf of such [council, board, authority] <u>municipality or body;</u>”;</p> <p>(d) by the substitution in the definition of “representative employer” for the words following paragraph (d) of the following words: “who [is a resident] <u>resides in the Republic</u>, but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Schedule; and”.</p>	15 20 25 30 35 40 45 50

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of paragraph 2 of Fourth Schedule
		<p>79. 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 (c):</p> <p>“(cA) <u>any premium paid by an employer of the taxpayer directly or indirectly for the benefit or 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; and</u>”.</p>
		Amendment of paragraph 5 of Fourth Schedule
		<p>80. 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:</p> <p>“(1) Subject to the provisions of sub-paragraph (6) <u>[any], if an employer [who fails to deduct or withhold the full amount of employees’ tax as provided in paragraph 2 shall be] is</u> personally liable for the payment <u>[to the Commissioner of the amount]</u> of employees’ tax <u>under Chapter 10 of the Tax Administration Act, [which he or she fails to deduct or withhold, and] the employer</u> shall [, <u>subject to the provisions of sub-paragraph (2),</u>] 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.”.</p>
		Amendment of paragraph 6 of Fourth Schedule
		<p>81. Paragraph 6 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subparagraph (1) of the following subparagraph:</p> <p>“(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</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>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</p> <p><i>(b)</i> by the deletion of subparagraphs (2), (2A), (2B), (3) and (4).</p>	5
		<p>Repeal of paragraph 8 of Fourth Schedule</p>	
		<p>82. The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 8.</p>	10
		<p>Amendment of paragraph 11B of Fourth Schedule</p>	
		<p>83. Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p><i>(a)</i> by the substitution in subparagraph (1) for subparagraph (ii) of paragraph <i>(f)</i> of the definition of “net remuneration” of the following subparagraph:</p> <p>“(ii) by way of an annuity or withdrawal from a retirement income drawdown account provided or payable by a pension fund, pension preservation fund, provident fund, provident preservation fund or benefit fund;”; and</p> <p><i>(b)</i> by the deletion of subparagraph (4A).</p>	15 20 25
		<p>Amendment of paragraph 11C of Fourth Schedule</p>	
		<p>84. 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:</p> <p>“(2) Subject to subparagraph (6), every private company shall on a monthly basis, in respect of every director of that company, pay to the Commissioner an amount determined in accordance with subparagraph (3), which shall for the purposes of [sections 79, 89bis, 89ter, 89quat,] section 90 [, 102 and 102A] of the Act, [and] paragraphs 1, 4, 6, 11[, 12], 13 and 14 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 paragraph 2 of this Schedule.”.</p>	30 35 40 45

No. and Year	Short Title	Extent of amendment or repeal	
		Repeal of paragraph 12 of Fourth Schedule	
		85. 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
		<p>86. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:</p> <p style="padding-left: 40px;"><u>“[Every] In addition to the records required in accordance with Part A of Chapter 4 of the Tax Administration Act, every employer shall in respect of each employee maintain a record showing—”</u>;</p> <p>(b) by the substitution for subparagraph (2) of the following subparagraph:</p> <p style="padding-left: 40px;">“(2) Every employer shall when making any payment of employees’ tax submit to the Commissioner [such declaration containing such information as the Commissioner may prescribe] a return.”;</p> <p>(c) by the substitution in subparagraph (3) for the words following item (b) of the following words:</p> <p style="padding-left: 40px;">“or within such longer time as the Commissioner may approve, render to the Commissioner [such] a return [as the Commissioner may prescribe].”;</p> <p>(d) by the deletion of subparagraph (4); and</p> <p>(e) by the substitution for subparagraph (6) of the following subparagraph:</p> <p style="padding-left: 40px;">“(6) If an employer fails to render to the Commissioner a return referred to in subparagraph (3) within the period prescribed in that subparagraph, <u>the Commissioner may impose under Chapter 15 of the Tax Administration Act on that employer [shall be required to pay] a percentage based penalty [equal to] for each month that the employer fails to submit a complete return which in total may not exceed 10 per cent of the total amount of employees’ tax deducted or withheld or which should have been</u></p>	10 15 20 25 30 35 40 45 50

No. and Year	Short Title	Extent of amendment or repeal	
		deducted or withheld by the employer from the remuneration of employees for the period [relating to the return required in terms of] described in that subparagraph [: Provided that the Commissioner may remit that penalty or portion thereof if he or she is satisfied that the circumstances warrant it].” .	5 10
		Amendment of paragraph 15 of Fourth Schedule	
		<p>87. Paragraph 15 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subparagraph (1) of the following subparagraph:</p> <p style="padding-left: 2em;">“(1) Every person who is an employer shall apply to the Commissioner [in such form as the Commissioner may prescribe] in accordance with Chapter 3 of the Tax Administration Act for registration [as an employer within 14 days after becoming an employer, or within such further period as the Commissioner may approve]: 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.”;</p> <p>(b) by the deletion of subparagraph (2);</p> <p>(c) by the substitution for subparagraph (3) of the following subparagraph:</p> <p style="padding-left: 2em;">“(3) Every person who [has applied or is deemed to have 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, 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</p> <p>(d) by the deletion of subparagraph (4).</p>	15 20 25 30 35 40 45
		Repeal of paragraph 16 of Fourth Schedule	
		88. Paragraph 16 of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed.	

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		<p data-bbox="807 241 1251 297">Amendment of paragraph 17 of Fourth Schedule</p> <p data-bbox="807 309 1251 398">89. Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p data-bbox="807 409 1251 465">(a) by the substitution for subparagraph (5) of the following subparagraph:</p> <p data-bbox="871 477 1251 1193">“(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by 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 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 provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied <u>together with the period for which such tables shall remain in force.</u>”;</p> <p data-bbox="807 1205 1251 1261">(b) by the deletion of subparagraph (6); and</p> <p data-bbox="807 1272 1251 1328">(c) by the substitution for subparagraph (8) of the following subparagraph:</p> <p data-bbox="871 1339 1251 1574">“(8) Every person who is a provisional 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 <u>in accordance with Chapter 3 of the Tax Administration Act.</u>”.</p>
		<p data-bbox="807 1590 1251 1646">Amendment of paragraph 18 of Fourth Schedule</p>
		<p data-bbox="807 1657 1251 1747">90. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p data-bbox="807 1758 1251 1848">(a) by the substitution in subparagraph (1)(c) for the subsubitem (ii) of the following subsubitem:</p> <p data-bbox="871 1859 1251 2022">“(ii) the taxable income of that person for the relevant year of assessment which is derived from interest, <u>foreign</u> dividends and rental from the letting of fixed property will not exceed R20 000;”;</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>(b) by the substitution in subparagraph (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 [over the age of] 65 years or older, if the Commissioner is satisfied that such person’s taxable income for that year—”; and</p> <p>(c) by the substitution in subparagraph (1)(d) for subsubitem (iii) of the following subsubitem: “(iii) will not be derived otherwise than from remuneration, interest, <u>foreign</u> dividends, or rental from the letting of fixed property.”.</p>
		<p>Amendment of paragraph 19 of Fourth Schedule</p>
		<p>91. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution in subparagraph (1) for item (a) of the following item: “(a) Every provisional taxpayer (other than a company) [or a person contemplated in paragraph 18] shall, during every period within which provisional tax is or may be payable by [him] <u>that provisional taxpayer</u> 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 prescribe,] (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] <u>the taxpayer.</u>”;</p> <p>(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 provisional 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</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>such form as the Commissioner may prescribe,] (should the Commissioner so require) a return of an estimate of the total taxable income which will be derived by the company in respect of the year of assessment in respect of which provisional tax is or may be payable by the company.”; 5</p> <p>(c) by the substitution in subparagraph (1) for item (c) of the following item: 10</p> <p>“(c) The amount of any estimate so submitted by a provisional taxpayer (other than a company) during the period referred to in paragraph 21(1)(a) [or any extension of such period granted in terms of paragraph 25(2)], or by a company (as a provisional taxpayer) during the period referred to in paragraph 23(a) [or any extension of such period granted in terms of paragraph 25(2)], shall, unless the Commissioner, having regard to the circumstances of the case, agrees to accept an estimate of a lower amount, not be less than the basic amount applicable to the estimate in question, as contemplated in item (d).”;</p> <p>(d) by the substitution in subparagraph (1) for subsubitem (bb) of item (d)(i) of the following subsubitem: 30</p> <p>“(bb) [the taxable portion of any lump sum] any amount contemplated in [section 7A(4A) and] paragraph (d) of the definition of ‘gross income’ in section 1; and”;</p> <p>(e) by the substitution in subparagraph (1) for the proviso to item (d) of the following proviso: 40</p> <p>“Provided that, if an estimate under item (a) or (b) must be made— 45</p> <p><u>(a) more than 18 months; and</u></p> <p><u>(b) in respect of a period that ends more than one year, after the end of the latest preceding year of assessment in relation to such estimate, the basic amount determined in terms of subitem (i) 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 of which the estimate is made.”;</u></p> 55

