

# **TAX ADMINISTRATION BILL**

## **DRAFT FOR PUBLIC COMMENT**

## **Notes on the draft Tax Administration Bill**

### ***Background***

The drafting of the draft 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. These provisions include, for example, the objection and appeal procedures, search and seizure provisions, provisions relating to secrecy and collection processes.” 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, 1962. It will assist in dividing the work of the re-write into more manageable parts, since the administrative part of the Act comprises about 25 per cent of the Act.

### ***Objects of the TAB***

Generally, the TAB seeks to provide a 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. The TAB takes account of the constitutional rights of taxpayers but does not seek to re-codify them across the board, since all legislation - including the TAB - must be read together with the Constitution.

The drafting of the TAB focused on reviewing the current administrative provisions of the tax Acts administered by SARS, excluding the Customs & Excise Act, 1964, and harmonising these provisions across taxes as far as possible. The drafting of the TAB was also informed by a comparative evaluation of the tax administration laws of other countries and involved the assistance of international tax experts and local constitutional experts.

### ***Presentation of the TAB***

The layout of the TAB largely follows the administrative “life cycle” of a taxpayer. The TAB begins with general provisions and registration, runs through assessment and recovery of tax, and concludes with the reporting of unprofessional conduct and transitional provisions. Measures to assist in understanding the TAB include shorter sections, shorter sub-sections and the use of less formalistic language.

### ***Noteworthy changes in the TAB***

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 gaps identified by the review and experts mentioned above. Some examples of the changes are as follows.

- The introduction of a framework for the single registration of taxpayers for all tax types.
- The extension of third party information reporting for purposes of, amongst others, the pre-population of returns.
- The reservation of more serious powers for senior SARS officials only.
- The extension of SARS’s information gathering powers, including interviews at SARS offices and the gathering of information in respect of identified classes of taxpayers.
- The provision of monthly audit reports to a taxpayer undergoing a field audit and notice of final conclusion of the audit, including a letter of findings a taxpayer may respond to before an assessment is issued.

- The separation of audits and criminal investigations by SARS to ensure that the rights of taxpayers who are suspects in a criminal investigation are given effect to.
- The power to conduct a search and seizure without a warrant if such warrant cannot be obtained in time to prevent the imminent removal or destruction of records.
- The insertion of a requirement that an assessment that is not issued in accordance with a return be accompanied by a statement of the grounds for the assessment
- The insertion of a number of provisions to deal with the securing of the collection of taxes that would otherwise be in jeopardy due to the actions of a taxpayer, including the right to issue an assessment in advance of the date it would normally be issued and to seize a taxpayer's assets for up to 24 hours while a court is approached to prevent the dissipation of the assets.
- The publication of all judgments of the Tax Court in a form that does not reveal the taxpayer's identity, whether marked reportable or not, to ensure that taxpayers and SARS are placed on an equal footing with respect to knowledge of these persuasive judgments.
- The creation of a framework to support the modernisation of SARS's accounting system, within which—
  - a single taxpayer account with a "rolling balance" may be created,
  - instalment payment arrangements may be approved,
  - new payment allocation rules may be applied, for example the application of the First-In-First-Out rule, and
  - interest provisions may be aligned across taxes and interest due or payable may be calculated on a compound basis.
- The replacement of the discretionary system of imposing additional tax of up to 200% to penalise non-compliance with a system imposing penalties based on specific behaviours and factors. The onus to prove the grounds for the imposition of additional tax is placed on SARS
- The modification of the onus on a taxpayer, whose return reflects a false statement, in a criminal prosecution, so that the taxpayer now only has the onus to show that he or she had reasonable grounds for believing the statement to be true.

### ***Current law references***

In order to assist commentators working through the TAB, a document reflecting the current Income Tax and VAT provisions on which many clauses of the TAB are based is available separately.

### ***Hyperlinks***

For ease of use in electronic format the index and cross-references between sections in the TAB are hyperlinked.

### ***Commentary period***

Public comments can be submitted to the following addresses until the deadline of **26 February 2010**:

E-mail: [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za) , with the subject "Draft Tax Administration Bill"

Mail: Legal & Policy Division – Draft Tax Administration Bill, SARS, P O Box 402, Pretoria, 0001

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## CHAPTER 1 DEFINITIONS

### Definitions

1. For the purposes of this Act, unless the context otherwise indicates, a term which is assigned a meaning in another *tax act* has the meaning so assigned, and the following terms, if italicised in this Act or appearing in the heading of a Chapter, Part, or section have the following meanings —

“**administration of a tax act**” has the meaning assigned in [section 3](#);

“**additional assessment**” has the meaning assigned in [section 86](#);

“**assessment**” means the determination of the amount of a *tax* liability, by way of self-assessment by the *taxpayer*, or an original assessment, reduced assessment, or *additional assessment* by SARS, and includes any decision which in terms of a *tax act* is subject to objection and appeal;

“**biometrical information**” means biological data to authenticate the identity of a natural person, and includes:

- (a) facial recognition;
- (b) fingerprint recognition;
- (c) vocal recognition; and
- (d) iris or retina recognition.

“**Commissioner**” means the Commissioner for SARS appointed in terms of section 6 of the *SARS Act*, or the Acting Commissioner designated in terms of section 6 of the *SARS Act*;

“**company**” has the meaning assigned in section 1 of the *Income Tax Act*;

“**confidential information**” has the meaning assigned in [section 60](#);

“**Customs and Excise Act**” means the Customs and Excise Act, 1964 (Act No. 91 of 1964);

“**day**” means a calendar day;

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

“**due date**” has the meaning assigned in [section 179\(5\)](#);

“**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;

“**judge**” means a judge of the High Court, whether in chambers or otherwise;

“**Minister**” means the Minister of Finance;

“**prescribed rate**” has the meaning assigned in [section 181\(3\)](#);

“**premises**” includes a building, aircraft, vehicle, vessel, or place;

“**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);

“**relevant material**” means *information*, a *document*, or a *thing* that may be useful in assessing a *tax*, collecting *tax*, or showing non-compliance with an obligation under a *tax act* or a *tax offence* was committed;

“**reportable arrangement**” has the meaning assigned in [section 27](#);

“**representative employer**” has the meaning assigned in [section 145](#);

“**representative taxpayer**” has the meaning assigned in [section 145](#);

“**representative vendor**” has the meaning assigned in [section 145](#);

“**return**” means a form, *document*, or other manner of submitting *information* to SARS that incorporates a self-*assessment* or on the basis of which an *assessment* is to be made by SARS;

“**SARS**” means the South African Revenue Service as established under the *SARS Act*;

“**SARS Act**” means the South African Revenue Service Act, 1997 (Act No. 37 of 1997);

“**SARS information**” has the meaning assigned under [section 59\(1\)\(b\)](#);

“**SARS official**” means the *Commissioner*, an employee of SARS or a person contracted by SARS, for purposes of the *administration of a tax act*;

“**senior SARS official**” means the *Commissioner* or another *SARS official* referred to in [section 6\(4\)](#);

“**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;

“**Skills Development Levies Act**” means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);

“**tax**” means a tax, duty, levy, royalty, fee, charge, contribution, additional tax, *penalty*, interest and any other moneys imposed under a *tax act* ;

“**taxable event**” means an occurrence which affects the liability of a person to tax;



“**tax act**” means this Act or an Act or portion of an Act administered by the *Commissioner*, excluding the *Customs and Excise Act*;

“**tax board**” means a tax board established under [section 100](#);

“**tax court**” means a tax court established under [section 108](#);

“**tax debt**” means an amount of *tax* or other amount 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 a *SARS official* relating to the *administration of a tax act*;

“**tax period**” means—

- (a) in relation to income tax, a year of *assessment* as defined in section 1 of the *Income Tax Act*;
- (b) in relation to *Value-Added Tax*, as defined in section 1 of the Value-Added Tax Act, a tax period determined under section 27 of that Act;
- (c) in relation to any other *tax*, the period or date of the *taxable event* in respect of which the amount of *tax* payable must be determined;

“**taxpayer**” has the meaning assigned under [section 143](#);

“**taxpayer information**” has the meaning assigned under [section 59\(1\)\(a\)](#);

“**taxpayer reference number**” means the number referred to in [section 16](#);

“**thing**” includes a corporeal or incorporeal thing;

“**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).

## CHAPTER 2

### GENERAL ADMINISTRATION PROVISIONS

#### *Part A*

#### *In general*

#### **Purpose of Act**

2. The purpose of this Act is to ensure the effective and efficient collection of *tax* by—

- (a) aligning the *administration of the tax acts* to the extent practically possible;
- (b) prescribing the rights and duties 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
- (d) generally giving effect to the objects and purposes of *tax administration*.

### **Tax acts to be administered by SARS**

3. (1) *SARS* is responsible for the *administration of a tax act*.

(2) *Administration of a tax act* means to efficiently, effectively and to the widest extent possible—

- (a) obtain full *information* in relation to anything that may affect the liability of a person for *tax* in respect of a previous, current, or future *tax period*, or *taxable event* or the obligation of a person (whether personally or on behalf of another person) to comply with a *tax act*;
- (b) ascertain, by inspection, examination, audit or investigation or otherwise, whether a person has filed or submitted correct *returns, information, or documents* in compliance with the provisions of a *tax act*;
- (c) establish the identity of a person for purposes of determining liability for *tax*;
- (d) determine of the liability of any person for *tax*;
- (e) collect *tax*;
- (f) investigate whether an offence has been committed in terms of a *tax act*, and, if so—
  - (i) to lay criminal charges;
  - (ii) to liaise with law enforcement agencies and the prosecuting authority; and
  - (iii) to do all that is reasonably required for the investigation and prosecution of *tax offences* or related common law offences;
- (g) enforce *SARS'* remedies under a *tax act* to ensure that an obligation imposed by or under a *tax act* is complied with; and
- (h) perform any other administrative function necessary to carry out the provisions of a *tax act*.

### **Application of Act**

4. 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).

## Currency

5. Tax is payable in Rand.

### *Part B*

#### *Powers and Duties of SARS and SARS Officials*

## **Powers and duties**

6. (1) The powers and duties of SARS under this Act may be exercised for purposes of the *administration of a tax act*.

(2) Unless otherwise provided, the powers conferred and the duties imposed upon the *Commissioner* or SARS by or under a *tax act* may be exercised or performed by a *SARS official*.

(3) Powers which are assigned to the *Commissioner* personally by this Act must be exercised by the *Commissioner* personally unless he delegates such power in accordance with the power to do so.

(4) Powers required by this Act to be exercised by a *senior SARS official* must be—

- (a) exercised by the *Commissioner*;
- (b) by a *SARS official* who has specific authority from the *Commissioner* to exercise the power; or
- (c) by any person occupying a post designated by the *Commissioner* for this purpose.

(5) The *senior SARS official* described in subsection (4) 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
- (b) the incumbent of a specific post under the *senior SARS official's* control.

## **Conflict of interest**

7. In accordance with policies adopted by the *Commissioner*, a *SARS official* must not exercise a power or become involved in the *administration of a tax act* matter —

- (a) relating to a person in respect of which the official has or had a personal, family, social, business, professional, employment, or financial relationship; or
- (b) otherwise presenting a conflict of interest.

**Identity cards**

8. (1) SARS must issue an identity card to each *SARS official*.

(2) When a *SARS official* exercises a power or duty under a *tax act* in person, the official must produce the identity card.

(3) If the official does not produce the identity card as required under subsection (2) the member of the public is entitled to assume that the person is not a *SARS official*.

**Decision, notice, or communication**

9. (1) A decision made and a notice or communication issued or signed by a *SARS official*—

(a) is deemed to have been made, issued, or signed by a person authorised to do so, until proven to the contrary; and

(b) in the discretion of the *SARS official* described in subparagraph (i) to (iii) upon request by the relevant *taxpayer* or otherwise, may, subject to this Act, be withdrawn or amended by—

(i) the *SARS official*;

(ii) any *SARS official* to whom the *SARS official* reports; or

(iii) a *senior SARS official*.

(2) A decision referred to in subsection (1) must not be withdrawn or amended after three years from the date of the written notice of that decision or the notice of *assessment* giving effect to the decision (if applicable), if all the material facts were known to the *SARS official* at the time the decision was made.

*Part C**Delegations***Delegations**

10. (1) A delegation by the *Commissioner* under [sections 42, 51, 138, 189](#) or [192](#)—

(a) must be in writing;

(b) becomes effective only when signed and accepted by the person to whom the delegation is made;

- (c) is subject to the limitations and conditions the *Commissioner* may determine in making the delegation;
- (d) may either be to—
  - (i) a specific individual; or
  - (ii) the incumbent of a specific post;and
- (e) may be ratified, amended or repealed by the *Commissioner*.

(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.

(3) A *senior SARS official* may ratify an act done on behalf of the *Commissioner* or of *SARS*, other than an act required to be done by the *Commissioner* personally, in which event the act is regarded as having been done validly from the beginning.

#### *Part D*

#### *Authority to act in Legal Proceedings*

### **Legal proceedings**

11. (1) No person other than the *Commissioner* or a person authorised by the *Commissioner* may institute or defend legal proceedings in a matter in which the *Commissioner* or *SARS* is a party.

(2) For purposes of subsection (1), a person who, on behalf of the *Commissioner*, institutes litigation, or performs acts which are relied upon by the *Commissioner* in litigation, is presumed to be duly authorised.

(3) A *senior SARS official* may lay a criminal charge relating to a *tax offence* described in [section 219](#).

### **Right of appearance in proceedings**

12. (1) A *senior SARS official* may, on behalf of *SARS* or the *Commissioner* appear in the *tax court*, *ex parte* in a *judge's chambers* in proceedings referred to in a *tax act*, or in a higher court.

(2) A *senior SARS official* may appear in the *tax court* or higher court only if the

person—

- (a) is an advocate duly admitted as an advocate under—
    - (i) the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or
    - (ii) a law providing for the admission of advocates in an area in the Republic which remained in force by virtue of section 229 of the Constitution, 1996 (Act No. 108 of 1996), or
  - (b) is an attorney duly admitted and enrolled as an attorney under—
    - (i) the Attorneys Act, 1979 (Act No. 53 of 1979); or
    - (ii) a law providing for the admission of attorneys in an area in the Republic which remained in force by virtue of section 229 of the Constitution, 1996 (Act No. 108 of 1996).
- (3) Notwithstanding the provisions of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995), or any other law, a *senior SARS official* who has at least three years experience in the *tax court* may, if authorised by the *Commissioner* to do so, appear on behalf of the *Commissioner* or *SARS* in a higher court (other than the Constitutional Court).

## *Part E*

### *Powers and duties of Minister of Finance*

#### **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;
- (b) be delegated by the *Minister* to the Deputy-Minister; or
- (c) except for the powers under [section 241](#), be delegated by the *Minister* to the Director-General of the National Treasury.

(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.

## CHAPTER 3 REGISTRATION

### Registration requirements and sanctions

**14.** (1) A person obliged to, or 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) In the event of failure to comply with the requirements described in subsection 1, the person is subject to the sanctions imposed by this Act or, if applicable, the relevant *tax act*.

(3) A person referred to in subsection (1) must—

- (a) apply for registration within 21 *days* of so becoming obliged or within the further period as *SARS* may approve;
- (b) apply for one or more taxes in the form and manner as the *Commissioner* may direct and provide *SARS* with the further particulars and any *documents* as *SARS* may require in the application form for the purpose of registering the person for the tax or taxes.

(4) A person may be required to submit *biometrical information* upon registration in the manner and form as may be prescribed by the *Commissioner* if the information is required to ensure—

- (a) proper identification of the person; or
- (b) counteracting identity theft or fraud.

### Continuation of registration

**15.** (1) A person who has been registered must communicate to *SARS* within 21 *days* any change in—

- (a) postal address;
- (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.

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

### **Taxpayer reference number**

16. (1) SARS must allocate a *taxpayer reference number* to each person registered under this Chapter.

(2) SARS may consider a *return* or other *document* submitted by a *taxpayer* to be invalid if it does not contain the *taxpayer's taxpayer reference number*.

## **CHAPTER 4 RETURNS AND RECORDS**

### *Part A*

#### *General*

### **Submission of return**

17. (1) A *taxpayer* required under a *tax act* to submit 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 notice requiring the submission.

(2) A *return* must contain the *information* prescribed by the *Commissioner*.

(3) A *return* must be signed by the *taxpayer* or by the *taxpayer's* legal representative.

(4) If the *return* or part of the *return* was prepared for reward by some other person, that other person must also sign the *return*.

(5) Non-receipt by a *taxpayer* of a *return* form does not affect the obligation to submit a *return*.

(6) If a *taxpayer* becomes aware of an error in a *return*, or if requested to do so by SARS to correct an error in a *return*, the *taxpayer* must file an amended *return*.

(7) SARS may in its discretion extend the time period for filing a *return* in a particular case, in accordance with procedures and criteria in policies published by the *Commissioner*.



