

REPUBLIC OF SOUTH AFRICA

**TAX ADMINISTRATION BILL**

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*(As introduced in the National Assembly (proposed section 75), explanatory summary of  
Bill published in Government Gazette No.      of      ) (The English text is the official  
text of the Bill)*  
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(MINISTER OF FINANCE)

[B      2010]

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

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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## CHAPTER 1 DEFINITIONS

### Definitions

1. In this Act, unless the context indicates otherwise, a term which is assigned a meaning in another tax Act has the meaning so assigned, and the following terms have the following meaning:

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

**“additional assessment”** has the meaning assigned in section 92;

**“assessment”** means the determination of the amount of a tax liability, by way of self-assessment by the taxpayer or assessment by the South African Revenue Service, and includes any decision which in terms of a tax Act is subject to objection and appeal;

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

- (a) facial recognition;
- (b) fingerprint recognition;
- (c) voice recognition;
- (d) iris or retina recognition; and
- (e) other, less intrusive biological data, as may be prescribed by the Minister in a regulation issued under section 258;

**“business day”** means any day which is not a Saturday, Sunday or public holiday;

**“Commissioner”** means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 37 of 1997) or the Acting Commissioner designated in terms of section 7 of the South African Revenue Service Act, 1997;

**“company”** has the meaning assigned in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

**“confidential information”** has the meaning assigned in section 68;

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

**“date of assessment”** means—

- (a) in the case of an assessment by SARS, the date of the issue of the notice of assessment; or
- (b) in the case of a self-assessment by the taxpayer—
  - (i) if a return is required, the date that the return is submitted; or,
  - (ii) if no return is required, the date of the last payment of the tax for the tax period or, if no payment was made in respect of the tax for the tax period, the effective date;

**“due date”** means in relation to—

- (a) tax for a tax period, the last day on which tax for the tax period must be paid under this Act or a tax Act;
- (b) any other tax, the period or date of the taxable event in respect of which the amount of tax payable must be determined;
- (c) a penalty imposed under Chapter 15 or any other penalty imposed in terms of a tax Act, is the due date for payment specified in the notice of the penalty assessment or notice of the penalty;
- (d) additional tax, is the due date for payment of the tax to which the additional tax relates; and
- (e) interest, is each day that interest accrues;

**“date of sequestration”** means—

- (a) the date of voluntary surrender of an estate, if accepted by the Court; or
- (b) the date of provisional sequestration of an estate, if a final order of sequestration is granted by the Court;

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

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

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

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

**“income tax”** means normal tax referred to in section 5 of the Income Tax Act, 1962 (Act No. 58 of 1962) but excludes provisional tax and employees' tax;

**“Income Tax Act”** means the Income Tax Act, 1962 (Act No. 58 of 1962);

**“information”** includes information generated, recorded, sent, received, stored, or displayed by any means;

**“jeopardy assessment”** has the meaning assigned in section 94;

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

**“Mineral and Petroleum Resources Royalty (Administration) Act”** means the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008);

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

**“official publication”** means a binding general ruling, interpretation note, practice note, or public notice issued by a senior SARS official or the Commissioner;

**“Ombud”** means the Tax Ombud appointed by the Minister under section 14;

**“original assessment”** has the meaning assigned in section 91;

**“practice generally prevailing”** has the meaning assigned in section 5;

**“prescribed rate”** has the meaning assigned in section 189(3);

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

**“presiding officer”** is the person before whom an inquiry referred to in Part C of Chapter 5 is held;

**“Promotion of Access to Information Act”** means the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);

**“public notice”** means a notice published in the *Government Gazette*;  
**“reduced assessment”** has the meaning assigned in section 93;  
**“relevant material”** means any information, document, or thing that is foreseeably relevant for tax risk assessment, assessing tax, collecting tax, or showing non-compliance with an obligation under a tax Act or showing that a tax offence was committed;  
**“reportable arrangement”** has the meaning assigned in section 35;  
**“representative employer”** has the meaning assigned in section 153;  
**“representative taxpayer”** has the meaning assigned in section 153;  
**“representative vendor”** has the meaning assigned in section 153;  
**“return”** means a form, document or other manner of submitting information to the South African Revenue Service that incorporates a self-assessment or is the basis on which an assessment is to be made by the South African Revenue Service;  
**“responsible third party”** has the meaning assigned under section 158;  
**“SARS”** means the South African Revenue Service as established under the South African Revenue Service Act, 1997;  
**“SARS Act”** means the South African Revenue Service Act, 1997 (Act No. 34 of 1997);  
**“SARS information”** has the meaning assigned under section 67(1)(a);  
**“SARS official”** means the Commissioner, an employee of SARS or a person contracted by SARS for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner;  
**“Securities Transfer Tax Administration Act”** means the Securities Transfer Tax Administration Act, 2007 (Act 26 of 2007);  
**“self-assessment”** means a determination of the amount of tax payable under a tax Act by a taxpayer and submitting a return which incorporates the determination or, if no return is required, making a payment of the tax;  
**“senior SARS official”** means a 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”** for purposes of administration under this Act includes 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 or may affect the liability of a person to tax;  
**“tax Act”** means this Act or an Act, or portion of an Act, referred to in section 4 of the SARS Act, excluding the Customs and Excise Act;  
**“tax board”** means a tax board established under section 108;  
**“tax court”** means a court established under section 116;  
**“tax debt”** means an amount of tax due by a person in terms of a tax Act;



**“tax offence”** means an offence in terms of a tax Act or any other offence involving fraud on SARS or on a SARS official relating to the administration of a tax Act, or a related common law offence;

**“tax period”** means in relation to—

- (a) income tax, a year of assessment as defined in section 1 of the Income Tax Act;
- (b) provisional tax or employee’s tax as defined in the Fourth Schedule to the Income Tax Act, skill development levies as determined in section 3 of the Skills Development Levies Act, and unemployment insurance contributions as determined in section 6 of the Unemployment Insurance Contributions Act, the period in respect of which the amount of tax payable must be determined under the relevant tax Act;
- (c) value-added tax, a tax period determined under section 27 of the Value-Added Tax Act;
- (d) royalty payable on mineral rights and petroleum resources, a year of assessment as defined in section 1 of the Mineral and Petroleum Resources Royalty (Administration) Act;
- (e) the levy on diamond exports, the assessment period referred to in section 1 of the Diamond Export Levy (Administration) Act;
- (f) tax on the transfer of a security, as defined in section 1 of the Securities Transfer Tax Act, 2007, the period referred to in section 3 of the Securities Transfer Tax Administration Act;
- (g) any other tax, the period or date of the taxable event in respect of which the amount of tax payable must be determined under a tax Act; or
- (h) in relation to a jeopardy assessment, the period determined under this Act;

**“taxpayer”** has the meaning assigned under section 151;

**“taxpayer information”** has the meaning assigned under section 67(1)(b);

**“taxpayer reference number”** means the number referred to in section 24;

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

**“this Act”** includes the regulations;

**“Transfer Duty Act”** means the Transfer Duty Act, 1949 (Act No. 40 of 1949);

**“Unemployment Insurance Contributions Act”** means the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);

**“Value-Added Tax Act”** means the Value-Added Tax Act, 1991 (Act No. 89 of 1991);

**“withholding agent”** has the meaning assigned under section 156.

**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 obligations of taxpayers and other persons to whom this Act applies;
- (c) prescribing the powers and duties of persons engaged in the administration of a tax Act; and
- (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 this Act under the control or direction of the Commissioner.

(2) Administration of a tax Act means to—

- (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 whether a person has filed or submitted correct returns, information, or documents in compliance with the provisions of a tax Act;
- (c) establish the identity of a person for purposes of determining liability for tax;
- (d) determine the liability of a person for tax;
- (e) collect tax and refund any tax overpaid;
- (f) investigate whether an offence has been committed in terms of a tax Act, and, if so—
  - (i) to lay criminal charges; and
  - (ii) to provide the assistance that is reasonably required for the investigation and prosecution of tax offences or related common law offences;
- (g) enforce SARS' remedies under a tax Act to ensure that an obligation imposed by or under a tax Act is complied with;
- (h) perform any other administrative function necessary to carry out the provisions of a tax Act; and
- (i) give effect to the obligation of SARS to provide reciprocal assistance under an arrangement made with the government of any other country by an agreement entered into in accordance with a tax Act.

## **Application of Act**

4. (1) This Act applies to every person who is liable to comply with a provision of a tax Act (whether personally or on behalf of another person) and binds SARS.

(2) If this Act is silent with regard to the administration of a tax Act and it is specifically provided for in the relevant tax Act, the provisions of that tax Act apply.

## **Practice generally prevailing**

5. (1) A practice generally prevailing is an official publication regarding the application or interpretation of a tax Act that is binding on and generally applied by SARS.

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

- (a) the provision of this Act or the tax Act that was the subject of the official publication is repealed or amended, from the effective date of the repeal or amendment;
- (b) a court overturns or modifies an interpretation of this Act or the tax Act on which the official publication is based, from the date of judgment unless—
  - (i) the decision is under appeal;
  - (ii) the decision is fact-specific and the general interpretation upon which the official publication was based is unaffected; or
  - (iii) the reference to the interpretation upon which the official publication was based was *obiter dicta*; or
- (c) the official publication is withdrawn or modified by the Commissioner, from the date of the official publication of the withdrawal or modification.

(3) A general ruling ceases to be a practice generally prevailing in the circumstances described in section 85.

## **Part B**

### ***Powers and duties of SARS and SARS officials***

#### **Powers and duties**

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

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

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

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

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

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

(5) Powers not specifically required by this Act to be exercised by the Commissioner personally or by a senior SARS official, may be exercised or performed by any SARS official.

(6) The Commissioner may by public notice specify that a power or duty in a tax Act other than this Act must be exercised by the Commissioner personally or a senior SARS official.

### **Conflict of interest**

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

### **Identity cards**

8. (1) SARS must issue an identity card to each SARS official.
- (2) When a SARS official exercises a power or duty under a tax Act in person, the official must produce the identity card upon request by a member of the public.
- (3) If the official does not produce the identity card a member of the public is entitled to assume that the person is not a SARS official.

### **Decision, notice or communication**

9. (1) A decision made by a SARS official and a notice or communication issued by SARS —
- (a) is regarded as made by a SARS official, authorised to do so or duly issued by SARS, until proven to the contrary; and

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

- (i) the SARS official;
- (ii) any SARS official to whom the SARS official reports; or
- (iii) a senior SARS official.

(2) If the decision, notice or communication to be withdrawn or amended adversely affects the rights of the taxpayer, the taxpayer must be—

- (a) given prior notice of the intention of SARS to do so; and
- (b) prior to the withdrawal or amendment, provided with the opportunity to submit written reasons why the decision, notice or communication should not be withdrawn or amended.

(3) A decision, notice or communication referred to in subsection (1) may not be withdrawn or amended after three years from the—

- (a) date of the written notice of that decision; or
- (b) 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 section 50, 59, 146, 197 or 200—

- (a) must be in writing;
- (b) becomes effective only when signed by the person to whom the delegation is made;
- (c) is subject to the limitations and conditions the Commissioner may determine in making the delegation;
- (d) may either be to—
  - (i) a specific individual; or
  - (ii) the incumbent of a specific post; and
- (e) may be amended or repealed by the Commissioner.

(2) A delegation does not divest the person making the delegation of the responsibility for the exercise of the delegated power or the performance of the delegated duty.

### ***Part D*** ***Authority to act in legal proceedings***

### **Legal proceedings**

11. (1) No person other than the Commissioner or a person authorised by the Commissioner may institute or defend civil 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 regarded as duly authorised until proven to the contrary.

(3) A senior SARS official may lay a criminal charge relating to a tax offence described in section 236.

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

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

(2) A senior SARS official may appear in the tax court or other High Court only if the person—

(a) is an advocate duly admitted under—

- (i) the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or
- (ii) a law providing for the admission of advocates in an area in the Republic which remained in force by virtue of section 229 of the Constitution of the Republic of South Africa, 1996, or

(b) is an attorney duly admitted and enrolled under—

- (i) the Attorneys Act, 1979 (Act No. 53 of 1979); or
- (ii) a law providing for the admission of attorneys in an area in the Republic which remained in force by virtue of section 229 of the Constitution, 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 any other High Court (other than the Constitutional Court).

## **Part E**

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

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

13. (1) The powers conferred and the duties imposed upon the Minister by or under the provisions of a tax Act may—

(a) be exercised or performed by the Minister personally; and

(b) except for the powers under sections 14 and 258, be delegated by the Minister to the Deputy-Minister; or 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.

### **Power of Minister to appoint Tax Ombud**

**14.** (1) The Minister must appoint a person as Tax Ombud—

(a) for a term of three years, which term may be renewed; and

(b) under such conditions regarding remuneration and allowances as the Minister may determine.

(2) The person appointed under subsection (1) or (3) may be removed by the Minister for any reason that the Minister considers good and sufficient.

(3) During a vacancy in the office of Tax Ombud, the Minister may designate a person in the office of the Tax Ombud to act as Tax Ombud.

(4) No person may be designated in terms of subsection (3) as acting Tax Ombud for a period longer than 90 days at a time.

(5) A person appointed as Tax Ombud—

(a) is accountable to the Minister;

(b) must have a good background in customer service as well as tax law; and

(c) may not at any time during the preceding 5 years been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty for which the person has been sentenced to a period of imprisonment exceeding two years without the option of a fine or to a fine exceeding the prescribed amount.

### **Office of Tax Ombud**

**15.** (1) The staff of the office of the Tax Ombud must be employed in terms of the South African Revenue Service Act and be seconded to the office of the Tax Ombud by the Commissioner after consultation with the Tax Ombud.

(2) When the Tax Ombud is absent or otherwise unable to perform the functions of office, the Tax Ombud may designate another person in the office of the Tax Ombud as acting Tax Ombud.

(3) No person may be designated in terms of subsection (2) as acting Tax Ombud for a period longer than 90 days at a time.

(4) The expenditure connected with the functions of the Office of the Tax Ombud is paid out of the funds of SARS.

(5) The Tax Ombud and the staff of the office of the Tax Ombud are subject to the provisions of Chapter 6, except for the disclosure referred to in section 19.

## **Mandate of Tax Ombud**

**16.** (1) The mandate of the Tax Ombud is to, subject to section 18(4), review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS.

(2) In discharging his or her mandate, the Tax Ombud must—

- (a) review a complaint and, if necessary, resolve it through mediation or conciliation;
- (b) act independently in resolving a complaint;
- (c) follow informal, fair and cost-effective procedures in resolving a complaint;
- (d) provide information to a taxpayer about the mandate of the Tax Ombud and the procedures to pursue a complaint;
- (e) facilitate access by taxpayers to complaint resolution mechanisms within SARS to address complaints; and
- (f) identify and review systemic and emerging issues related to service matters or the application of the provisions of this Act that impact negatively on taxpayers.

