



SOUTH AFRICAN REVENUE SERVICE

**INTERPRETATION NOTE NO. 23**

DATE: 11 March 2004

**ACT** : **INCOME TAX ACT, No 58 of 1962 (the Act)**  
**SECTION** : **SECTION 78(1A), (1B) and (1C)**  
**SUBJECT** : **ESTIMATED ASSESSMENTS (FOREIGN FUNDS OR ASSETS)**

**NOTE:**

The Tax Administration Act No. 28 of 2011 became effective on 1 October 2012. Section 78 of the Income Tax Act dealing with estimated assessments has been repealed by paragraph 64 of Schedule 1 to the Tax Administration Act. Section 95 of the Tax Administration Act now deals with estimated assessments.

This Note is therefore withdrawn with effect from 1 October 2012.

**1. Purpose**

The purpose of this Interpretation Note is to provide guidance in respect of the application of the provisions of section 78(1A), (1B) and (1C) of the Act.

**2. Background**

During 1997 the Government announced certain relaxations on foreign exchange controls and allowed residents to invest, within certain limitations, funds offshore. In order to cater for these announcements the Act was amended to subject to income tax investment income from foreign sources. With effect from 1 January 2001 and in respect of years of assessment commencing on or after this date, South Africa adopted a residence-based or worldwide system of taxation. In addition to substantive provisions dealing with the residence basis of taxation, various administrative provisions have been incorporated into the law to regulate the reporting as well as the consequences of non-compliance with the relevant reporting provisions of foreign income of taxpayers.

The provisions of section 78(1A), (1B) and (1C) are specifically aimed at ensuring compliance and provide a strong incentive for taxpayers to make full disclosure of their offshore assets and income in their returns of income.

### 3. The law

#### 3.1 The provisions of section 78 of the Act

Section 78 provides as follows:

**“78. Estimated assessments.**

- (1) In every case in which any person makes default in furnishing any return or information or the Commissioner is not satisfied with the return or information furnished by any person, the Commissioner may estimate either in whole or in part the taxable income in relation to which the return or information is required.
- (1A) (a) Where the Commissioner has reason to believe that any resident has not declared or accounted for—
- (i) any funds held in foreign currency or any assets owned by that resident outside the Republic; or
  - (ii) any funds in foreign currency or assets outside the Republic from which any income or gain would be attributable to that resident during the relevant year of assessment in terms of section 7 or Part X of the Eighth Schedule,
- in any return contemplated in section 66 (1), the Commissioner shall estimate the amount in foreign currency of any such funds or the market value in foreign currency of such assets, that he or she believes are owned by that resident outside the Republic on the last day of that year of assessment, after giving that resident notice to account for those funds or assets and that resident has failed to so account within the period stated by the Commissioner in that notice.
- (b) The amount or value in foreign currency contemplated in paragraph (a) may be estimated after taking into account any information at the disposal of the Commissioner including, but not limited to, information relating to—
- (i) any funds or assets transferred by that resident from the Republic;
  - (ii) any funds or assets received by or accrued to that resident from any source outside the Republic; or
  - (iii) the period that has elapsed since those funds or assets were transferred, or funds or assets were received or accrued.
- (1B) The Commissioner shall estimate an amount of taxable income derived from any funds or assets contemplated in subsection (1A), which estimated amount shall be calculated by applying a percentage, determined at the rate contemplated in paragraph (a) of the definition of ‘official rate of interest’ contemplated in paragraph 1 of the Seventh Schedule during the year of assessment to the estimated amount of those funds or value of those assets or such higher amount as may be estimated in terms of subsection (1).
- (1C) The amount of taxable income estimated in terms of subsection (1B) shall be—
- (a) translated to the currency of the Republic on the last day of the relevant year of assessment at the ruling exchange rate at that date to determine the amount to be included in taxable income; and
  - (b) taken into account by the Commissioner during any succeeding year of assessment in estimating the amount of any funds in foreign currency or value of any assets owned by that resident outside the Republic, as contemplated in subsection (1A).
- (2) Any such estimate of the taxable income as contemplated in subsection (1), or the estimated amount of any funds or value of any assets as contemplated in subsection (1A), shall be subject to objection and appeal: Provided that if it appears to the Commissioner that any person is unable from any cause to furnish an accurate return of his income, aggregate

capital gain, aggregate capital loss or amount of funds in foreign currency or value of assets owned outside the Republic, the Commissioner may agree with such person as to—

- (a) what amount of such income, aggregate capital gain or aggregate capital loss shall be taxable income, net capital gain or assessed capital loss; or
- (b) the amount of the funds in foreign currency or value of the assets owned outside the Republic,

and any amount or value so agreed upon shall not be subject to any objection or appeal.