(8) The *Commissioner* may also extend the filing deadline generally or for specific classes of *taxpayers* by public notice, and any extension does not affect the deadline for paying the *tax*.

### **Third party returns**

18. The *Commissioner* may by public notice require a person who employs, pays amounts to, receives amounts on behalf of, otherwise transacts with another person or has control over assets of another person, to submit a return requiring information in the form at the time and place and in the manner as may be prescribed by the *Commissioner* in the notice concerning the *information*.

### **Other returns required**

19. (1) If a person fails to make a *return* as and when required under a *tax act*, a *senior SARS official* may appoint a person to make a *return* on behalf of the person, and the *return* made by the person so appointed is deemed to be the *return* of the person liable to make the same.

(2) *SARS* may require a person to submit further or more detailed *returns* regarding any matter of which a *return* is required or prescribed by a *tax act*.

### **Statement concerning account**

20. (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
- (b) whether or not the entries in those books and *documents* disclose the true nature of the transactions, receipts, accruals, payments, or debits in so far as may be ascertained by that examination.

(2) A person who prepares financial statements, or accounts for another person must, at the request of that other person, submit to that other person a copy of the certificate or statement referred to in subsection (1).

## Duty to keep records

21. (1) A person must keep the records, books of account or *documents* that enables the person to observe the requirements of a *tax act* and 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 is a *taxpayer* during the *tax period*, and—

- (a) has submitted a *return* for the *tax period*;
- (b) is required under law to submit a *return* for the *tax period* and has not submitted a *return* for the *tax period*; or
- (c) is not required to submit a *return* but has, during the *tax period*, received income, has a capital gain or capital loss, or engaged in other activity that is subject to *tax* or would be subject to *tax* but for the application of a threshold or exemption.

(3) Records need not be retained by the person described in—

- (a) subsection (2)(a), after a period of five years from the date of the submission of the *return*; and
- (b) subsection (2)(c), after a period of five years from the end of the relevant *tax period*.

## Form of records kept or retained

22. (1) The records, books of account, and *documents* referred to in [section 21](#), 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*; or
- (c) in a form authorised by the *Commissioner* in terms of subsection (2).

(2) The *Commissioner* may, subject to the conditions as the *Commissioner* may determine, authorise the retention of *information* contained in records or *documents* referred to in [section 21](#) in a form acceptable to the *Commissioner*, *in lieu* of the retention of the originals.

## Inspection of records

23. The records, books of account, and *documents* referred to in [sections 21](#) and [22](#), whether in their original form or in a form authorised by the *Commissioner* in terms

of [section 22\(2\)](#), must at all reasonable times during the relevant periods referred to in [section 21](#), be open for inspection by a SARS official for the purpose of—

- (a) determining compliance with the requirements of [sections 21](#) and [22](#); or
- (b) an examination, audit or investigation.

### **Retention period where objection or appeal lodged**

**24.** Notwithstanding [section 21\(3\)](#), if a person lodges an objection or appeal against an *assessment*, the person must retain the records relevant to the objection or appeal until the *assessment* becomes final.

### **Translation**

**25.** (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 *taxpayer* or another 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—

- (a) be produced at a time and at the place specified by the notice; and
- (b) be prepared and certified by a sworn translator or another person approved by the *senior SARS official*.

## *Part B*

### *Reportable arrangements*

### **Definitions**

**26.** For the purposes of this Part, unless the context otherwise indicates, the following terms, if in single quotation marks in this Part or appearing in the heading of a section, have the following meanings—

**‘arrangement’** means a transaction, operation, scheme, agreement, or understanding (whether enforceable or not);

**‘financial benefit’** means a reduction in the cost of finance, including interest, finance charges, costs, fees, and discounts in the redemption amount;

**‘participant’**, in relation to a *reportable 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 a *reportable arrangement*;

**‘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 Generally Accepted Accounting Practice after taking into account all costs and expenditure incurred by that ‘participant’ in connection with the ‘arrangement’ and after deducting any foreign taxes paid or payable by that ‘participant’;

**‘promoter’**, in relation to a *reportable arrangement*, means a person who is principally responsible for organising, designing, selling, financing, or managing the *reportable arrangement*;

**‘tax benefit’** includes avoidance, postponement, or reduction of a liability for *tax*.

## Reportable arrangements

**27.** (1) An arrangement is a *reportable arrangement* if it is listed in 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*);
- (b) has any of the characteristics contemplated in section 80C(2)(b) of the *Income Tax Act*, or substantially similar characteristics;
- (c) is or will be disclosed by any ‘participant’ as—
  - (i) an expense for purposes of the *Income Tax Act* but not for purposes of Generally Accepted Accounting Practice; or
  - (ii) revenue for purposes of Generally Accepted Accounting Practice 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’.

(2) The following ‘arrangements’ are listed arrangements:

- (a) an ‘arrangement’ involving an instrument which would qualify under the definition of “hybrid equity instrument” in section 8E of the *Income Tax Act*, if the references to “three years” in that definition were changed to “ten years”;
- (b) an ‘arrangement’ involving an instrument which would qualify under the definition of “hybrid debt instrument” in section 8F of the *Income Tax Act*, if the references to “three years” in that definition were changed to “ten years”; or
- (c) an ‘arrangement’ identified by the *Minister* by notice in the Gazette as an ‘arrangement’ which is likely to result in an undue ‘tax benefit’.

(3) This section does not apply to any excluded arrangement contemplated in [section 28](#).

### Excluded arrangements

**28.** (1) An ‘arrangement’ is an excluded ‘arrangement’ if it is—

- (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;
- (b) a lease;
- (c) a transaction undertaken through an exchange regulated in terms of the Securities Services Act, 2004 (Act 36 of 2004); or
- (d) a transaction in participatory interests in a scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act 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
- (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'.

(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 *Minister* may determine an 'arrangement' to be an excluded 'arrangement' by notice in the Gazette, if satisfied that the 'arrangement' is not likely to lead to an undue 'tax benefit'.

### **Disclosure obligation**

**29.** (1) The 'promoter' must disclose the *information* in respect of a *reportable arrangement* as is described in [section 30](#).

(2) If there is no 'promoter' in relation to an 'arrangement' or if the 'promoter' is not resident, all other 'participants' must disclose the *information* contemplated in [section 30](#) in respect of the *reportable arrangement*.

(3) A 'participant' need not disclose the *information* in respect of a *reportable arrangement* if the 'participant' obtains a written statement from—

- (a) the 'promoter' that the 'promoter' has disclosed that *reportable arrangement* as required by this Part; or
- (b) any other 'participant', if subsection (2) applies, that the other 'participant' has disclosed the *reportable arrangement* as required by this Part, including all the *information* referred to in [section 30](#).

(4) The *reportable arrangement* must be disclosed within 60 days after an amount is first received by or 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 60 days, if reasonable grounds exist for the extension.

(6) Failure to disclose the *information* in respect of a *reportable arrangement* is liable to a *penalty* in accordance with [section 204](#).

**Information to be submitted**

**30.** The ‘promoter’ or ‘participant’ must submit, in relation to a *reportable arrangement* or, if specifically required by SARS, a potential *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*;
- (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’;
- (d) a list of all its agreements; and
- (e) any financial model that embodies its projected *tax* treatment.

**Reportable arrangement reference number**

**31.** SARS must, after receipt of the *information* contemplated in [section 30](#), issue a *reportable arrangement* reference number to each ‘participant’.

*Part C**Advance Notice Required***Leaving the Republic**

**32.** (1) If so required under subsection (2), a *taxpayer* who plans on leaving the Republic for a period of six months or longer or for an indefinite period must notify SARS of that fact at least 30 *days* before the date the person is to leave the Republic.

(2) The *Commissioner* must publish by public notice the classes of *taxpayers* to whom and circumstances in which subsection (1) applies.

## CHAPTER 5 INFORMATION GATHERING

### *Part A*

#### *Request for information*

#### **Request for relevant material**

33. (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 within a reasonable period to submit *relevant material* (whether orally or in writing) that SARS requires.

(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 *senior SARS official* may request *information* for purposes of revenue analysis or estimation.

(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 notice.

(5) *Relevant material* required by SARS under this section must be referred to in the request with reasonable certainty.

(6) A direction that *information* be provided under oath or solemn declaration must be approved by a *senior SARS official*.

#### **Production of relevant material in person**

34. (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.

(2) The *senior SARS official* issuing the notice may require the person examined to produce any *relevant material* in the control of the person during the interview.

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

(4) A person who must attend and give *information* may be assisted by any



representative during the interview.

*Part B*  
*Audit and Investigation*

**Authorisation for SARS official to audit and investigate**

**35.** (1) A *senior SARS official* may grant a *SARS official* written authorisation to audit and investigate, as contemplated in this part, any *relevant material*.

(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), the member of the public is entitled to assume that the person is not a *SARS official*.

**Audit selection**

**36.** SARS may select a *taxpayer* for audit on the basis of any consideration relevant for the proper *administration of a tax act*, including on random or a risk assessment basis.

**Field audit**

**37.** (1) A *SARS official* named in an authorisation referred to in [section 35](#) may, subject to subsection (3), require a person with reasonable prior notice to make available at the person's *premises* specified in the notice any *relevant material* that the official may require to audit in connection with the *administration of a tax act* in relation to the person or another person.

(2) The notice referred to in subsection (1) must—

- (a) state the date, time, and place that the audit is due to start (which must be during normal business hours); and
- (b) indicate the initial basis and scope of the audit, except where this may prejudice the outcome of the audit.

(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 one week 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.

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

### **Assistance during field audit**

**38.** (1) The person on whose premises an audit is carried out must provide such reasonable assistance as is required by SARS to conduct the audit, including—

- (a) making available appropriate facilities, to the extent that such facilities are available;
- (b) answering questions relating to the audit; and
- (c) submitting relevant material as required.

(2) No person may obstruct a SARS official from carrying out the audit or without reasonable excuse refuse to give the assistance as may 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 22(6) of the *Promotion of Access to Information Act*.

### **Keeping taxpayer informed**

**39.** (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 an audit report indicating the stage of completion of the audit.

(2) Upon conclusion of the audit, and where the audit —

- (a) was inconclusive, SARS must inform the taxpayer accordingly within 30 days; or
- (b) identified potential adjustments of a material nature, SARS must within 30 days, or the further period that may be required based on the complexities of the audit, provide the taxpayer with a document containing the outcome of the audit, including the grounds for the proposed assessment.

(3) Upon receipt of the document described in subsection (2)(b), the taxpayer must within 30 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, to respond in writing

to the facts and conclusions set out in the *document*.

(4) The person may waive the right to receive the *document*.

(5) Subsections (1) and (2) do not apply if SARS has a reasonable belief that compliance with those subsections would impede or prejudice the purpose, progress, or outcome of the audit, in which case SARS may issue the *assessment* resulting from the audit and a *document* containing the outcome of the audit and the grounds of the *assessment* must be provided to the taxpayer within 30 *days* of the *assessment* or the further period that may be required based on the complexities of the audit.

### Referral for criminal investigation

**40.** (1) If, at any time 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 SARS official responsible for criminal investigations.

(2) Any *relevant material* gathered during an audit after the referral, must be kept separate from the criminal investigation and must not be used in any criminal proceedings instituted in respect of the offence.

(3) If an investigation is referred under subsection (1) and—

- (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,
- the *information* and files relating to the case must be returned to the *SARS official* responsible for the audit.

### Criminal investigation

**41.** (1) If an investigation is referred under [section 40](#) and it is ultimately decided to pursue a criminal investigation, SARS must then apply the *information* gathering powers in terms of this Part 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 is not prevented from making use of evidence obtained prior to the referral referred to in [section 40](#) or any information obtained during the audit thereafter wherein a taxpayer does incriminates himself or herself.

(3) Evidence obtained during a criminal investigation may be used for purposes of audit as well as in subsequent criminal proceedings.

*Part C*  
*Inquiries*

**Authorisation for inquiry**

**42.** (1) The *Commissioner* personally, or a *senior SARS official* delegated by him for this purpose, may authorise any person to conduct an inquiry for the purposes of the *administration of a tax act*.

(2) A *judge* may, on application made *ex parte* by the *Commissioner* or a *senior SARS official* delegated by him for this purpose, grant an order in terms of which a person described in subsection (6) 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.

(4) A *judge* may grant the order if satisfied that there are reasonable grounds to believe that—

- (a) a person has failed to comply with an obligation imposed under a *tax act* or a person has committed a *tax offence*;
- (b) *relevant information* is likely to be revealed during the inquiry which may provide proof of the failure to comply or of the commission of the offence; and
- (c) the inquiry referred to in the application is likely to reveal the *relevant information*.

(5) The order referred to in subsection (2) must—

- (a) designate a *presiding officer* before whom the inquiry is to be held;
- (b) identify the person referred to in subsection (4)(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*.

(6) A *presiding officer* must be a person appointed to the panel described in [section 103](#).

### **Inquiry proceedings**

43. (1) The *presiding officer* determines the conduct of the inquiry as the officer thinks fit.

(2) The *presiding officer* must ensure the recording of the proceedings and evidence at the inquiry to a standard that would meet the standard required for the proceedings and evidence to be used in a court of law.

(3) A decision by the *presiding officer* in respect of the inquiry is not reviewable, except an order that imposes a fine or commits a person to jail.

### **Notice to appear**

44. (1) The *presiding officer* may, by notice in writing, require a person, whether or not chargeable to *tax*, to attend at the time and place designated in the notice for the purpose of being examined under oath or solemn declaration, and for that purpose the *presiding officer* may require the person examined to produce any *relevant material* in the control of the person.

(2) If the notice requires the production of *relevant material* it is sufficient if the *document* is referred to in the notice with reasonable specificity.

### **Legal representation at Inquiry**

45. A person has the right to have a legal representative present during the time that the person appears before the *presiding officer*.

### **Powers of presiding officer**

46. The *presiding officer* has the same powers regarding witnesses at the inquiry as are vested in a President of the *tax court* under [sections 119](#) and [section 120](#).

### **Witness fees**

47. 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).

### Confidentiality of proceedings

48. (1) An inquiry under this Part is private and confidential and the *presiding officer* may exclude or remove a person (other than a *SARS official*) from the inquiry if the person's attendance is not necessary for the inquiry.

(2) [Section 61](#) applies with necessary changes to persons present at the questioning of a person, including the person being questioned.

(3) Subject to [section 49\(2\)](#), 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.

(4) If, after an inquiry under this Part, an *assessment* is made, the *taxpayer* concerned in the *assessment* is entitled to a transcript of the proceedings at the *taxpayer's* expense.

### Incriminating evidence

49. (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;
- (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

50. Unless a court orders otherwise, an inquiry relating to a person referred to in [section 42\(4\)\(a\)](#) must proceed notwithstanding 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.

*Part D*  
*Search and seizure*

### **Application for warrant**

**51.** (1) The *Commissioner* personally, or a *senior SARS official* delegated by him for this purpose, may, if necessary or relevant to administer a *tax act*, authorise an application for a warrant authorising *SARS* to enter at any time a *premises* if *relevant material* is kept without prior notice to—

- (a) enter and search the *premises*; and
- (b) search any person present on the *premises*.

(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 involving an estimated amount of less than R500 000 in *tax*.

### **Issuance of warrant**

**52.** (1) A *judge* or magistrate may issue the warrant referred to in [section 51\(1\)](#) if satisfied that there are reasonable grounds to believe that—

- (a) a person failed to comply with an obligation imposed under a *tax act*, or committed a *tax offence*; and
- (b) *relevant material* likely to be found on the *premises* specified in the application may provide evidence of the failure to comply or commission of the offence.

(2) A warrant issued under subsection (1) must as far as is reasonably practical 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 *relevant material* to be searched for and seized.

(3) The warrant must be exercised within 60 *days* or such further period as a *judge*

or magistrate deems appropriate on good cause shown.

### Carrying out search

53. (1) A *SARS official* exercising a power under a warrant referred to in [section 52](#) must produce the warrant.

(2) Subject to [section 55](#), an official's failure to produce a warrant entitles a person to refuse access to the official.

(3) The official may—

- (a) open or cause to be opened or removed in conducting a search, anything which the official suspects to contain *relevant material*;
- (b) seize any *relevant material* referred to in the warrant, and any other *relevant material*;
- (c) make extracts from or copies of any *relevant material*, and require from a person an explanation of any *relevant material*;
- (d) if a paper or electronic copy of computer-stored *information* is not provided, seize and retain the computer in which *relevant material* is stored for as long as is necessary to copy the *information* required; and
- (e) stop and board a vessel, aircraft, or vehicle which the officer has reasonable grounds to believe contains *relevant material*, search the vessel, aircraft, or vehicle or a person found in the vehicle, and question the person with respect to a matter dealt with in a *tax act*.

(4) The official may search a person only if the official is of the same gender as the person being searched.

(5) The 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.

(6) 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.