## **Limitations on authority**

**17.** The Tax Ombud may not review—

- (a) legislation or tax policy;
- (b) SARS policy or practice generally prevailing, other than to the extent that it relates to a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS;
- (c) a matter subject to objection and appeal under a tax Act; or
- (d) any decision of, proceeding in or matter before, the tax court.

## **Review of complaint**

**18.** (1) The Tax Ombud may review any issue within the Ombud's mandate on receipt of a request from a taxpayer.

(2) The Tax Ombud may—

- (a) determine how a review is to be conducted; and
- (b) determine whether a review should be terminated before completion.

(3) In exercising the discretion set out in subsection (2), the Tax Ombud must consider such factors as—

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



(4) The Tax Ombud may only review a request if the requester has exhausted the available complaints resolution mechanisms in SARS, unless there are compelling circumstances.

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

- (a) the request raises systemic issues;
- (b) exhausting the complaints resolution mechanisms will cause undue hardship to the requester; or
- (c) exhausting the complaints resolution mechanisms is unlikely to produce a result within a period of time that the Tax Ombud considers reasonable.

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

### **Reports by Tax Ombud**

**19.** (1) The Tax Ombud must report directly to the Minister.

(2) The Tax Ombud must submit an annual report to the Minister within five months of the end of SARS's financial year.

(3) The Tax Ombud must submit a report to the Commissioner quarterly or at such other intervals as may be agreed.

(4) The reports must—

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

### **Other reports and recommendations**

**20.** (1) The Tax Ombud must attempt to resolve all issues within the Tax Ombud's mandate at the level at which they can most efficiently and effectively be resolved and must, in so doing, communicate with any SARS officials that may be identified by SARS.

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

## Confidentiality

**21.** (1) The Tax Ombud and any person acting on the Tax Ombud's behalf may not disclose information of any kind that is obtained by or on behalf of the Tax Ombud, or prepared from information obtained by or on behalf of the Tax Ombud.

(2) Despite subsection (1), the Tax Ombud and any person acting on the Tax Ombud's behalf—

- (a) may disclose information that does not, directly or indirectly, reveal the identity of the taxpayer to whom it relates; and
- (b) must disclose information if required by this Act or an Act of Parliament but only in accordance with, and for the purposes of, such Acts.

## CHAPTER 3 REGISTRATION

### Registration requirements

**22.** (1) A person—

- (a) obliged to apply to; or
- (b) who may voluntarily,

register with SARS under a tax Act must do so in terms of the requirements of this Chapter or, if applicable, the relevant tax Act.

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

- (a) apply for registration within the period provided for in a tax Act or, if no such period is provided for, 21 business days of so becoming obliged or within the further period as SARS may approve in the form and manner prescribed by the Commissioner;
- (b) apply for one or more taxes in the form and manner as the Commissioner may direct; and
- (c) provide SARS with the further particulars and any documents as SARS may require for the purpose of registering the person for the tax or taxes.

(3) A person may be required to submit biometric information upon registration in the 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.

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

### **Communication of change in registered particulars**

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

- (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.

### **Taxpayer reference number**

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

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

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

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

## **CHAPTER 4 RETURNS AND RECORDS Part A General**

### **Submission of return**

**25.** (1) A person 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 public notice requiring the submission.

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

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

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

(5) SARS may, prior to the issue of an original assessment, request or allow a person to submit an amended return to correct an undisputed error in a return.

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

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

### **Third party returns**

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

### **Other returns required**

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

### **Statement concerning account**

**28.** (1) SARS may require a person who submits financial statements or accounts prepared by another person in support of that person's submitted return, to submit a certificate or statement by the other person setting out the details of—

- (a) the extent of the other person's examination of the books of account and of the documents from which the books of account were written up; and
- (b) whether or not the entries in those books and documents disclose the true nature of the transactions, receipts, accruals, payments, or debits in so far as may be ascertained by that examination.

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

### **Duty to keep records**

**29.** (1) A person must keep the records, books of account or documents that—

- (a) enable the person to observe the requirements of a tax Act;
- (b) are specifically required under a tax Act; and

- (c) enable SARS to be satisfied that the person has observed these requirements.
- (2) The requirements of this Act to keep records for a tax period apply to a person who 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 any 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**

- 30.** (1) The records, books of account, and documents referred to in section 29, must be kept or retained—
- (a) in their original form in an orderly fashion and in a safe place;
- (b) in the form, including electronic form, as may be prescribed by the Commissioner in a public notice; or
- (c) in a form specifically authorised by a Senior SARS official in terms of subsection (2).
- (2) A senior SARS official may, subject to the conditions as the official may determine, authorise the retention of information contained in records or documents referred to in section 29 in a form acceptable to the official.

### **Inspection of records**

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

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

**32.** Notwithstanding section 29(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**

**33.** (1) In the case of information that is not in one of the official languages of the Republic, a senior SARS official may by notice require a 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) if required by SARS, be prepared and certified by a sworn and accredited translator or another person approved by the senior SARS official.

## **Part B** **Reportable arrangements**

### **Definitions**

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

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

**‘financial benefit’** means a reduction in the cost of finance, including interest, finance charges, costs, fees, and discounts in a 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 an 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 Statements of Generally Accepted Accounting Practice after taking into account all costs and expenditure incurred by the ‘participant’ in connection with the ‘arrangement’ and after deducting any foreign tax paid or payable by the ‘participant’ in connection with the ‘arrangement’;

**‘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

**35.** (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) gives rise to an amount that is or will be disclosed by any ‘participant’ in any year of assessment or over the term of the ‘arrangement’ as—
  - (i) a deduction for purposes of the Income Tax Act but not as an expense for purposes of Statements of Generally Accepted Accounting Practice; or
  - (ii) revenue for purposes of Statements 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 “10 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 “10 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 36.

### Excluded arrangements

**36.** (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 No. 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 No. 45 of 2002).

(2) Subsection (1) applies only to an 'arrangement' that—

- (a) is undertaken on a stand-alone basis and is not directly or indirectly connected to any other 'arrangement' (whether entered into between the same or different parties); or
- (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**

**37.** (1) The 'promoter' must disclose the information referred to in section 38 in respect of a reportable arrangement.

(2) If there is no 'promoter' in relation to the arrangement or if the 'promoter' is not a resident, all other 'participants' must disclose the information.

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

- (a) the 'promoter' that the 'promoter' has disclosed the arrangement; or
- (b) any other 'participant', if subsection (2) applies, that the other 'participant' has disclosed the arrangement.



(4) The arrangement must be disclosed within 45 business days after an amount is 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 45 business days, if reasonable grounds exist for the extension.

### **Information to be submitted**

**38.** The 'promoter' or 'participant' must submit, in relation to a reportable arrangement, in the form and manner and at the time or place that may be prescribed by the Commissioner—

- (a) a detailed description of all its steps and key features including, in the case of an arrangement that is a step or part of a larger arrangement, all the steps and key features of the larger arrangement;
- (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**

**39.** SARS must, after receipt of the information contemplated in section 38, issue a reportable arrangement reference number to each 'participant' for administrative purposes only.

## **CHAPTER 5 INFORMATION GATHERING Part A *Request for information***

### **Inspections**

**40.** (1) SARS may, for the purposes of the administration of a tax Act and without prior notice, arrive at a premises and inspect the premises to determine only—

- (a) the identity of the person occupying the premises;
- (b) whether the person occupying the premises is conducting a trade or an enterprise; or
- (c) whether the person occupying the premises is registered for tax.

(2) 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.

### **Request for information**

**41.** (1) SARS may, for the purposes of the administration of a tax Act in relation to a taxpayer, whether identified by name or otherwise objectively identifiable, require the taxpayer or another person to, within a reasonable period, submit relevant material (whether orally or in writing) that SARS requires.

(2) A senior SARS official may request relevant material in terms of subsection (1) in respect of taxpayers in an objectively identifiable class of taxpayers.

(3) A request by SARS for information from another person is limited to the records maintained or that should reasonably be maintained by the person.

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

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

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

(7) A senior SARS official may request information for purposes of revenue estimation.

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

**42.** (1) A senior SARS official may, by notice, require a person, whether or not chargeable to tax, to attend in person at the time and place designated in the notice for the purpose of being interviewed by a SARS official concerning the tax affairs of the person or another person, if the interview —

(a) is intended to clarify issues of concern to SARS to render further inquiries or an audit unnecessary; and

(b) is not for purposes of a criminal investigation.

(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 specificity.

**Part B**  
***Audit and Investigation***

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

**43.** (1) A senior SARS official may grant a SARS official written authorisation to audit and investigate, as contemplated in this part, any relevant material of a taxpayer or related entity .

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

(3) If the official does not produce the authorisation as required under subsection (2), a member of the public is entitled to assume that the person is not a SARS official so authorised.

**Audit selection**

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

**Field audit**

**45.** (1) A SARS official named in an authorisation referred to in section 43 may, subject to subsection (3), require a person with prior notice of at least 10 business days to make available at the person's premises specified in the notice any relevant material that the official may require to audit in connection with the administration of a tax Act in relation to the person or another person.

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

- (a) state the place where and the date and time that the audit is due to start (which must be during normal business hours); and
- (b) indicate the initial basis and scope 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 five business days before the date listed in the notice advances reasonable grounds for varying the notice, SARS may vary the notice accordingly, subject to conditions SARS may impose with regard to preparatory measures for the audit.

(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**

**46.** (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—

- (a) obstruct a SARS official from carrying out the audit; or
- (b) without reasonable excuse refuse to give the assistance as may be required under subsection (1).

(3) The person may recover from SARS after completion of the audit (or, at the person's request, on a monthly basis) the costs for the use of photocopying facilities in accordance with the fees prescribed in accordance with section 92(1)(b) of the Promotion of Access to Information Act.

### **Keeping taxpayer informed**

**47.** (1) A SARS official involved in or responsible for an audit under this Part must, in the form and in the manner as may be prescribed by the Commissioner by public notice, provide the taxpayer with a report indicating the stage of completion of the audit.

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

- (a) was inconclusive, SARS must inform the taxpayer accordingly within 21 business days; or
- (b) identified potential adjustments of a material nature, SARS must within 21 business days, or the further period that may be required based on the complexities of the audit, provide the taxpayer with a document 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 21 business days of delivery of the document, or the further period requested by the taxpayer that may be allowed by SARS based on the complexities of the audit, respond in writing to the facts and conclusions set out in the document.

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

(5) Subsections (1) and (2) do not apply if a senior SARS official has a reasonable belief that compliance with those subsections would impede or prejudice the purpose, progress, or outcome of the audit.

(6) SARS may under the circumstances described in subsection (5) issue the assessment resulting from the audit and the grounds of the assessment must be provided to the taxpayer within 21 business days of the assessment or the further period that may be required based on the complexities of the audit.

### **Referral for criminal investigation**

**48.** (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 senior SARS official responsible for criminal investigations for a decision as to whether a criminal investigation should be pursued.

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

(3) If an investigation is referred under subsection (1) the relevant material and files relating to the case must be returned to the SARS official responsible for the audit if —

- (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.

### **Criminal investigation**

**49.** (1) If an investigation is referred under section 48 and it is ultimately decided to pursue a criminal investigation, SARS must then apply the information gathering powers in terms of this Chapter with due recognition of the taxpayer's constitutional rights as a suspect in a criminal investigation.

(2) In the event that a decision is taken to pursue the criminal investigation of a serious tax offence, SARS may make use of relevant material obtained prior to the referral referred to in section 48.

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

## ***Part C*** ***Inquiries***

### **Authorisation for inquiry**

**50.** (1) The Commissioner personally, or a senior SARS official delegated by him or her 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 the Commissioner for this purpose, grant an order in terms of which a person described in section 51(3) is designated to act as presiding officer at the inquiry contemplated in this section.

(3) An application under subsection (2) must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based.

### **Inquiry order**

**51.** (1) A judge may grant the order referred to in section 50(2) if satisfied that there are reasonable grounds to believe that—

- (a) a person has—
  - (i) failed to comply with an obligation imposed under a tax Act; or
  - (ii) committed a tax offence; and
- (b) relevant material is likely to be revealed during the inquiry which may provide proof of the failure to comply or of the commission of the offence.

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

- (a) designate a presiding officer before whom the inquiry is to be held;
- (b) identify the person referred to in subsection (1)(a);
- (c) refer to the alleged non-compliance or offence to be inquired into;
- (d) be reasonably specific as to the ambit of the inquiry; and
- (e) be provided to the presiding officer.

(3) A presiding officer must be a person appointed to the panel described in section 111.

### **Inquiry proceedings**

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

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

(3) A person has the right to have a legal representative present when that person appears as a witness before the presiding officer.

### **Notice to appear**

**53.** (1) The presiding officer may, by notice in writing, require a person, whether or not chargeable to tax, to—

- (a) appear before the inquiry, at the time and place designated in the notice, for the purpose of being examined under oath or solemn declaration, and
- (b) produce any relevant material in the custody of the person.

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

### **Powers of presiding officer**

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

### **Witness fees**

**55.** The presiding officer may direct that a person receive witness fees to attend an inquiry in accordance with the tariffs prescribed in terms of section 51 of the Magistrates' Courts Act, 1944 (Act 32 of 1944).

### **Confidentiality of proceedings**

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

### **Incriminating evidence**

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

**58.** Unless a court orders otherwise, an inquiry relating to a person referred to in section 51(1)(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**

**59.** (1) The Commissioner personally, or a senior SARS official delegated by him or her for this purpose, may, if necessary or relevant to administer a tax Act, authorise an application for a warrant authorising SARS to enter a premises where relevant material is kept to search—

- (a) the premises; and
- (b) 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 where the estimated tax in dispute does not exceed the amount determined in the notice issued under section 109(1)(a).

**Issuance of warrant**

**60.** (1) A judge or magistrate may issue the warrant referred to in section 59(1) if satisfied that there are reasonable grounds to believe that—

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

(2) A warrant issued under subsection (1) must as far as is reasonable 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 name of an independent attorney for purposes of section 64.

(3) The warrant must be exercised within 45 business days or such further period as a judge or magistrate deems appropriate on good cause shown.

**Carrying out search**

**61.** (1) A SARS official exercising a power under a warrant referred to in section 60 must produce the warrant.

(2) Subject to section 63, a SARS official's failure to produce a warrant entitles a person to refuse access to the official.