- (3) For the purposes of this section, ‘**foreign currency**’ means currency other than the currency of the Republic.”

### 3.2 Overview of provisions

**Table 1 - Overview of provisions of section 78 – Estimated assessments**

<b>Section 78</b>	<b>Topic</b>	<b>Description</b>
(1)	Power of the Commissioner to estimate taxable income	The Commissioner <b>may</b> estimate taxable income where – <ul style="list-style-type: none"> <li>• a person is in default in furnishing any return or information; or</li> <li>• the Commissioner is not satisfied with the return or information supplied.</li> </ul>
(1A)	Estimate of foreign funds or assets and notice to resident	The Commissioner <b>must</b> estimate the market value of foreign assets in foreign currency that he/she believes have not been disclosed by any resident. Assets include those – <ul style="list-style-type: none"> <li>• owned by a person; or</li> <li>• subject to attribution in terms of section 7 or Part X of Eighth Schedule.</li> </ul> Notice must be given to a resident to account for such assets before the Commissioner makes an estimate. In estimating market value, the Commissioner must take account of – <ul style="list-style-type: none"> <li>• assets transferred offshore;</li> <li>• assets received or accrued from offshore sources;</li> <li>• the period assets have been held offshore; and</li> <li>• any other information.</li> </ul>
(1B)	Estimate of taxable income derived from foreign funds or assets referred to in	Estimate of taxable income = market value of foreign assets x official rate of interest. The Commissioner can estimate a higher amount

	subsection (1A)	in terms of section 78(1).
(1C)	Translation of estimated foreign taxable income into rands and future estimates of foreign funds and assets	Taxable income in rands = estimated foreign taxable income x ruling exchange rate on the last day of the tax year.  The Commissioner must take the above amount into account when estimating asset values in future years of assessment.
(2)	Objection and appeal	Estimates of the market value of assets and taxable income are subject to objection and appeal.  The Commissioner and the taxpayer can agree on the value of assets and the amount of taxable income. Agreed amounts are not subject to objection and appeal.
(3)	Meaning of "foreign currency"	Foreign currency means currency other than rands.

### 3.3 Effective date

Section 78(1A), (1B) and (1C) were introduced into section 78 of the Act by section 27(1)(a) of the Taxation Laws Amendment Act, No 30 of 2002 (Act 30 of 2002). Consequential amendments were also made to section 78(2) by section 27(1)(b) of Act 30 of 2002.

In terms of section 27(2) of Act 30 of 2002 these amendments "shall come into operation on 1 January 2003, and shall apply in respect of any funds or assets held by a person, which are not declared or accounted for in any return submitted to the Commissioner in respect of any year of assessment ending on or after that date."

#### 3.3.1 Application to returns of income

For individuals and trusts these amendments apply to returns of income covering the year of assessment ending on 28 February 2003 and all subsequent years. In the case of a company with, say a January year end, the amendments would apply to the return of income covering the year ended on 31 January 2003 and all subsequent years. Estimates of taxable income that need to be made by the Commissioner in respect of returns of income covering earlier years of assessment must be dealt with in terms of section 78(1).

#### 3.3.2 Application to funds or assets

The amendments apply to funds in foreign currency or assets owned outside the Republic that have not been disclosed or accounted for in the applicable returns of income regardless of when those assets were originally acquired. For example, the amendments will apply to a foreign asset acquired in 1990 that has not been accounted for in the 2003 return of income.

### **3.4 Do sections 78(1A), 78(1B) and 78 (1C) take precedence over section 78(1)?**

Although the provisions of section 78(1A), (1B) and (1C) will generally take precedence with regard to the estimation of foreign taxable income, the Commissioner can in terms of section 78(1B) still apply the provisions of section 78(1) if he/she is satisfied that the resulting estimate is too low.

## **4. Application of section 78**

### **4.1 Power of the Commissioner to estimate taxable income [section 78(1)]**

**4.1.1** Section 78(1) of the Act is a general provision that enables the Commissioner to estimate the taxable income of a taxpayer in certain circumstances. These circumstances can briefly be explained as follows:

#### **(a) Default in furnishing any return or information**

The Commissioner is entitled to estimate, in whole or in part, the taxable income of any person who –

- makes default in furnishing a return of or information about his or her taxable income; or
- submits a return or information with which the Commissioner is not satisfied. A return includes any account or statements annexed to a return in support of the information contained in the return.