(7) The official and *SARS* are not liable for damage to property necessitated by reason of the search.

(8) If the official seizes *relevant material*, the official must ensure that the *relevant material* seized is preserved and retain it until it is no longer required for—

- (a) the investigation into the non-compliance or the offence described under [section](#)



[52\(1\)\(a\)](#); 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

**54.** If SARS has reasonable grounds to believe that—

- (a) the *relevant material* referred to in [section 52\(1\)\(b\)](#) and included in a warrant is at *premises* not identified in the warrant and is about to be removed or destroyed; and
- (b) a warrant cannot be obtained in time to prevent the removal or destruction, the *premises* are deemed to be included in the warrant and SARS may search the *premises* and exercise the powers granted in terms of this Part, as if the *premises* had been identified in the warrant.

### Search without warrant

**55.** (1) A *senior SARS official* may without a warrant exercise the powers referred to in [section 53\(3\)](#)—

- (a) if the person who may consent thereto so consents in writing; or
- (b) if the official on reasonable grounds is satisfied—
- (i) that there may be an imminent removal or destruction of *relevant material* likely to be found on the *premises*;
  - (ii) that if SARS applies for a search warrant under [section 51](#), a search warrant will be issued; and
  - (iii) that the delay in obtaining a warrant would defeat the object of the search and seizure.
- (2) [Section 53\(4\)](#) to [\(8\)](#) applies to a search conducted under this section.

### Legal professional privilege

**56.** (1) If SARS foresees the need to search and seize *relevant material* that may be alleged to be subject to legal professional privilege, an attorney independent from both parties must be present during the execution of the warrant.

- (2) Where a *taxpayer* during the execution of a warrant alleges the existence of

legal professional privilege in respect of *relevant material*, the material must be preserved until the presence of an independent attorney is secured.

(3) The independent attorney referred to in subsections (1) and (2) must—

- (a) be briefed by SARS but is deemed not to be acting on behalf of SARS; and
- (b) personally take responsibility for the removal from the *premises of relevant material* in respect of which legal privilege is alleged, and keep it in the attorney's possession for a subsequent determination of whether the privilege applies.

(4) If a dispute arises as to whether *relevant material* is subject to legal professional privilege—

- (a) the attorney must through mediation attempt to resolve the dispute; and
- (b) if the attorney is not able through mediation to resolve the dispute, the *judge* or magistrate who issued the warrant, or, if not available, then another *judge* or magistrate as may be tasked, must determine the claim to privilege by way of proceedings *in camera*.

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

57. (1) The person to whose affairs *information* 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 section 22(6) of the *Promotion of Access to Information Act*;
- (b) during normal business hours; and
- (c) under the supervision determined by a *senior SARS official*.

### Application for return of seized relevant material

58. (1) A person may request SARS for the return of some or all of the seized material.

(2) If SARS refuses the request, the person may apply to the relevant division of the High Court for the return of the seized material.

(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 52\(1\)](#) or orders the return of the seized material, the court may nevertheless authorise SARS to retain the

original or a copy of any *relevant material* in the interests of justice.

## CHAPTER 6 CONFIDENTIALITY OF INFORMATION

### General prohibition of disclosure

**59.** (1) This Chapter applies to—

- (a) *SARS information*, which means *confidential information* prepared by or for SARS or disclosed to SARS, but excludes *taxpayer information*; and
- (b) *taxpayer information*, which means any *relevant material* provided by a *taxpayer* or obtained by SARS in respect of the *taxpayer*, including *biometrical 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—

- (a) a *SARS official*, before commencing duties or exercising any powers under a *tax act*; and
- (b) a person referred to in [section 62](#) 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 information* or *taxpayer information* contrary to this Chapter, the person to whom it was so disclosed must not in any manner further disclose, publish or make it known to any other person who is not a *SARS official*.

(4) 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 by a *taxpayer*, the *taxpayer's* representative or other person acting on behalf of the *taxpayer* and published in the media or in any other public manner.

### SARS Information and disclosure

**60.** (1) For purposes of the definition of *SARS information*, confidential information includes:

- (a) personal *information* about a current or former SARS official, whether deceased or not;
- (b) *information* subject to legal professional privilege vested in SARS;

- (c) *information* that was supplied in confidence by a third party to SARS the disclosure of which could reasonably be expected to prejudice the future supply of similar *information*, or *information* from the same source;
- (d) *information* related to investigations and prosecutions described in section 39 of the *Promotion of Access to Information Act*;
- (e) *information* related to the operations of SARS including—
  - (i) an opinion, advice, report or recommendation; or
  - (ii) an account of a consultation, discussion or deliberation that has occurred, obtained or prepared by or on behalf of 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, the disclosure of which *information* could reasonably be expected to frustrate the deliberative process in SARS or between SARS and other organs of state—
    - (aa) by inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or
    - (bb) by premature disclosure of a policy or contemplated policy, reasonably be expected to frustrate the success of that policy;
- (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 not to change a *tax* or a duty, levy, penalty, interest and similar moneys imposed under the *Customs and Excise Act*;
- (h) *information* supplied in confidence by or on behalf of another state or an international organisation to SARS;
- (i) financial, commercial, scientific or technical information, other than trade secrets, of SARS, the disclosure of which would be likely to cause harm to the financial interests of SARS;
- (j) a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by SARS;
- (k) *information* the disclosure of which could reasonably be expected to put SARS at a disadvantage in contractual or other negotiations;

(l) information relating to the security of SARS buildings, property, structures or systems.

(2) Subject to this Chapter, a person who is a current or former *SARS official* must—

(a) not disclose *SARS information* to a person who is not a *SARS official*;

(b) not disclose *SARS information* to a *SARS official* who is not authorised to have access to the *information*; and

(c) 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 the *information* if—

(a) authorised to do so under a policy approved by the *Commissioner*; or

(b) the *information* is public *information*.

### **Secrecy of taxpayer information and disclosure**

**61.** (1) Subject to this Chapter, a person who is a current or former *SARS official* must 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) under any other act which expressly provides for the disclosure of the *information* notwithstanding the provisions in this Chapter, or

(b) subject to subsection (3), by order of a High Court or any higher court.

(3) An application to the High Court contemplated in subsection (2)(b) requires prior notice to *SARS* of at least 15 *days* unless the court, based on urgency, allows a shorter period. *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 *judge* must 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 *biometrical information*.

(4) A person who is not a *SARS official* and who obtains *information* relating to the tax affairs of a *taxpayer* or class of *taxpayers* under this section, [section 62](#) or [63](#) must not disclose the *information* to another person unless the disclosure is necessary to perform the functions of the person who obtained the *information*.

(5) Subsection (1) does not prohibit the disclosure of *information*—

- (a) to the *taxpayer*, or
- (b) with the consent of the *taxpayer*, to another person.

(6) *Biometrical information* of a *taxpayer* must not be disclosed by *SARS* to any person, except under the circumstances described in subsection (2).

### Disclosure for non-tax administration purposes

**62.** (1) A *senior SARS official* may provide to the Director-General of the National Treasury *information* in respect of—

- (a) a *taxpayer* which is an institution referred to in section 3(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), or an 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* or *SARS information*, 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 *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 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 those Regulations;

- (c) 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 their functions under the National Student Financial Aid Scheme Act, 1999 (Act No. 56 of 1999); or
- (d) 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 *Commissioner* is authorised by law to have access.

(3) 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).

(4) Notwithstanding subsections (1) to (3), a *senior SARS official* must 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**

**63.** (1) If so authorised by a court order referred to in subsection (3), SARS must disclose the *information* described in subsection (2) to—

- (a) the National Commissioner of the South African Police Service, referred to in section 6(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995); or
- (b) the National Director of Public Prosecutions, referred to in section 5(2)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998).

(2) Subsection (1) applies to *information* which may reveal evidence—

- (a) that an offence (other than a *tax offence*) has been or may be committed in respect of which a court may impose a sentence of imprisonment exceeding five years;
- (b) that may be relevant to the investigation or prosecution of an offence referred to in subparagraph (a); or
- (c) of an imminent and serious public safety or environmental risk.

(3) The National Commissioner of the South African Police Service, the National Director of Public Prosecutions or a person acting under their direction and control, if —

- (a) carrying out an investigation relating to an offence or a public safety or environmental risk referred to in subsection (2); and
- (b) of the opinion that SARS may have *information* that is relevant to that investigation,

may make an 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 5 *days* unless the court, based on urgency, allows a shorter period.

(4) SARS may oppose the application referred to in subsection (3) 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.

(5) A *senior SARS official* may, if of the opinion that—

- (a) SARS has *information* referred to in subsection (2);
- (b) the *information* will likely be critical to the prosecution of the offence or avoidance of the risk; and
- (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).

### **Self incrimination**

**64.** An admission by the taxpayer of the commission of an offence—

- (a) contained in a *return*, application, or other *document* submitted to SARS by a *taxpayer*; or
- (b) obtained from a *taxpayer* under Chapter 5,

is not admissible in criminal proceedings against the taxpayer, unless a competent court otherwise directs.

### **Disclosure to taxpayer of own record**

**65.** (1) A *taxpayer* is entitled to obtain—

- (a) access to *information* the *taxpayer* submitted to SARS;
- (b) a copy, certified by SARS, of the recorded particulars of any *assessment* relating to the *taxpayer*; and
- (c) other *information* relating to the tax affairs of the *taxpayer*.

(2) A request for *information* under subsection (1)(c) must be made under the *Promotion of Access to Information Act*.



## Publication of names of offenders

66. (1) The *Commissioner* may from time to time publish for general information the particulars specified in subsection (2), relating to a tax offence committed by a person, if—

- (a) the person was convicted of the offence; and
- (b) all appeal or review proceedings relating to the offence have been completed or were not instituted within the period allowed.

(2) The publication referred to in subsection (1) may specify—

- (a) the name and area of residence of the offender;
- (b) any particulars of the offence that the *Commissioner* thinks fit; and
- (c) the particulars of the fine or sentence imposed.

## CHAPTER 7 ADVANCE RULINGS

### Definitions

67. For the purposes of this Chapter, unless the context otherwise indicates, the following terms, if in single quotation marks in this Chapter or appearing in the heading of a Part or a section, have the following meanings—

‘**advance ruling**’ means a ‘general ruling’, a ‘private ruling’, or a ‘class ruling’;

‘**applicant**’ means a person who submits an ‘application’;

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

‘**binding effect**’ has the meaning assigned in [section 74\(1\)](#);

‘**class**’ means—

- (a) shareholders, members, beneficiaries or the like in respect of a *company*, association, pension fund, trust, or the like; or
- (b) a group of persons (who may be unrelated), who are similarly situated in respect of a tax and agree to be represented by an applicant;

‘**class member**’ means a member of the ‘class’ to which a ‘class ruling’ applies;

‘**class ruling**’ has the meaning assigned in [section 70\(2\)](#);

‘**general ruling**’ has the meaning assigned in [section 81\(1\)](#);

‘**private ruling**’ has the meaning assigned in [section 70\(1\)](#);

‘**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 scheme and includes a series of 'transactions'.

## **Purpose**

**68.** 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**

**69.** Subject to [section 72](#), SARS may make an 'advance ruling' on any provision of a *tax act*.

## **Private rulings and class rulings**

**70.** (1) SARS may issue a 'private ruling' upon 'application' by a person in accordance with [section 71](#). A 'private ruling' is 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'.

(2) SARS may issue a 'class ruling' upon 'application' by a person in accordance with [section 71](#). A 'class ruling' is 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'.

(3) SARS may make a 'private ruling' or '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 'private ruling' or 'class ruling' may be issued in the manner and in the form that the *Commissioner* may prescribe, as long as it is signed by a *senior SARS official* and contains the following:

- (a) a statement identifying it as a ‘private ruling’ or as a ‘class ruling’ made under this section;
- (b) the name, tax reference number (if applicable), and postal address of the ‘applicant’;
- (c) in the case of a ‘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;
- (g) the specific ruling made; and
- (h) the period for which the ruling is valid.

(6) In the case of a ‘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.

## Applications

**71.** (1) Subject to the minimum requirements set forth in subsection (4), an ‘application’ must be made in the manner and in the form that the *Commissioner* may prescribe.

(2) An ‘application’ for a ‘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*. 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 ‘class ruling’ may be made by a person on behalf of a ‘class’.

(4) An ‘application’ must contain the following minimum *information*:

- (a) the ‘applicant’s’ name, applicable identification or *taxpayer reference number*, postal address, email address, and telephone number;
- (b) the name, postal address, email address and telephone number of the ‘applicant’s’ representative, if any;
- (c) a complete description of the ‘proposed transaction’ in respect of which the ruling is sought, including its financial implications;
- (d) a complete description of the impact the ‘proposed transaction’ may have upon the

tax liability of the ‘applicant’ or any ‘class member’ or, if relevant, any connected person in relation to the ‘applicant’ or any ‘class member’;

- (e) a complete description of any ‘transaction’ entered into by the ‘applicant’ or ‘class member’ prior to submitting the ‘application’ or that may be undertaken after the completion of the ‘proposed transaction’ which may have a bearing on the *tax* consequences of the ‘proposed transaction’ or may be considered to be part of a series of transactions involving the ‘proposed transaction’;
  - (f) the proposed ruling being sought, including a draft of the ruling;
  - (g) the relevant statutory provisions or legal issues;
  - (h) the reasons why the ‘applicant’ believes that the proposed ruling should be granted;
  - (i) a statement of the ‘applicant’s’ interpretation of the relevant statutory 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, whether those authorities support or are contrary to the proposed ruling being sought;
  - (j) a statement, to the best of the ‘applicant’s’ knowledge, as to whether the ruling requested is referred to in [section 72](#);
  - (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’;
  - (l) the ‘applicant’s’ consent to the publication of the ruling by SARS in accordance with [section 79](#); and
  - (m) in the case of an ‘application’ for a ‘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 73](#).
- (7) SARS must provide an ‘applicant’ with a reasonable opportunity to consult 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. A

withdrawal does not affect the liability to pay fees under [section 73](#). A co-applicant to a ‘private ruling’ or a person referred to in [section 70\(2\)](#) may withdraw from an ‘application’ at any time.

## Rejection of application

**72.** (1) SARS may reject an ‘application’ for an ‘advance ruling’ if—

- (a) the ‘application’ 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; or
  - (vii) whether a person is an independent contractor, labour broker, or personal service provider;
- (b) the ‘application’ 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 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) pending before the courts;
- (c) the ‘application’ involves the application or interpretation of a general or specific anti-avoidance provision or doctrine;
- (d) the ‘application’ 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; or
  - (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;
- (e) the ‘application’ involves a matter the resolution of which would be unduly time-consuming or resource intensive; or
- (f) the ‘application’ requests SARS to rule on the substance of a ‘transaction’ and disregard its form.

(2) The *Commissioner* may publish a list of additional issues 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 73](#).

## Fees

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

- (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.

(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’ and upon request by the ‘applicants’, SARS may impose a single prescribed

fee in respect of the ‘application’.

### **Binding effect**

74. (1) Subject to [sections 76](#), [77](#), and [78](#), if an ‘advance ruling’ applies to a person in accordance with [section 75](#), then SARS must interpret or apply the applicable *tax act* to the person in accordance with the ruling. This requirement is referred to in this Chapter as the ruling having “*binding effect*.”

(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 75](#).

(3) A ‘general ruling’ may be cited by SARS or any person in a proceeding before SARS or the courts.

(4) A private or ‘class ruling’ must not be cited in a proceeding before SARS or the courts other than a proceeding involving an ‘applicant’ or a ‘class member’.

(5) A publication or other written statement issued by SARS does not have ‘binding effect’ unless it is an ‘advance ruling’.

### **Applicability of advance rulings**

75. An ‘advance ruling’ applies to a person only if—

- (a) the person’s set of facts or ‘transaction’ are the same as the particular set of facts or ‘transaction’ specified in the ruling;
- (b) the person’s set of facts or ‘transaction’ fall entirely within the effective period of the ruling;
- (c) any assumptions made or conditions imposed by SARS in connection with the validity of the ruling have been satisfied or carried out;
- (d) in the case of a ‘private ruling’, the person is an ‘applicant’ identified in the ruling; and
- (e) in the case of a ‘class ruling’, the person is a ‘class member’ identified in the ruling.

### **Rulings rendered void**

76. (1) A ‘private ruling’ or ‘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**

**77.** (1) Notwithstanding any provision to the contrary contained in this Act or a *tax act*, an ‘advance ruling’ ceases to be effective if—

- (a) the provision of the *tax act* that was the subject of the ‘advance ruling’ is repealed or amended, 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, 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 the *Commissioner* publishes a notice of withdrawal or modification.

### **Withdrawal or modification**

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

(2) Notice of the withdrawal or modification of a published ‘advance ruling’ must be published in the manner the *Commissioner* deems appropriate.