- (3) The SARS official may—
- (a) open or cause to be opened or removed in conducting a search, anything which the official suspects to contain relevant material;
  - (b) seize relevant material ;
  - (c) seize and retain a computer or storage device in which relevant material is stored for as long as it is necessary to copy the material required;
  - (d) make extracts from or copies of relevant material, and require from a person an explanation of relevant material; and
  - (e) if the *premises* listed in the warrant is a vessel, aircraft, or vehicle, stop and board the vessel, aircraft or vehicle, search the vessel, aircraft or vehicle or a person found in the vessel, aircraft or vehicle, and question the person with respect to a matter dealt with in a tax Act.

(4) The SARS official must make an inventory of the relevant material seized in the form, manner and at the time that is reasonable under the circumstances and provide a copy thereof to the person.

(5) The SARS official must conduct the search with strict regard for decency and order, and may search a person if the official is of the same gender as the person being searched.

(6) The SARS official may, at any time, request such assistance from a police officer as the official may consider reasonably necessary and the police officer must render the assistance.

(7) No person may obstruct a SARS official or a police officer from executing the warrant or without reasonable excuse refuse to give such assistance as may be reasonably required for the execution of the warrant.

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

(9) If the SARS official seizes relevant material, the official must ensure that the relevant material seized is preserved and retained until it is no longer required for—

- (a) the investigation into the non-compliance or the offence described under section 60(1)(a); or
- (b) the conclusion of any legal proceedings under a tax Act or criminal proceedings in which it is required to be used.

### **Search of premises not identified in warrant**

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

(c) the delay in obtaining a warrant would defeat the object of the search and seizure,

SARS may enter and search the premises and exercise the powers granted in terms of this Part, as if the premises had been identified in the warrant.

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

### **Search without warrant**

**63.** (1) A senior SARS official may without a warrant exercise the powers referred to in section 61(3)—

- (a) if the person who may consent thereto so consents in writing; or
- (b) if the senior SARS official on reasonable grounds is satisfied that—
  - (i) there may be an imminent removal or destruction of relevant material likely to be found on the premises;
  - (ii) if SARS applies for a search warrant under section 59, a search warrant will be issued; and
  - (iii) the delay in obtaining a warrant would defeat the object of the search and seizure.

(2) Section 61(3) to (8) and section 64(2)(b) applies to a search conducted under this section.

### **Legal professional privilege**

**64.** (1) If SARS foresees the need to search and seize relevant material that may be alleged to be subject to legal professional privilege, an attorney named in the warrant or, if unavailable, an attorney from the panel appointed under section 111, must be present during the execution of the warrant.

(2) If, during the carrying out of search and seizure by SARS, a person alleges the existence of legal professional privilege in respect of relevant material, the material must be—

- (a) for purposes of the execution of a warrant issued under section 60, preserved until the presence of the attorney referred to in subsection (1) is secured; or
- (b) for purposes of a search and seizure carried out under section 63, sealed and as soon as is reasonably possible handed over to an attorney from the panel appointed under section 111.

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

- (a) be briefed by SARS but is not regarded as acting on behalf of either party; and
- (b) personally take responsibility for—

- (i) in the circumstances described in subsection (2)(a), the removal from the premises of relevant material in respect of which legal privilege is alleged; or
- (ii) in the circumstances described in subsection (2)(b), the receipt of the sealed information; and
- (iii) retaining the relevant material until the determination of whether the privilege applies.

(4) If a determination of whether the privilege applies is made by the attorney and 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, a judge or magistrate must determine the claim to privilege by way of proceedings *in camera*; and
- (c) the costs of the mediation and proceedings must be borne by the unsuccessful party.

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

**65.** (1) The person to whose affairs relevant material seized relates may examine and copy it.

(2) Examination and copying must be made—

- (a) at the person's cost in accordance with the fees prescribed in accordance with section 92(1)(b) of the Promotion of Access to Information Act;
- (b) during normal business hours; and
- (c) under the supervision determined by a senior SARS official.

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

**66.** (1) A person may request SARS to—

- (a) return some or all of the seized material; or
- (b) pay the costs of physical damage caused during the conduct of a search and seizure.

(2) If SARS refuses the request, the person may apply to a High Court for the return of the seized material or payment of compensation for physical damage caused during the conduct of the search and seizure.

(3) The court may, on good cause shown, make the order as it deems fit.

(4) If the court sets aside the warrant issued in terms of section 60(1) or orders the return of the seized material, the court may nevertheless authorise SARS to retain the original or a copy of any relevant material in the interests of justice.

## CHAPTER 6 CONFIDENTIALITY OF INFORMATION

### General prohibition of disclosure

- 67.** (1) This Chapter applies to—
- (a) SARS information, which means confidential information as referred to in section 68(1); and
  - (b) taxpayer information, which means any relevant material provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information.
- (2) An oath or solemn declaration undertaking to comply with the requirements of this Chapter in the form as may be prescribed by the Commissioner, must be taken before a magistrate, justice of the peace, or commissioner of oaths by—
- (a) a SARS official, before commencing duties or exercising any powers under a tax Act; and
  - (b) a person referred to in section 70 who performs any function as contemplated in that section, before the disclosure described in that section may be made.
- (3) In the event of the disclosure of SARS 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) A person who receives information under section 68, 69, 70 or 71, must preserve the secrecy of the information and may only disclose the information to another person if the disclosure is necessary to perform the functions specified in those sections.
- (5) The Commissioner may, for purposes of protecting the integrity and reputation of SARS as an organisation and after giving the taxpayer at least 24 hours' notice, disclose taxpayer information to the extent necessary to counter or rebut false allegations or information disclosed by a taxpayer, the taxpayer's duly authorised representative or other person acting under the instructions of the taxpayer and published in the media or in any other manner.

### SARS Information and disclosure

- 68.** (1) For purposes of the definition of SARS information, confidential information means information relevant to the administration of a tax Act that is—
- (a) personal information about a current or former SARS official, whether deceased or not;
  - (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 an opinion, advice, report, recommendation or an account of a consultation, discussion or deliberation that has occurred, if—
  - (i) the information was given, obtained or prepared by or for SARS for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; and
  - (ii) the disclosure of the information could reasonably be expected to frustrate the deliberative process in SARS or between SARS and other organs of state by—
    - (aa) inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or
    - (bb) frustrating the success of a policy or contemplated policy by the premature disclosure thereof;
- (f) information about research being or to be carried out by or on behalf of SARS, the disclosure of which would be likely to prejudice the outcome of the research;
- (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 a tax Act or the Customs and Excise Act;
- (h) information supplied in confidence by or on behalf of another state or an international organisation to SARS;
- (i) a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by SARS; and
- (j) information relating to the security of SARS buildings, property, structures or systems.

(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 SARS information if—

- (a) the information is public information;
- (b) authorised by the Commissioner;

- (c) disclosure is authorised under any other Act which expressly provides for the disclosure of the information notwithstanding the provisions in this Chapter;
- (d) access has been granted for the disclosure of the information in terms of the Promotion of Access to Information Act; or
- (e) by order of a High Court.

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

**69.** (1) Subject to this Chapter, a person who is a current or former SARS official must preserve the secrecy of taxpayer information and 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; or
  - (ii) as a witness in any civil or criminal proceedings under a tax Act, or
- (b) under any other Act which expressly provides for the disclosure of the information notwithstanding the provisions in this Chapter;
- (c) subject to subsection (3) and (4), by order of a High Court; or
- (d) to an employer (as defined in the Fourth Schedule to the Income Tax Act) of an employee (as defined in the Fourth Schedule), but only the income tax reference number, identity number, physical or postal address of that employee and such other non-financial information in relation to that employee, as that employer may require in order to comply with its obligations in terms of a tax Act.

(3) An application to the tax court contemplated in subsection (2)(c) requires prior notice to SARS of at least 15 business days unless the court, based on urgency, allows a shorter period.

(4) SARS may oppose the application on the basis that the disclosure may seriously prejudice the taxpayer concerned or impair a civil or criminal tax investigation by SARS, and the court may not grant the order unless satisfied that the following circumstances apply—

- (a) the information cannot be obtained elsewhere;
- (b) the primary mechanisms for procuring evidence under any Act or rule of court will yield or yielded no or disappointing results;
- (c) the information is central to the case; and
- (d) the information does not constitute biometric information.

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

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

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

(7) The Commissioner may, despite the provisions of this section, publish—

- (a) the name and taxpayer reference number of a taxpayer; and
- (b) a list of approved public benefit organisations for the purposes of the provisions of sections 18A and 30 of the Income Tax Act.

### **Disclosure for non-tax administration purposes**

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

- (a) a taxpayer which is an—
  - (i) institution referred to in section 3(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
  - (ii) entity referred to in section 3 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003),
 to the extent necessary for the Director-General to perform the functions and exercise the powers of the National Treasury under those Acts; and
- (b) a class of taxpayers to the extent necessary for the purposes of tax policy design or revenue estimation.

(2) A senior SARS official may disclose to—

- (a) the Statistician-General, the taxpayer information as may be required for the purpose of carrying out the Statistician-General's duties to publish statistics in an anonymous form;
- (b) the Chairperson of the Board administering the National Student Financial Aid Scheme, the name and address of the employer of a person to whom a loan or bursary has been granted under that scheme, for use in performing their functions under the National Student Financial Aid Scheme Act, 1999 (Act No. 56 of 1999);
- (c) a Commission of Inquiry established by the President of the Republic of South Africa under a law of the Republic, the information to which the Commissioner is authorised by law to have access; and
- (d) an organ of state or institution listed in a regulation issued by the Minister under section 258, information to which the organ of state or institution is otherwise lawfully entitled to and for the purposes only of verifying the following particulars of a taxpayer—
  - (i) name and taxpayer reference number;
  - (ii) any identifying number;
  - (iii) physical and postal address and other contact details;
  - (iv) employer's name, address and contact details; and

- (v) other non-financial information as the organ of state or institution may require for purposes of verifying items (i) to (iv) .
- (3) Subject to subsection (4), a senior SARS official may disclose to—
- (a) the Governor of the South African Reserve Bank, or other person to whom the Minister delegates powers, functions, and duties under the Exchange Control Regulations, 1961, issued under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), the information as may be required to exercise a power or perform a function or duty under the South African Reserve Bank Act, 1994 (Act No. 29 of 1994) or those Regulations;
  - (b) the Financial Services Board, the information as may be required for the purpose of carrying out the Board's duties and functions under Financial Services Board Act, 1990 (Act No. 97 of 1990);
  - (c) the Financial Intelligence Centre, the information as may be required for the purpose of carrying out the Centre's duties and functions under the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and
  - (d) the National Credit Regulator, the information as may be required for the purpose of carrying out the Regulator's duties and functions under the National Credit Act, 2005 (Act No. 34 of 2005).
- (4) The information disclosed under subsection (3) may only be disclosed to the extent that it is—
- (a) necessary for the purpose of exercising a power or performing a regulatory function or duty under the legislation referred to in subsection (3); and
  - (b) relevant and proportionate to what the disclosure is intended to achieve as determined under the legislation.
- (5) 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).
- (6) 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**

- 71.** (1) If so ordered by a judge referred to in subsection (3) or (5), a senior SARS official 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) 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 for an order authorising SARS to disclose the information under subsection (1).

(4) The National Commissioner of the South African Police Service, the National Director of Public Prosecutions or a person acting under their 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 *ex parte* application to a judge in chambers for an order requiring SARS to disclose the information referred to in subsection (2), which application requires prior notice to SARS of at least 10 business days unless the judge, based on urgency, allows a shorter period.

(5) SARS may oppose the application referred to in subsection (4) on the basis that the disclosure would seriously impair or prejudice a civil or criminal tax investigation or other enforcement of a tax act by SARS.

### **Self incrimination**

**72.** 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 directs otherwise.

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

**73.** (1) A taxpayer or the taxpayer's duly authorised representative is entitled to obtain—

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

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

(3) The person requesting information under subsection (1)(b) may be required to pay for the costs of any copies in accordance with the fees prescribed in accordance with section 92(1)(b) of the Promotion of Access to Information Act.

### **Publication of names of offenders**

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

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

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

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

## **CHAPTER 7 ADVANCE RULINGS**

### **Definitions**

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

**'advance ruling'** means a 'binding general ruling', a 'private general ruling' or a 'class ruling';

**'applicant'** means a person who submits an application for a 'private general ruling' or a 'class ruling';

**'application'** means an 'application' for a 'private general ruling' or a 'class ruling';

**'binding effect'** means the requirement that SARS interpret or apply the applicable tax Act in accordance with an 'advance ruling' under section 82(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, that may be unrelated and—

- (i) are similarly affected by the application of a tax Act to a 'proposed transaction'; and
- (ii) agree to be represented by an applicant;

**'class member'** and **'class members'** means a member or members of the 'class' to which a 'class ruling' applies;

**'class ruling'** means a written statement issued by SARS regarding the application of a tax Act to a specific 'class' of persons in respect of a 'proposed transaction';

**'connected person'** means a connected person as defined in the Income Tax Act;

**'binding general ruling'** means a written statement issued by the Commissioner under section 89 regarding the interpretation of a tax Act or the application of a tax Act to the stated facts and circumstances;

**'non-binding private opinion'** means informal guidance issued by SARS in respect of the tax treatment of a particular set of facts and circumstances or transaction, but which does not have any binding effect within the meaning of section 88;

**'binding private ruling'** means a written statement issued by SARS regarding the application of a tax Act to one or more parties to a 'proposed transaction', in respect of the 'transaction';

**'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 of advance ruling**

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

### **Scope of advance ruling**

**77.** Subject to section 80, SARS may make an 'advance ruling' on any provision of a tax Act.

### **Private rulings and class rulings**

**78.** (1) SARS may issue a 'private general ruling' upon 'application' by a person in accordance with section 79.

(2) SARS may issue a 'class ruling' upon 'application' by a person in accordance with section 79.

(3) SARS may make a 'private general 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 general ruling’ or ‘class ruling’ may be issued in the manner and in the form that the Commissioner may prescribe, and must be signed by a senior SARS official and must contain the following—

- (a) a statement identifying it as a ‘private general 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**

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

(2) An ‘application’ for a ‘private general ruling’ may be made by one person who is a party to a ‘proposed transaction’, or by two or more parties to a ‘proposed transaction’ as co-applicants, and if there is more than one ‘applicant’, each ‘applicant’ must join in designating one ‘applicant’ as the lead ‘applicant’ to represent the others.

(3) An ‘application’ for a ‘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 80;
  - (k) a description of the information that the 'applicant' believes should be deleted from the final ruling before publication in order to protect the confidentiality of the 'applicant' or 'class members';
  - (l) the 'applicant's' consent to the publication of the ruling by SARS in accordance with section 87; and
  - (m) in the case of an 'application' for a 'class ruling'—
    - (i) a description of the 'class members'; and
    - (ii) the impact the 'proposed transaction' may have upon the tax liability of the 'class members' or, if relevant, any connected person in relation to the 'applicant' or to any 'class member'.
- (5) SARS may request additional information from an 'applicant' at any time.