The words “makes default in rendering a return” are of wide application and include a misrepresentation of stated facts as well as an omission of any amount or information in the return. Furthermore, it is not required that the default be deliberate or intentional before the provisions of section 78(1) can be invoked.

#### **(b) The Commissioner is not satisfied with the return or information furnished**

Circumstances which would prompt an investigation into the taxpayer’s affairs include an unexplained increase in the taxpayer’s assets or a lifestyle which is not commensurate with the taxpayer’s declared income. The taxpayer bears the onus in terms of section 82 of the Act of proving that any unexplained increase in capital has been properly accounted for. In other words, the taxpayer must show that the amount has either been subjected to tax or that it is not taxable.

The Commissioner would also be entitled to be dissatisfied and act in terms of section 78 when a taxpayer is unable to furnish him or her with information required for the purposes of an assessment, for example, where the records have been lost or destroyed.

### **4.2 Foreign assets and income [section 78(1A), (1B) and (1C)]**

Section 78(1A), (1B) and (1C) specifically provides for the circumstances where the Commissioner has reason to believe that any resident has not declared or accounted for foreign funds and income that should have been declared in any return furnished by a

taxpayer. The provisions apply in specific circumstances and require a specific process to be followed before an amount can be estimated.

#### **4.2.1 Estimate of foreign funds or assets and notice to resident [section 78(1A)]**

##### **4.2.1.1 Factors the Commissioner must take into account**

These provisions apply in the circumstances where the Commissioner has reason to believe that any resident has not declared or accounted for the following:

#### **(a) Any funds held in foreign currency or any assets owned by a resident outside the country**

Section 78(1A) refers to funds or assets held or owned directly by the taxpayer. The words “funds” and “assets” are not defined in section 1 of the Act and must therefore bear their ordinary meaning. “Funds” refer to foreign notes and coins in current circulation or traveller’s cheques whilst the word “assets” is self-explanatory. Funds may be held in or outside the Republic but assets must be physically located outside the Republic. Funds must however be held in foreign currency. Taxpayers are obliged to declare or account for foreign funds or assets in various sections of the return of income and its annexures. Examples include –

- statements of assets and liabilities required to be submitted by company directors, members of close corporations, sole traders and partners;
- balance sheets; and
- various other sections of the return such as those dealing with investments, letting of fixed property and capital gains tax.

#### **(b) Any funds in foreign currency or assets outside the Republic from which any income or capital gain would be attributable to that resident during the relevant year of assessment in terms of section 7 or Part X of the Eighth Schedule**

Certain income is deemed to accrue to a taxpayer, despite the fact that it is received by another person, for example, a trust or the taxpayer’s spouse. These circumstances are specifically set out in section 7 and Part X of the Eighth Schedule (paragraphs 68 to 73) to the Act. The Commissioner is, therefore, also empowered to estimate the income or capital gains in circumstances where the resident has defaulted in declaring income relating to the above deeming provisions.

There must be a subjective belief in the mind of the Commissioner or his/her representative that the resident has not complied with the requirement of full disclosure in the annual return of income. This belief or view may, for example, be based on any of the following factors:

#### **➤ Any funds or assets transferred by that resident from the Republic**

All residents are obliged to apply for a tax clearance certificate when assets are transferred offshore. Section 78(1A)(b)(i) refers mainly to these funds. The Commissioner may, however, also use any other information that has come to his/her attention relating to funds or assets transferred by the resident to a foreign jurisdiction.

➤ **Any funds or assets received by or accrued to that resident from any source outside the Republic**

This would generally relate to information that may have been declared in any tax return previously submitted by the resident or any other person. Examples include foreign funds or assets acquired by inheritance, donation or barter transaction from another person (whether resident or non-resident). [Section 78(1A)(b)(ii)]

➤ **The period that has elapsed since those funds or assets were transferred, or the funds or assets were received or accrued**

This provision indicates that the Commissioner's belief may be based on the period from the date that the assets were transferred offshore to the period under review. [Section 78(1A)(b)(iii)]

**Example**

A resident completed an application for a tax clearance certificate in 1998 and transferred R500 000 to the United Kingdom. The year of assessment under review is 2003. The Commissioner may take into consideration the fact that the amount was transferred 5 years ago and is likely to have increased in value as a result of capital growth or accumulated income.