(3) The notice of withdrawal or modification must include at least —

- (a) the title or number of the ‘advance ruling’ being withdrawn or modified;
- (b) if a modification, a summary of the changes made; and



(c) the effective date of the withdrawal or modification.

(4) If the 'advance ruling' is a private or '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.

(5) SARS may specify the effective date of the decision to withdraw or modify the ruling which date must not be earlier than the date the ruling is delivered to an 'applicant' or in the case of a 'general ruling' the decision is published unless the circumstances in subsection (6) apply.

(6) SARS may withdraw or modify a 'private ruling' or a '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.

(7) Notwithstanding any provision to the contrary contained a *tax act*, an 'advance ruling' ceases to be effective if—

- (a) the provision of the *tax act* that was the subject of the 'advance ruling' is repealed or amended, 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 Act on which the 'advance ruling' is based, 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 dictum*.

(8) An 'advance ruling' ceases to be effective upon the occurrence of any of the circumstances described in subsection (7), whether or not the *Commissioner* publishes a notice of withdrawal or modification.

## Publication

**79.** (1) A person applying for a private or ‘class ruling’ must consent to the publication of the ruling in accordance with this section.

(2) A private or ‘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) An ‘applicant’ for a ‘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.

(7) SARS must treat the publication of the withdrawal or modification of a private or ‘class ruling’ in the same manner and subject to the same requirements as the publication of the original ruling.

(8) Subsection (2) does not—

- (a) require the publication of a ruling that is 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.

## Non binding private opinions

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

(2) A ‘non-binding private opinion’ must not be cited in a proceeding before SARS or the courts other than a proceeding involving the person to whom the opinion was issued.

(3) With respect to any written statement issued by the *Commissioner* prior to the effective date of this Act, the *Commissioner* may prescribe, in writing, the extent to which,

if any, the statement has 'binding effect'.

(4) Except to the extent the *Commissioner* prescribes otherwise in accordance with subsection (3) of this section, any written statement issued by the *Commissioner* prior to the effective date of this Act is to be treated as, and have the effect of, a 'non-binding private opinion'.

## General rulings

**81.** (1) The *Commissioner* may issue 'general rulings'. A 'general ruling' is a written statement issued by the *Commissioner* regarding the interpretation of a *tax act* or the application of a *tax act* to the stated facts and circumstances.

(2) A 'general ruling' may be effective for either—

- (a) a particular *tax period* or other definite period; or
- (b) an indefinite period.

(3) A 'general ruling' must state—

- (a) that it is a 'general ruling' made under this section;
- (b) the provisions of a *tax act* which are the subject of the 'general ruling'; and
- (c) either—
  - (i) the *tax period* or other definite period for which it applies; or
  - (ii) in the case of a 'general ruling' for an indefinite period, that it is for an indefinite period and the date or *tax period* from which it applies.

(4) A 'general ruling' may be issued as an interpretation note or in another form and may be issued in the manner that the *Commissioner* prescribes.

(5) A publication or other written statement does not constitute and must not be considered or treated as a 'general ruling' unless it contains the *information* prescribed by subsection (3).

## Procedures and Guidelines

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

## CHAPTER 8 ASSESSMENTS

### Assessments

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

(2) If a *tax act* requires a *taxpayer* to submit a *return* which incorporates an *assessment* of the amount of *tax* due, the submission of the *return* is a self-*assessment* of the *tax* due.

### Notice of assessment

**84.** (1) *SARS* must give the person assessed notice, whether electronic or otherwise, of an *assessment* made by *SARS*, stating—

- (a) the name of the *taxpayer*;
- (b) the *taxpayer's taxpayer reference number*, if one has been issued;
- (c) the date of issue of the notice;
- (d) the amount of the *assessment*;
- (e) the *tax period* in relation to which the *assessment* is made;
- (f) the *due date* for paying the amount assessed; and
- (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 85](#) or [86](#), a summary of the *information* upon which the *assessment* is based;
- (b) in the case of any other *assessment* that is not based on a *return* submitted by the *taxpayer*, a statement of the grounds for the *assessment*; and
- (c) in the case of a jeopardy *assessment*, the grounds for believing that the *tax* would otherwise be in jeopardy.

(3) The *due date* for payment of *tax* reflected in a notice of *assessment* must not be less than 30 *days* after the date the notice is issued.

### Estimated assessment

85. (1) SARS may make an *assessment* based in whole or in part on an estimate if a person fails to submit a *return* as required.

(2) SARS must make the estimate based on *information* readily available to it.

(3) An estimated *assessment* does not detract from the obligation to submit a *return*, and a person in respect of whom an estimated *assessment* has been issued, may within 30 *days* from the date of the delivery of the *assessment* request SARS to issue a reduced *assessment* by submitting a complete and correct *return*.

(4) If a person is unable to submit an accurate *return*, a *senior SARS official* may agree with the person as to the amount of tax chargeable and issue an *assessment* accordingly, which *assessment* is not subject to objection and appeal.

### Additional assessment

86. (1) Subject to [section 91](#) 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 issue an *additional assessment* to correct the prejudice.

(2) [Section 85](#) and Chapter 16 apply to an *assessment* made by SARS under this section.

(3) SARS must not raise an *assessment* under subsection (1) if any amount which should have been assessed to tax under the *assessment* was, in accordance with the practice generally prevailing at the date of the *assessment*, not assessed to tax, or the full amount of tax which should have been assessed under the *assessment* was, in accordance with the practice, not assessed.

(4) SARS must raise an *additional assessment* despite the fact that an *assessment* may have been made upon the person concerned in respect of the *tax period* in question.

### Reduced assessment

87. (1) A reduced *assessment* must be issued if—

- (a) the taxpayer successfully disputed the *assessment* in terms of Chapter 9; or
- (b) SARS is satisfied that there is an error in the *assessment* as a result of—
  - (i) a processing error by SARS; or

- (ii) an error by the taxpayer in a *return*.
- (2) SARS must not reduce an *assessment* in terms of subsection (1)(b) —
  - (a) after the expiration of the period referred to in [section 91\(1\)](#); or
  - (b) if the *assessment* was made in accordance with the practice generally prevailing at the date of that *assessment*.
- (3) SARS may reduce an *assessment* under subsection (1)(b) notwithstanding the fact that no objection has been lodged or appeal noted.

### Jeopardy assessment

**88.** (1) SARS may make an *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 ground that—
- (a) its amount is excessive; or
  - (b) circumstances that justify a jeopardy *assessment* do not exist.

### Withdrawal of assessment

**89.** (1) SARS may, notwithstanding the fact that no objection has been lodged or appeal noted, withdraw an *assessment*, which—

- (a) was issued to the incorrect *taxpayer*, or
- (b) was issued in respect of the incorrect *tax period*.

(2) SARS must withdraw an *assessment* issued in respect of—

- (a) the estate of a person for the period prior to the date of sequestration; or
- (b) the insolvent estate of a person,

if the sequestration order is set aside.

(3) An *assessment* withdrawn under this section is deemed not to have been issued.

### Recording of assessment

**90.** (1) The particulars of an *assessment* and the amount of *tax* payable thereon

must be recorded and kept by SARS.

(2) The record of an *assessment* is not open to public inspection.

(3) The record of an *assessment*, whether in electronic format or otherwise, may be destroyed by SARS only after the expiration of the period that may be approved by the Auditor-General.

(4) The date of an *assessment* is the date specified in the relevant *tax act*.

### Period of limitations for issuance of assessment

**91.** (1) SARS must not raise an *assessment* in respect of a *tax period*—

(a) three years after the date of an *assessment* by SARS;

(b) five years after the date of an *assessment* by way of self-*assessment* by the taxpayer;

(c) in the case of a *tax* for which no *return* is required, after the expiration of five years from the date of the payment of the tax; or

(d) if the amount which should have been assessed to tax under the *assessment* was, in accordance with the practice generally prevailing at the date of the *assessment*, not assessed to tax, or the full amount of tax which should have been assessed under the *assessment* was, in accordance with the practice, not assessed.

(2) Subsection (1) does not apply if—

(a) the fact that the full amount of *tax* chargeable was not assessed, was due to—

(i) fraud;

(ii) misrepresentation; or

(iii) non-disclosure of material facts, or

(b) SARS and the *taxpayer* so agree prior to the expiry of the limitations period.

### Finality of assessment

**92.** (1) An *assessment* is final if, in relation to the *assessment*—

(a) which is an estimated *assessment* under [section 85](#), no *return* described in [section 85\(3\)](#) has been received by SARS or it is an *assessment* described in [section 85\(4\)](#);

(b) no objection has been made, or an objection has been withdrawn;

(c) after decision of an objection, no valid notice of appeal has been filed;

(d) the dispute has been otherwise resolved through dispute resolution under Chapter 9,

including a decision under section [106\(1\)](#) and [121\(2\)](#); or

(e) an appeal has been determined and there is no right of further appeal.

(2) Subsection (1) does not prevent SARS from making an *additional assessment* in accordance with [section 86](#).

## CHAPTER 9 DISPUTE RESOLUTION

### *Part A*

### *General*

#### **Definitions**

**93.** For the purposes of this Chapter, unless the context otherwise indicates, the following terms, if in single quotation marks in this Chapter or appearing in the heading of a Part or a section, have the following meanings—

‘**appellant**’, except in Part E of this Chapter, means a person who has noted an appeal against an *assessment* as referred to in [section 99](#);

‘**registrar**’ means the registrar of the *tax court* appointed under [section 113](#); and

‘**rules**’ mean the rules made under [section 95](#).

#### **Burden of proof**

**94.** (1) The burden of proof whether —

(a) an amount, transaction, event or item is not taxable;

(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;

(d) an amount qualifies as a reduction of tax payable, or

(e) any other decision that is subject to objection and appeal under a *tax act* is incorrect, is upon the taxpayer.

(2) The burden of proving the facts on which SARS based the imposition of additional *tax* under Chapter 16 is upon SARS.



## Rules for dispute resolution

95. (1) The *Minister* may, after consultation with the Minister of Justice and Constitutional Development, by publication by notice in the *Gazette* make 'rules' governing the procedures to lodge an objection and appeal against an *assessment*, 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 the *Commissioner* and the person aggrieved by an *assessment* may resolve a dispute.

### *Part B*

#### *Objection and appeal*

### Objection against assessment or decision

96. (1) A *taxpayer* who is aggrieved by an *assessment* made in respect of the *taxpayer* may object to the *assessment*.

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

- (a) a decision under subsection (4) not to extend the period for lodging an objection;
- (b) a decision under [section 99\(2\)](#) not to extend the period for lodging an appeal; and
- (c) any other decision that may be objected to or appealed against under a *tax act*.

(3) A *taxpayer* entitled to object to an *assessment* or decision must lodge an objection in the manner, under the terms, and within the period prescribed in the 'rules'.

(4) A *senior SARS official* may extend the period prescribed in the 'rules' within which objections must be made if satisfied that reasonable grounds exist for the delay in lodging the objection.

(5) The period for objection must not be so extended—

- (a) for a period exceeding 30 *days*, unless 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 the *assessment*; or
- (c) if the grounds for objection are based wholly or mainly on any change in practice generally prevailing which applied on the date of that *assessment*.

## Forum for dispute of assessment

**97.** A *taxpayer* must not dispute an *assessment* as described in section 96 in any Court or other proceedings, except in proceedings under this Chapter or by application to the High Court for review.

## Decision on objection

**98.** (1) *SARS* must consider a valid objection and, in the manner and within the period prescribed under this Act and the ‘rules’, may disallow it or allow it either in whole or in part.

(2) If the objection is allowed either in whole or in part, the *assessment* must be altered accordingly.

(3) *SARS* must, by notice, inform the *taxpayer* objecting or the *taxpayer’s* representative of the *SARS* decision referred to in subsection (1).

(4) The notice must state the basis for the decision and a summary of the procedures for appeal.

## Appeal against assessment

**99.** (1) After delivery of the notice of the decision referred to in [section 98](#), a *taxpayer* objecting to an *assessment* may appeal against the *assessment* to the *tax board* or *tax court* in the manner, under the terms, and within the period prescribed in this Act and the ‘rules’.

(2) A *senior SARS official* may extend for 30 *days* the period within which an appeal must be lodged, if satisfied that reasonable grounds exist for the delay, and for up to 90 *days* if exceptional circumstances exist that justify an extension beyond 30 *days*.

(3) A notice of appeal that does not satisfy the requirements of subsection (1) is not valid.

(4) If an *assessment* has been altered under [section 98\(2\)](#), the *assessment* as altered is the *assessment* against which the appeal is noted.

(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’. Under the ‘rules’, proceedings on the appeal are suspended while the

alternative dispute resolution procedure is ongoing.

*Part C*  
*Tax Board*

**Establishment of tax board**

**100.** (1) The *Minister* by notice in the *Gazette* may—

- (a) establish a *tax board* or boards for areas that the *Minister* thinks fit; and
- (b) abolish an existing tax board or establish an additional tax board as circumstances may require.

(2) Tax boards are established under subsection (1) to hear appeals referred to in [section 99](#) in the manner provided in this Part.

**Jurisdiction of tax board**

**101.** (1) An appeal against an *assessment* 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 from time to time by notice in the *Gazette*; and
- (b) SARS and the ‘appellant’ so agree.

(2) SARS must designate the places where *tax boards* hear appeals.

(3) The *tax board* must hear an appeal at the place referred to in subsection (2) which is closest to the ‘appellant’s’ residence, unless the ‘appellant’ and SARS agree that the appeal be heard at another place.

(4) In making a decision under subsection (1)(b), a *senior SARS official* must consider whether the grounds of the dispute or legal principles related to the appeal, should rather be heard by the *tax court*.

(5) If the Chairperson prior to or during the hearing, considering the grounds of the dispute or the legal principles related to the appeal, believes that the appeal should be heard by the *tax court* rather than the *tax board*, the Chairperson may direct that the appeal be set down for hearing de novo before the *tax court*.

## Constitution of tax board

**102.** (1) A *tax board* consists of—

- (a) the Chairperson who must be an advocate or attorney from the panel appointed under [section 103](#); and
  - (b) if the Chairperson, the a *senior SARS official*, or the *taxpayer* considers that person necessary—
    - (i) an accountant who is a member of the panel referred to in [section 112](#); and
    - (ii) a representative of the commercial community who is a member of the panel referred to in [section 112](#).
- (2) [Sections 114](#) and [115](#) , [116](#), [118](#), [119](#), [120](#) apply, with the necessary changes, and under procedures determined in the ‘rules’, to the *tax board* and the chairperson.

## Appointment of chairpersons

**103.** (1) The *Minister* must, in consultation with the Judge-President of the Provincial Division within the jurisdiction where the *tax board* is to sit, by notice in the *Gazette* 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 Gazetted; 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 and for any reason that the *Minister* considers good and sufficient.

(4) A member of the panel must be appointed as Chairperson of a *tax board*.

## Clerk of tax board

**104.** (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.

(4) The clerk of the *tax board* must, within the period and in the manner provided in

the ‘rules’, submit a notice to the members of the *tax board* and the ‘appellant’ specifying the time and place for the hearing.

### **Tax board procedure**

**105.** (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. Each party must have the opportunity to put the party’s case to the *tax board*.

(2) The *tax board* is not required to record its proceedings.

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

(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*.

(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*, that ‘third party’ may appear on the ‘appellant’s’ behalf.

(8) The ‘appellant’ or the person serving ‘appellant’ in a representative capacity 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* in respect of which the appeal has been lodged—

(a) at the request of the *SARS* representative; and

(b) on proof that the ‘appellant’ was furnished the notice of the sitting of the *tax board*.

(10) If the board confirms an *assessment* under subsection (9), the ‘appellant’ may not thereafter request that the appeal be referred to the *tax court* under [section 107](#).

(11) If the *SARS* representative fails to appear before the *tax board* at the time and place set for the hearing, at the ‘appellant’s’ request, the *tax board* may allow the ‘appellant’s’ appeal.

(12) If the court allows the appeal under subsection (11), SARS must not thereafter refer the appeal to the *tax court* under [section 107](#).

(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 *days* after the date determined for the hearing or the longer period as may be allowed in exceptional circumstances.

### **Decision of tax board**

**106.** (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 90 *days* after conclusion of the hearing.

(3) The clerk must by notice in writing submit a copy of the *tax board’s* decision to SARS and the ‘appellant’.

### **Referral of appeal to tax court**

**107.** (1) If the ‘appellant’ is dissatisfied with the *tax board’s* decision or the Chairperson fails to deliver the decision under section 106(2) within the prescribed 90 *day* period, the ‘appellant’ may within 30 *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 106\(3\)](#) or the expiry of the period referred to in section 106(2), require, in writing, that the appeal be referred to the *tax court* for hearing.

(2) If SARS is dissatisfied with the *tax board’s* decision, SARS may within 30 *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 106\(3\)](#), require, in writing, that the appeal be referred to the *tax court* for hearing.