(6) An 'application' must be accompanied by the 'application' fee prescribed by the Commissioner pursuant to section 81.

(7) SARS must provide an 'applicant' with a reasonable opportunity to make representations if, based upon the 'application' and any additional information received, it appears that the content of the ruling to be made would differ materially from the proposed ruling sought by the 'applicant'.

(8) An 'applicant' may withdraw an 'application' for a ruling at any time.

(9) A co-applicant to a 'private general ruling' or a person referred to in section 78(2) may withdraw from an 'application' at any time.

(10) A withdrawal does not affect the liability to pay fees under section 81.

## Rejection of application

- 80.** (1) SARS may reject an ‘application’ for an ‘advance ruling’ if the ‘application’—
- (a) requests or requires the rendering of an opinion, conclusion, or determination regarding—
    - (i) the market value of an asset;
    - (ii) the application or interpretation of the laws of a foreign country;
    - (iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the ‘applicant’ or a ‘class member’;
    - (iv) the constitutionality of a tax Act;
    - (v) a ‘proposed transaction’ that is hypothetical or not seriously contemplated;
    - (vi) a matter which can be resolved by SARS issuing a directive under the Fourth Schedule to the Income Tax Act;
    - (vii) whether a person is an independent contractor, labour broker, or personal service provider; or
    - (viii) a matter which is submitted for academic purposes;
  - (b) contains—
    - (i) a frivolous or vexatious issue;
    - (ii) an alternative course of action by the ‘applicant’ or a ‘class member’ that is not seriously contemplated; or
    - (iii) an issue that is the same as or substantially similar to an issue that is—
      - (aa) currently before SARS in connection with an audit 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 a court;
  - (c) 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;

- (v) in respect of a 'transaction' that is part of another 'transaction' which has a bearing on the issue, the details of which have not been disclosed; or
- (vi) which is the same as or substantially similar to an issue upon which the applicant has already received an unfavourable ruling;
- (e) involves a matter the resolution of which would be unduly time-consuming or resource intensive; or
- (f) requests SARS to rule on the substance of a 'transaction' and disregard its form.

(2) The Commissioner may publish a list of additional considerations in respect of which the Commissioner may reject an 'application'.

(3) If SARS requests additional information in respect of an 'application' and the 'applicant' fails or refuses to provide the information, SARS may reject the 'application' without a refund or rebate of any fees imposed under section 81.

## **Fees**

**81.** (1) In order to defray the cost of the 'advance ruling' system, the Commissioner may 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' SARS may, upon request by the 'applicants', impose a single prescribed fee in respect of the 'application'.

## **Binding effect**

**82.** (1) Subject to sections 84, 85, and 86, if an 'advance ruling' applies to a person in accordance with section 83, then SARS must interpret or apply the applicable tax Act to the person in accordance with the ruling.

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

(3) A 'binding general ruling' may be cited by SARS or any person in a proceeding before SARS or a court.

(4) A private or 'class ruling' must not be cited in a proceeding before SARS or a court other than a proceeding involving an 'applicant' or a 'class member', as the case may be.

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

### **Applicability of advance rulings**

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

### **Rulings rendered void**

- 84.** (1) A 'private general 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**

- 85.** (1) Notwithstanding any provision to the contrary contained in 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, in which case the 'advance ruling' will cease to be effective from the date that the repeal or amendment is effective; or



- (b) a court overturns or modifies an interpretation of the tax Act on which the 'advance ruling' is based, in which case the 'advance ruling' will cease to be effective from the date of judgment unless—
- (i) the decision is under appeal;
  - (ii) the decision is fact-specific and the general interpretation upon which the 'advance ruling' was based is unaffected; or
  - (iii) the reference to the interpretation upon which the 'advance ruling' was based was *obiter dicta*.
- (2) An 'advance ruling' ceases to be effective upon the occurrence of any of the circumstances described in subsection (1), whether or not the Commissioner publishes a notice of withdrawal or modification.

### **Withdrawal or modification**

- 86.** (1) SARS may withdraw or modify an 'advance ruling' at any time, subject to the requirements of this section.
- (2) If the 'advance ruling' is a 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.
- (3) SARS may specify the effective date of the decision to withdraw or modify the ruling which date must not be earlier than the date—
- (a) the ruling is delivered to an 'applicant', unless the circumstances in subsection (4) apply; or
  - (b) in the case of a 'binding general ruling', the decision is published.
- (4) SARS may withdraw or modify a 'private general 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.

### **Publication**

- 87.** (1) A person applying for a 'private general ruling' or 'class ruling' must consent to the publication of the ruling in accordance with this section.
- (2) A 'private general ruling' 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 general ruling’ 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 materially the same as a ruling already published; or
- (b) apply to a ruling that has been withdrawn before SARS has had occasion to publish it.

(9) If an advance ruling has been published, notice of the withdrawal or modification thereof must be published in the manner and media as the Commissioner may deem appropriate.

### **Non binding private opinions**

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

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

### **Binding general rulings**

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

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

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

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

- (b) the provisions of a tax Act which are the subject of the 'binding general ruling'; and
  - (c) either—
    - (i) the tax period or other definite period for which it applies; or
    - (ii) in the case of a 'binding general ruling' for an indefinite period, that it is for an indefinite period and the date or tax period from which it applies.
- (3) A 'binding general ruling' may be issued as an interpretation note or in another form and may be issued in the manner that the Commissioner prescribes.
- (4) A publication or other written statement does not constitute and may not be considered or treated as a 'binding general ruling' unless it contains the information prescribed by subsection (2).

### **Procedures and guidelines**

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

## **CHAPTER 8 ASSESSMENTS**

### **Original assessment**

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

(2) If a tax Act requires a taxpayer to submit a return which incorporates a determination of the amount of a tax liability, the submission of the return is an original self-assessment of the tax liability.

(3) If a tax Act requires a taxpayer to make a determination of the amount of a tax liability and no return is required, the payment of the amount of tax due is an original assessment.

(4) If a taxpayer does not or is not required to submit a return, SARS may make an assessment based on an estimate under section 95 if that taxpayer fails to pay the tax required under a tax Act.

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

### **Additional assessment**

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

### **Reduced assessment**

- 93.** (1) A reduced assessment must be issued if—
- (a) the taxpayer successfully disputed the assessment in terms of Chapter 9;
  - (b) necessary to give effect to a settlement under section 149;
  - (c) necessary to give effect to a judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal; or
  - (d) SARS is satisfied that there is an error in the assessment as a result of an undisputed error by—
    - (i) SARS; or
    - (ii) the taxpayer in a return.
- (2) SARS may reduce an assessment notwithstanding the fact that no objection has been lodged or appeal noted.

### **Jeopardy assessment**

**94.** (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 tax court on the ground that—

- (a) its amount is excessive; or
- (b) circumstances that justify a jeopardy assessment do not exist.

### **Estimation of assessment**

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

- (a) fails to submit a return as required; or
- (b) submits an inadequate or incorrect return or information.

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

(3) If the taxpayer is unable to submit an accurate return, a senior SARS official may agree in writing with the taxpayer as to the amount of tax chargeable

and issue an assessment accordingly, which assessment is not subject to objection or appeal.

### **Notice of assessment**

**96.** (1) SARS must give the taxpayer assessed notice of the assessment made by SARS, stating—

- (a) the name of the taxpayer;
- (b) the taxpayer's taxpayer reference number, if one has been allocated;
- (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 95 or an assessment that is not fully based on a return submitted by the taxpayer, a statement of the grounds for the assessment; and
- (b) in the case of a jeopardy assessment, the grounds for believing that the tax would otherwise be in jeopardy.

### **Recording of assessment**

**97.** (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 after five years from the date of assessment or the expiration of a further period that may be required by the Auditor-General.

### **Withdrawal of assessment**

**98.** (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;
- (b) was issued in respect of the incorrect tax period; or
- (c) was issued as a result of an incorrect payment allocation.

(2) An assessment withdrawn under this section is regarded not to have been issued.

### Period of limitations for issuance of assessment

- 99.** (1) SARS may not make an assessment in terms of this Chapter—
- (a) three years after the date of assessment of an original assessment by SARS;
  - (b) in the case of self assessment for which a return is required, five years after the date of assessment of an original assessment—
    - (i) by way of self-assessment by the taxpayer; or
    - (ii) if no return is received, by SARS;
  - (c) in the case of a self assessment for which no return is required, after the expiration of five years from the—
    - (i) date of the last payment of the tax for the tax period; or
    - (ii) if no payment was made in respect of the tax for the tax period, the effective date;
  - (d) in the case of—
    - (i) an additional assessment if the—
      - (aa) amount which should have been assessed to tax under the assessment was, in accordance with the practice generally prevailing at the date of assessment, not assessed to tax; or
      - (bb) full amount of tax which should have been assessed under the assessment was, in accordance with the practice, not assessed;
    - (ii) a reduced assessment, if the assessment was made in accordance with the practice generally prevailing at the date of that assessment; or
    - (iii) a tax for which no return is required, if the payment was made in accordance with the practice generally prevailing at the date of that payment; or
  - (e) in respect of a dispute that has been resolved under Chapter 9.
 

(2) Subsection (1) does not apply to the extent that—

    - (a) the fact that the full amount of tax chargeable was not assessed, was due to—
      - (i) in the case of self assessment, the failure to submit a return or, if no return is required, the failure to make the required payment of tax;
      - (ii) fraud;
      - (iii) misrepresentation; or
      - (iv) non-disclosure of material facts;
    - (b) SARS and the taxpayer so agree prior to the expiry of the limitations period; or
    - (c) it is necessary to give effect to—
      - (i) the resolution of a dispute under Chapter 9; or
      - (ii) a judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal.

### Finality of assessment

- 100.** (1) An assessment is final if, in relation to the assessment—
- (a) which is an assessment described—

- (i) in section 95, no return described in section 91(5)(b) has been received by SARS; or
- (ii) in section 95(3);
- (b) no objection has been made, or an objection has been withdrawn;
- (c) after decision of an objection, no notice of appeal has been filed;
- (d) the dispute has been otherwise resolved through dispute resolution under Chapter 9;
- (e) an appeal has been determined by the tax board and there is no referral to the tax court under section 115;
- (f) an appeal has been determined by the tax court and there is no right of further appeal; or
- (g) an appeal has been determined by a higher court and there is no right of further appeal.

(2) Subsection (1) does not prevent SARS from making an additional assessment, but in respect of an amount of tax that has been dealt with in a disputed assessment referred to in:

- (a) subsection (1)(d), (e) and (f), SARS may only make an additional assessment under the circumstances referred to in section 99(2)(a); and
- (b) subsection (1)(g), SARS may not make an additional assessment.

**CHAPTER 9**  
**DISPUTE RESOLUTION**  
*Part A*  
*General*

**Definitions**

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

‘**appellant**’, except in Part E of this Chapter, means a person who has noted an appeal against an assessment as referred to in section 107;

‘**registrar**’ means the registrar of the tax court; and

‘**rules**’ mean the rules made under section 103.

**Burden of proof**

**102.** (1) A taxpayer bears the burden of proving—

- (a) an amount, transaction, event or item is exempt or otherwise not taxable;
- (b) an amount or item is deductible or may be set-off;
- (c) the rate of tax applicable to a transaction, event, item or class of taxpayer;
- (d) an amount qualifies as a reduction of tax payable;
- (e) a valuation is correct; or

(f) any other decision that is subject to objection and appeal under a tax Act is incorrect.

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

### **Rules for dispute resolution**

**103.** (1) The Minister may, after consultation with the Minister of Justice and Constitutional Development, by public notice make 'rules' governing the procedures to lodge an objection and appeal against an assessment, and the conduct and hearing of an appeal before a tax board.

(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**

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

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

- (a) a decision under subsection (4) not to extend the period for lodging an objection;
- (b) a decision under section 107(2) not to extend the period for lodging an appeal;
- (c) a decision not to authorise a refund under section 190; and
- (d) any other decision that may be objected to or appealed against under a tax Act.

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

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

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

- (a) for a period exceeding 21 business days, unless exceptional circumstances exist which gave rise to the delay in lodging the objection;
- (b) if more than three years have lapsed from the date of assessment; or
- (c) if the grounds for objection are based wholly or mainly on a change in practice generally prevailing which applied on the date of assessment.



### **Forum for dispute of assessment**

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

### **Decision on objection**

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

(b) SARS may disallow the objection 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**

**107.** (1) After delivery of the notice of the decision referred to in section 106, 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, in respect of the tax board, the 'rules'.

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

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

(b) up to 45 business days, if exceptional circumstances exist that justify an extension beyond 21 business days.

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

(4) If an assessment has been altered under section 106(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'.

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

**Part C**  
**Tax board**

**Establishment of tax board**

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

**Jurisdiction of tax board**

- 109.** (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 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 or place of business, unless the ‘appellant’ and SARS agree that the appeal be heard at another place.
- (4) In making a decision under subsection (1)(b), a senior SARS official must consider whether the grounds of the dispute or legal principles related to the appeal, should rather be heard by the tax court.
- (5) If the Chairperson prior to or during the hearing, considering the grounds of the dispute or the legal principles related to the appeal, believes that the appeal should be heard by the tax court rather than the tax board, the Chairperson may direct that the appeal be set down for hearing *de novo* before the tax court.

**Constitution of tax board**

- 110.** (1) A tax board consists of—
- (a) the Chairperson who must be an advocate or attorney from the panel appointed under section 111; and
  - (b) if the Chairperson, a senior SARS official, or taxpayer considers that person necessary—
    - (i) an accountant who is a member of the panel referred to in section 119; and
    - (ii) a representative of the commercial community who is a member of the panel referred to in section 119.

(2) Sections 122, 123 , 124, 126, 127 and 128 apply, with the necessary changes, and under procedures determined in the 'rules', to the tax board and the chairperson.

### **Appointment of chairpersons**

**111.** (1) The Minister must, in consultation with the Judge-President of the General Division of the High Court within the jurisdiction where the tax board is to sit, by 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 published in the *Gazette*; 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.

(5) A Chairperson will not solely on account of his or her liability to tax be regarded as having a personal interest or a conflict of interest in any matter upon which he or she may be called upon to adjudicate.

(6) A Chairperson must withdraw from the proceedings as soon as the Chairperson becomes aware of a conflict of interest which may give rise to bias which the Chairperson may experience with the case concerned or other circumstances that may affect the Chairperson's ability to remain objective for the duration of the case.

(7) Either party may ask for withdrawal of the Chairperson on the basis of conflict of interest or other indications of bias, under procedures provided in the 'rules'.

### **Clerk of tax board**

**112.** (1) The Commissioner must appoint a clerk of the tax board.

(2) The clerk acts as convener of the tax board.