The Commissioner is specifically not limited to the above information. Any other factor known to the Commissioner may be used to justify or substantiate the belief that the taxpayer defaulted. For example, the Commissioner could be in possession of information about assets held outside the Republic before the taxpayer became a resident or information obtained from foreign tax authorities through the exchange of information provisions contained in double taxation treaties.

**4.2.1.2 Notice to resident**

Before the Commissioner can raise an estimate in respect of such funds or assets he/she must give the resident notice to account for those funds or assets within a stated period. This notice may be in the form of either a request to explain the apparent non-disclosure or provide a proper account in respect of the existence or disappearance of the funds or assets. It could also be in the form of a letter of findings setting out the proposed estimate.

**4.2.1.3 Factors to be taken into account by the Commissioner in estimating value of funds or assets at the end of the year of assessment**

The Commissioner must estimate the amount of the undisclosed funds or market value of the assets in the foreign country's currency as at the end of the relevant year of assessment. It is important to note that the estimate must be in the foreign currency as this will impact on the final calculation of the estimated income or capital gain that will be subject to tax in the hands of the resident.

**(a) The first year of estimation**

In the first year in which an estimate is made it is necessary to estimate the amount of funds or the market value of the relevant assets at the end of that year. Two scenarios present themselves. The first situation relates to where the Commissioner can identify

the assets that have not been accounted for. The second situation arises where the Commissioner cannot identify the assets, but is aware of the amount taken offshore.

In the first scenario where the assets are known, the Commissioner would probably be in a position to determine the actual market value of the asset in question. If not, the procedure in the second scenario must be followed.

In the second scenario where the assets cannot be identified, the market value must be determined by means of an estimate taking into account the length of time the funds have been outside the Republic and the probable growth in value. Whilst the official rate of interest may be used as a growth factor, the Commissioner is not bound by that rate and can make a reasonable estimate on some other basis having regard to the nature of the assets and the return on such assets. The use of the official rate is only prescribed in determining the taxable income in respect of the specific year.

**(b) The second and subsequent years of estimation (2004 and subsequent years of assessment)**

In the second and subsequent years of assessment the amount of the funds or value of the assets must be determined by adding the estimated taxable income in the previous year as determined under section 78(1B) to the amount of the funds or value of the assets as determined at the end of the previous year.

**4.2.2 Estimate of taxable income derived from foreign funds or assets [section 78(1B)]**

**(a) Estimating taxable income using the official rate of interest**

Section 78(1B) requires that the Commissioner must estimate the amount to be subjected to tax by applying a percentage, determined at the rate contemplated in paragraph (a) of the definition of "official rate of interest" contemplated in paragraph 1 of the Seventh Schedule to the Act, to the value of the foreign assets in foreign currency.

The official rate of interest is the rate used to determine the value of a fringe benefit that arises from a low or interest-free loan granted by an employer to an employee. This rate is currently 9% (as at 1 March 2004), but may be changed by the Minister of Finance by notice in the *Government Gazette* from time to time. An updated Table of Interest Rates is available on the SARS website under Income Tax – IT Tables.

The estimate, converted into rands, is deemed to be an amount of taxable income as defined in section 1 of the Act.

**Example**

The Commissioner became aware that X, a resident sole trader, had taken \$92 000 out of South Africa on 1 July 2002. The funds were not reflected in the statements of assets and liabilities as at 28 February 2003 in X's 2003 return of income. The return also showed no income from this source. X refused to respond to the Commissioner's requests for information regarding the funds. It is estimated that the market value of assets as at 28 February 2003 was \$100 000. The exchange rate on 28 February 2003 was \$1:R9.



The Commissioner estimated X's foreign taxable income for the 2003 year of assessment from the relevant funds as follows:

	\$
01/07/2002 – 31/08/2002 = 11,5% x \$100 000 x 2/12 =	1 917
01/09/2002 – 28/02/2003 = 13,5% x \$100 000 x 6/12 =	<u>6 750</u>
	<u>8 667</u>

Estimated taxable income for the 2003 year of assessment in respect of these assets is, therefore, equal to R78 003. [\$8 667 x R9 = R78 003]

**(b) Higher estimates**

Income estimated in terms of section 78(1B) is the minimum prescribed estimate if all the requirements have been met. The Commissioner is, however, not bound by this amount and may make a higher estimate in terms of the general provisions of section 78(1) if he/she is satisfied that the estimate arrived at in terms of subsections (1A), (1B) and (1C) is too low.