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

*Part D*  
*Tax Court*

**Establishment of tax court**

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

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

**Jurisdiction of tax court**

**109.** (1) The *tax court* has jurisdiction over *tax* appeals in terms of this Chapter.

(2) The place where an appeal is heard is determined by the ‘rules’.

(3) The court may hear an interlocutory application relating to an objection or appeal and may decide on a procedural matter as provided for in the ‘rules’.

**Constitution of tax court**

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

- (a) a *judge* or an acting *judge* of the High Court, who is the President of the *tax court* (hereinafter referred to as “the President”);
- (b) an accountant selected from the panel of members appointed in terms of [section 112](#); and
- (c) a representative of the commercial community selected from the panel of members appointed in terms of [section 112](#).

(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 qualified mining engineer; or
- (b) if the appeal involves the valuation of assets, be a sworn appraiser.

(3) If an appeal to the *tax court* involves a matter of law only or is an application for

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

(4) The President of the court alone decides whether a matter for decision involves a matter of fact or a matter of law.

(5) The Judge-President of the Provincial 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 (2), if applicable, if—

- (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**

**111.** (1) The Judge-President of the Provincial Division of the High Court with jurisdiction in the area for which a *tax court* has been constituted must nominate and second a *judge* or an acting *judge* of the division to be the President of that *tax court*.

(2) The Judge-President must determine whether the secondment referred to in subsection (1) applies for a period, or for the hearing of particular cases.

(3) A *judge* will not solely on account of his or her liability to be assessed under a *tax act* be deemed to be have a personal interest or have a conflict of interest in any matter upon which he or she may be called upon to adjudicate.

### **Appointment of panel of tax court members**

**112.** (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 110\(1\)\(b\)](#) and [\(c\)](#) with terms of office for five years from the date of the relevant proclamation.

(2) A person appointed in terms of subsection (1) must be a person of good standing who has appropriate experience.

(3) A person appointed in terms of subsection (1) is eligible for re-appointment for a further period or periods as the President of the Republic may think fit.

(4) The President of the Republic may terminate the appointment of a member under this section at any time and for any reason which the President considers good and



sufficient.

(5) A member's appointment lapses in the event that the *tax court* is abolished under [section 108\(1\)](#).

(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**

**113.** (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.

### **Conflict of interest**

**114.** (1) A member of the court must withdraw from the proceedings as soon as the member becomes aware of a conflict of interest as defined in the 'rules' 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.

(2) Either party may ask for withdrawal of a member on the basis of conflict of interest, under procedures provided in the 'rules'.

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

**115.** (1) If at any stage during the hearing of an appeal, or after hearing of the appeal but before judgment has been handed down—

- (a) 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*, unless the court consists of three *judges*, as contemplated in [section 110\(5\)](#), and the remaining *judges* constitute the majority of *judges* before whom the hearing was commenced, in which case the hearing must proceed before the remaining *judges* and members; or
- (b) one of the members dies, retires or becomes otherwise incapable of acting in that

capacity, the hearing of an appeal must proceed before the President and remaining members.

(2) If at any stage during or after the hearing of an appeal, but before judgment has been handed down, the President dies, retires, or becomes incapable of acting in that capacity, the appeal must be heard *de novo*.

(3) If the Court has been constituted under [section 110\(5\)](#), the hearing of the appeal referred to in section (1) must proceed before the remaining *judges* and members, if the remaining *judges* constitute the majority of *judges* before whom the hearing was commenced.

(4) 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 other *judges*, the remaining member, and, if the President deems it necessary, a replacement member.

(5) 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**

**116.** The *tax court* sittings are not public.

### **Appearance at hearing of tax court**

**117.** (1) A *SARS official* referred to in [section 11](#) may appear at the hearing of an appeal in support of the *assessment*.

(2) The ‘appellant’ and a person who is interested in the appeal may appear in person or be represented by a counsel, attorney, or agent.

### **Subpoena of witness**

**118.** *SARS*, the ‘appellant’ or the President of a *tax court* may subpoena any witness in the manner prescribed in the ‘rules’, whether or not that witness resides within the *tax court’s* area of jurisdiction.

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

**119.** (1) A person subpoenaed under [section 118](#) is liable to the fine or imprisonment specified in subsection (2), if the person without reasonable cause fails to—

- (a) give evidence at the hearing of an appeal;
- (b) remain in attendance throughout the proceedings unless excused by the President of the *tax court*; or
- (c) produce a *document* or *thing* in the person's possession or under the person's control according to the subpoena without reasonable cause to produce the *document* or *thing*.

(2) The President of the *tax court* may impose a fine or, in default of payment, imprisonment for a period not exceeding three months, on a person described in subsection (1) upon being satisfied by—

- (a) oath or solemn declaration; or
- (b) the *return* of the person by whom the subpoena was served,

that the person has been duly subpoenaed and that the person's reasonable expenses have been paid or offered.

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

(4) A fine imposed under subsection (2) is enforceable as if it were a *penalty* imposed by a High Court in similar circumstances and any laws applicable in respect of a *penalty* imposed by a High Court apply with the necessary changes in respect of the fine.

(5) The President of the *tax court* may, on good cause shown, remit the whole or any part of the fine or imprisonment imposed under subsection (2).

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

### Contempt of tax court

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

- (a) wilfully insults a *judge*, member or officer of the *tax court* attending the sitting;

(b) wilfully interrupts the *tax court* proceedings; or  
(c) otherwise misbehaves in the place where the hearing is held,  
the President of the *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).

### Decision by tax court

**121.** (1) The *tax court*, after hearing the 'appellant's' appeal against a SARS decision, must decide the matter on the basis that the burden of proof as described in [section 94\(1\)](#) is upon the *taxpayer*.

(2) In the case of an *assessment* under appeal, the *tax court* may—

- (a) confirm the *assessment*;
- (b) order the *assessment* 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 additional *tax* or duty imposed by SARS under a *tax act*, the *tax court* may reduce, confirm, or increase the additional *tax* or duty so imposed.

(4) In the case of any other SARS decision subject to appeal, the *tax court* may confirm or amend the decision.

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

### Order for costs

**122.** (1) The *tax court* may, on application by an aggrieved party, grant an order for costs in favour of the party, if—

- (a) the SARS claim is held to be unreasonable;
- (b) the 'appellant's' grounds of appeal are held to be frivolous;
- (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.

(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 judgement**

**123.** The ‘registrar’ must notify the ‘appellant’ and *SARS* of the court’s decision within the period and in the manner prescribed in the ‘rules’.

### **Publication of judgment**

**124.** A judgment of the *tax court* must be published for general *information* in a form that does not reveal the ‘appellant’s’ identity.

## *Part E*

### *Appeal against tax court decision*

#### **Appeal against decision of tax court**

**125.** (1) The *taxpayer* or *SARS* may in the manner provided for in the ‘rules’, appeal against a decision of the *tax court*.

(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—

(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 110\(5\)](#).

## Notice of intention to appeal

**126.** (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 *days* after the date of the notice by the ‘registrar’ notifying the parties of the *tax court’s* decision under [section 123](#), or within a further period as the President of the *tax court* may on good cause shown allow, lodge with the ‘registrar’ and 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) if the appellant wishes the appeal to be heard by the Supreme Court of Appeal, 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—

- (a) requires 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) requires a copy of the recording of the evidence or a part thereof from the ‘Registrar’ for purposes of private transcription, pay the fees prescribed for the copy 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

**127.** (1) If the ‘appellant’ requests the appeal to be heard by the Supreme Court of Appeal, the ‘registrar’ must submit the notice of intention to appeal lodged under [section 126\(1\)](#) to the President of the *tax court*, who must make an order granting or refusing leave to appeal to that Court, 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 Provincial Division of the High Court with jurisdiction in the area for which the *tax court* has been constituted, 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**

**128.** (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 126](#) abandons, subject to any right to note a cross appeal, the right of appeal against the decision.

(2) A person who under [section 126](#) 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**

**129.** (1) After the expiry of the time allowed under [section 126\(1\)](#) 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 *days* after the date of the ‘registrar’s’ notice; and
- (b) supply to the person referred to in paragraph (a) a certified copy of any order related to the intended appeal that the President of the *tax court* made under [section 127](#).

(2) If it appears that the President of the *tax court* will make an order under [section 127](#) or if an intending ‘appellant’ requires a transcript of evidence given at the hearing of the case by the *tax court* as envisaged in [section 126\(2\)\(c\)](#), the ‘registrar’ must not give notice under subsection (1)(a) until the order has been made or the transcript has been completed.

(3) If the opposite party is not also an intending ‘appellant’ in the same case, the ‘registrar’ must provide to the opposite party copies of the notice and any order referred to

in subsection (1)(a) and (b).

### Notice of appeal to Supreme Court of Appeal

**130.** (1) If a person has—

- (a) appealed to the Supreme Court of Appeal from a court established under [section 110\(5\)](#).
  - (b) been granted leave to appeal to the Supreme Court of Appeal under [section 127](#); 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.

(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 127](#), the party who lodged the notice of intention to appeal must note an appeal to the appropriate Provincial Division of the High Court.

(3) The notice of appeal must be lodged within the period referred to in [section 129\(1\)\(a\)](#) 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 rule of the relevant higher court.

(5) If the intending ‘appellant’ requests that the appeal be heard by the Supreme Court of Appeal, the notice of appeal must include a copy of the order by the President of the *tax court* granting leave to appeal to that Court.

### Notice of cross-appeal

**131.** (1) A cross-appeal against a decision of the *tax court* in a case in which an appeal has been lodged under [section 130](#), must be noted by lodging a written notice of cross-appeal with the ‘registrar’, the opposite party or the opposite party’s attorney, and the ‘registrar’ of the court to which the cross-appeal is noted.

(2) The notice of cross-appeal must be lodged within 21 *days* after the date the appeal is noted under [section 130](#) or within a longer period as may be allowed under the rules of the court to which the cross-appeal is noted.

(3) A notice of cross-appeal must state—



- (a) whether the whole or only part of the judgment is appealed against, and if a part, which part;
- (b) the grounds of cross-appeal specifying the findings of fact or rulings of law appealed against; and
- (c) any further particulars that may be required under the rules of the court to which the cross-appeal is noted.

### **Record of appeal**

**132.** (1) The record lodged with a court to which an appeal against a decision of a *tax court* is noted, includes all *documents* placed before the *tax court* under the ‘rules’.

(2) *Documents* submitted in the *Tax Court* which do not relate to the matters in dispute in the appeal may be excluded from the record with the consent of the parties.

### **Abandonment of judgment**

**133.** (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.

(2) A notice of abandonment becomes part of the record.

## *Part F*

### *Settlement of dispute*

### **Definitions**

**134.** For the purposes of this Part, unless the context otherwise indicates, the following terms, if in single quotation marks in this Part or appearing in the heading of a section, have the following meanings—

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

‘**settle**’ means 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 position, and

‘settlement’ must be construed accordingly.

### **Purpose of part**

**135.** (1) A basic principle in *tax* law is that it is the duty of *SARS* to assess and collect *tax* according to the laws enacted by Parliament; and not to forgo a *tax* which is properly chargeable and payable.

(2) Circumstances may require that the strictness and rigidity of this basic principle be tempered, if such flexibility is to the best advantage of the state.

(3) The purpose of this Part is to prescribe the circumstances in which it is appropriate for *SARS* to temper the basic principle and ‘settle’ a ‘dispute’.

### **Nature of settlement procedure**

**136.** (1) ‘Settlement’ procedure is informal and independent of any objection or appeal proceedings. It can be pursued concurrently with the proceedings or in their absence. It provides a means of resolving a case which is in addition to the proceedings, to alternative ‘dispute’ resolution, or to concession of the case by either party.

(2) Either party to a ‘dispute’ may initiate a ‘settlement’ procedure at any time by communication with the other party.

(3) Neither *SARS* nor the *taxpayer* has the right to require the other party to engage in a ‘settlement’ procedure.

### **Circumstances in which settlement is inappropriate**

**137.** 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 138](#) exist and—
- (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 clearly established *SARS* practice and no exceptional circumstances exist to justify a departure from the law or practice; or
  - (iii) the person concerned has not complied with the provisions of a *tax act* and the

non-compliance is of a serious nature;

- (b) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose; or
- (c) the pursuit of the matter through the courts will significantly promote *taxpayer* compliance with a *tax act* and the case is suitable for this purpose.

### **Circumstances where settlement is appropriate**

**138.** The *Commissioner* personally, or a *senior SARS official* delegated by him for this purpose may, if it is to the best advantage of the state, 'settle' a 'dispute', in whole or in part, on a basis that is fair and equitable to both the person concerned and to *SARS*, having regard to—

- (a) whether the 'settlement' would be in the interest of good management of the *tax* system, overall fairness, and the best use of *SARS* resources;
- (b) the cost of litigation in comparison to the possible benefits with reference to—
  - (i) the prospects of success in court;
  - (ii) the prospects of the collection of the amounts due; and
  - (iii) the costs associated with collection;
- (c) whether there are any—
  - (i) complex factual issues in contention; or
  - (ii) evidentiary difficulties,which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative 'dispute' resolution procedures or the courts;
- (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
- (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**

**139.** (1) The person participating in a 'settlement' procedure must disclose all relevant facts during the discussion phase of the process of *settling* a 'dispute'.

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

(3) *Disputes* settled in whole or in part must be evidenced by an agreement between the parties in the format prescribed by SARS and must include details on—

- (a) how each particular issue is *settled*;
- (b) relevant undertakings by the parties;
- (c) treatment of the issue in future years;
- (d) withdrawal of objections and appeals; and
- (e) arrangements for payment.

(4) The *Commissioner* may establish 'settlement' committees comprising of *senior SARS officials* to authorise 'settlements'.

(5) The agreement must be signed by a *senior SARS official* or the chairperson of a 'settlement' committee and by the person concerned.

(6) 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.

(7) SARS must, if the 'dispute' is not ultimately settled, explain to the person concerned the further rights of objection and appeal.

(8) Subject to [section 140](#), the agreement and terms of a 'settlement' agreement must remain confidential, unless SARS and the person concerned agree otherwise.

(9) 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.

(10) 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* delegated under [section 138](#) may—

- (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 the relevant *tax act* in full and final settlement of the dispute.

## **Register of settlements and reporting**

**140.** (1) SARS must—

- (a) maintain a register of all ‘disputes’ ‘settled’ under this Part; and
  - (b) fully document the process under which each ‘dispute’ is ‘settled’.
- (2) SARS must provide an annual summary of ‘settlements’ to the Auditor-General and to the *Minister*.
- (3) The summary referred to in subsection (2) must be submitted by no later than the date on which the annual report for SARS is submitted to Parliament for the year and must—
- (a) be in a format which, subject to [section 62\(3\)](#), does not disclose the identity of the person concerned; and
  - (b) contain details, arranged by main classes of *taxpayers* or sections of the public, of the number of ‘settlements’, the amount of *tax* forgone, and the estimated savings in litigation costs.

### Alteration of assessment on settlement

**141.** (1) If a *dispute* between SARS and the person aggrieved by an *assessment* is ‘settled’ under this Part, SARS may, notwithstanding anything to the contrary contained in a *tax act*, alter the *assessment* to give effect to the ‘settlement’.

(2) An altered *assessment* referred to in subsection (1) is not subject to objection and appeal.

## CHAPTER 10 TAX LIABILITY AND PAYMENT

### *Part A*

#### *Taxpayers*

### Definitions

**142.** For the purposes of this Part, unless the context otherwise indicates, the following terms, if in single quotation marks in this Part or appearing in the heading of a section, have the following meanings—

**‘fair market value’**, means the price which could be obtained upon a sale of property between a willing buyer and a willing seller dealing at arm’s length in an open market;

**‘responsible third party’** has the meaning assigned under [section 150](#);

‘withholding agent’ has the meaning assigned under [section 148](#).

## Taxpayer

**143.** For purposes of this Act, taxpayer means—

- (a) a person chargeable to *tax*;
- (b) a *representative taxpayer*;
- (c) a ‘withholding agent’; or
- (d) a ‘responsible third party’.

## A person chargeable to tax

**144.** 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

**145.** (1) For the purposes of this Act, a *representative taxpayer* means a person who is responsible for paying the *tax* liability of another person as an agent, other than as a ‘withholding agent’, and includes a person who—

- (a) is a *representative taxpayer* in terms of the *Income Tax Act*;
- (b) is a *representative employer* in terms of the Fourth Schedule to the *Income Tax Act*;
- (c) is a *representative vendor* in terms of section 46 of the *Value-Added Tax Act*; or
- (d) is otherwise responsible for paying the *tax* liability of another person as an agent, other than as a ‘withholding agent’.

(2) A person who becomes a *representative taxpayer* must notify SARS thereof within 21 *days* in the form that the *Commissioner* may prescribe.