No. and Year	Short Title	Extent of amendment or repeal
		<p>(f) by the substitution in subparagraph (1) for subitem (ii) of item (e) of the following subitem:</p> <p style="padding-left: 40px;">“(ii) in respect of which a notice of assessment relevant to the estimate has been issued by the Commissioner not less than [60]14 days before the date on which the estimate is submitted to the Commissioner: Provided that where the Commissioner has in respect of any estimate required to be made by a provisional taxpayer issued to the taxpayer a return for the payment of provisional tax upon which the Commissioner has indicated the taxpayer’s taxable income for the latest preceding year of assessment, in respect of which a notice of assessment was issued prior to the issue of such return, such [taxable income] year of assessment shall at the option of the taxpayer be deemed to be [the basic amount applicable to such estimate] that latest preceding year of assessment.”;</p> <p>(g) by the substitution for subparagraph (2) of the following subparagraph:</p> <p style="padding-left: 40px;">“(2) If any provisional taxpayer fails to submit any estimate as required by subparagraph (1), the Commissioner may estimate the taxable income which is required to be estimated [, and such estimate shall be final and conclusive].”;</p> <p>and</p> <p>(h) by the substitution for subparagraph (3) of the following subparagraph:</p> <p style="padding-left: 40px;">“(3) The Commissioner may call upon any provisional taxpayer to justify any estimate made by him in terms of subparagraph (1), or to furnish particulars of his income and expenditure or any other particulars that may be required, and, if 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 shall be final and conclusive].”.</p>

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of paragraph 20 of Fourth Schedule
		<p>92. Paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: 5</p> <p style="text-align: center;">“[ADDITIONAL TAX] UNDERSTATEMENT PENALTY IN THE EVENT OF TAXABLE INCOME BEING UNDERESTIMATED”; 10</p> <p>(b) by the substitution in subparagraph (1) for items (a) and (b) of the following items: 15</p> <p style="padding-left: 2em;">“(a) more than R1 million and such estimate is less than 80 per cent of the amount of the actual taxable income the Commissioner may, if he or she is not satisfied that the amount of such estimate was seriously calculated with due regard to the factors having a bearing thereon or was not deliberately or negligently understated, subject to the provisions of subparagraph (3), impose, in addition to the normal tax chargeable in respect of the taxpayer’s taxable income for such year of assessment, an [amount by way of additional tax] understatement penalty [up] 20</p> <p style="padding-left: 2em;">equal to 20 per cent of the difference between the amount of normal tax as calculated in respect of such 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 equal to 80 per cent of such actual taxable income; and 25</p> <p style="padding-left: 2em;">(b) in any other case, less than 90 per cent of the amount of such 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 taxpayer shall, subject to the provisions of subparagraphs (2) and (3), be liable to pay to the 30</p> <p style="text-align: right;">35 40 45 50 55</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>Commissioner, in addition to the normal tax chargeable in respect of his or her taxable income for such year of assessment, an [amount by way of additional tax] <u>understatement penalty</u> equal to 20 per cent of the difference between the amount of normal tax as calculated in respect of such estimate and the lesser of the following amounts, namely—</p> <p>(i) the amount of normal tax calculated, at the rates applicable in respect of such year of assessment, in respect of a taxable income equal to 90 per cent of such actual taxable income; and</p> <p>(ii) the amount of normal tax calculated in respect of a taxable income equal to such basic amount, at the rates applicable in respect of such year of assessment.”;</p> <p>(c) by the substitution for subparagraph (2) of the following subparagraph: “(2) Where the Commissioner is satisfied that the amount of any estimate referred to in subparagraph (1)(b) was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated, or if the Commissioner is partly so satisfied, the Commissioner may in his or her discretion remit the [additional tax] <u>understatement penalty</u> or a part thereof.”; and</p> <p>(d) by the deletion of subparagraph (4).</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
		<p>Amendment of paragraph 20A of Fourth Schedule</p>	45
		<p>93. Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “[ADDITIONAL TAX] PENALTY IN THE EVENT OF FAILURE TO SUBMIT AN ESTIMATE OF TAXABLE INCOME TIMEOUSLY”;</p>	50

No. and Year	Short Title	Extent of amendment or repeal
		<p>(b) by the substitution for subparagraph (1) of the following subparagraph:</p> <p style="padding-left: 40px;">“(1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by that provisional taxpayer during any year of assessment and the estimate of his or her taxable income for that year required to be submitted by him or her under paragraph 19(1) during the period contemplated in paragraph 21(1)(b), 22(1) or 23(b), as 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 of such period has under paragraph 25(2) been extended to a date later than the end of such year, on or before such date,] the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 19(2) or has increased the amount thereof under paragraph 19(3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, [an amount by way of additional tax] a <u>penalty</u> equal to 20 per cent of the amount by which the normal tax payable by him or her in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by him or her in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part [or within any extension of such period under paragraph 25(2)] and any amounts of employees’ tax deducted or withheld from his or her remuneration by his or her employer during such year.”;</p> <p>(c) by the substitution for subparagraph (2) of the following subparagraph:</p> <p style="padding-left: 40px;">“(2) The Commissioner may, if <u>he or she</u> is satisfied that the provisional taxpayer’s failure to submit such an estimate timeously was not</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>due to an intent to evade or postpone the payment of provisional tax or normal tax, remit the whole or any part of the [additional tax] penalty imposed under subparagraph (1).”; and (d) by the deletion of subparagraph (3).</p>	5
		<p>Amendment of paragraph 23A of Fourth Schedule</p>	
		<p>94. Paragraph 23A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— (a) by the substitution for subparagraph (1) of the following subparagraph: “(1) Any provisional taxpayer may for the purpose of avoiding or reducing his liability for any interest which may become payable by him in respect of any year of assessment under [section 89quat] Chapter 12 of the Tax Administration Act, elect to make an additional payment of provisional tax in respect of such year.”; and (b) by the deletion of subparagraph (2).</p>	10 15 20
		<p>Amendment of paragraph 25 of Fourth Schedule</p>	
		<p>95. Paragraph 25 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 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 increased the amount of any estimate of taxable income submitted by any provisional taxpayer during such period, any additional provisional tax payable as a result of the Commissioner having made such increase shall, notwithstanding the provisions of paragraphs 21[, 22] and 23, be payable within such period as the Commissioner may determine.”; and (b) by the deletion of subparagraph (2).</p>	25 30 35 40 45
		<p>Amendment of paragraph 27 of Fourth Schedule</p>	
		<p>96. Paragraph 27 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p>	