**4.2.3 Translation of estimated foreign taxable income into rand and future estimates of foreign funds and assets [section 78(1C)(a)]. Translation of taxable income into rand at ruling exchange rate**

Once the amount has been estimated in foreign currency it must be translated into rand. The translation (conversion) must be done on the last day of the year of assessment in question at the ruling exchange rate at that date. The term "ruling exchange rate" is not defined in section 1 of the Act and the definition in section 24I is not appropriate for the purposes of section 78. It is, therefore, appropriate that the term be given its ordinary meaning and for this purpose the closing rate at which the relevant foreign currency could be exchanged into rand (buying rate) as published by the South African Reserve Bank on the last business day of the relevant year of assessment is acceptable.

**4.2.4 Taking previous year's estimated taxable income into account in determining future asset values [section 78(1C)(b)]**

The estimated amount must be taken into account in any future year of assessment if a further estimate must be done in terms of section 78(1A). The effect of this requirement is that the estimated income is capitalised, thereby increasing the capital upon which the following year's taxable income must be calculated.

There is no discretion in this regard, nor may any expenditure be deducted from the amount estimated in terms of this subsection.

**5. Additional taxes and interest on under-estimation of provisional tax**

The non-declaration of income amounts to a default in terms of section 76 of the Act. The Commissioner is, therefore, obliged to impose additional tax, which may be remitted in full or in part depending on the facts and circumstances of the case. In cases where the taxpayer has not co-operated and the Commissioner is forced to make an estimate in terms of section 78 the taxpayer may face additional taxes of up to twice the tax chargeable in respect of the income estimated. In addition to the additional tax chargeable, interest on the underpayment of provisional tax will also be levied in terms of section 89*quat*(2) of the Act.

## 6. Case studies

### Case Study No 1

On 1 March 2001 B, a South African applied for a tax clearance certificate and transferred R500 000 to the United States. At the time the exchange rate was \$1 = R10. During the subsequent years of assessment he did not declare any income in his tax returns nor did he explain what happened to the money that was transferred. B ignored the requests for information by the Commissioner.

#### Calculation of the estimate

The amount was transferred on 1 March 2001. The Commissioner estimated that the value of the investment had grown by 10% per annum. This estimate is based on the rate of return that was published by banks in the country where the initial investment was made. The value of assets as at 28 February 2003 is arrived at as follows:

Initial investment (R500 000), i.e. \$50 000		\$ 50 000
Estimated growth in the value of the assets - 01/03 2001 to 28/02/2002 (10%)		5 000
<b>Value of assets on 28 February 2002</b>		<b>55 000</b>
Estimated growth in the value of the assets - 01/03/2002 to 28/02/2003 (10%)		5 500
<b>Value of assets on 28 February 2003</b>		<b>60 500</b>

The estimate of taxable income will be as follows:

<b>Value of assets on 28 February 2003</b>		\$ 60 500
Estimated income in US \$ at the official rate during the year –		
01/03/2002 – 31/08/2002 (11,5%) [60 500 x 11,5% x (6/12)]		3 479
01/09/2002 – 28/02/2003 (13,5%) [60 500 x 13,5% x (6/12)]		4 084
<b>Value of assets on 29 February 2004</b>		<b>68 063</b>
Estimated income in US \$ at the official rate during the year –		
01/03/2003 – 30/06/2003 (14,5%) [68 063 x 14,5% x (4/12)]		3 290
01/07/2003 – 31/08/2003 (13%) [68 063 x 13% x (2/12)]		1 475
01/09/2003 – 30/11/2003 (12%) [68 063 x 12% x (3/12)]		2 042
01/12/2003 – 29/02/2004 (9,5%) [68 063 x 9,5% x (3/12)]		1 617
<b>Value of assets on 28 February 2005</b>		<b>76 487</b>

Assuming the ruling exchange rate on 28 February 2003 was \$1 = R12 and on 29 February 2004 \$1 = R7, the amount that must be included in B's taxable income will be as follows:

2003 (\$7 563 x R12 per \$1)	=	R90 756
2004 (\$8 424 x R7 per \$1)	=	R58 968

As a result of B's default, additional tax of up to double the amount of the tax attributable to the estimated amount may also be levied. In addition to any additional tax, interest on the underpayment of provisional tax will also be calculated on the amount of tax ultimately payable.