## Liability of representative taxpayer

**146.** A *representative taxpayer* is, to the extent provided by a *tax act*—

- (a) subject to the duties, responsibilities, and liabilities of the person or entity represented;
- (b) entitled to any abatement, deduction, exemption, right to set off a loss, and other

- items that could be claimed by the person represented; and
- (c) liable for the amount specified by the *tax law*.

### **Personal liability of representative taxpayers**

**147.** A *representative taxpayer* is personally liable for *tax* payable in the *representative taxpayer's* 's representative capacity, if, while it remains unpaid—

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

### **Withholding agent**

**148.** For the purposes of this Act, 'withholding agent' means a person who must under a *tax act* withhold an amount of *tax* and pay it to SARS.

### **Personal liability of withholding agent**

**149.** A 'withholding agent' is personally liable for an amount of *tax* withheld and not paid to SARS or for an amount of *tax* which should have been withheld under a *tax act* but was not so withheld.

### **Responsible third party**

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

### **Personal liability of responsible third party**

**151.** A 'responsible third party' is personally liable to the extent described in Part D of

## Chapter 11.

**Right to indemnity**

**152.** A *representative taxpayer*, 'withholding agent' and '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.

**Security**

**153.** (1) A *senior SARS official* may require security from a person who is a *taxpayer* to safeguard the collection of *tax* by SARS, if the person—

- (a) was previously held liable in the person's personal capacity under this part;
- (b) has been convicted of a *tax offence*;
- (c) has repeatedly failed to pay amounts of tax due;
- (d) has repeatedly failed to carry out other obligations imposed under any *tax act*; or
- (e) is under the management or control of a person who is or was a person contemplated in paragraph (a) to (d);

(2) If security is required, SARS must by written notice to the person, within such period that SARS may allow, require the person to furnish to or deposit with SARS security for the payment of any *tax* which has or may become payable by the person in terms of a *tax act*.

(3) The security must be of such nature, for such amount and in such form that SARS may direct.

(4) A *senior SARS official* may, having regard to the circumstances of a person which is not a natural person, require of any or all of the members, shareholders or trustees involved in the management of the person to enter into a contract of suretyship in respect of the person's liability for tax which may arise from time to time.



*Part B*  
*Payment of tax*

**Determination of day, time and place for payment of tax**

**154.** (1) Tax must be paid on 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 instalments as may be determined by SARS having regard to the circumstances of the case.

(2) SARS may prescribe the method of payment of tax.

(3) Despite [section 84\(3\)](#) and [section 159](#), a *senior SARS official* may, if there are reasonable grounds to believe that—

- (a) a *taxpayer* will not pay the full amount of *tax*;
  - (b) a *taxpayer* will dissipate the *taxpayer's* assets; or
  - (c) that recovery may become difficult in the future,
- require the *taxpayer* to—

- (i) pay the full amount immediately upon receipt of the notice of *assessment* or a notice described in [section 159\(6\)](#) or within the period as the official deems appropriate under the circumstances; or
- (ii) provide such security as the *Commissioner* deems necessary.

**Preservation of assets order**

**155.** (1) If a *taxpayer* fails to comply with [section 154\(3\)](#), SARS may, 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 until instituting an application for a preservation of assets order described in subsection (2), which application must commence with 24 hours from the time of seizure of the assets.

(2) A *senior SARS official* may, under the circumstances described in subsection (1), 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 property to which the order relates.

(3) A preservation of assets order may be made—

- (a) in respect of the realisable property as may be specified in the order and which is

held by the person against whom the preservation order is being made;

- (b) in respect of all realisable property held by the person, whether it is specified in the order or not; or
- (c) in respect of all property which, if it is transferred to the person after the making of the preservation order, would be realisable property.

(4) A preservation of assets order must provide for notice to be given to a person affected by the order.

(5) A 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 *day* mentioned in the rule to appear and to show cause why the preservation order should not be made final; and
- (c) upon application by *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.

(6) For purposes of the notice or rule required under subsection (4) or (5)(b), if the *taxpayer* or other person has been absent during a period of 21 *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.

(7) A High Court, in granting a preservation order, may make any ancillary orders regarding how the assets must be dealt with, including—

- (a) authorising the seizure of all movable property;
- (b) appointing a *curator bonis* in whom the assets of that *taxpayer* or another person liable for *tax* vests;
- (c) 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 family or household, if the court is satisfied that the person has disclosed under oath all direct or indirect interests in property subject to the order and that the person cannot meet the expenses concerned out of his or her unrestrained property; or
- (d) any other order that the court considers appropriate for the proper, fair and effective execution of the order.

(8) A High Court making a preservation order may also make such further order in

respect of the discovery of any facts including facts relating to any property over which the *taxpayer* or other person may have effective control and the location of the property as the court may consider necessary or expedient with a view to achieving the objects of the preservation order.

(9) A preservation order remains in force pending the outcome of an appeal, if any, against the preservation order.

(10) A High 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 property concerned or other ancillary order if it is satisfied that the—

- (a) operation of the order concerned will deprive the applicant of the means to provide for his or her reasonable living expenses and cause undue hardship for the applicant; and
- (b) hardship that the applicant will suffer as a result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred.

(11) A High Court which made a preservation order must rescind the order when the proceedings against the person are concluded.

### **Payment of tax pending objection or appeal**

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

- (a) the obligation to pay *tax* chargeable under this Act; and
- (b) the right of SARS to receive and recover *tax* (except in the manner described in [section 169](#)) chargeable under this 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 125](#).

(2) A taxpayer may request a *senior SARS official* to suspend the payment of any tax or a portion thereof due under an *assessment* where the liability to pay that tax is disputed.

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

- (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) if the taxpayer is able to provide adequate security for the payment of the amount involved;
- (e) if payment of the amount involved would result in irreparable financial hardship to the taxpayer;
- (f) whether sequestration or liquidation proceedings are imminent;
- (g) if fraud is involved in the origin of the dispute, or
- (h) if the taxpayer has failed to furnish any information requested under this Act for purposes of a decision under this section.

(4) A *senior SARS official* may deny a request in terms of subsection (3) 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;
- (b) the taxpayer is employing dilatory tactics in conducting the objection or appeal;
- (c) on further consideration of the factors contemplated in (3), the suspension should not have been given; or
- (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.

(5) If an *assessment* is altered in accordance with—

- (a) an objection or appeal;
- (b) a decision of a court of law pursuant to an appeal under [section 125](#); or
- (c) a decision by SARS to concede the appeal to the *tax board* or the *tax court* or that 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 being recoverable with interest calculated as provided in section 179(1).

(6) The payment by the *Commissioner* of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the National Revenue Fund.

(7) The provisions of Chapter 13 apply with the necessary changes in respect of any amount refundable and any interest payable by the *Commissioner* under this section.

*Part C**Taxpayer Account and Allocation of Payments***Taxpayer account**

**157.** (1) SARS must maintain a taxpayer account for each *taxpayer* reflecting all taxes due under the *tax acts* as and when possible in respect of each tax type.

(2) 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;
- (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.

(3) From time to time, SARS must send to the *taxpayer* a statement of the account, reflecting the amounts currently due and any details that SARS considers appropriate.

**Allocation of payments**

**158.** (1) Notwithstanding anything to the contrary contained in a *tax act*, SARS may, subject to subsection (4), 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 for which payment has been suspended under this Act.

(2) For purposes of subsection (1), SARS may apply the first in first out principle in respect of a specific *tax* type, a group of *tax* types or all *tax* types in the manner that may be determined by the *Commissioner*.

(3) SARS may apply the first in first out principle in respect of a specific *tax* type, a group of *tax* types or all *tax* types in the manner determined by the *Commissioner*.

(4) In the event a payment in subsection (1) is insufficient to extinguish all *debts* of the same age, the amount of the payment may be allocated among these *debts* that may be determined by the *Commissioner*.

(5) 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**

**159.** (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 instalments, if satisfied that—

- (a) criteria or risks that may be prescribed by the *Commissioner* have been duly taken into consideration; and
- (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.

(4) *SARS* may terminate an instalment payment agreement if the *taxpayer* fails to pay an instalment or to otherwise comply with its terms.

(5) A *senior SARS official* may modify or terminate an instalment payment agreement if satisfied that—

- (a) the collection of *tax* is in jeopardy;
- (b) the *taxpayer* has furnished materially incorrect *information* in applying for the agreement; or
- (c) the financial condition of the *taxpayer* has materially changed.

(6) A termination referred to in subsection (4) and (5)(a) takes effect as at the date stated in the notice of termination sent to the *taxpayer*. A termination or modification referred to in subsection (5)(b) or (c) takes effect 30 days after notice of the termination is sent to the *taxpayer*.

**Criteria for instalment payment agreement**

**160.** 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 reasonably certain to be remedied in the future;
- (b) the *taxpayer* anticipates income or other receipts which can be used to satisfy the *tax debt*;
- (c) prospects of immediate collection activity are poor or uneconomical but are likely to improve in the future; or
- (d) collection activity would be harsh in the particular case and the deferral or instalment agreement is unlikely to prejudice *tax* collection.

## CHAPTER 11 RECOVERY OF TAX

### *Part A*

#### *General*

#### **Debt due to SARS**

**161.** (1) An amount of *tax* due in terms of a *tax act* is a *tax debt* due or payable to SARS for the benefit of the National Revenue Fund.

(2) A *tax* due and payable is recoverable by SARS under this Chapter, and is recoverable from any assets of the taxpayer, whether directly or indirectly held.

(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 or the organ of State or institution concerned.

(4) If a *taxpayer* fails to pay a *tax debt* when due and payable, the costs that are incurred by SARS in collecting the debt may be collected by SARS.

(5) The fees imposed under this section constitute fees imposed by SARS within the meaning of section 5(1)(h) the *SARS Act*, and constitute funds of SARS within the meaning of section 24 of that Act.

(6) A reference to *tax* in this Chapter is considered to include a reference to the collection costs.

### **Evidence as to assessment**

**162.** The production of a *document* issued by SARS purporting to be a copy of or an extract from a notice of *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 particulars of the *assessment* are correct.

### **Period of limitations on collection**

**163.** Proceedings for recovery of a *tax debt* may no longer be initiated after the expiration of fifteen years from the date the *assessment* of *tax* becomes final.

## *Part B*

### *Judgment Procedure*

#### **Application for civil judgment for recovery of tax**

**164.** (1) If a person fails to pay *tax* when it is payable, SARS may, after giving the person at least seven *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.

(2) 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 tax.

#### **Jurisdiction of Magistrates’ Court**

**165.** Notwithstanding anything to the contrary in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), the certified statement referred to in [section 164](#) may be filed with the clerk of the Magistrate’s court that has jurisdiction over the *taxpayer* named in the statement.

#### **Effect of statement**

**166.** A certified statement filed under [section 164](#) 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**

**167.** (1) Subject to subsection (2), SARS may amend the amount of the *tax* due specified in the statement filed under [section 164](#) if, in the opinion of SARS, the amount in the statement is incorrect.

(2) The amendment of the statement referred to in subsection (1) is not effective until it is initialled by the clerk of the court.

### **Withdrawal of statement and reinstatement of proceedings**

**168.** (1) SARS may withdraw a certified statement filed as provided under [section 164](#) by sending a notice of withdrawal to the relevant clerk or ‘registrar’.

(2) A statement withdrawn in accordance with subsection (1) ceases to have effect.

(3) SARS may file a new statement under [section 164](#) covering *tax* included in a statement withdrawn under subsection (1).

## *Part C*

### *Sequestration and Liquidation Proceedings*

### **Institution of proceedings**

**169.** SARS may institute proceedings for the sequestration or liquidation of a *taxpayer* for a *tax debt*.

### **Jurisdiction of court**

**170.** Notwithstanding any law to the contrary, a proceeding referred to in [section 169](#) may be instituted in any court and that court may grant an order that SARS requests, whether or not the *taxpayer* is registered, resident, domiciled, has a place of effective management or a place of business, in the Republic.

*Part D**Collection of Tax Debt From Third Parties***Appointment of third party to satisfy tax debts**

**171.** (1) SARS may by notice to a person who holds or will hold assets, belonging to a *taxpayer* or who owes or will owe any money, including a pension, salary, wage or other remuneration to the *taxpayer*, require the person to transfer the assets or pay the amounts to SARS in satisfaction of the *taxpayer's tax debt*.

(2) Until the assets have been transferred or the amounts have been paid to SARS as specified in the notice under subsection (1) by SARS, a person receiving a notice under subsection (1)—

- (a) must retain possession of the amounts or the assets referred to in the notice; and
- (b) must not pay any amount thereof to the *taxpayer*.

**Liability of financial management**

**172.** A person who—

- (a) controls or is regularly involved in the management of the overall financial affairs of a *taxpayer* concerned; and
- (b) a *senior SARS official* is satisfied is or was negligent or fraudulent in respect of the payment of the *tax debts* of the person,

may be held personally liable for any *tax debt* of the person to the extent that the person's negligence or fraud resulted in the failure to pay the *tax debt*.

**Liability of shareholder**

**173.** (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 liability as a 'responsible third party', 'withholding agent', or a *representative taxpayer, employer or vendor*.

(2) The persons who are shareholders of the *company* within one year prior to its winding up are jointly and severally liable to pay the unpaid *tax* to the extent that—

- (a) they receive assets of the *company* in their capacity as shareholders within one year

prior to its winding-up; and

(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 a *tax act*.

(3) The liability of the shareholders is secondary to the liability of the *company*.

(4) Persons who are liable for *tax* of a *company* under this section may avail themselves of any rights as against *SARS* which would have been available to the *company*.

(5) This section does not apply—

(a) in respect of a “listed company” within the meaning of the *Income Tax Act*; or

(b) in respect of a shareholder of a *company* referred to in paragraph (a).

### **Liability of transferee**

**174.** (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*.

(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 its 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,

(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**

**175.** (1) If a person assists in dissipating a *taxpayer’s* assets in order to obstruct the collection of a *tax debt*, the person is jointly and severally liable with the *taxpayer* for the *tax debt* to the extent provided under subsection (2).

(2) A person described under subsection (1) is liable to the extent that the person’s assistance reduces the assets available to pay the *taxpayer’s tax debt*.

## Remedies against third parties

**176.** (1) SARS has the same remedies against any agent or person acting in a fiduciary capacity in respect of assets of any kind vested in or under the control or management of the agent or person it would have against any person liable to pay any *tax*.

(2) SARS has the same remedies against the property of the persons referred to in this Part as SARS has against the property of the *taxpayer*.

### Part E

#### Assisting Foreign Governments

## Tax recovery on behalf of foreign governments

**177.** (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 a request for the collection from any 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.

(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 stating—

- (a) the amount of the tax due;
- (b) if 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—
  - (i) such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or
  - (ii) there is a risk of dissipation or concealment of assets by the person,

which certificate in any proceedings is conclusive proof of the existence of the *tax debt* and the statements contained therein.

(3) If, in response to the notice issued under subsection (1) the person—

- (a) admits liability;
- (b) fails to respond to the notice; or
- (c) denies liability but the *Commissioner*, based on the statements in the certificate

described in subsection (2) or, if necessary, after consultation with the competent authority of the other country or, is satisfied that—

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

(aa) such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or

(bb) there is a risk of dissipation or concealment of assets by the person, the *Commissioner* 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.

(4) If the person described under subsection (1) fails to comply with the notice under subsection (3), *SARS* may recover the amount in the certificate issued under subsection (2) for transmission to the foreign authority as if it were a *tax* payable by the person under a *tax act*.

(5) 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*.

## *Part F*

### *Remedies With Respect to Foreign Assets*

#### **Foreign assets of taxpayer**

**178.** (1) To collect a *tax debt*, a senior *SARS official* may apply for an order referred to in subsection (2), if—

- (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* has—
  - (i) assets outside the Republic; or

(ii) transferred assets to a connected person in relation to the *taxpayer* outside the Republic over which the *taxpayer* has effective control, which may fully or partly satisfy the *tax debt*.

(2) A *senior SARS official* may apply to a competent 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*.

(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;
- (c) require the *taxpayer* to cease trading;
- (d) require another organ of state to withhold a payment due by that organ of state to the *taxpayer*, or
- (e) issue any other order it deems fit.

(4) An order made under subsection (2) applies until the *tax debt* has been satisfied or the assets have been repatriated and utilised in satisfaction of the *tax debt*.

## CHAPTER 12 INTEREST

### General interest rules

**179.** (1) If a person fails to pay *tax* in full by the *due date*, interest is chargeable on the amount of the outstanding balance—

- (a) at the rate provided under [section 181](#); and
- (b) for the period provided under [section 180](#).

(2) Subject to [section 182](#), if SARS fails to pay a refund within the period required under a *tax act*, SARS must pay interest —

- (a) at the rate provided under [section 181](#), and
- (b) for the period provided under [section 180](#).

(3) A payment of interest by SARS under this Act is a drawback from the National Revenue Fund.

(4) Interest payable under this Act is calculated on the daily balance owing and compounded monthly.