No. and Year	Short Title	Extent of amendment or repeal
		<p>(a) by the substitution for subparagraph (1) of the following subparagraph: “(1) If any provisional taxpayer fails to pay any amount of provisional tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 21 or 23, or paragraph 25(1), [or within such extended period as the Commissioner may allow 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 Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty equal to ten per cent of the amount not paid.”; and</p> <p>(b) by the deletion of subparagraph (2).</p>
		<p>Insertion of paragraph 28A of Fourth Schedule</p>
		<p>97. 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 employees’ 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 respect of the taxpayer’s liability for tax whether or not the liability has been ascertained or determined at the date of any payment.”.</p>
		<p>Amendment of paragraph 30 of Fourth Schedule</p>
		<p>98. Paragraph 30 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution in subsection (1) for the words preceding subparagraph (a) of the following words: “Any person who <u>wilfully and without just cause—</u>”;</p> <p>(b) by the deletion in subparagraph (1) of items (c), (d), (e) and (i);</p> <p>(c) by the substitution for item (j) in subparagraph (1) of the following item: “(j) [fails or neglects to apply to the Commissioner for registration as an employer as required by subparagraph (1) of] being a registered employer under paragraph 15(1),</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>“[A]Notwithstanding the provisions of Part A of Chapter 4 of the Tax Administration Act, a registered micro business must <u>only</u> retain a record of—”.</p>	5
		<p>Repeal of paragraph 15 of Sixth Schedule</p>	
		<p>103. Paragraph 15 of the Sixth Schedule to the Income Tax Act, 1962, is hereby repealed.</p>	
		<p>Amendment of paragraph 12A of Seventh Schedule</p>	
		<p>104. Paragraph 12A of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (4).</p>	10
		<p>Amendment of paragraph 17 of Seventh Schedule</p>	
		<p>105. Paragraph 17 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended— <i>(a)</i> by the deletion of the proviso in subparagraph (4); and <i>(b)</i> by the deletion of subparagraph (5).</p>	15
		<p>Amendment of paragraph 18 of Seventh Schedule</p>	
		<p>106. 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: “(1) Every employer shall on the return referred to in paragraph 14 of the Fourth Schedule declare that all taxable benefits enjoyed by employees of such employer during the period in respect of which such return was furnished, are declared on the <u>[employees] employees’ 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 Commissioner.”.</u></p>	20 25 30 35
		<p>Repeal of paragraph 19 of Seventh Schedule</p>	
		<p>107. Paragraph 19 of the Seventh Schedule to the Income Tax Act, 1962, is hereby repealed.</p>	

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
		<p>108. 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 that Act, of the term ‘SARS official’.</p>
		Amendment of section 1
		<p>109. Section 1 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the deletion of the definition of “business day”;</p> <p>(b) by the substitution for the definition of “Commissioner” of the following definition:</p> <p style="padding-left: 40px;">“ ‘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 of section 7 of that Act;”;</p> <p>(c) by the substitution for the definition of “prescribed rate” of the following definition:</p> <p style="padding-left: 40px;">“ ‘prescribed rate’ means the rate contemplated in section 189(3) of the Tax Administration Act;”;</p> <p>(d) by the insertion after the definition of “tax” of the following definition:</p> <p style="padding-left: 40px;">“ ‘Tax Administration Act’ means the Tax Administration Act, 2011;”;</p> <p>(e) by the deletion of the definition of “tax period”; and</p> <p>(f) by the substitution for the definition of “VAT registration number” of the following definition:</p> <p style="padding-left: 40px;">“ ‘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 24 of the Tax Administration Act;”;</p> <p>(g) by the renumbering of section 1 to section 1(1); and</p> <p>(h) by the insertion after subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(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.”.</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p data-bbox="807 237 1166 271">Substitution of section 4</p> <p data-bbox="807 277 1254 367">110. The Value-Added Tax Act, 1991, is hereby amended by the substitution for section 4 of the following section:</p> <p data-bbox="831 389 1254 450">“[Act to be administered by Commissioner] Administration of Act</p> <p data-bbox="831 472 1254 562">4. (1) The Commissioner [shall be] <u>is</u> responsible for carrying out the provisions of this Act.</p> <p data-bbox="831 568 1254 781">(2) <u>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 in this Act, regulated by the Tax Administration Act.</u>”.</p>
		<p data-bbox="807 792 1086 826">Amendment of section 5</p> <p data-bbox="807 833 1254 893">111. Section 5 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p data-bbox="807 900 1254 960">(a) by the substitution for subsection (1) of the following subsection:</p> <p data-bbox="871 967 1254 1296">“(1) The powers conferred and the duties imposed upon the Commissioner by or in terms of the provisions of this Act or any amendment thereof may be exercised or performed by the Commissioner personally, or by any [officer engaged in carrying out the said provisions under the control, direction or supervision of the Commissioner] SARS official.”; and</p> <p data-bbox="807 1303 1206 1337">(b) by the deletion of subsection (2).</p>
		<p data-bbox="807 1330 1015 1364">Repeal of section 6</p>
		<p data-bbox="807 1368 1254 1429">112. Section 6 of the Value-Added Tax Act, 1991, is hereby repealed.</p>
		<p data-bbox="807 1435 1086 1469">Amendment of section 13</p>
		<p data-bbox="807 1473 1254 1592">113. Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:</p> <p data-bbox="831 1599 1254 1688">“(a) for the collection (in such manner as the Commissioner may determine) by a SARS official, or the[—</p> <p data-bbox="895 1695 1254 1807">(i) any officer performing his or her duties under the control, direction or supervision of the Commissioner; or</p> <p data-bbox="879 1814 1254 2031">(ii)] Managing Director of the South African Post Office Limited on behalf of the Commissioner, of the tax payable in terms of this Act in respect of the importation of any goods into the Republic; and”.</p>

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of section 14
		<p>114. 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 [declaration (in such form as the Commissioner may prescribe) containing such information as may be required] <u>return</u>; and”.</p>
		Amendment of section 15
		<p>115. 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),] <u>(a)</u> the amount referred to in subsection (6)(b) exceeds the amount referred to in subsection (6)(a); or <u>(b)</u> the amount referred to in subsection (7)(b) exceeds the amount referred to in subsection (7)(a), the amount of the excess shall be refundable to the vendor by the Commissioner in respect of the changeover period as provided in [section 44(1)] Chapter 13 of the <u>Tax Administration Act</u>, read with section 16(5).”.</p>
		Amendment of section 16
		<p>116. Section 16 of the Value-Added Tax Act, 1991, is hereby amended— (a) by the substitution for the proviso to subsection (2) of the following proviso: “Provided that where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this 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 Commissioner may determine that no deduction for input tax in relation to that supply or importation shall be made unless that tax invoice or debit note or credit note or that bill of entry or other document is retained in accordance with the provisions of section 55(3)] <u>and Part A of Chapter 4 of the Tax Administration Act.</u>”; and</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>(b) by the substitution for subsection (5) of the following subsection:</p> <p>“(5) If, in relation to any tax period of any vendor, the aggregate of the amounts that may be deducted under subsection (3) from the sum referred to in that subsection, the amount (if any) refundable to the vendor under section 15(8), [the amount (if any) brought forward from the tax period preceding the first-mentioned tax period as provided in paragraph (ii) of the proviso to section 44(1) and the amount (if any) credited under section 44(4) to the vendor’s account during the first-mentioned tax period] and any other amount refundable under Chapter 13 of the Tax Administration Act, exceeds the said sum, the amount of the excess shall, subject to the provisions of this Act, be refundable to the vendor by the Commissioner as provided in [section 44(1)] Chapter 13 of the Tax Administration Act.”.</p>
		Amendment of section 17
		<p>117. Section 17 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for paragraph (iii) in subsection (1) of the following paragraph:</p> <p>“(iii) where a method for determining the ratio referred to in this subsection has been approved by the Commissioner, that method may only be changed with effect from a future tax period, or from such other date as the Commissioner may consider equitable and such other date must fall—</p> <p><u>(aa) in the case of a vendor who is a taxpayer as defined in section 1 of the Income Tax Act, within the year of assessment as defined in that Act, or</u></p> <p><u>(bb) in the case of a vendor who is not a taxpayer as defined in section 1 of the Income Tax Act, within the period of</u></p>