(3) If no Chairperson is available in the jurisdiction within which the tax board is to be convened, the clerk may convene the tax board with a Chairperson from another jurisdiction.

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

### **Tax board procedure**

**113.** (1) Subject to the procedure provided for by the 'rules', the Chairperson determines the procedures during the hearing of an appeal as the Chairperson sees fit, and each party must have the opportunity to put the party's case to the tax board.

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

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

(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' 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 with the notice of the sitting of the tax board.

(10) If the tax board confirms an assessment under subsection (9), the 'appellant' may not thereafter request that the appeal be referred to the tax court under section 115.

(11) If the senior SARS official fails to appear before the tax board at the time and place set for the hearing, at the 'appellant's' request, the tax board may allow the 'appellant's' appeal.

(12) If the tax board allows the appeal under subsection (11), SARS must not thereafter refer the appeal to the tax court under section 115.

(13) Subsections (9), (10), (11) and (12) do not apply if the Chairperson is satisfied that sound reasons exist for the non-appearance and the reasons are delivered by the 'appellant' or SARS to the clerk of the tax board within 10 business days after the date determined for the hearing or the longer period as may be allowed in exceptional circumstances.

### **Decision of tax board**

**114.** (1) The tax board, after hearing the ‘appellant’s’ appeal against a SARS decision, must decide the matter in accordance with this Chapter.

(2) The Chairperson must prepare a written statement of the tax board’s decision that includes the tax board’s findings of the facts of the case and the reasons for its decision, within 60 business days after conclusion of the hearing.

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

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

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

(2) If SARS is dissatisfied with the tax board’s decision, SARS may within 21 business days, or within the further period as the Chairperson may on good cause shown allow, after the date of the notice referred to in section 114(3), 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**

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

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

### **Jurisdiction of tax court**

**117.** (1) The tax court for purposes of this Chapter has jurisdiction over tax appeals lodged under section 107.

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

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

(4) To the extent that the Promotion of Administrative Justice Act (Act No. 3 of 2000), applies to decisions taken by SARS officials in terms of this Act, the tax court is vested with all of the powers conferred by that Act on the High Court.

### **Constitution of tax court**

**118.** (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;
- (b) an accountant selected from the panel of members appointed in terms of section 120; and
- (c) a representative of the commercial community selected from the panel of members appointed in terms of section 120.

(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 General Division of the High Court with jurisdiction in the area where the relevant tax court is situated, may direct that the tax court consist of three judges or acting judges of the High Court (one of whom is the President of the tax court) and the members of the court referred to in subsections (1)(b) and (2), where necessary, 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**

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

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

(3) A judge will not solely on account of his or her liability to tax be regarded as having a personal interest or a conflict of interest in any matter upon which he or she may be called upon to adjudicate.

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

**120.** (1) The President of the Republic by proclamation in the *Gazette* must appoint the panel of members of a tax court for purposes of section 118(1)(b) and (c) for a term of office of five years from the date of the relevant proclamation.

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

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

(4) The President of the Republic may terminate the appointment of a member under this section at any time 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 116(1).

(6) A member of the tax court must perform the member's functions independently, impartially, and without fear, favour, or prejudice.

### **Appointment of registrar of tax court**

**121.** (1) The Commissioner appoints the 'registrar' of the tax court.

(2) A person appointed as 'registrar' and persons appointed in the 'registrar's' office are SARS employees.

(3) The 'registrar' and other persons referred to in subsection (2) must perform their functions under this Act and the 'rules' independently, impartially, and without fear, favour, or prejudice.

### **Conflict of interest**

**122.** (1) A member of the court must withdraw from the proceedings as soon as the member becomes aware of a conflict of interest which may give rise to bias which the member may experience with the case concerned or other circumstances that may affect the member's ability to remain objective for the duration of the case.

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

(3) A member of the court will not solely on account of his or her liability to tax be regarded as having a personal interest or a conflict of interest in the case.

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

**123.** (1) If at any stage during the hearing of an appeal, or after hearing of the appeal but before judgment has been handed down, one of the judges dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal must be heard *de novo*, unless the court consists of three judges, as contemplated in section 118(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.

(2) If the Court has been constituted under section 118(5), the hearing of the appeal referred to in subsection (1) must proceed before the remaining judges and members, if the remaining judges constitute the majority of judges before whom the hearing was commenced.

(3) If at any stage during or after the hearing of an appeal but before judgment has been handed down, a member of the tax court dies, retires or becomes incapable of acting in that capacity, the hearing of the appeal must proceed before the President, any other judges, the remaining member, and, if the President deems it necessary, a replacement member.

(4) The judgment of the remaining judges and members referred to in subsection (1) or (3) is the judgment of the court.

### **Sitting of tax court not public**

**124.** (1) The tax court sittings for purposes of hearing an appeal under section 107 are not public.

(2) The President may in exceptional circumstances, on request of any person, allow that person or any other person to attend the sitting but may do so only after taking into account any representations that the 'appellant' and a senior SARS official, referred to in section 12 appearing in support of the assessment, wishes to make on the request.

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

**125.** (1) A senior SARS official referred to in section 12 may appear at the hearing of an appeal in support of the assessment.

(2) The taxpayer and a person who is interested in the appeal may appear in person or be represented by an advocate, attorney, or agent.



### **Subpoena of witness**

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

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

**127.** (1) A person subpoenaed under section 126 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**

- 128.** (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**

**129.** (1) The tax court, after hearing the 'appellant's' appeal lodged under section 107 against a SARS decision, must decide the matter on the basis that the burden of proof as described in section 102 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 additional tax or duty imposed by SARS under a tax Act, the tax court must decide the matter on the basis that the burden of proof is upon SARS and may reduce, confirm, or increase the additional tax or duty so imposed.

(4) In the case of any other SARS decision subject to appeal, under this Chapter, 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**

**130.** (1) The tax court may, in dealing with an appeal under this Chapter and on application by an aggrieved party, grant an order for costs in favour of the party, if—

(a) the SARS 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**

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

### **Publication of judgment**

**132.** A judgment of the tax court dealing with an appeal under this Chapter 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**

**133.** (1) The taxpayer or SARS may in the manner provided for in this Act appeal against a decision of the tax court under sections 129 and 130.

(2) An appeal against a decision of the tax court lies—

- (a) to the full bench of the Provincial Division of the High Court which has 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 118(5).

#### **Notice of intention to appeal**

**134.** (1) A party who intends to lodge an appeal against a decision of the tax court (hereinafter in this Part referred to as the appellant) must, within 21 business days after the date of the notice by the ‘registrar’ notifying the parties of the tax court’s decision under section 131, or within a further period as the President of the tax court may on good cause shown allow, lodge with the ‘registrar’ and serve upon the opposite party or the opposite party’s attorney or agent, a notice of intention to appeal against the decision.

(2) A notice of intention to appeal must state—

- (a) in which division of the High Court the ‘appellant’ wishes the appeal to be heard;
- (b) 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 requires a—

- (a) transcript of the evidence or a part thereof from the ‘Registrar’, the appellant must pay the fees prescribed by the Commissioner by public notice; or
- (b) copy of the recording of the evidence or a part thereof from the ‘Registrar’ for purposes of private transcription, the appellant must pay the fees prescribed by the Commissioner in the public notice.

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

### **Leave to appeal to Supreme Court of Appeal**

**135.** (1) If an intending ‘appellant’ wishes to appeal against a decision of the tax court, the ‘registrar’ must submit the notice of intention to appeal lodged under section 134(1) to the President of the tax court, who must make an order granting or refusing leave to appeal having regard to the grounds of the intended appeal as indicated in the notice.

(2) If the President of the tax court cannot act in that capacity or it is inconvenient for the President to act in that capacity for purposes of this section, the Judge-President of the tax court, may nominate and second another judge or acting judge to act as President of the tax court for that purpose.

(3) Subject to the right to petition the Chief Justice for leave to appeal to the Supreme Court of Appeal in terms of section 21 of the Supreme Court Act, 1959 (Act No. 59 of 1959), an order made by the President of the tax court under subsection (1) is final.

### **Failure to lodge notice of intention to appeal**

**136.** (1) A person entitled to appeal against a decision of the tax court, who has not lodged a notice of intention to appeal within the time and in the manner required by section 134, abandons, subject to any right to note a cross appeal, the right of appeal against the decision.

(2) A person who under section 134 lodged a notice of intention to appeal against a decision of the tax court, but who has subsequently withdrawn the notice, abandons the right to note an appeal or cross-appeal against the decision.

### **Notice by registrar of period for appeal**

**137.** (1) After the expiry of the time allowed under section 134(1) for the lodging of a notice of intention to appeal, the ‘registrar’ must—

- (a) give notice to a person who has lodged a notice of intention to appeal which has not been withdrawn, that if the person decides to appeal, the appeal must be noted within 21 business days after the date of the 'registrar's' notice; and
- (b) supply to the person referred to in paragraph (a) a certified copy of an order that the President of the tax court made under section 135 which is the subject of the intended appeal.

(2) The 'registrar' may not give notice under subsection (1)(a) until the order has been made or the transcript has been completed if—

- (a) it appears that the President of the tax court will make an order under section 135; or
- (b) an intending 'appellant' requires a transcript of evidence given at the hearing of the case by the tax court as envisaged in section 134(2)(c).

(3) If the opposite party is not also an intending 'appellant' in the same case, the 'registrar' must provide to the opposite party copies of the notice and any order referred to in subsection (1)(a) and (b).

### **Notice of appeal**

**138.** (1) If a person has—

- (a) appealed to the Supreme Court of Appeal from a court established under section 118(5);
  - (b) been granted leave to appeal to the Supreme Court of Appeal under section 135; or
  - (c) successfully petitioned to the Supreme Court of Appeal for leave to appeal,
- the appeal which a party must note against a decision given in the relevant case must be noted to that Court.

(2) If the notice of intention to appeal was noted to the High Court or leave to appeal to the Supreme Court of Appeal has been refused under section 135, the party who lodged the notice of intention to appeal must note an appeal to the appropriate Provincial Division of the High Court.

(3) The notice of appeal must be lodged within the period referred to in section 137(1)(a) or within a longer period as may be allowed under the rules of the court to which the appeal is noted.

(4) A notice of appeal must be in accordance with the requirements in the rules of the relevant higher court.

### **Notice of cross-appeal**

**139.** (1) A cross-appeal against a decision of the tax court in a case in which an appeal has been lodged under section 138, must be noted by lodging a written notice of cross-appeal with the 'registrar', serving it upon the opposite party or the

opposite party's attorney and lodging it with the 'registrar' of the court to which the cross-appeal is noted.

(2) The notice of cross-appeal must be lodged within 21 business days after the date the appeal is noted under section 138 or within a longer period as may be allowed under the rules of the court to which the cross-appeal is noted.

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

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

### **Record of appeal**

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

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

### **Abandonment of judgment**

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

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

## ***Part F*** ***Settlement of disputes***

### **Definitions**

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

'**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, after the lodging of an appeal under this Chapter, to resolve a 'dispute' by compromising a disputed liability, otherwise than by way of either SARS or the person

concerned accepting the other party's interpretation of the facts or the law applicable to those facts or of both the facts and the law , and 'settlement' must be construed accordingly.

### **Purpose of part**

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

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

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

### **Initiation of settlement procedure**

**144.** (1) Either party to a 'dispute' may initiate a 'settlement' procedure by communication with the other party.

(2) Neither SARS nor the taxpayer has the right to require the other party to engage in a 'settlement' procedure.

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

**145.** It is inappropriate and not to the best advantage of the state to 'settle' a 'dispute' if in the opinion of SARS,—

- (a) no circumstances envisaged in section 146 exist and—
  - (i) the action by the person concerned that relates to the 'dispute' constitutes 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**

**146.** The Commissioner personally, or a senior SARS official delegated by him or her 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) SARS’s 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**

**147.** (1) A person participating in a ‘settlement’ procedure must disclose all relevant facts during the discussion phase of the process of ‘settling’ a ‘dispute’.

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

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

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

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

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

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



(7) The agreement and terms of a 'settlement' agreement must remain confidential, unless their disclosure is authorised by law or SARS and the person concerned agree otherwise.

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

(9) If the person concerned fails to pay the amount due pursuant to the agreement or otherwise fails to adhere to the agreement, the Commissioner or a senior SARS official delegated under section 146 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 this Act in full and final 'settlement' of the dispute.

### **Register of settlements and reporting**

**148.** (1) SARS must—

- (a) maintain a register of all 'disputes' 'settled' under this Part; and
- (b) 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 70(5), does not disclose the identity of the person concerned; and
- (b) contain details, arranged by main classes of taxpayers or sections of the public, of the number of 'settlements', the amount of tax forgone, and the estimated savings in litigation costs.

### **Alteration of assessment on settlement**

**149.** (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**

**150.** In this Chapter and Chapter 11, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings: **'fair market value'**, means the price which could be obtained upon a sale of an asset between a willing buyer and a willing seller dealing at arm's length in an open market.

**Taxpayer**

- 151.** In 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**

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

**Representative taxpayer**

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

- (a) is a representative taxpayer in terms of the Income Tax Act;
- (b) is a representative employer in terms of the Fourth Schedule to the Income Tax Act; or
- (c) is a representative vendor in terms of section 46 of the Value-Added Tax Act.

(2) Every person who becomes or ceases to be a representative taxpayer (except a public officer of a company) under a tax Act, must notify SARS accordingly in such form as the Commissioner may prescribe, within 21 business days after becoming or ceasing to be a representative taxpayer, as the case may be.

(3) A taxpayer is not relieved from any liability, responsibility or duty imposed under a tax Act by reason of the fact that the taxpayer's representative—

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

### **Liability of representative taxpayer**

- 154.** (1) A representative taxpayer is as regards—
- (a) the income to which the representative taxpayer is entitled;
  - (b) monies to which the representative taxpayer is entitled or has the management or control;
  - (c) transactions concluded by the representative taxpayer; and
  - (d) anything else done by the representative taxpayer,
- in such capacity—
- (i) subject to the duties, responsibilities, and liabilities of the taxpayer represented;
  - (ii) entitled to any abatement, deduction, exemption, right to set off a loss, and other items that could be claimed by the person represented; and
  - (iii) liable for the amount of tax specified by a tax Act.
- (2) A representative taxpayer may be assessed in respect of any tax under subsection (1), but such assessment is regarded as made upon the representative taxpayer in such capacity only.

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

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

### **Withholding agent**

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

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

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

### **Responsible third party**

**158.** In 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**

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

### **Right to recovery**

**160.** (1) 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.

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

### **Security**

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

- (a) is a representative taxpayer, withholding agent or responsible third party who was previously held liable in the taxpayer’s personal capacity under a tax Act;
- (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 taxpayer require the taxpayer to furnish to or deposit with SARS, within such period that SARS may allow, security for the payment of any tax which has or may become payable by the taxpayer in terms of a tax Act.