(5) The *due date*—

- (a) in relation to *tax* for a *tax period*, is the date on or before which *tax* for the *tax period* must be paid under a *tax act*;
- (b) in relation to a *penalty*, is the *due date* for payment specified in the notice of *assessment* of the *penalty*;
- (c) in relation to additional *tax*, is the *due date* for payment of the *tax* to which the additional *tax* relates; and
- (d) in relation to interest, is each *day* that interest accrues.

### **Period over which interest is charged**

**180.** (1) Unless otherwise provided in a *tax act*, interest payable under [section 179\(1\)](#) is imposed for the period from the *due 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 *due date* for the payment until the earlier of the date on which the payment is made or the *due date* for the second provisional tax payment; and
- (b) second payment of provisional tax, is imposed from the *due date* for the payment until the earlier of the date on which the payment is made or the effective date.

(3) Interest for any underpayment of income *tax* is imposed from the effective date until the date that the amount due is paid.

(4) Unless otherwise provided under a *tax act* or under the circumstances described in [section 182\(2\)](#)—

- (a) interest on a refundable amount is calculated from the date that 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*, the date on which the offset is effected is considered to be the date of payment.

### **Rate at which interest is charged**

**181.** (1) Subject to subsection (2), the interest rate payable under [section 179\(1\)](#) or [\(2\)](#) is the *prescribed rate*.

(2) In the case of interest payable with respect to refunds of provisional *tax*, the rate payable by SARS is four percentage points below the *prescribed rate*.

(3) The *prescribed rate* is the interest rate that the *Minister* may from time to time fix by notice in the Gazette under section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(4) If the *Minister* fixes a different interest rate referred to in subsection (3) the 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.

## CHAPTER 13 REFUNDS

### Refunds of excess payments

**182.** (1) Subject to [section 183](#), if a person makes payments in excess of the amount properly chargeable under a *tax act*, the person is entitled to a refund to the extent that the amount paid exceeds the sum of—

- (a) the amount of the *assessment*, if the amount was paid with respect to an *assessment*; or
- (b) in any other case, the amount properly chargeable under the relevant *tax act*.

(2) SARS must not authorise a refund as referred to in subsection (1)(b) if—

- (a) the amount was paid in accordance with the practice generally prevailing at the date of the payment; or
- (b) the refund is claimed by the person after three years from—
  - (i) if the *tax* was payable in respect of a *tax period*, the end of the *tax period*; or
  - (ii) in any other case, the date of the official receipt acknowledging the payment (or if more than one payment was made, the date of the official receipt acknowledging the latest of the payments).

(3) 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 those provisions, the amount or the excess must forthwith be repaid by the person concerned to SARS and may be recoverable by SARS under this Act as if it were a tax.



## Refunds subject to set-off and deferral

**183.** (1) If a *taxpayer* has an outstanding *tax debt*, an amount that is refundable under [section 182](#) must be treated as a payment by the *taxpayer* that is recorded in the *taxpayer's* account under [section 157](#), 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) If SARS owes a refund to a *taxpayer*, the *taxpayer* may elect that the refund be set-off against any other *tax debt*.

(3) If a *taxpayer*, without just cause, fails to submit a *return* required under a *tax act* or the *Customs and Excise Act*, SARS may withhold the payment of any amount refundable under [section 182](#) until the *taxpayer* submits the *return* and SARS is satisfied that any *tax liability* for the relevant *tax period* is satisfied.

## CHAPTER 14

### WRITE OFF OR WAIVER OF TAX DEBTS

#### *Part A*

#### *General provisions*

### Definitions

**184.** For the purposes of this Chapter, unless the context otherwise indicates, the following terms, if in single quotation marks in this Chapter or appearing in the heading of a Part or a section, 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, 1973 (Act No. 61 of 1973);

**‘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 installment payment agreement under [section 159](#)) 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 '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;

'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

**185.** (1) As a general rule, it is the duty of SARS to assess and collect all *tax debts* according to a *tax act* and not to forgo any *tax debts*.

(2) Circumstances may, however, require that the strictness and rigidity of the general rule be tempered if it would be to the best advantage of the State.

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

## Application of Chapter

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

### *Part B*

#### *Temporary write-off of tax debt*

## Temporary write off of tax debt

**187.** (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 188](#) at that time.

(2) A decision by the *senior SARS official* to temporarily 'write off' an amount of *tax debt* does not absolve the 'debtor' from the liability for that *tax debt*.

(3) A *senior SARS official* may at any time withdraw the decision to temporarily write-off a *tax debt* if satisfied that the *tax debt* is no longer uneconomical to pursue as referred to in [section 188](#) and that the decision to temporarily 'write off' would jeopardise

the general *tax* collection effort.

### **Tax debts uneconomical to pursue**

**188.** (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*.

(2) In determining whether the cost of recovery is likely to exceed the anticipated amount to be recovered as referred to in subsection (1), *SARS* must have regard to—

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

### *Part C*

#### *Write-off of tax debt*

### **Write off of tax debt**

**189.** (1) The *Commissioner* or a *senior SARS official* delegated by him for this purpose, may authorise the ‘write off’ of an amount of *tax debt*—

- (a) to the extent satisfied that the *tax debt* is irrecoverable at law as referred to in [section 190](#); or
- (b) if the debt is ‘compromised’ in terms of Part D.

(2) *SARS* must notify the ‘debtor’ of any amount of *tax debt* ‘written off’.

### **Tax debts irrecoverable at law**

**190.** (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 has been liquidated or sequestrated and it represents the balance outstanding—
    - (i) 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
    - (ii) following the termination of a ‘compromise’ or arrangement as referred to in section 311 of the ‘Companies Act’ with the ‘debtor’s’ creditors, which has been sanctioned by a court.
- (2) A *tax debt* is not irrecoverable at law if SARS has not first explored action against or recovery from the ‘assets’ of the persons who may be liable for the debt under Part D of Chapter 11.

### **Procedure for writing off a tax debt**

**191.** (1) Before deciding to ‘write off’ a *tax debt*, SARS must—

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

(2) In deciding whether to support an offer of ‘compromise’ made to creditors in terms of section 311 of the *Companies Act* SARS must, in addition to considering the *information* as referred to in section 312 of that Act, take into account the *information* and aspects covered in the provisions of [sections 192](#), [193\(1\)](#), [194](#) and [195](#) with necessary changes.

### *Part D*

#### *Compromise of tax debt*

### **Compromise of tax debt**

**192.** The *Commissioner* or a *senior SARS official* delegated by him for this purpose,

may authorise the ‘compromise’ a portion of a *tax debt* upon request by a ‘debtor’, which complies with the requirements of [section 193](#), if the purpose of the ‘compromise’ is to secure the highest net return from the recovery of the *tax debt* or to avoid serious hardship, and if the ‘compromise’ is consistent with considerations of good management of the *tax system* and administrative efficiency.

### Request by debtor for compromise

**193.** (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 the *Commissioner* or a delegated *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 persons”, as defined in section 1 of the *Income Tax Act*, 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) The *Commissioner* or a *senior SARS official* delegated by him for this purpose may require that the application be supplemented by such further *information* as may be

required.

### Consideration of request to compromise tax debt

**194.** (1) In considering a request for a ‘compromise’, the *Commissioner* or a delegated *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’, SARS 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

**195.** Notwithstanding [section 192](#) the *Commissioner* or a delegated *senior SARS official* must not ‘compromise’ any amount of a *tax debt* if—

- (a) 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;
- (b) another creditor has communicated its intention to initiate or has initiated liquidation or sequestration proceedings;
- (c) the *tax affairs* of the ‘debtor’ (other than the outstanding *tax debt*) are not up to date;

- (d) it may adversely affect broader *taxpayer* compliance; or
- (e) 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

**196.** (1) To ‘compromise’ a *tax debt*, a *senior SARS official* authorised by the *Commissioner* or a delegated *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
- (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’—

- (a) comply with subsequent obligations imposed in terms of a *tax act* ;
- (b) pay the *tax debt* in the manner prescribed by SARS; or
- (c) give up specified existing or future tax benefits, such as carryovers of losses, deductions, credits and rebates.

### SARS not bound by compromise

**197.** SARS is not bound by a ‘compromise’ if—

- (a) the ‘debtor’ fails to disclose a material fact to which the ‘compromise’ relates;
- (b) the ‘debtor’ supplies materially incorrect *information* to which the ‘compromise’ relates;
- (c) the ‘debtor’ fails to comply with a provision or condition contained in the agreement referred to in [section 196](#); 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 196](#).

*Part E**Records and reporting***Register of tax debts written off or compromised**

**198.** (1) SARS must maintain a register of the *tax debts* ‘written off’ or ‘compromised’ in terms of this Chapter.

(2) The register referred to in subsection (1) must contain—

- (a) the details of the ‘debtor’, including name, address, and *taxpayer reference number*;
- (b) the amount of the *tax debt* ‘written off’ or ‘compromised’ and the periods to which the *tax debt* relates; and
- (c) the reason for ‘writing off’ or compromising the *tax debt*.

**Reporting by Commissioner of tax debts written-off or compromised**

**199.** (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.

(2) SARS 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—

- (a) be in a format which, subject to [section 62\(3\)](#) of this Act, 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.



**CHAPTER 15****PENALTIES***Part A**General***Definitions**

**200.** For the purposes of this Chapter, unless the context otherwise indicates, the following terms, if in single quotation marks in this Chapter or appearing in the heading of a Part or a section, have the following meanings—

**‘administrative penalty’** or **‘penalty’** means a ‘penalty’ imposed by SARS in accordance with this Chapter;

**‘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 210](#) must be disregarded;

**‘official publication’** means a binding public ruling, interpretation note, practice note or media release issued by the Office of the *Commissioner*;

**‘penalty assessment’** means an *assessment* in respect of —

(a) a ‘penalty’ only; or

(b) tax and a ‘penalty’ which are assessed at the same the time;

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

**‘remittance request’** means a request for remittance of a ‘penalty’ submitted in accordance with [section 207](#).

**Purpose**

**201.** 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 the tax acts*; and

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

*Part B*  
*Fixed Amount Penalties*

### General penalty for non-compliance

**202.** (1) If SARS is satisfied that the factual basis for any non-compliance by a person referred to in subsection (2) exists, excluding the non-compliance referred to in [section 205](#), SARS must impose the appropriate ‘penalty’ in accordance with the Table in [section 203](#).

(2) Non-compliance referred to in this subsection is non-compliance with an obligation that is imposed by or under a *tax act* and is listed in a notice issued by the *Commissioner*, other than—

- (a) the failure to pay *tax*, ‘penalty’, or interest; or
- (b) non-compliance subject to additional *tax* under Chapter 16.

### Fixed amount penalty table

**203.** (1) For purposes of the non-compliance referred to in [section 202](#), a *senior SARS official* must impose a ‘penalty’ in accordance with the following Table:

**Table: Amount of Administrative Penalty**

1 Item	2 Assessed loss or taxable income for ‘preceding year’	3 ‘Penalty’
(i)	Assessed loss	R250
(ii)	R0 — R250 000	R250
(iii)	R250 001 — R500 000	R500
(iv)	R500 001 — R1 000 000	R1 000
(v)	R1 000 001 — R5 000 000	R2 000
(vi)	R500 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 30 days after—

- (a) the date of the delivery of the ‘penalty’ *assessment*, if SARS is in possession of the current address of the person and is able to deliver the *assessment*, but limited to 35 months after the date of delivery; or
- (b) the date of the non-compliance if SARS is not in possession of the current address of the person and is unable to deliver the ‘penalty’ *assessment*, but limited to 47 months after the date of non-compliance.

(3) The following persons, except those falling under item (viii) of the Table or those that did not trade during the year of *assessment*, are treated as falling under item (vii) of the Table:

- (a) a *company* listed on a recognised stock exchange as referred to in paragraph 1 of the Eighth Schedule to the *Income Tax Act*;
- (b) a *company* whose gross receipts or accruals for the ‘preceding year’ exceeds R500 million; or
- (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).

(4) A *senior SARS official* may, except in the case of persons referred to in subsection (3)(a) to (c), if the taxable income of the relevant person for the ‘preceding year’ is unknown or that person was not a *taxpayer* in that year—

- (a) impose a ‘penalty’ in accordance with item (ii) of column 1 of the Table; or
- (b) estimate the amount of *taxable income* of the relevant person for the ‘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 of the person in respect of whom a ‘penalty’ was imposed in terms of 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 column 1.

## Reportable arrangement

**204.** (1) A ‘participant’ who fails to disclose the *information* in respect of a *reportable*

*arrangement* as required by [sections 29](#) or [30](#) is liable to a ‘penalty’, for each month that the failure to report 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 27](#)) exceeds R2 000 000, and is tripled if the benefit exceeds R5 000 000.

### *Part C*

#### *Percentage Based Penalty*

#### **Percentage based penalty**

**205.** If SARS is satisfied that the factual basis for any non-compliance referred to in this subparagraph exists, SARS must, in addition to any other ‘penalty’, interest, or charge for which the person may be liable under this Chapter or another *tax act*, impose a ‘penalty’ equal to ten percent of the—

- (a) amount of employees’ *tax* that an employer fails to pay as and when required under the *Income Tax Act*;
- (b) total amount of employees’ *tax* deducted or withheld, or that should have been deducted or withheld, by an employer from the remuneration of employees, if the employer fails to submit an employees’ *tax return* as and when required under the *Income Tax Act*; or
- (c) amount of provisional tax that a provisional taxpayer fails to pay as and when required under the *Income Tax Act*;
- (d) amount of value added tax that a vendor fails to pay as and when required under the *Value Added Tax Act*;
- (e) amount of skills development levy that an employer fails to pay as and when required under the *Skills Development Levies Act*;
- (f) amount of unemployment insurance contribution that an employer fails to pay as and when required under the *Unemployment Insurance Contributions Act*; or
- (g) amount of any unpaid tax that may be subject to a percentage based ‘penalty’ under any other *tax act*.

*Part D*  
*Procedure*

**Procedures for imposing penalty**

**206.** (1) A ‘penalty’ imposed under Part B or C is imposed by way of a ‘penalty’ *assessment*, and if a ‘penalty’ *assessment* is made, SARS must give notice of the *assessment* in the format as SARS may decide to the person, including the following:

- (a) the non-compliance in respect of which the ‘penalty’ is assessed and its duration;
- (b) the amount of the ‘penalty’ assessed;
- (c) the *due date* for paying the ‘penalty’;
- (d) the automatic increase of the ‘penalty’; and
- (e) a summary of procedures for requesting remittance of the ‘penalty’.

(2) A ‘penalty’ is due upon *assessment* and must be paid on or before the *due date* stated in the notice of the ‘penalty’ *assessment*.

(3) Subject to subsection (4), a ‘penalty’ is due upon *assessment* and must be paid—

- (a) on or before the *due date* stated in the notice of the ‘penalty’ *assessment*; or
- (b) where the ‘penalty’ *assessment* is made together with an *assessment* of *tax*, on or before the deadline for payment stated in the notice of the *assessment* for *tax*.

(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*, apply to penalties assessed under this Chapter.

**Procedure to request remittance**

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

(2) The ‘remittance request’ must include—

- (a) a description of the circumstances which prevented the person from complying with the relevant obligation under a *tax act* in respect of which the ‘penalty’ has been imposed; and

(b) the supporting *documents* and *information* as may be required by SARS in the prescribed form.

(3) During the period commencing on the *day* that SARS receives the ‘remittance request’, and ending 30 *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

(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 208](#) or [209](#), and that reasonable circumstances exist for the late receipt of the ‘remittance request’; or

(b) a circumstance referred to in [section 210\(2\)](#) rendered the person incapable of submitting a timely request.

## *Part E*

### *Remedies*

#### **Remittance of penalty for failure to register**

**208.** If a ‘penalty’ is imposed on a person for a failure to register as and when required under this Act, SARS may remit the ‘penalty’ in whole or in part if—

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

(b) the person has filed all *returns* required under a *tax act*.

#### **Remittance of penalty for nominal or first incidence of non-compliance**

**209.** (1) if a ‘penalty’ has been imposed in respect of—

(a) a ‘first incidence’ of non-compliance described in [section 202](#) or [205](#);

(b) an incidence of non-compliance described in [section 202](#) if the duration of the non-compliance is less than 7 *days*; or

(c) an incidence of non-compliance described in [section 205](#) involving an amount of less

than R2 000 or if the duration of the non-compliance is less than 7 *days*, SARS may, in respect of a ‘penalty’ imposed under [section 202](#) or [205](#), 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
- (ii) the non-compliance in issue has been remedied.

(2) In the case of a ‘penalty’ imposed under [section 204](#), the R2 000 limit referred to in subsection (1) is changed to R50 000.

### Remittance of penalty in exceptional circumstances

**210.** (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*.

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

- (a) a natural or human-made disaster;
- (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:
  - (i) a capturing error;
  - (ii) a processing delay;
  - (iii) provision of incorrect *information* in an ‘official publication’ issued by SARS;
  - (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; or
- (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 jeopardized; or
- (g) any other circumstance of analogous seriousness.