No. and Year	Short Title	Extent of amendment or repeal
		<p style="text-align: right;">5</p> <p style="text-align: right;">10</p> <p style="text-align: right;">15</p> <p style="text-align: right;">20</p> <p style="text-align: right;">25</p> <p style="text-align: right;">30</p> <p style="text-align: right;">35</p> <p style="text-align: right;">40</p> <p>twelve months ending on the last day of February, or if such vendor draws up annual financial statements in respect of a year ending other than on the last day of February, within that year, during which the application for the aforementioned method was made by the vendor.”; and</p> <p>(b) by the substitution for the words preceding the proviso to subsection (1) of the following words:</p> <p>“Where goods or services are acquired or imported by a vendor partly for consumption, use or supply (hereinafter referred to as the intended use) in the course of making taxable supplies and partly for another intended use, the extent to which any tax which has become payable in respect of the supply to 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 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 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 intended use of such goods or services in the course of making taxable supplies bears to the total intended use of such goods or services”.</p>
		<p>Amendment of section 23</p>
		<p style="text-align: right;">45</p> <p style="text-align: right;">50</p> <p>118. Section 23 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) Every person who is not a resident of the Republic, and who in 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</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p data-bbox="874 241 1257 488">such form as the Commissioner may direct and provide the Commissioner with such further particulars and any documentation as the Commissioner may require in such form for the purpose of registering that person: Provided that where—</p> <p data-bbox="884 499 1257 842">(i) a person who applies for registration under this subsection has not provided all particulars and documentation as required by the Commissioner, that person shall be deemed not to have applied for registration until he has provided all such particulars and documentation to the Commissioner;</p> <p data-bbox="877 853 1257 1126">(ii) such person is not a resident 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 addition to section 22(4) of the Tax Administration Act, until [he] such person has—</p> <p data-bbox="919 1137 1257 1413">[(aa)](a) appointed a representative vendor as contemplated in section [48(1)] 46 in the Republic and furnished the Commissioner with the particulars of such representative vendor;</p> <p data-bbox="919 1424 1257 1888">[(bb)](b) opened a banking account with any bank, mutual bank or other similar institution, registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), for the purposes of his enterprise carried on in the Republic and furnished the Commissioner with the particulars of such banking account.”;</p> <p data-bbox="804 1899 1257 1989">(b) by the substitution in subsection (3) for the words following paragraph (d) of the following words:</p> <p data-bbox="877 2000 1257 2022">“may apply to the Commissioner</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>for registration [in such form as the Commissioner may direct and provide the Commissioner with such further particulars and any documentation as the Commissioner may require in such form for the purpose of registering that person].”; and</p> <p>(c) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:</p> <p>“(a) applied for registration in accordance with <u>Chapter 3 of the Tax Administration Act</u> or subsection (2) or (3) and the Commissioner is satisfied that that person is eligible to be registered in terms of this Act, that person shall be a vendor for the purposes of this Act with effect from such date as the Commissioner may determine; or</p> <p>(b) not applied for registration in terms of [subsection (2)] <u>Chapter 3 of the Tax Administration Act</u> and the Commissioner is satisfied that that person is liable to be registered in terms of this Act, that person shall be a vendor for the purposes of this Act with effect from the date on which that person first became liable to be registered in terms of this Act: Provided that the Commissioner may, having regard to the circumstances of the case, determine that person to be a vendor from such later date as the Commissioner may consider equitable”.</p>
		<p>Amendment of section 25</p>
		<p>119. Section 25 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for the words preceding paragraph (a) of the following words:</p> <p>“[Subject to this Act] <u>In addition to any requirement under the Tax Administration Act</u>, every vendor shall within 21 days [and in such form as the Commissioner may prescribe] notify the Commissioner in writing of—”;</p>

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		<p>(b) by the substitution for paragraph (a) of the following paragraph: “(a) any change in the [name, address,] constitution or nature of the principal enterprise or enterprises of that vendor;”;</p> <p>(c) by the deletion of paragraph (f);</p> <p>(d) by the addition after paragraph (g) of the following paragraph: “(h) any changes in the majority ownership of any company”;</p> <p>and</p> <p>(e) by the deletion of the proviso.</p>	<p>5</p> <p>10</p>
		Substitution of section 26	
		<p>120. The Value-Added Tax Act, 1991, is hereby amended by the substitution for section 26 of the following section:</p> <p>“Liabilities not affected by person ceasing to be vendor</p> <p>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.”.</p>	<p>15</p> <p>20</p> <p>25</p> <p>30</p>
		Amendment of section 27	
		<p>121. Section 27 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (6) of the following subsection:</p> <p>“(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—</p> <p>(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;</p> <p>(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, end on a fixed day approved by the Commissioner, which day shall fall within 10 days before or</p>	<p>35</p> <p>40</p> <p>45</p> <p>50</p>

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		<p>after such last day: Provided that <u>the future tax period so approved by the Commissioner must be used by the vendor for a minimum period of 12 months commencing from the tax period the change is made;</u></p> <p>(iii) the first day of any tax period of the vendor subsequent to the vendor's first tax period shall be the first day following—</p> <p>(a) the last day of the vendor's preceding tax period; or</p> <p>(b) <u>the fixed day as approved by the Commissioner in terms of paragraph (ii).</u>”.</p>	<p>5</p> <p>10</p> <p>15</p>
		Amendment of section 28	
		<p>122. Section 28 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the deletion in subsection (1) of paragraph (i) of the proviso;</p> <p>(b) by the substitution in subsection (1) for paragraph (iii) of the proviso of the following paragraph:</p> <p>“(iii) a vendor registered with the Commissioner to submit returns and payments electronically (other than by means of a debit order), must furnish the return <u>within the period contemplated in subsection (1) and make full payment of the amount of tax within the period ending on the last business day of the month during which that twenty-fifth day falls;</u></p> <p>(c) by the deletion in subsection (1) of paragraphs (iv) and (v) of the proviso; and</p> <p>(d) by the deletion of subsections (3), (4), (5), (6), (7), (8) and (9).</p>	<p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
		Amendment of section 29	40
		<p>123. 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 following words:</p> <p>“furnish the Commissioner with a return [(in such form as the Commissioner may prescribe)] reflecting—”.</p>	45
		Repeal of section 30	
		<p>124. Section 30 of the Value-Added Tax Act, 1991, is hereby repealed.</p>	