### Case Study No 2

A South African resident submitted his 2003 tax return without disclosing any foreign assets. The Commissioner obtained information that the individual had –

- transferred \$100 000 or R750 000 from South Africa for foreign investment purposes on 28 February 2001;

- invested \$50 000 with a foreign portfolio manager while working on contract in New York for 4 months until 28 February 2002; and
- changed the registration of his light aircraft from a South African to a Botswanan registration in 2001 before commencing charter operations in Botswana. The market value of the aircraft at the time of change of registration was \$80 000 and this had remained unchanged at 28 February 2003.

The taxpayer failed to account for foreign assets after a request by the Commissioner to complete the sections of the tax return dealing with foreign assets and liabilities.

### Estimated value of foreign currency

In terms of section 78(1A) the Commissioner must estimate the market value of the foreign funds or assets owned by the taxpayer as at 28 February 2003. This is done as follows:

- Foreign investment of \$100 000 increased by the official rate of interest for the 2002 tax year

		\$
01/03/2001 – 30/09/2001	= \$100 000 x 13% x 7/12	= 7 583
01/10/2001 – 28/02/2002	= \$100 000 x 10,5% x 5/12	= 4 375
		<u>11 958</u>

Balance at 28 February 2002 = \$111 958 [\$100 000 + 11 958]

		\$
01/03/2002 – 31/08/2002	= 11,5% x 6/12 x \$111 958	= 6 438
01/09/2002 – 28/02/2003	= 13,5% x 6/12 x \$111 958	= 7 557
		<u>13 995</u>

Balance at 28 February 2003 = \$125 953 [\$111 958 + 13 995]

- Investment with foreign portfolio manager = \$50 000

Actual market value on 28 February 2002 = \$50 000

Estimated market value on 28 February 2003

		\$
01/03/2002 – 31/08/2002	= 11,5% x 6/12 x \$50 000	= 2 875
01/09/2002 – 28/02/2003	= 13,5% x 6/12 x \$50 000	= 3 375
		<u>6 250</u>

Estimated market value at 28 February 2003 = \$56 250 [\$50 000 + \$6 250]

- Market value of aircraft at 28 February 2003 = \$80 000.

**Note: In this case study the Commissioner has used the official rate of interest to estimate the market value of the foreign investments as at 28 February 2003. In Case study No 1 the Commissioner used a growth factor.**

### Estimated taxable income

In accordance with section 78(1B) the Commissioner must estimate an amount of taxable income derived from the above funds and other assets (\$125 953 + \$56 250 + \$80 000 = \$262 203) by applying the official rate of interest which applied during the 2003 tax year.

Estimated taxable income:

		\$
01.03.2002 – 31.08.2002 [11,5% x \$262 203 x 6/12]	=	15 077
01.09.2002 – 28.02.2003 [13,5% x \$262 203 x 6/12]	=	<u>17 699</u>
		<u>32 776</u>

### Translation of taxable income

The amount of taxable income estimated in foreign currency is then translated to rand on 28 February 2003 at the ruling exchange rate of \$1 = R11

$$\begin{aligned} &= \$32\,776 \times 11 \\ &= R360\,536 \end{aligned}$$

The amount of R360 536 is included in the taxable income of the taxpayer for the 2003 year of assessment.

## 7. Objection and appeal

The Commissioner's estimate of the amount of any foreign funds or value of any foreign assets is subject to objection and appeal in terms of section 78(2). Any objection or appeal must comply with the rules issued by the Minister of Finance in GNR 467 dated 1 April 2003. Notice of objection and appeal must be lodged using the prescribed forms (ADR 1 – Notice of objection and ADR 2 – Notice of appeal). These forms may be downloaded from the SARS website at <http://www.sars.gov.za/dr/adr/Default.htm>

One of the requirements for the lodging of a valid objection is that it must specify in detail the grounds upon which it is made (rule 4(b)). In the context of undisclosed foreign funds or assets this means that the taxpayer will have to provide the Commissioner with proof of the cost and market value of the assets as well as any income or capital gains and losses derived there from.

Where it is not possible to provide the Commissioner with these details, the Commissioner and the person can agree on

- the amount that is to be included in taxable income or that will comprise a net capital gain or assessed capital loss, and
- the amount of the funds in foreign currency or value of the foreign assets.

No provision is made for the Commissioner to estimate an assessed loss.

Any amounts so agreed upon are not subject to objection and appeal.

**8. Conclusion**

The measures contained in section 78(1A), (1B) and (1C) can produce punitive results. Such consequences can, however, easily be avoided if residents keep proper records of their offshore income and assets, make full disclosure in their returns of income and respond timeously to any enquiries from the Commissioner.

**Law Administration  
SOUTH AFRICAN REVENUE SERVICE**

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