(3) The security must be of the nature, amount and form that SARS directs.

(4) If the security is in the form of cash deposit and the taxpayer fails to make such deposit, it may—

- (a) be collected as if it were a tax debt of the taxpayer recoverable under this Act; or
- (b) be set-off against any refund due to the taxpayer.

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

## **Part B**

### **Payment of tax**

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

**162.** (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 terms of an instalment payment agreement under section 167.

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

(3) Despite sections 96(1)(f) and 167, a senior SARS official may, if there are reasonable grounds to believe that—

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

require the taxpayer to—

- (i) pay the full amount immediately upon receipt of the notice of assessment or a notice described in section 167(6) or within the period as the official deems appropriate under the circumstances; or
- (ii) provide such security as the Commissioner deems necessary.

#### **Preservation of assets order**

**163.** (1) A senior SARS official may authorise an application to the a 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.

(2) SARS may, in anticipation of the application and in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax due, seize the assets pending the outcome of an application for a preservation of assets order described in subsection (1), which application must commence with 24 hours from the time of seizure of the assets.

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

- (a) if required to secure the collection of the full amount of tax that would otherwise be dissipated;
- (b) in respect of the realisable assets as may be specified in the order and which is held by the person against whom the preservation order is being made;
- (c) in respect of all realisable assets held by the person, whether it is specified in the order or not; or
- (d) in respect of all assets which, if it is transferred to the person after the making of the preservation order, would be realisable assets.

(4) A preservation of assets order must provide for notice to be given to the taxpayer and a person from whom the assets were seized.

(5) The court to which an application is made in terms of subsection (1) may—

- (a) make a provisional preservation order having immediate effect;
- (b) simultaneously grant a rule nisi calling upon the taxpayer or other person upon a business day mentioned in the rule to appear and to show cause why the preservation order should not be made final; and
- (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 business days from his or her usual place of residence or business within the Republic the court may direct that it will be sufficient service of that notice or rule if a copy thereof is affixed to or near the outer door of the buildings where the court sits and published in the *Gazette*, unless the court directs some other mode of service.

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

- (a) authorising the seizure of all movable assets;
- (b) appointing a *curator bonis* in whom the assets of that taxpayer or another person liable for tax vests;
- (c) realise the assets in satisfaction of the tax debt;
- (d) making provision as the court may think fit for the reasonable living expenses of a person against whom the preservation order is being made and his or her 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
- (e) any other order that the court considers appropriate for the proper, fair and effective execution of the order.

(8) The court making a preservation order may also make such further order in respect of the discovery of any facts including facts relating to any 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) The court which made a preservation order may on application by a person affected by that order vary or rescind the order or an order authorising the seizure of the 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.

(10) A preservation order remains in force—

- (a) pending the setting aside thereof on appeal, if any, against the preservation order; or
- (b) until the assets subject to the preservation order are no longer required for purposes of the satisfaction of the tax debt.

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

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

- (a) the obligation to pay tax chargeable under a tax Act; and
  - (b) the right of SARS to receive and recover tax chargeable under a tax Act,
- will not be suspended by an objection or appeal or pending the decision of a court of law pursuant to an appeal under section 133.

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

(3) During the period commencing on the day that SARS receives the request for suspension and ending 5 business days after notice has been given of SARS's decision, no collection proceedings may be taken unless SARS has a reasonable belief that there is a risk of dissipation of assets by the person concerned.

(4) 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) whether the taxpayer is able to provide adequate security for the payment of the amount involved;
- (e) whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;

- (f) whether sequestration or liquidation proceedings are imminent;
- (g) whether fraud is involved in the origin of the dispute; or
- (h) whether the taxpayer has failed to furnish any information requested under this Act for purposes of a decision under this section.

(5) 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.

(6) 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 133; or
- (c) a decision by SARS to concede the appeal to the tax board or the tax court or other court of law,

a due adjustment must be made, amounts paid in excess refunded with interest at the prescribed rate, the interest being calculated from the date that excess was received by SARS to the date the refunded tax is paid, and amounts short-paid are recoverable with interest calculated as provided in section 187(1).

(7) The payment by the Commissioner of any interest under the provisions of this section must be regarded as a drawback from revenue charged to the National Revenue Fund.

(8) The provisions of section 191 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**

**165.** (1) SARS must maintain a taxpayer account for each taxpayer reflecting all tax due under the tax Acts as and when possible.

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

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

- (a) the tax owed;



- (b) any penalty imposed;
- (c) the interest payable on outstanding amounts due;
- (d) any other amount owed;
- (e) tax payments made by or on behalf of the taxpayer; and
- (f) any credit for amounts paid that the taxpayer is entitled to have set off against the taxpayer's tax liability.

(4) From time to time, or when requested by the taxpayer, SARS must send to the taxpayer a statement of the account, reflecting the amounts currently due and any details that SARS considers appropriate.

### **Allocation of payments**

**166.** (1) Notwithstanding anything to the contrary contained in a tax Act, SARS may, subject to subsection (3), allocate any payment made in terms of a tax Act against the oldest amount of tax outstanding at the time of the payment, other than amounts—

- (a) for which payment has been suspended under this Act; or
- (b) that are payable in terms of an instalment payment agreement under section 167.

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

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

(4) The age of a tax debt for purposes of subsection (1) is determined according to the duration from the date the debt became payable in terms of the applicable Act.

## **Part D** **Deferral of Payment**

### **Instalment payment agreement**

**167.** (1) A senior SARS official may enter into an agreement with a taxpayer in the form prescribed by the Commissioner under which the taxpayer is allowed to pay a tax debt in one sum after a prescribed period or 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 and a payment prior to the termination of the agreement is part payment of the tax debt.

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

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

(6) A termination—

- (a) referred to in subsection (4) or (5)(a) takes effect as at the date stated in the notice of termination sent to the taxpayer; and
- (b) or modification referred to in subsection (5)(b) or (c) takes effect 21 business days after notice of the termination is sent to the taxpayer.

### **Criteria for instalment payment agreement**

**168.** A senior SARS official may enter into an instalment payment agreement only if—

- (a) the taxpayer suffers from a deficiency of assets or liquidity which is 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**

**169.** (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—

(a) in the case of a representative taxpayer who is not personally liable under section 155, any assets belonging to the person represented which may be in the representative taxpayer's possession or under his or her management or control; or

(b) in any other case, any assets of the taxpayer.

(3) SARS is regarded as the creditor for the purposes of an amount referred to in 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 recovered by SARS from the taxpayer.

(5) 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.

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

### **Evidence as to assessment**

**170.** The production of a document issued by SARS purporting to be a copy of or an extract from an assessment is conclusive evidence—

(a) of the making of the assessment; and

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

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

**171.** Proceedings for recovery of a tax debt must not 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**

**172.** (1) If a person fails to pay tax when it is payable, SARS may, after giving the person at least 10 business days notice, file with the clerk or registrar of a competent court a certified statement setting out the amount of tax payable and certified by SARS as correct.

(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 the tax.

### **Jurisdiction of Magistrates' Court**

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

### **Effect of statement**

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

### **Amendment of statement**

**175.** (1) SARS may amend the amount of the tax due specified in the statement filed under section 172 if, in the opinion of SARS, the amount in the statement is incorrect.

(2) The amendment of the statement is not effective until it is initialled by the clerk or the registrar of the court concerned.

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

**176.** (1) SARS may withdraw a certified statement filed under section 172 by sending a notice of withdrawal to the relevant clerk or registrar upon which the statement ceases to have effect

(2) SARS may file a new statement under section 172 setting out tax included in a withdrawn statement.

## ***Part C***

### ***Sequestration and Liquidation Proceedings***

#### **Institution of proceedings**

**177.** (1) SARS may institute proceedings for the sequestration or liquidation of a taxpayer for a tax debt unless the tax debt is subject to an objection or

appeal under Chapter 9 or a further appeal against a decision by the tax court under section 129.

(2) The procedures following the institution of procedures under subsection (1) are regulated by the laws of insolvency.

### **Jurisdiction of court**

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

## ***Part D***

### ***Collection of Tax Debt from Third Parties***

#### **Liability of third party appointed to satisfy tax debts**

**179.** (1) A senior SARS official may by notice to a person who holds or 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 money to SARS in satisfaction of the taxpayer's tax debt.

(2) A person that is unable to comply with a requirement of the notice must advise the senior SARS official of the reasons for not complying within the period specified in the notice.

(3) A person receiving a notice must transfer the assets or pay the money in accordance with the notice and, if the person parts with or disposes of the assets or money contrary to the notice, the person is personally liable to the extent of the value of the assets or money.

(4) SARS may, on request by a person affected by a notice, amend the notice to extend the period over which the amount must be paid to SARS, to allow the taxpayer to pay the basic living expenses of the taxpayer and his or her dependants.

#### **Liability for financial management**

**180.** A person who—

- (a) controls or is regularly involved in the management of the overall financial affairs of a taxpayer; 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 taxpayer,
- may be held personally liable for any tax debt of the taxpayer to the extent that the person's negligence or fraud resulted in the failure to pay the tax debt.

### **Liability of shareholder**

**181.** (1) This section applies where a company is wound up other than by means of an involuntary liquidation without having satisfied its tax debt, including 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 under a tax Act.

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

(4) Persons who are liable for tax of a company under this section may avail themselves of any rights 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**

**182.** (1) A person (referred to as a transferee) who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for consideration below the fair market value of the asset is liable for the tax debt of the taxpayer.

(2) The liability is limited to the lesser of—

- (a) the tax debt that existed at the time of the receipt of the asset or would have existed had the transferor complied with the transferor’s obligations under a tax Act; and
- (b) the fair market value of the asset at the time of the transfer, reduced by the fair market value at the time of any consideration paid.

(3) Subsection (1) applies only to an asset received by the transferee within one year before SARS notifies the transferee of liability under this section.

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

**183.** If a person assists in dissipating a taxpayer’s assets in order to obstruct the collection of a tax debt of the taxpayer, the person is jointly and severally liable with

the taxpayer for the tax debt to the extent that the person's assistance reduces the assets available to pay the taxpayer's tax debt.

### **Recovery powers against responsible third parties**

**184.** SARS has the same powers of recovery against the property of a person 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**

**185.** (1) If SARS has, in accordance with any arrangements made with the government of any other country by an agreement entered into in accordance with a tax Act, received—

- (a) a request for conservancy of an amount alleged to be due by a person under the tax laws of the other country where there is a risk of dissipation or concealment of assets by the person, a senior SARS official may apply for a preservation order under section 163 as if the amount were a tax payable by the person under a tax Act; or
- (b) a request for the collection from a person of an amount alleged to be due by the person under the tax laws of the other country, a senior SARS official may, by notice, call upon the person to state, within a period specified in the notice, whether or not the person admits liability for the amount or for any lesser amount.

(2) A request described in subsection (1) must be in the form prescribed by the Commissioner and must include a formal certificate issued by the competent authority of the other country stating—

- (a) the amount of the tax due;
- (b) whether the liability for the amount is disputed in terms of the laws of the other country;
- (c) if the liability for the amount is so disputed, whether such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; and
- (d) whether there is a risk of dissipation or concealment of assets by the person.

(3) In any proceedings, a certificate referred to in subsection (2) is—

- (a) conclusive proof of the existence of the liability alleged; and
- (b) prima facie proof of the other statements contained therein.

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

- (a) admits liability;
- (b) fails to respond to the notice; or

- (c) denies liability but 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, is satisfied that—
- (i) the liability for the amount is not disputed in terms of the laws of the other country;
  - (ii) although the liability for the amount is disputed in terms of the laws of the other country, such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or
  - (iii) there is a risk of dissipation or concealment of assets by the person,
- the 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.

(5) If the person fails to comply with the notice under subsection (4), SARS may recover the amount in the certificate for transmission to the foreign authority as if it were a tax payable by the person under a tax Act.

(6) No steps taken in assistance in collection by any other country under 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**

**186.** (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—
  - (i) has assets outside the Republic; or
  - (ii) has 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 the tax 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

**187.** (1) If a tax debt or refund payable by SARS is not paid in full by the effective date, interest accrues on the amount of the outstanding balance of the tax debt or refund—

- (a) at the rate provided under section 189; and
- (b) for the period provided under section 188.

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

(3) Subject to section 272, interest payable under a tax Act is calculated on the daily balance owing and compounded monthly, and the Commissioner may prescribe by public notice when this method of determining interest will apply to a tax type and from which date.

(4) The effective date for purposes of the calculation of interest in relation to—

- (a) tax other than income tax for any tax period, is the date on or before which tax for the tax period, is due and payable under a tax Act;
- (b) income tax for any year of assessment, is the date falling six months after the last day of that year;
- (c) a fixed amount penalty, is the due date for payment specified in the notice of assessment of the penalty, and in relation to any increment of the penalty under section 211(2), the date of the increment;
- (d) a percentage based penalty, is the due date for payment specified in the notice of assessment of the penalty; and
- (e) interest, is each day that interest accrues.

(5) The effective date in relation to an additional assessment or reduced assessment is the effective date in relation to the tax payable under the original assessment.

(6) If a senior SARS official is satisfied that interest payable by a taxpayer under subsection (1) is payable as a result of circumstances beyond the taxpayer's control, the official may, unless prohibited by a tax Act, direct that so much of the interest as is attributable to the circumstances is not payable by the taxpayer.

(7) The circumstances referred to in subsection (6) are limited to the following—

- (a) a natural or human-made disaster;
- (b) a civil disturbance or disruption in services; or
- (c) a serious illness or accident.

### **Period over which interest accrues**

**188.** (1) Unless otherwise provided in a tax Act, interest payable under section 187 is imposed for the period from the effective date of the tax to the date the tax is paid.

(2) Interest payable in respect of the—

- (a) first payment of provisional tax, is imposed from the effective date until the earlier of the date on which the payment is made or the effective date for the second provisional tax payment; and
- (b) second payment of provisional tax, is imposed from the effective date until the earlier of the date on which the payment is made or the effective date referred to in section 187(4)(b);

(3) Unless otherwise provided under a tax Act—

- (a) interest on an amount refundable under section 190 is calculated from the later of the effective date or the date that excess was received by SARS to the date the refunded tax is paid; and
- (b) for this purpose, if a refund is offset against a liability of the taxpayer under section 191, the date on which the offset is effected is considered to be the date of payment of the refund.

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

**189.** (1) The rate at which interest is payable under section 187 is the prescribed rate.

(2) In the case of interest payable with respect to refunds on assessment of provisional tax and employees' tax paid within six months after the last date of that year of assessment, the rate payable by SARS is four percentage points below the prescribed rate.

(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.