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		<p data-bbox="805 241 1256 271">Amendment of section 31</p> <p data-bbox="805 280 1256 338">125. Section 31 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p data-bbox="805 347 1256 405"><i>(a)</i> by the substitution for subsection (1) of the following subsection:</p> <p data-bbox="901 414 1256 495">“<i>(1)</i> [Where]The Commissioner may make an assessment of the amount of tax payable by—</p> <p data-bbox="869 504 1256 651"><i>(a)</i> any person fails to furnish any return as required by section 28, 29 or 30 or fails to furnish any declaration as required by section 14; or</p> <p data-bbox="885 660 1256 831"><i>(b)</i> the Commissioner is not satisfied with any return or declaration which any person is required to furnish under a section referred to in paragraph <i>(a)</i>; or</p> <p data-bbox="885 840 1256 1032"><i>(c)</i> the Commissioner has reason to believe that any person has become liable for the payment of any amount of tax but has not paid such amount; or]</p> <p data-bbox="885 1041 1256 1189"><i>(d)</i> any person, not being a vendor, that supplies goods or services and represents that tax is charged on that supply; or</p> <p data-bbox="885 1198 1256 1503"><i>(e)</i> any vendor that supplies goods or services and such supply is not a taxable supply or such supply is a taxable supply in respect of which tax is chargeable at a rate of zero per cent, and in either case that vendor represents that tax is charged on such supply at a rate in excess of zero per cent;</p> <p data-bbox="885 1512 1256 1951"><i>(f)</i> any person who holds himself out as a person entitled to a refund or who produces, furnishes, authorises, or makes use of any tax invoice or document or debit note and has obtained any undue tax benefit or refund under the provisions of an export incentive scheme referred to in paragraph <i>(d)</i> of the definition of “exported” in section 1, to which such person is not entitled[,</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>the Commissioner may, notwithstanding 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 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 person concerned to the Commissioner].”;</p> <p>(b) by the deletion in subsection (2) of paragraph (a);</p> <p>(c) by the deletion of subsection (3);</p> <p>(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 notice of such assessment, stating the amount upon which tax is payable, the amount of tax payable, the amount of any additional tax payable in terms of section 60 and the tax period (if any) in relation to which the assessment is made] must give a notice of assessment, and—”;</p> <p>(e) by the deletion of subsections (5) and (5A).</p>
		Repeal of sections 31A and 31B
		126. Sections 31A and 31B of the Value-Added Tax Act, 1991, are hereby repealed.
		Amendment of section 32
		<p>127. Section 32 of the Value Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading: “Objections to certain decisions [or assessments]”;</p> <p>(b) by the substitution for subsection (1) of the following subsection: “(1) [Any person who is dissatisfied with—]<u>The following decisions of the Commissioner are subject to objection and appeal:</u></p> <p>(a) any decision given in writing by the Commissioner—</p> <p>(i) in terms of section 23(7) notifying that person of the Commissioner’s refusal to register that person in terms of this Act; [or]</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>(ii) in terms of section 24(6) or (7) notifying that person of the Commissioner's decision to cancel any registration of that person in terms of this Act or of the Commissioner's refusal to cancel such registration; or</p> <p>[(iii) in terms of section 44(8) of the Commissioner's refusal to make a refund; or]</p> <p>(iv) refusing to approve a method for determining the ratio contemplated in section 17(1); or</p> <p>[(v) in terms of section 43(5) and (6) notifying a member, shareholder or trustee of a vendor that he is required to provide surety in respect of the vendor's liability for tax from time to time; or</p> <p>(vi) refusing to remit, in whole or in part, any interest or penalty in terms of section 39(7); or</p> <p>(b) any assessment made upon him under the provisions of section 31, 60 or 61; or]</p> <p>(c) any [direction or supplementary direction] decision made by the Commissioner and served on that person in terms of section 50A(3) or (4), may lodge an objection thereto with the Commissioner.”;</p> <p>(c) by the deletion of subsections (2), (2A), (3), (4) and (5).</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
		Repeal of sections 33 to 37	
		128. Sections 33, 33A, 34, 35, 36 and 37 of the Value-Added Tax Act, 1991, are hereby repealed.	
		Amendment of section 39	
		<p>129. Section 39 of the Value Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading:</p> <p style="padding-left: 40px;">“Penalty [and interest] for failure to pay tax when due”;</p> <p>(b) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) [(a)] If any person who is liable for the payment of tax and is</p>	<p>45</p> <p>50</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>required to make such payment [in the manner prescribed in] in accordance with the provisions of section 14, 28(1) or 29, fails to pay any amount of such tax within the period for the payment of such tax specified in the said [provision he shall] provisions, the Commissioner must, in [addition to such amount of tax, pay] accordance with Chapter 15 of the Tax Administration Act, impose[—</p> <p>(i)]a penalty equal to 10 per cent of the said amount of tax[; and</p> <p>(ii) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.</p> <p>(b) Where any amount of tax has in relation to any tax period of any vendor been refunded to the vendor in terms of the provisions of section 44(1), read with section 16(5), or has in relation to that period been set off against unpaid tax in terms of the provisions of section 44(6), and such amount was in whole or in part not properly refundable to the vendor under section 16(5), so much of such amount as was not properly so refundable shall for the purposes of paragraph (a)(i) be deemed to an amount of tax required to be paid by the vendor within the said period and for the purposes of paragraph (a)(ii), an amount of tax required to be paid by the vendor during the period in which the refund was made.”;</p> <p>(c) by the deletion of subsection (2);</p> <p>(d) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Where any importer of goods which are required to be entered under the Customs and</p>

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		<p data-bbox="874 241 1257 365">Excise Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later, <u>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—</u></p> <p data-bbox="874 365 1257 454"><i>(a)</i>] a penalty equal to 10 per cent of the said amount of tax[; and</p> <p data-bbox="874 454 1257 544"><i>(b)</i> where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day].”;</p> <p data-bbox="804 544 1257 633"><i>(e)</i> by the substitution for subsection (5) of the following subsection:</p> <p data-bbox="874 633 1257 723">“(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), <u>the Commissioner must, in accordance with Chapter 15 of the Tax Administration Act, impose on that person [shall, in addition to such amount of tax, pay—</u></p> <p data-bbox="874 723 1257 813"><i>(a)</i>] a penalty equal to 10 per cent of the said amount of tax[; and</p> <p data-bbox="874 813 1257 902"><i>(b)</i> where payment of the said amount of tax is made on or after the first day of the month following the month</p>

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		<p>during which the period allowed for payment of the tax ended, interest on that amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day].”; and</p> <p>(f) by the deletion of subsections (6), (6A), (7) and (8).</p>	5 10
		Repeal of section 40	
		130. Section 40 of the Value-Added Tax Act, 1991, is hereby repealed.	
		Repeal of section 41A	
		131. Section 41A of the Value-Added Tax Act, 1991, is hereby repealed.	
		Amendment of section 41B	
		<p>132. Section 41B of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The Commissioner may issue a VAT class ruling or a VAT ruling and in applying the provisions [relating to Part IA of Chapter III of the Income Tax Act] of Chapter 7 of the Tax Administration Act, a VAT class ruling or a VAT ruling must be dealt with as if it were a binding class ruling or a binding private ruling, respectively: Provided that—</p> <p>(i) the provisions of [subsections (2)(k), (2)(l) and (5) of section 76E and section 76F of the Income Tax Act] section 79(4)(f) and (k) and (6) of the Tax Administration Act shall not apply to any VAT class ruling or VAT ruling;</p> <p>(ii) an application for a VAT class ruling or a VAT ruling in terms of this section shall not be accepted by the Commissioner if the application—</p> <p>(aa) is for an advance tax ruling that qualifies for acceptance in terms of [section 41A] Chapter 7 of the Tax Administration Act; and</p> <p>(bb) falls within a category of rulings prescribed by the Minister by regulation for which applications for rulings in terms of this section may not be accepted.”.</p>	15 20 25 30 35 40 45