## Penalty incorrectly assessed

**211.** 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

**212.** 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 ADDITIONAL TAX

### Definitions

**213.** For the purposes of this Chapter, unless the context otherwise indicates, the following terms, if in single quotation marks in this Chapter or appearing in the heading of a Part or a section, have the following meanings—

‘**repeat case**’ means a second or further case of any of the behaviours listed under items (i) to (v) of the additional tax percentage table reflected in [section 214](#);

“**substantial understatement**” means a case where the prejudice to SARS 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;

“**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;
- (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.

“**understatement**” means any prejudice to SARS as a result of—

- (a) default in rendering a *return*;



- (b) omission from a *return*; or  
(c) an incorrect statement in a *return*.

### Additional tax percentage table

214. The additional tax percentage table is:

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%	12%	0%
(ii)	Reasonable care not taken in completing <i>return</i>	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%

### Additional tax on default, omission or evasion

215. (1) If a *taxpayer* fails to perform a duty required under a *tax act*, or omits to do anything required, with the effect of—

- (a) evading the payment of *tax* properly payable by the *taxpayer*; or  
(b) causing a refund by SARS of an amount of *tax* (such amount being referred to hereunder as the excess) which is in excess of the amount properly refundable to the *taxpayer*,

the *taxpayer* must pay, in addition to the *tax* chargeable, the highest applicable additional *tax* determined as the percentage of the *tax* referred to in paragraph (a) or the excess referred to in paragraph (b) in accordance with the table in [section 214](#).

(2) This section does not apply to an understatement of *tax* on a *return* within the meaning of [section 216](#).

### **Additional tax on understatement**

**216.** (1) If the amount of *tax* shown on a *return* understates the amount of *tax* required to be shown on the *return*, the *taxpayer* must pay in addition to the *tax* chargeable the highest applicable additional *tax* determined as the percentage of the understatement in accordance with the table in [section 214](#).

(2) In the case of a *return* that does not involve *self-assessment*, the amount of the understatement for purposes of this section is the difference between the *tax* as assessed in accordance with the *return* submitted by the *taxpayer* and the *tax* properly chargeable.

(3) If the *taxpayer* takes a position in a *return* which would, if accepted by *SARS*, result in prejudice to *SARS* in the future, the amount of the prejudice to *SARS* must be quantified as if the prejudice is suffered at the end of the *tax period* at the maximum rate of *tax* that would be applicable to the *taxpayer* for that *tax period*.

### **Payment and recovery of additional tax**

**217.** If *SARS* assesses the additional *tax* imposed under [sections 215](#) or [216](#), the *taxpayer* must pay the additional *tax* within the period that *SARS* prescribes. The same procedures for objection, appeal, and dispute resolution apply as for an *assessment* of *tax*.

## **CHAPTER 17 CRIMINAL OFFENCES**

### **Criminal offences relating to non-compliance with this Act**

**218.** A person who wilfully and without just cause—

(a) fails or neglects to register or notify *SARS* of a change in address as required in Chapter 3;

- (b) fails or neglects to submit a *return* or *document* as required in Chapter 4;
- (c) fails or neglects to report a *reportable arrangement*;
- (d) fails or neglects to retain records as required under this Act;
- (e) submits a false certificate or statement under Chapter 4;
- (f) refuses or neglects to—
  - (i) furnish, produce or make available any *information, document, or thing*;
  - (ii) reply to or answer truly and fully any questions put to the person by a *SARS official*;
  - (iii) take an oath or make a solemn declaration; or
  - (iv) attend and give evidence,as and when required in terms of this Act;
- (g) fails to comply with a directive issued by *SARS* to the person under a *tax act*;
- (h) fails or neglects to disclose to *SARS* any material facts which should have been disclosed under this Act;
- (i) obstructs or hinders a *SARS* official in the discharge of the official's duties;
- (j) refuse to give assistance required under [section 38](#) or [53\(6\)](#);
- (k) holds himself or herself out as a *SARS* official engaged in carrying out the provisions of this Act;
- (l) fails or neglects to comply with the provisions of [sections 171](#) to [174](#), if that person was given notice by *SARS* to transfer the assets or pay the amounts to *SARS* as referred to in that section; or
- (m) 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, is guilty of an offence, and if convicted, is subject to a fine or to imprisonment for a period not exceeding two years.

### **Criminal offences relating to evasion of tax**

**219.** (1) A person who with intent to evade or to assist another person to evade liability under a *tax act*—

- (a) makes or causes or allows to be made any false statement or entry in a *return*, or signs a statement or *return* so rendered without reasonable grounds for believing the same to be true;
- (b) gives a false answer, whether orally or in writing, to a request for *information* made

under this Act;

(c) prepares or 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; or

(d) makes use of, or authorises the use of, fraud or contrivance,

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

(2) A *senior SARS official* may lay a complaint with the South African Police Service or the National Prosecuting Authority regarding an offence contemplated in subsection (1).

### **Criminal offences related to secrecy provisions**

**220.** A person who contravenes the provisions of [sections 59\(2\)](#) or [\(3\)](#), [60\(1\)](#), [61\(1\)](#), [\(4\)](#) or [\(6\)](#) or [62\(4\)](#) is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.

### **Filing return without authority**

**221.** A person who—

(a) submits a *return* or other *document* to *SARS* under a forged signature;

(b) uses an electronic or digital signature of another person in an electronic communication to *SARS*; or

(c) otherwise submits to *SARS* a communication on behalf of another person, without the person's consent and authority, is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding 2 years.

### **Jurisdiction of courts**

**222.** 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 a jurisdiction conferred upon a court by any other law.

## CHAPTER 18

### REPORTING OF UNPROFESSIONAL CONDUCT

#### Definitions

**223.** For the purposes of this Chapter,

**‘accredited tax practitioner’** means a practitioner as described in section X of the ‘Regulation of Tax Practitioners Act’.

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

**‘Regulation of Tax Practitioners Act’** means the Regulation of Tax Practitioners Act, 201X (Act No. X of 201X).

#### Complaint to Controlling Body

**224.** A *senior SARS official* may lodge a complaint with a ‘controlling body’ if a 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*, or by reason of negligence on the part of the person resulted in the avoidance or undue postponement of the performance of the obligation; or
- (b) constitutes a contravention of a rule or code of conduct for the profession which may result in disciplinary action being taken against the person by the body.

#### Complaint with Independent Regulatory Board for Tax Practitioners

**225.** A *senior SARS official* may lodge a complaint with the Independent Regulatory Board for Tax Practitioners if a person who must register with the Board under section X of the ‘Regulation of Tax Practitioners Act’ has, in the opinion of the official—

- (a) been grossly negligent with regard to work that person performed as an ‘accredited tax practitioner’;

- (b) without exercising due diligence, prepared or assisted in the preparation, approval, or submission of a *return*, affidavit, or other *document* relating to matters affecting the application of a *tax act*;
- (c) unreasonably delayed the finalisation of a matter before SARS;
- (d) knowingly gave false or misleading *information* in connection with matters affecting the application of a *tax act* or participated in such activity;
- (e) directly or indirectly attempted to influence a SARS official concerning a matter relating to a *tax act* by the use of threats, false accusations, duress, or coercion, or by offering gifts, favours, or special inducements;
- (f) in relation to SARS or a SARS official, used abusive language, made false accusations or statements knowing them to be false, or circulated or published malicious or libelous matter;
- (g) given a false opinion knowingly, recklessly, or through gross incompetence concerning a matter relating to a *tax act*; or
- (h) failed to register with the Independent Regulatory Board for Tax Practitioners as required'.

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

**226.** (1) Notwithstanding [section 61](#), the *senior SARS official* lodging a complaint under [section 224](#) or [225](#) 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 30 *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 30 *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 224](#) or [225](#).

### Complaint considered by controlling body

**227.** (1) The complaint is to be considered by the ‘controlling body’ according to its rules.

(2) A hearing of the matter where details of the 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 MISCELLANEOUS

### Deadlines

**228.** (1) If—

- (a) a *day* notified by the *Commissioner* 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 a 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 at a SARS office, failing which the action must be done on the following business day and is treated as done on the given 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.

(4) SARS must accept a late application for extension, if satisfied that the applicant was unable to file the application in time due to any of the circumstances referred to in

[section 210\(2\)\(a\)](#) to [\(e\)](#) or any other circumstance of analogous seriousness.

### **Power of Minister to determine date for submission of returns and payment of tax, interest and penalties**

**229.** (1) Notwithstanding any other provision of a *tax act*, if the date for the submission of a return or the payment of tax is the last day of the financial year of the Government, the *Minister* may by notice in the *Gazette* prescribe any other date for submission of the return and payment of the tax, which date must not fall on a day more than two business days prior to the last day of that year.

(2) The notice contemplated in subsection (1) must be published at least 30 *days* prior to the date so prescribed by the *Minister*.

### **Public officers of companies**

**230.** (1) Every *company* carrying on business or having an office in the Republic must at all times be represented by an individual residing in the Republic.

(2) The individual representative under subsection (1) must be—

- (a) a person 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.

(3) If a public officer is not appointed as required under this section, the public officer is the managing director, director, secretary, or other officer of the *company* that *SARS* designates for that purpose.

(4) A *company* covered by this section that has not appointed a public officer is subject to a *tax act*, the same as if a *tax act* did not require the public officer to be appointed.

(5) A public officer is responsible for all acts, matters, or *things* that the public officer's *company* must do under a *tax act*, and in case of default, the public officer is subject to penalties for the *company's* defaults.

(6) A public officer's *company* is deemed to do everything done by the public



officer in the officer's representative capacity.

### **Address for Notices and Documents**

**231.** (1) A *company* referred to in [section 230\(1\)](#), must, within the period referred to in [section 230\(2\)\(d\)](#), appoint a place within the Republic approved by SARS at which SARS may serve, deliver, or send the *company* a notice or other *document* provided for under a *tax act*.

(2) Every notice, process, or proceeding which under a *tax act* may be given to, served upon, or taken against any *company* referred to in [section 230\(1\)](#), 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*.

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

**232.** In the event of a *company* referred to in [section 230\(1\)](#) being placed in voluntary or compulsory liquidation, the liquidator or liquidators duly appointed are required to exercise in respect of the *company* all the functions and assume all the responsibilities of a public officer under a *tax act* during the continuance of the liquidation.

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

**233.** (1) No appointment is deemed to have been made under [section 230\(2\)](#) 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.

(2) A *company* must 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 231\(1\)](#) and SARS must be notified of every change of public officer or the place for the service or delivery of notices within fourteen *days* of the change taking effect.

### **Authentication of documents**

**234.** (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 deemed to be 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. The same applies for other *documents* submitted to SARS by or on behalf of a person.

### **Delivery of documents to persons other than companies**

**235.** 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 deemed to have issued, given, sent, or served the communication to the person—

- (a) if handed to the person;
- (b) if 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;
- (c) if 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.
- (d) if 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**

**236.** 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 to, or served the communication to the *company*—

- (a) if delivered to the public officer of the *company*;
- (b) if left with a person older than 16 years apparently residing or employed at—
  - (i) the place appointed by the *company* under [section 231\(2\)\(a\)](#); or
  - (ii) where no such place has been appointed by the *company*, the last known office or place of business of the *company*; or
- (c) if sent by post addressed to the *company* or its public officer at the *company* or public

officer's last known address, which includes—

- (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.

(d) if 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.

### **Documents delivered deemed to have been received**

**237.** (1) A notice, *document*, or other communication issued, given, sent, or served in the manner referred to in [section 235\(1\)\(c\)](#) or [236\(1\)\(c\)](#) is deemed to have 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.

(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;
- (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 235\(1\)](#) or [236\(1\)](#) (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 disadvantage,  
SARS may direct that the notice, *document*, or other communication be withdrawn and be issued, given, sent, or served anew.

### **Defect does not affect validity**

**238.** (1) 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 a failure to comply with the

requirements of [section 235](#) or [236](#) 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.

## Electronic Communication

**239.** The *Minister* may make rules and regulations prescribing the procedures for submitting a *return* in electronic format, and for other electronic communications between SARS and persons or 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

**240.** (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 30 *days* from the date the application is duly filed.

(3) SARS may provide a *taxpayer* with a *tax clearance certificate* only if satisfied that the *taxpayer* does not have any—

- (a) *tax debt* outstanding, excluding a *tax debt* contemplated in [section 159](#) or [196](#) or a *tax debt* that has been suspended under [section 156](#), or
- (b) any outstanding *returns*.

(4) A *tax clearance certificate* must be in the prescribed form and include at least the following—

- (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 not no outstanding *tax debts* as at the date of the certificate; and
- (e) the expiry date of the certificate.

(5) 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 of thereof if the certificate—

- (a) was issued in error;
- (b) does not accord with the records of SARS; or
- (c) was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts.

## Regulations

**241.** The *Minister* may make regulations giving effect to the objects and purposes of this Act.

## CHAPTER 20 TRANSITIONAL PROVISIONS

### Provisions relating to secrecy

**242.** (1) A person who took and subscribed to an oath or solemn declaration of secrecy under a *tax act* prior to promulgation of this Act is deemed to have taken and subscribed to that oath or solemn declaration under [section 59\(2\)](#).

(2) An appointment of a person made under a *tax act* is deemed to have been made under this Act, if appointment of such a person is contemplated under this Act and the person is still filling the office or position to which the person was appointed at the commencement of this Act.

### **Public officer previously appointed**

**243.** If SARS does not raise an objection to the continuation in office of a public officer appointed or deemed to have been appointed under a *tax act* and holding office at the commencement of this Act, the public officer is deemed to be a public officer appointed under this Act.

### **Appointment of chairpersons of tax board**

**244.** 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 on the date that this Act comes into operation is deemed to have been appointed under the provisions of [section 103](#) 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 103\(3\)](#).

### **Appointment of members of tax court**

**245.** A member of the *tax court* appointed under a *tax act* who is a member on the date that this Act comes into operation is deemed to have been appointed under the provisions of [section 112\(1\)](#) until the expiry of his or her term of office in terms of the provisions previously in force, or until termination or lapse of his or her appointment in terms of [section 112\(4\)](#).

### **Continuation of court rules**

**246.** Rules of court issued by the *Minister* under a *tax act* that are in force immediately before this Act comes into operation continue in force as if they were issued under [section 95](#).

### **Delegation by Commissioner**

**247.** (1) A power delegated by the *Commissioner* under the *SARS Act* or a *tax act*, which delegation is in force immediately before this Act comes into operation, is deemed to

have been delegated under this Act.

(2) Subsection (1) applies for 90 *days* from commencement of this Act.

(3) A person delegated by the *Commissioner* to settle a dispute under a *tax act* that remains unresolved immediately before this Act comes into operation, is deemed to have been delegated under [section 138](#).

### **Persons authorised to inspect, audit, examine or obtain information**

**248.** If a person was issued a letter authorising a *SARS official* to perform certain functions under a *tax act*, and the letter is in force immediately before this Act comes into operation, the *SARS official* is deemed to have been issued that letter under [section 35](#).

### **Conduct of inquiries**

**249.** If the *Commissioner* authorised an inquiry under a *tax act* and the inquiry is ongoing before this Act comes into operation, the inquiry is deemed to have been authorised under [section 42](#).

### **Application of Chapter 15**

**250.** Chapter 15 applies to non-compliance—

- (a) on or after the date this Act come into effect; or
- (b) resulting from a continuous failure by a person to comply with an obligation that existed on the date this Act came into effect.

### **Continuation of Authority**

**251.** (1) Rules and regulations issued under the authority of a *tax act* that are in force immediately before this Act comes into operation, remain in force as if they were, respectively, issued under [section 95](#) or [241](#) of this Act, to the extent consistent with this Act.

(2) Forms prescribed under the authority of a *tax act* before the commencement date of this Act, and in use on the date of commencement, are considered to have been prescribed under the authority of this Act, to the extent consistent with this Act.

(3) Rulings, interpretation notes, practice notes, and any other publications issued by the *Commissioner* under the authority of a *tax act* before the commencement date of this Act, which have not been revoked, are considered to have been issued under the authority of this Act.

### **Application of Act to Prior or Continuing Action**

**252.** (1) Subject to this section, this Act applies to an act or omission occurring, or a *tax* decision made, before the commencement date.

(2) Any appeal or prosecution commenced before the commencement date continues and is disposed of as if this Act had not come into force.

(3) If the period for an application, appeal, or prosecution had expired before the commencement date, 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.

(4) A *tax* liability that arose before the commencement date may be recovered under this Act, but without prejudice to an action already taken for the recovery of the *tax*.

### **Amendment of legislation**

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

### **Short title and commencement**

**254.** This Act is called the Tax Administration Act, 2010, and comes into operation on a date or dates to be determined by the President by proclamation in the *Gazette*.