(5) If interest is payable under this Chapter, and—

- (a) the rate at which the interest is payable has with effect from any date been altered; and
- (b) the interest is payable in respect of any tax period or portion thereof which commenced before the said date,

the interest to be determined in respect of—

- (i) the tax period or portion thereof which ended immediately before the said date; or
  - (ii) the portion of the tax period which was completed before the said date,
- must be calculated as if the rate had not been altered.

## CHAPTER 13 REFUNDS

### Refunds of excess payments

**190.** (1) Subject to section 191, a refund is payable if—

- (a) 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 the amount of the assessment if the amount was paid with respect to an assessment; or
- (b) an amount of tax is refundable to a taxpayer under a tax Act or an amount so refunded was less than the amount properly refundable under the tax Act.

(2) SARS need not authorise a refund as referred to in subsection (1) until such time that a verification, inspection or audit of the refund in accordance with Chapter 5 has been finalised.

(3) A person is not entitled to a refund under 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 within the period referred to in section 99(1) from—
  - (i) the end of the tax period, if the tax was payable in respect of a tax period;
  - or

- (ii) 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).

(4) If SARS pays to any person by way of a refund any amount which was not properly payable to that person or which was in excess of the amount due to the person by way of a refund under a tax Act, the amount of the excess must forthwith be repaid by the person concerned to SARS and may be recoverable by SARS under this Act as if it were a tax.

### **Refunds subject to set-off and deferral**

**191.** (1) If a taxpayer has an outstanding tax debt, an amount that is refundable under section 190, including interest thereon under section 188(3)(a), must be treated as a payment by the taxpayer that is recorded in the taxpayer's account under section 165, to the extent of the amount outstanding, and any remaining amount must be set off against any outstanding debt under the Customs and Excise Act.

(2) Subsection (1) does not apply to a tax debt—

- (a) that is disputed under Chapter 9 and for which suspension of payment under section 164 exists; or
- (b) in respect of which an Instalment payment agreement under section 167 or a compromise agreement under section 204 applies.

(3) An amount is not refundable if the amount is less than R100 or any other amount that the Commissioner may determine by public notice, but the amount may be carried forward to the immediately succeeding tax period.

## **CHAPTER 14**

### **WRITE OFF OR WAIVER OF TAX DEBTS**

#### **Part A**

#### ***General provisions***

### **Definitions**

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

**'asset'** includes—

- (a) property of whatever nature, whether movable or immovable, corporeal or incorporeal; and
- (b) a right or interest of whatever nature to or in the property;

**'Companies Act'** means the Companies Act, 2008 (Act No. 71 of 2008);

**'compromise'** means an agreement entered into between SARS and a 'debtor' in terms of which—

- (a) the 'debtor' undertakes to pay an amount (pursuant to an Instalment payment agreement under section 167) which is less than the full amount of the tax debt due by that 'debtor' in full satisfaction of the tax debt; and
  - (b) SARS undertakes to '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**

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

(2) SARS may, when required by circumstances, deviate from the strictness and rigidity of the general rule referred to in subsection (1) if it would be to the best advantage of the State.

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

### **Application of Chapter**

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

## ***Part B***

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

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

**195.** (1) A senior SARS official may decide to temporarily 'write off' an amount of tax debt if satisfied that the tax debt is uneconomical to pursue as contemplated in section 196 at that time.

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

(3) A senior SARS official may at any time withdraw the decision to temporarily write-off a tax debt if satisfied that the tax debt is no longer uneconomical to pursue as referred to in section 196 and that the decision to temporarily 'write off' would jeopardise the general tax collection effort.

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

**196.** (1) A tax debt is uneconomical to pursue if a senior SARS official is satisfied that the total cost of recovery of that tax debt will in all likelihood exceed the anticipated amount to be recovered in respect of the outstanding tax debt .

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

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

**197.** (1) A senior SARS official 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 198; or
- (b) if the debt is ‘compromised’ in terms of Part D.

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

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

**198.** (1) A tax debt is irrecoverable at law if—

- (a) it cannot be recovered by action and judgment of a court; or
- (b) it is owed by a ‘debtor’ that 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 business rescue plan referred to in Part D of Chapter 6 of the 'Companies Act', 'compromise' or arrangement as referred to in section 155 of that 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**

**199.** (1) Before deciding to 'write off' a tax debt, a senior SARS official must—

- (a) determine whether there are any other tax debts owing to SARS by the 'debtor';
- (b) reconcile amounts owed by and to the 'debtor', including penalties, interest, 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 a business rescue plan referred to in Part D of Chapter 6 of the 'Companies Act' or 'compromise' made to creditors under section 155 of the 'Companies Act' 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 200, 201(1), 202 and 203 with necessary changes.

## ***Part D*** ***Compromise of tax debt***

### **Compromise of tax debt**

**200.** A senior SARS official may authorise the 'compromise' of a portion of a tax debt upon request by a 'debtor', which complies with the requirements of section 201, if—

- (a) the purpose of the 'compromise' is to secure the highest net return from the recovery of the tax debt; and
- (b) the 'compromise' is consistent with considerations of good management of the tax system and administrative efficiency.

### **Request by debtor for compromise**

**201.** (1) A request by a 'debtor' for a tax debt to be 'compromised' must be signed by the 'debtor' and be supported by a detailed statement setting out—

- (a) the 'assets' and liabilities of the 'debtor' reflecting their current market value;
- (b) the amounts received by or accrued to, and expenditure incurred by, the 'debtor' during the 12 months immediately preceding the request;
- (c) the 'assets' which have been disposed of in the preceding three years, or such longer period as 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 person", 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) A senior SARS official may require that the application be supplemented by such further information as may be required.

### **Consideration of request to compromise tax debt**

**202.** (1) In considering a request for a 'compromise', a senior SARS official must have regard to the extent that the 'compromise' may result in—

- (a) savings in the costs of collection;
- (b) collection at an earlier date than would otherwise be the case without the 'compromise';
- (c) collection of a greater amount than would otherwise have been recovered; or
- (d) the abandonment by the 'debtor' of some claim or right, which has a monetary value, arising under a tax Act administered by SARS, including existing or future 'tax benefits', such as carryovers of losses, deductions, credits and rebates.

(2) In determining the position without the 'compromise', a senior SARS must have regard to—



- (a) the value of the 'debtor's' present 'assets';
- (b) future prospects of the 'debtor', including arrangements which have been implemented or are proposed which may have the effect of diverting income or 'assets' that may otherwise accrue to or be acquired by the 'debtor' or a "connected person" in relation to the 'debtor';
- (c) past transactions of the 'debtor'; and
- (d) the position of any "connected person" in relation to the 'debtor'.

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

**203.** Notwithstanding section 200 a senior SARS official may not 'compromise' any amount of a tax debt if—

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

### **Procedure for compromise**

**204.** (1) To 'compromise' a tax debt, a senior SARS official and the 'debtor' must sign an agreement setting out—

- (a) the amount payable by the 'debtor' in full satisfaction of the debt;
- (b) the undertaking by SARS not to pursue recovery of the balance of the tax debt; and
- (c) the conditions subject to which the tax debt is 'compromised' by SARS.

(2) The conditions referred to in subsection 1(c) may include a requirement that the 'debtor' must—

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

**SARS not bound by compromise**

- 205.** 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 204; or
  - (d) the 'debtor' is liquidated or the 'debtor's' estate is sequestrated before the 'debtor' has fully complied with the conditions contained in the agreement referred to in section 204.

**Part E**  
**Records and reporting**

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

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

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

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

**207.** (1) The amount of tax debts 'written off' or 'compromised' during a financial year must be disclosed in the annual financial statements of SARS relating to administered revenue for that year.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister a summary of the tax debts which were 'written off' or 'compromised' in whole or in part during the period covered by the summary, which must—

- (a) be in a format which, subject to section 70(3), 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**

**208.** In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, 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 218 must be disregarded;

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

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

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

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

**Purpose**

**209.** The purpose of this Chapter is to ensure—

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

**Part B**  
**Fixed Amount Penalties**

**Non-compliance subject to penalty**

**210.** (1) If SARS is satisfied that non-compliance by a person referred to in subsection (2) exists, excluding the non-compliance referred to in section 213, SARS must impose the appropriate ‘penalty’ in accordance with the Table in section 211.

(2) Non-compliance is failure to comply with an obligation that is imposed by or under a tax act and is listed in a public notice issued by the Commissioner, other than—

- (a) the failure to pay tax; or
- (b) non-compliance subject to additional tax under Chapter 16.

### Fixed amount penalty table

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

**Table: Amount of Administrative 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)	R5 000 001 — R10 000 000	R4 000
(vii)	R10 000 001 — R50 000 000	R8 000
(viii)	Above R50 000 000	R16 000

(2) The amount of the 'penalty' in column 3 will increase automatically by the same amount for each month, or part thereof, that the person fails to remedy the non-compliance within one month after—

- (a) the date of the delivery of the 'penalty' assessment, if SARS is in possession of the current address of the person and is able to deliver the assessment, but limited to 35 months after the date of delivery; or
- (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' exceed R500 million;
- (c) a company that forms part of a "group of companies" as defined in section 1 of the Income Tax Act which group includes a company described in item (a) or (b); or
- (d) a person or entity, exempt from income tax under the Income Tax Act but liable to tax under another tax Act, whose gross receipts or accruals exceeds R30 million.

(4) SARS may, except in the case of persons referred to in subsections (3)(a) to (c), if the taxable income of the relevant person for the 'preceding year' is unknown or that person was not a taxpayer in that year—

- (a) impose a 'penalty' in accordance with item (ii) of column 1 of the Table; or
- (b) estimate the amount of taxable income of the relevant person for the 'preceding year' based on available relevant material and impose a 'penalty' in accordance with the applicable subparagraph in column 1 of the Table.

(5) Where, upon determining the actual taxable income or assessed loss of the person in respect of whom a 'penalty' was imposed under subsection (4), it appears that the person falls within another item in column 1 of the Table, the 'penalty' must be adjusted in accordance with the applicable subparagraph in that column with effect from the date of the imposition of the penalty issued under subsection (4).

### **Reportable arrangement**

**212.** (1) A 'participant' who fails to disclose the information in respect of a reportable arrangement as required by section 37 or 38 is liable to a 'penalty', for each month that the failure continues (up to 12 months), in the amount of—

- (a) R50 000, in the case of a 'participant' other than the 'promoter'; or
- (b) R100 000, in the case of the 'promoter'.

(2) The amount of 'penalty' determined under subsection (1) is doubled if the amount of anticipated 'tax benefit' for the 'participant' by reason of the arrangement (within the meaning of section 35) exceeds R5 000 000, and is tripled if the benefit exceeds R10 000 000.

## **Part C**

### **Percentage Based Penalty**

#### **Percentage based penalty**

**213.** (1) If SARS is satisfied that an amount of tax that was not paid as and when required under a tax Act, SARS must, in addition to any other 'penalty', interest, or charge for which the person may be liable under this Chapter, impose a 'penalty' equal to the percentage of the amount of unpaid tax as prescribed in the tax Act.

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

### **Part D Procedure**

#### **Procedures for imposing penalty**

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

- (a) the non-compliance in respect of which the 'penalty' is assessed and its duration;
- (b) the amount of the 'penalty' 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) Subject to subsection (3), a 'penalty' is due upon assessment and must be paid—

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

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

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

#### **Procedure to request remittance**

**215.** (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) 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 21 business days after notice has been given of SARS' decision, no collection steps relating to the 'penalty' amount may be taken unless SARS has a reasonable belief that there is—

- (a) a risk of dissipation of assets by the person concerned; or
- (b) fraud involved in the origin of the non-compliance or the grounds for remittance.

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

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

## ***Part E*** ***Remedies***

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

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

- (a) the failure to register was discovered because the person approached SARS voluntarily; and
- (b) the person has filed all returns required under a tax Act.

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

**217.** (1) If a 'penalty' has been imposed in respect of—

- (a) a 'first incidence' of the non-compliance described in section 210, 212 or 213;
- (b) an incidence of non-compliance described in section 210 if the duration of the non-compliance is less than five business days; or
- (c) an incidence of non-compliance described in section 213 involving an amount of less than R2 000 or if the duration of the non-compliance is less than five business days,

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

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

(2) In the case of a 'penalty' imposed under section 212, the R2 000 limit referred to in subsection (1) is changed to R50 000.

### **Remittance of penalty in exceptional circumstances**

**218.** (1) SARS must, upon receipt of a 'remittance request', remit the 'penalty' or if applicable a portion thereof, if SARS is satisfied that one or more of the circumstances referred to in subsection (2) rendered the person on whom the 'penalty' was imposed incapable of complying with the relevant obligation under the relevant tax Act.

(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 or media release issued by the office of the Commissioner;
  - (iv) delay in providing information to any person; or
  - (v) failure by SARS to provide sufficient time for an adequate response to a request for information by SARS; 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 jeopardised; or
- (g) any other circumstance of analogous seriousness.

### **Penalty incorrectly assessed**

**219.** If SARS is satisfied that a 'penalty' was not assessed in accordance with this Chapter, SARS may, within three years of the 'penalty' assessment, issue an altered assessment accordingly.

### **Objection and appeal**

**220.** The following decisions by SARS are subject to objection and appeal a—

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



**CHAPTER 16**  
**ADDITIONAL TAX**  
*Part A*  
***Imposition of Additional Tax***

**Definitions**

**221.** In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, 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 223 within five years of the previous case;

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

**'tax'** means tax as defined in section 1, excluding additional tax, penalty and interest;

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

- (a) an amount, transaction, event or item is taxable;
- (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 or the *fiscus* in respect of a tax period as a result of—

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

**Additional tax on understatement**

**222.** (1) In the event of any 'understatement' by a taxpayer, the taxpayer must pay, in addition to the 'tax' chargeable for the relevant tax period, the additional tax determined under subsection (2).

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

(3) The shortfall is the sum of—

- (a) the difference between the amount of 'tax' properly chargeable for the tax period and the amount of 'tax' that would have been chargeable if the 'understatement' were accepted;

- (b) the difference between the amount properly refundable for the tax period and the amount that would have been refundable if the ‘understatement’ were accepted; and
- (c) the difference between the amount of an assessed loss or any other benefit to the taxpayer properly carried forward from the tax period to a succeeding tax period and the amount that would have been carried forward if the ‘understatement’ were accepted, multiplied by the tax rate determined under subsection (5).

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

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

**Additional tax percentage table**

**223.** (1) The additional tax percentage table is as follows:

<b>1 Item</b>	<b>2 Behaviour</b>	<b>3 Standard case</b>	<b>4 If obstructive, or if it is a ‘repeat case’</b>	<b>5 Voluntary disclosure after notification of audit</b>	<b>6 Voluntary disclosure before notification of audit</b>
(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%

(2) Additional tax for which provision is made under this Chapter is chargeable in cases where—

- (a) an assessment based on an estimation under section 95 is made; or
- (b) an assessment agreed upon with the taxpayer under section 95(3) is issued.