No. and Year	Short Title	Extent of amendment or repeal	
		Repeal of sections 42 and 43	
		133. Sections 42 and 43 of the Value-Added Tax Act, 1991, are hereby repealed.	
		Amendment of section 44	
		<p>134. Section 44 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the deletion of subsections (1) and (2);</p> <p>(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: “The Commissioner shall not make a refund under [subsection (2)] Chapter 13 of the Tax Administration Act unless—”;</p> <p>(c) by the deletion in subsection (3) of paragraphs (a) and (b);</p> <p>(d) by the deletion of subsections (4), (5) and (6);</p> <p>(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 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 the vendor in terms of section 45] section 190 of the Tax Administration Act, until the vendor has furnished such return as so required.”;</p> <p>(f) by the deletion of subsection (8); and</p> <p>(g) by the addition after subsection (9) of the following subsection: “(10) The amount determined under section 191(3) of the Tax Administration Act must be accounted for as provided in section 16(5), but any refundable amount (irrespective of the quantum thereof) is refundable in full to a vendor in respect of its final tax period on the cancellation of its registration as a vendor.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
		Substitution of section 45	
		<p>135. The Value-Added Tax Act, 1991, is hereby amended by the substitution for section 45 of the following section: “Interest on delayed refunds 45. (1) Where the Commissioner does not within the period of 21 business days after the date on which the vendor’s return in respect of a tax</p>	<p>45</p> <p>50</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>period is received by a SARS office refund any amount refundable under the Tax Administration Act, interest will be paid on such amount in accordance with Chapter 12 of that Act.</p> <p>(2) Despite the provisions of Chapter 12 of the Tax Administration Act, if a person fails to—</p> <p>(a) without just cause submit relevant material, requested by SARS for purposes of verification, inspection or audit of a refund in accordance with Chapter 5 of the Tax Administration Act; or</p> <p>(b) furnish SARS in writing with particulars of the account required in terms of section 44(3)(d) to enable SARS to transfer a refund to that account,</p> <p>no interest accrues on the amount refundable for the period from the date that—</p> <p>(i) in respect of subparagraph (a), the relevant material was required to be submitted; or</p> <p>(ii) in respect of subparagraph (b), the refund is authorised,</p> <p>until the date that the person submits the relevant material or bank account particulars.”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p>
		Repeal of section 45A	
		136. Section 45A of the Value-Added Tax Act, 1991, is hereby repealed.	
		Amendment of section 46	
		<p>137. Section 46 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for the words preceding paragraph (a) of the following words:</p> <p>“The natural person who [is a resident of] resides in the Republic responsible for the duties imposed by this Act—”;</p> <p>(b) by the substitution for paragraph (a) of the following paragraph:</p> <p>“(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 liquidation, the liquidator thereof;”;</p> <p>and</p> <p>(c) by the deletion of the proviso.</p>	<p>35</p> <p>40</p> <p>45</p> <p>50</p>

No. and Year	Short Title	Extent of amendment or repeal
		Repeal of sections 47, 48 and 49
		138. Sections 47, 48 and 49 of the Value-Added Tax Act, 1991, are hereby repealed.
		Amendment of section 50
		<p>139. Section 50 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (6) of the following subsection:</p> <p>“(6) Notwithstanding the preceding provisions of this section, any [direction] <u>decision</u> 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] <u>decision</u> 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] <u>decision</u> 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.”.</p>
		Amendment of section 50A
		<p>140. Section 50A of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Notwithstanding the provisions of section 23, if the Commissioner makes a [direction] <u>decision</u> under this section, the persons named in the [direction] <u>decision</u> shall be deemed to be a single person carrying on the activities of an enterprise described in the [direction] <u>decision</u> and that person shall be liable to be registered in terms of section 23 with effect from the date of the [direction] <u>decision</u> or, if the [direction] <u>decision</u> so provides, from such date as may be specified therein.”;</p>

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No. and Year	Short Title	Extent of amendment or repeal
		<p>(b) by the substitution in subsection (2) for the words preceding paragraph (c) of the following words:</p> <p>“The Commissioner shall not make a [direction] decision under this section naming any person unless he is satisfied—</p> <p>(a) that such person is making or has made taxable supplies; and</p> <p>(b) that the activities in the course of which he makes or made those taxable supplies form only part of certain activities which should properly be regarded as those of the enterprise described in the [direction] decision, the other activities of that enterprise being carried on at that time or previously by one or more other persons; and”;</p> <p>(c) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) A [direction] decision made under this section shall be served on each of the persons named in it.”;</p> <p>(d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:</p> <p>“Where, after a [direction] decision has been given under this section specifying a description of the enterprise, it appears to the Commissioner that a person who 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 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 of the persons named in the earlier [direction] decision with effect from—”;</p> <p>(e) by the substitution for subsections (5) and (6), respectively, of the following subsections:</p> <p>“(5) If, immediately before a [direction] decision (including a</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>supplementary [direction] decision) is made under this section, any person named in the [direction] decision is registered in respect of the taxable supplies made by him as contemplated in subsection (2) or (4), he shall cease to be liable to be so registered with effect from—</p> <p>(a) the date with effect from which the single person concerned became liable to be registered; or</p> <p>(b) the date of the [direction] decision, whichever date is the later.</p> <p>(6) In relation to an enterprise 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 in subsections (7) and (8) referred to as the members.”;</p> <p>(f) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words: “For the purposes of this Act, where a [direction] decision is made under this section—”;</p> <p>(g) by the substitution for paragraph (a) of subsection (7) of the following paragraph: “(a) the person carrying on the enterprise specified in the [direction] decision shall be registrable in such name as the members may jointly nominate upon compliance with the provisions of section 23(2);”.</p>
		Amendment of section 55
		<p>141. Section 55 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for the words preceding paragraph (a) of the following words: “[Every vendor shall keep such books of account (which books of account, where generated 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</p>

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		<p>Act and enable the Commissioner to satisfy himself that the vendor has observed such requirements, and] <u>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—</u>”; and</p> <p>(b) by the deletion of subsections (2), (3) and (4).</p>	<p>5</p> <p>10</p>
		Repeal of sections 57 to 57D	
		142. Sections 57, 57A, 57B, 57C and 57D of the Value-Added Tax Act, 1991, are hereby repealed.	
		Amendment of section 58	
		<p>143. Section 58 of the Value-Added Tax Act, 1991, is hereby amended—</p> <p>(a) by the substitution for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">“Any person who <u>wilfully and without just cause—</u>”;</p> <p>(b) by the deletion of paragraphs (a), (b) and (c);</p> <p>(c) by the substitution for paragraph (d) of the following paragraph:</p> <p style="padding-left: 40px;">“(d) fails to comply with the provisions of section 14, [or section] 28(1) or (2) or [section] 29 [or section 30]; or”;</p> <p>(d) by the deletion of paragraphs (f) to (i);</p> <p>(e) by the substitution in paragraph (j) for subparagraphs (ii) and (iii) of the following subparagraphs:</p> <p style="padding-left: 40px;">“(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</p> <p style="padding-left: 40px;">(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 such supply; or”;</p>	<p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p>

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		<p data-bbox="831 241 1257 338">“Arrangements and [directions] decisions to overcome difficulties, anomalies or incongruities</p> <p data-bbox="831 367 1257 712">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, <u>her</u> or their business, 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 Commissioner may make an arrangement or [give a direction] decision as to—</p> <p data-bbox="831 719 1257 779"><i>(a)</i> the manner in which such provisions shall be applied; or</p> <p data-bbox="831 786 1257 904"><i>(b)</i> 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,</p> <p data-bbox="831 911 1257 1218">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, 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.”.</p>	5 10 15 20 25 30
Act No. 34 of 1997	South African Revenue Service Act, 1997	Amendment of section 1	
		<p data-bbox="804 1332 1257 1487">148. 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:</p> <p data-bbox="831 1494 1257 1677">“ ‘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;”.</p>	35 40
Act No. 9 of 1999	Skills Development Levies Act, 1999	Amendment of section 1	45
		<p data-bbox="804 1758 1257 1818">149. Section 1 of the Skills Development Levies Act, 1999, is hereby amended—</p> <p data-bbox="804 1825 1257 1908"><i>(a)</i> by the substitution for the definition of “Commissioner” of the following definition:</p> <p data-bbox="874 1915 1257 2007">“ ‘Commissioner’ means the Commissioner for the South African Revenue Service <u>appointed in</u></p>	50

No. and Year	Short Title	Extent of amendment or repeal
		<p>terms of section 6 of the <u>South African Revenue Service Act, 1997 (Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act;</u>”;</p> <p>(b) by the insertion after the definition of “Skills Development Act” of the following definition: <u>“ ‘Tax Administration Act’ means the Tax Administration Act, 2011”;</u></p> <p>(c) by the renumbering of section 1 to section 1(1); and</p> <p>(d) by the insertion after subsection (1) of the following subsection: <u>“(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.”.</u></p>
		Amendment of section 2
		<p>150. Section 2 of the Skills Development Levies Act, 1999, is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection: <u>“(2) The Commissioner must 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, in accordance with the provisions of the Tax Administration Act.”;</u> and</p> <p>(b) by the insertion after subsection (2) of the following subsection: <u>“(2A) 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 in this Act, regulated by the Tax Administration Act.”.</u></p>
		Amendment of section 6
		<p>151. Section 6 of the Skills Development Levies Act, 1999, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection: <u>“(1) Subject to section 7, every employer must, not later than seven days, or such longer period as the Commissioner determines, after</u></p>

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		<p>the end of each month in respect of which the levy is payable, pay the levy to the Commissioner [in the manner and] within the period determined in this Act.”; and</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) An employer must[, not later than seven days, or such longer period as the Commissioner determines, after the end of each month in respect of which the levy is payable, pay the levy to the Commissioner and] together with [such] payment of the levy in terms of subsection (1), submit a [statement—</p> <p>(a) in such form as the Commissioner may require; and</p> <p>(b) reflecting the amount of the levy due by that employer and containing such other information as the Commissioner may require] return.”.</p>
		Repeal of section 7A
		152. Section 7A of the Skills Development Levies Act, 1999, is hereby repealed.
		Amendment of section 11
		<p>153. Section 11 of the Skills Development Levies Act, 1999, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount [at the rate contemplated paragraph (b) of the definition of ‘prescribed rate’ in section 1 of the Income Tax Act, calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be] in accordance with the provisions of Chapter 12 of the Tax Administration Act.”; and</p> <p>(b) by the deletion of subsection (2).</p>
		Repeal of section 13
		154. Section 13 of the Skills Development Levies Act, 1999, is hereby repealed.

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		Amendment of section 15	
		<p>155. Section 15 of the Skills Development Levies Act, 1999, is hereby amended by the addition after subsection (2) of the following subsection:</p> <p>“(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.”.</p>	5
		Repeal of sections 16, 17, 20, 20A and 21	10
		<p>156. Sections 16, 17, 20, 20A and 21 of the Skills Development Levies Act, 1999, are hereby repealed.</p>	
Act No. 4 of 2002	Unemployment Insurance Contributions Act, 2002	Amendment of section 1	15
		<p>157. Section 1 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘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 of section 7 of that Act;”;</p> <p>(b) by the insertion after the definition of “seasonal worker” of the following definition:</p> <p>“ ‘Tax Administration Act’ means the Tax Administration Act, 2011”;</p> <p>(c) by the renumbering of section 1 to section 1(1); and</p> <p>(d) by the insertion of the following subsection after subsection (1):</p> <p>“(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.”.</p>	20 25 30 35 40
		Amendment of section 3	
		<p>158. Section 3 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p>	45

No. and Year	Short Title	Extent of amendment or repeal
		<p>“(1) This Act must be administered by the Commissioner, in accordance with the provisions of the <u>Tax Administration Act.</u>”;</p> <p>(b) by the insertion after subsection (1) of the following subsection: “(1A) <u>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 in this Act, regulated by the Tax Administration Act.</u>”; and</p> <p>(c) by the substitution for subsection (2) of the following subsection: “(2) [The] <u>In addition to section 9 of the Tax Administration Act, and in accordance with section 10 of that Act, the Commissioner may delegate any power or assign any duty which relates to the collection of—</u> (a) contributions payable to the Unemployment Insurance Commissioner in terms of section 9; and (b) any information to be submitted by employers in terms of this Act, to the Unemployment Insurance Commissioner.”.</p>
		Amendment of section 8
		<p>159. Section 8 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection: “(2) An employer must, together with the payment [contemplated] referred to in subsection (1), submit a [statement in such form as the Commissioner may require and] <u>return</u> reflecting the amount of the payment and such other particulars as the Minister may prescribe [by regulation].”; and</p> <p>(b) by the deletion of subsection (3).</p>
		Amendment of section 9A
		<p>160. Section 9A of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for subsection (1) of the following subsection: “(1) Where any employer who is required to pay the amount of all</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p>employees' contributions and the employer's contributions in respect of every employee in the employment of that employer to [the Commissioner in terms of section 8 or to] the Unemployment Insurance Commissioner in terms of <u>section 9</u>—</p> <p>(a) has failed to submit a statement as required in terms of [section 8(2) or] section 9(2);</p> <p>(b) has furnished a return as required in terms of [section 8(2A) or] section 9(2A) but the Commissioner is not satisfied with the return;</p> <p>(c) has failed to deduct or withhold employees' contributions; or</p> <p>(d) has failed to pay over any contributions deducted or withheld, and such employer has not been absolved from his or her liabilities in terms of the provisions of this Act, the [Commissioner or the] Unemployment Insurance Commissioner[, as the case may be,] may make a reasonable estimate of the amount of any contributions due in terms of <u>section 6</u> and issue to the employer a notice of assessment for the unpaid amount.”.</p>
		Amendment of section 10
		<p>161. Section 10 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) An employer to whom this Act applies must apply for registration to the Commissioner, in accordance with Chapter 3 of the Tax Administration Act, or the Unemployment Insurance Commissioner, [whichever is applicable to such employer in terms of section 8 or 9,] in such manner and within such period as may be prescribed by the [Commissioner or] Unemployment Insurance Commissioner[, respectively].”; and</p> <p>(b) by the deletion of subsection (2).</p>
		Repeal of section 12
		<p>162. Section 12 of the Unemployment Insurance Contributions Act, 2002, is hereby repealed.</p>

No. and Year	Short Title	Extent of amendment or repeal
		<p data-bbox="807 241 1166 275">Amendment of section 13</p> <p data-bbox="807 282 1254 371">163. Section 13 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—</p> <p data-bbox="807 378 1254 434">(a) by the substitution for subsection (1) of the following subsection:</p> <p data-bbox="874 441 1254 1003">“(1) If any contribution remains unpaid after the last day for payment thereof as contemplated in section 8(1) or 9(1), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty of 10 per cent of the unpaid amount [is payable in addition to the interest contemplated in section 12,] but the Commissioner or the Unemployment Insurance Commissioner, as the case may be, may[, having due regard to the circumstances of the case,] remit the penalty or any portion thereof <u>in accordance with the provisions of Chapter 15 of the Tax Administration Act.</u>”; and</p> <p data-bbox="807 1010 1254 1066">(b) by the deletion of subsections (2), (3) and (4).</p>
		<p data-bbox="807 1081 1134 1115">Repeal of sections 14 and 17</p> <p data-bbox="807 1122 1254 1211">164. Sections 14 and 17 of the Unemployment Insurance Contributions Act, 2002, are hereby repealed.</p>
Act No. 14 of 2007	Diamond Export Levy (Administration) Act, 2007	<p data-bbox="807 1223 1086 1256">Amendment of section 1</p>
		<p data-bbox="807 1323 1254 1413">165. Section 1 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended—</p> <p data-bbox="807 1420 1254 1498">(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p data-bbox="874 1505 1254 1762">“‘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 of section 7 of that Act;”;</p> <p data-bbox="807 1769 1254 1848">(b) by the insertion after the definition of “registered person” of the following definition:</p> <p data-bbox="874 1854 1254 1955">“‘Tax Administration Act’ means the Tax Administration Act, 2011.”;</p> <p data-bbox="807 1962 1254 2018">(c) by the renumbering of section 1 to section 1(1); and</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>(d) by the insertion after subsection (1) of the following subsection: “(2) <u>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.</u>”.</p>	5
		Amendment of section 7	
		<p>166. Section 7 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: “[Every] <u>In addition to the records required under the Tax Administration Act, every registered person must retain [records necessary to observe the requirements of this Act and the Levy Act, including] the following records—</u>”; and</p> <p>(b) by the deletion of subsections (2) and (3).</p>	10 15 20
		Repeal of sections 10 to 15	
		<p>167. Sections 10, 11, 12, 13, 14 and 15 of the Diamond Export Levy (Administration) Act, 2007, are hereby repealed.</p>	25
		Amendment of section 16	
		<p>168. Section 16 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection: “(1) The Commissioner will be responsible for administering this Act and the Levy Act, <u>in accordance with the provisions of the Tax Administration Act, together with the assistance of the Regulator as described in subsection (2).</u>”;</p> <p>(b) by the insertion after subsection (1) of the following subsection: “(1A) <u>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 in this Act, regulated by the Tax Administration Act.</u>”; and</p> <p>(c) by the deletion of subsection (3).</p>	30 35 40 45

No. and Year	Short Title	Extent of amendment or repeal	
		Repeal of section 17	
		169. Section 17 of the Diamond Export Levy (Administration) Act, 2007, is hereby repealed.	
Act No. 26 of 2007	Securities Transfer Tax Administration Act, 2007	Amendment of section 1	5
		<p>170. Section 1 of the Securities Transfer Tax Administration Act, 2007, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) The Commissioner must administer this Act and the Securities Transfer Tax Act, 2007, in accordance with the provisions of the Tax Administration Act, 2011.”;</p> <p>(b) by the insertion after subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1A) 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 in this Act, regulated by the Tax Administration Act, 2011.”;</p> <p>(c) by the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 40px;">“(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act, 2011, and any word or expression to which a meaning has been assigned in the Securities Transfer Tax Act, 2007, bears the meaning so assigned for the purposes of this Act.”; and</p> <p>(d) by the deletion of subsection (3).</p>	10 15 20 25 30 35
		Amendment of section 4	
		<p>171. Section 4 of the Securities Transfer Tax Administration Act, 2007, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p style="padding-left: 40px;">“(1) The Commissioner must refund the amount of any overpayment of tax or of any interest or penalty properly chargeable in respect of the transfer of any security, if application for the refund is made within two years after the date of that overpayment in accordance with sections 190 and 191 of the Tax Administration Act, 2011.”; and</p>	40 45 50

No. and Year	Short Title	Extent of amendment or repeal	
		<i>(b)</i> by the deletion of subsections (2) and (4).	
		Repeal of sections 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19	
		172. Sections 5, 6, 7, 9, 10, 11, 12, 14, 15, 16, 17, 18 and 19 of the Securities Transfer Tax Administration Act, 2007, are hereby repealed.	5
		Substitution of section 20	
		<p>173. The Securities Transfer Tax Administration Act, 2007, is hereby amended by the substitution for section 20 of the following section:</p> <p>“Offences and penalties</p> <p>20. [Any] In addition to the offences contained in sections 235 and 236 of the Tax Administration Act, 2011, any person who [—</p> <p><i>(a)</i> fails or neglects to furnish, file or submit any declaration or document as and when required by or under this Act;</p> <p><i>(b)</i> without just cause shown, refuses or neglects to furnish any information, document or thing referred to in section 12;</p> <p><i>(c)</i> fails to disclose any material fact in the declaration referred to in section 2 or 3;</p> <p><i>(d)</i> obstructs or hinders any person in the performance of his or her functions under or in terms of this Act;</p> <p><i>(e)</i> submits or furnishes a false certificate or statement; or</p> <p><i>(f)</i> acquires an unlisted security and fails to inform the company of the transfer within the period referred to in section 2, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding [12 months] two years.”.</p>	10 15 20 25 30 35
		Repeal of section 21	
		174. Section 21 of the Securities Transfer Tax Administration Act, 2007, is hereby repealed.	40
Act No. 36 of 2007	Revenue Laws Second Amendment Act, 2007	Repeal of sections 33 and 36	
		175. Sections 33 and 36 of the Revenue Laws Second Amendment Act, 2007, are hereby repealed.	45

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	
		176. Sections 16 and 18 of the Taxation Laws Second Amendment Act, 2008, are hereby repealed.	5
		Amendment of section 23	
		177. 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 Petroleum Resources Royalty (Administration) Act, 2008	Amendment of section 1	10
		178. Section 1 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—	15
		(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 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
		(b) by the deletion of the definition of “nonbinding private opinion”;	
		(c) by the substitution for the definition of a “notice of assessment” of the following definition:	30
		“ ‘ notice of assessment ’ means a notice of assessment [mentioned in section 9] as described in section 96 of the Tax Administration Act;”;	35
		and	
		(d) by the insertion after the definition of “Royalty Act” of the following definition:	
		“ ‘ Tax Administration Act ’ means the Tax Administration Act, 2011;”;	40
		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 that meaning for purposes of this Act.”.	45
			50

No. and Year	Short Title	Extent of amendment or repeal
		Amendment of section 4
		<p data-bbox="799 271 1259 434">179. Section 4 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:</p> <p data-bbox="799 434 1259 786">“(b) <u>of which</u> one or more members [of that unincorporated body] hold a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted pursuant to the Mineral and Petroleum Resources Development Act (or a lease or sublease mentioned in section 11 of [the Mineral and Petroleum Resources Development] that Act in respect of such a right); and”.</p>
		Repeal of section 7
		<p data-bbox="799 824 1259 925">180. Section 7 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby repealed.</p>
		Amendment of section 8
		<p data-bbox="799 963 1259 1160">181. Section 8 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—</p> <p data-bbox="799 1160 1259 1227">(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p data-bbox="799 1227 1259 1424">“[A] <u>In addition to the records required under the Tax Administration Act, a registered person must retain [such records as are necessary to satisfy the requirements of this Act and the Royalty Act, including—]the following records:”;</u></p> <p data-bbox="799 1424 1259 1447">(b) by the deletion of subsection (2).</p>
		Amendment of section 9
		<p data-bbox="799 1485 1259 1648">182. Section 9 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the deletion of subsections (1), (2), (3) and (5).</p>
		Repeal of sections 10, 11, 12, 13 and 16
		<p data-bbox="799 1686 1259 1816">183. Sections 10, 11, 12, 13 and 16 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, are hereby repealed.</p>
		Amendment of section 17
		<p data-bbox="799 1854 1259 1955">184. Section 17 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—</p>

No. and Year	Short Title	Extent of amendment or repeal	
		<p>(a) by the substitution for subsection (1) of the following subsection: “(1) The Commissioner is responsible for administering this Act and the Royalty Act, in accordance with the provisions of the Tax Administration Act.”; and</p> <p>(b) by the substitution for subsection (2) of the following subsection: “(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 in this Act, regulated by the Tax Administration Act.”.</p>	5 10 15
		Repeal of section 18	
		185. Section 18 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby repealed.	
		Amendment of section 18A	
		<p>186. Section 18A of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection: “(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 facts and circumstances or a particular transaction] in terms of Chapter 7 of the Tax Administration Act.”; and</p> <p>(b) by the deletion of subsections (2) and (3).</p>	20 25 30
Act No. 61 of 2008	Revenue Laws Second Amendment Act, 2008	Amendment of section 3	35
		187. Section 3 of the Revenue Laws Second Amendment Act, 2008, is hereby amended by the deletion in subsection (1) of paragraphs (a) and (b).	40
		Repeal of sections 13 and 14	
		188. Sections 13 and 14 of the Revenue Laws Second Amendment Act, 2008, are hereby repealed.	
		Amendment of section 16	
		189. Section 16 of the Revenue Laws Second Amendment Act, 2008, is hereby amended by the deletion in subsection (1) of paragraph (b).	45

No. and Year	Short Title	Extent of amendment or repeal
		Repeal of section 20
		190. Section 20 of the Revenue Laws Second Amendment Act, 2008, is hereby repealed.
Act No. 18 of 2009	Taxation Laws Second Amendment Act, 2009	Repeal of sections 12, 13, 14, 33, 34 and 38
		191. 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 foreseeably 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™, “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.

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 material facts were known.

- (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 that 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:

- (i) 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.

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