### **Payment and recovery of additional tax**

**224.** (1) If SARS assesses the additional tax imposed under section 222, the taxpayer must pay the additional tax within the period that SARS prescribes.

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

## **Part B** **Voluntary Disclosure Program**

### **Definitions**

**225.** In this section, unless the context indicates otherwise, a term which is assigned a meaning in the relevant tax Act has the meaning so assigned, and the following terms have the following meanings:

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

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

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

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

### **Administration**

- 226.** (1) This Part is administered by the Commissioner.
- (2) Any power granted to the Commissioner under this Part may be exercised by the Commissioner personally or any official delegated by the Commissioner for that purpose.
- (3) The provisions of Chapter 6 applies *mutatis mutandis* to this Part.

### Qualifying person

**227.** (1) A person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief unless that person is aware of—

- (a) a pending audit or investigation into the person's affairs; or
- (b) an audit or investigation that has commenced, but has not yet been concluded.

(2) The Commissioner may direct that a person may apply for voluntary disclosure relief, despite the provisions of subsection (1), where the Commissioner is of the view, having regard to the circumstances and ambit of the audit or investigation, that—

- (a) the 'default' in respect of which the person wishes to apply for voluntary disclosure relief would not otherwise have been detected during the audit or investigation; and
- (b) the application would be in the interest of good management of the tax system and the best use of the Commissioner's resources.

(3) A person is deemed to be aware of a pending tax audit or investigation, or that the tax audit or investigation has commenced, if—

- (a) a representative of the person;
- (b) an officer, shareholder or member of the person, if the person is a company;
- (c) a partner in partnership with the person;
- (d) a trustee or beneficiary of the person, if the person is a trust; or
- (e) a person acting for or on behalf of or as an agent or fiduciary of the person, has become aware of the pending audit or investigation, or that tax audit or investigation has commenced.

### Requirements for valid voluntary disclosure

**228.** The requirements for a valid voluntary disclosure are that the disclosure must—

- (a) be voluntary;
- (b) involve a 'default';
- (c) be full and complete in all material respects;
- (d) involve the potential application of a penalty or additional tax in respect of the 'default';
- (e) not result in a refund due by SARS; and
- (f) be made in the prescribed form and manner.

### **No-name voluntary disclosure**

**229.** The Commissioner may issue a nonbinding private opinion as to a person's eligibility for relief under this Part, if the person provides sufficient information to do so, which information need not include the identity of any party to the default.

### **Voluntary disclosure relief**

**230.** Despite the provisions of a tax Act, SARS must, pursuant to the making of a valid voluntary disclosure by the applicant and the conclusions of the voluntary disclosure agreement under section 231—

- (a) not pursue criminal prosecution for any statutory offence under a tax Act or a related common law offence;
- (b) grant the relief in respect of any additional tax to the extent referred to in column 5 or 6 of the Additional Tax Percentage Table in section 223; and
- (c) if the taxpayer has remedied all non-compliance with any obligation under a tax Act, grant 100% relief in respect of an administrative penalty that was or may be imposed under Chapter 15, excluding a penalty imposed under that Chapter or in terms of a tax Act for the late submission of a return.

### **Voluntary disclosure agreement**

**231.** The approval by a senior SARS official of a voluntary disclosure application and relief granted under section 230, must be evidenced by a written agreement between SARS and the 'qualifying person' who is liable for the outstanding tax in the format as may be prescribed by the Commissioner and must include details on—

- (a) the material facts of the default on which the voluntary disclosure relief is based;
- (b) the amount payable by the person, which amount must separately reflect the additional tax payable;
- (c) the arrangements and dates for payment;
- (d) treatment of the issue in future years or periods; and
- (e) relevant undertakings by the parties.

### **Withdrawal of voluntary disclosure relief**

**232.** (1) In the event that, subsequent to the conclusion of a voluntary disclosure agreement under section 231, it is established that the applicant failed to disclose a matter that was material for purposes of making a valid voluntary disclosure under section 231, a senior SARS official may—

- (a) withdraw any relief granted under section 230;

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

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

### **Assessment of determination to give effect to agreement**

**233.** (1) If a voluntary disclosure agreement has been concluded under section 231, SARS may, notwithstanding anything to the contrary contained in a tax Act, issue an assessment or make a determination for purposes of giving effect to the agreement.

(2) Any assessment issued or determination made to give effect to an agreement under section 231 is not subject to objection and appeal or internal review.

### **Reporting**

**234.** (1) The Commissioner must annually provide to the Auditor-General and to the Minister a summary of all voluntary disclosure agreements concluded in respect of applications received during the period.

(2) The summary must—

- (a) not disclose the identity of the applicant, and must be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister, as the case may be; and
- (b) contain details of the number of voluntary disclosure agreements and the amount of tax assessed, which must be reflected in respect of main classes of taxpayers or sections of the public.

## **CHAPTER 17 CRIMINAL OFFENCES**

### **Criminal offences relating to non-compliance with this Act**

**235.** A person who wilfully and without just cause—

- (a) fails or neglects to register or notify SARS of a change in registered particulars as required in Chapter 3;
- (b) fails or neglects to appoint or notify SARS of the appointment or change of a representative taxpayer as required under section 153 or 257;
- (c) fails or neglects to register as a tax practitioner as required under section 241;

- (d) fails or neglects to submit a return or document to SARS or a person as required in Chapter 4 or under a tax Act;
- (e) fails or neglects to report a reportable arrangement;
- (f) fails or neglects to retain records as required under this Act;
- (g) submits a false certificate or statement under Chapter 4;
- (h) issues an erroneous, incomplete or false document required under a tax Act to be issued to another person;
- (i) refuses or neglects to—
  - (i) furnish, produce or make available any information, document, or thing, excluding information requested under section 41(7);
  - (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;
- (j) fails to comply with a directive or instruction issued by SARS to the person under a tax Act;
- (k) fails or neglects to disclose to SARS any material facts which should have been disclosed under this Act or to notify SARS of anything which the person is required to so notify SARS under a tax Act;
- (l) obstructs or hinders a SARS official in the discharge of the official's duties;
- (m) refuses to give assistance required under section 46 or section 61(6);
- (n) holds himself or herself out as a SARS official engaged in carrying out the provisions of this Act;
- (o) fails or neglects to comply with the provisions of sections 179 to 182, if that person was given notice by SARS to transfer the assets or pay the amounts to SARS as referred to in those sections; or
- (p) 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**

**236.** (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 other document, or signs a statement, return or other document so submitted without reasonable grounds for believing the same to be true;
- (b) gives a false answer, whether orally or in writing, to a request for information made under this Act;

(c) prepares, maintains or authorises the preparation or maintenance of false books of account or other records or falsifies or authorises the falsification of books of account or other records; or

(d) makes use of, or authorises the use of, fraud or contrivance,  
is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding five years.

(2) Any person who makes a statement in the manner referred to in subsection (1) must, unless the person proves that there is a reasonable possibility that he or she was ignorant of the falsity of such statement and that such ignorance was not due to negligence on his or her part, be regarded as guilty of the offence referred to in subsection (1).

(3) A senior SARS official may lay a complaint with the South African Police Service or the National Prosecuting Authority regarding an offence contemplated in subsection (1).

### **Criminal offences related to secrecy provisions**

**237.** A person who contravenes the provisions of section 67(2) or (3), 68(1), 69(1), (4) or (6) or 70(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**

**238.** A person who—

- (a) submits a return or other document to SARS under a forged signature;
- (b) uses an electronic or digital signature of another person in an electronic communication to SARS; or
- (c) otherwise submits to SARS a communication on behalf of another person, without the person's consent and authority,

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

### **Jurisdiction of courts**

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



## CHAPTER 18 REPORTING OF UNPROFESSIONAL CONDUCT

### Definitions

**240.** In this Chapter,  
**‘registered tax practitioner’** means a practitioner registered under section 241;  
**‘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.

### Registration of tax practitioners

**241.** (1) Every natural person who—

- (a) provides advice to another person with respect to the application of a tax Act; or
- (b) completes or assists in completing a document to be submitted to SARS by another person in terms of a tax Act;
- (c) during the five years preceding the registration has not been removed from a related profession or professional body for dishonesty or convicted for a crime involving dishonesty; and
- (d) during the preceding five years has not been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), or any offence involving dishonesty for which the person has been sentenced to a period of imprisonment exceeding two years without the option of a fine or to a fine exceeding the amount prescribed in that Act,

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

(2) The provisions of this section do not apply in respect of a person who—

- (a) provides the advice or completes or assists in completing a document solely for no consideration to that person or his or her employer or a “connected person”, as defined in the Income Tax Act, in relation to that employer or that person;
- (b) provides the advice solely in anticipation of or in the course of any litigation to which the Commissioner is a party or where the Commissioner is a complainant;
- (c) provides the advice solely as an incidental or subordinate part of providing goods or other services to another person;
- (d) provides the advice or completes or assists in completing a document solely—
  - (i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of that employer and “connected persons” in relation to that employer; or

- (ii) under the direct supervision of a person who is registered as a tax practitioner in terms of subsection (1).

### **Complaint to Controlling Body**

**242.** A senior SARS official may lodge a complaint with a 'controlling body' if a 'registered tax practitioner' or person who carries on a profession governed by the 'controlling body', did or omitted to do anything with respect to the affairs of a taxpayer, including that person's affairs, that in the opinion of the official—

- (a) was intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer under a tax Act, 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 'registered tax practitioner or person by the body.

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

**243.** (1) Notwithstanding section 69, the senior SARS official lodging a complaint under section 242 may disclose the information relating to the person's tax affairs as in the opinion of the official is necessary to lay before the 'controlling body' to which the complaint is made.

(2) Before a complaint is lodged or information is disclosed, SARS must deliver to the taxpayer and the person against whom the complaint is to be made notification of the intended complaint and information to be disclosed.

(3) The taxpayer or that person may, within 21 business days after the date of the notification, lodge with SARS an objection to the lodging of the complaint or disclosure of the information.

(4) If on the expiry of that period of 21 business days no objection has been lodged or, if an objection has been lodged and SARS is not satisfied that the objection should be sustained, a senior SARS official may thereupon lodge the complaint as referred to in section 242.

### **Complaint considered by controlling body**

**244.** (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 GENERAL PROVISIONS**

### **Deadlines**

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

falls on a Saturday, Sunday, or 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, and if done after that time on the day is regarded as done on the first business day following the day.

(3) Subject to subsection (4), if SARS is authorised to extend a deadline, the application for extension must be submitted to SARS in the prescribed form before the deadline expires unless a circumstance referred to in section 218(2) (a) to (e) rendered the person incapable of submitting a timely request.

(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 218(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**

**246.** (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 21 business days prior to the date so prescribed by the Minister.

### **Public officers of companies**

**247.** (1) Every company carrying on business or having an office in the Republic must at all times be represented by an individual residing in the Republic.

(2) The individual representative under subsection (1) must be—

- (a) a person who is a senior official of the company and is approved by SARS;
- (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 regarded as having done everything done by the public officer in the officer's representative capacity.

(7) If SARS is of the opinion that a person is no longer suitable to represent the company as public officer SARS may withdraw its approval under subsection (2)(a).

### **Address for notices and documents**

**248.** (1) A company referred to in section 247(1) must, within the period referred to in section 247(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 247(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**

**249.** In the event of a company referred to in section 247(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**

**250.** (1) No appointment is deemed to have been made under section 247(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—

- (a) keep the office of public officer constantly filled and must at all times maintain a place for the service or delivery of notices in accordance with section 248(1); and
- (b) notify SARS of every change of public officer or the place for the service or delivery of notices within 21 business days of the change taking effect.

### **Authentication of documents**

**251.** (1) A form, notice, demand, or other document issued or given by or on behalf of SARS or a SARS official under a tax Act is sufficiently authenticated if the name or official designation of SARS or the SARS official is stamped or printed on it.

(2) A return made or purporting to be made or signed by or on behalf of a person is regarded as duly made and signed by the person affected unless the person proves that the return was not made or signed by the person or on the person's behalf.

(3) Subsection (2) applies for other documents submitted to SARS by or on behalf of a person.

### **Delivery of documents to persons other than companies**

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

- (a) handed to the person;
- (b) left with another person over 16 years of age apparently residing or employed at the person's last known residence, office, or place of business;
- (c) sent to the person by post to the person's last known address, which includes—
  - (i) a residence, office, or place of business referred to in paragraph (b); or
  - (ii) the person's last known post office box number or that of the person's employer, or
- (d) sent to the person's last known electronic address which includes—
  - (i) the person's last known email address; or
  - (ii) the person's last known telefax number.

### **Delivery of documents to companies**

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

- (a) delivered to the public officer of the company;
- (b) left with a person older than 16 years apparently residing or employed at—
  - (i) the place appointed by the company under section 248; 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) sent by post addressed to the company or its public officer at the company's 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; or
- (d) sent to the person's last known electronic address which includes—
  - (i) the person's last known email address; or
  - (ii) the person's last known telefax number.

### **Documents delivered deemed to have been received**

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

(2) Subsection (1) does not apply if—

- (a) SARS is satisfied that the notice, document, or other communication was not received or was received at some other time; or
- (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 252 or 253 (excluding paragraphs (a) and (b) thereof)—
  - (i) has not been received by the addressee; or
  - (ii) has been received by that person considerably later than it should have been received; and
- (b) the person has in consequence been placed at a material disadvantage, the notice, document, or other communication must be withdrawn and be issued, given, sent, or served anew.

### **Defect does not affect validity**

**255.** (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 252 or 253 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**

**256.** (1) The Commissioner personally, or a senior SARS official delegated by him or her for this purpose, may by public notice make rules prescribing the procedures for submitting a return in electronic format, and for other electronic communications between SARS and other persons.

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

(3) If in any proceedings under a tax Act, the question arises whether an electronic or digital signature of a person referred to in subsection (2), was used with the authority of the person, it must be assumed, in the absence of proof to the contrary, that the signature was so used.

### **Tax clearance certificate**

**257.** (1) A taxpayer may apply to SARS for a tax clearance certificate in the prescribed form and manner.

(2) SARS must issue or decline to issue the certificate within 21 business days from the date the application is duly filed.

(3) SARS may provide a taxpayer with a tax clearance certificate only if satisfied that the taxpayer is registered for tax and does not have any—

- (a) tax debt outstanding, excluding a tax debt contemplated in section 167 or 204 or a tax debt that has been suspended under section 164; or
- (b) outstanding return unless an arrangement acceptable to SARS has been made for the submission of the return.

(4) A tax clearance certificate must be in the prescribed form and include at least 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 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 thereof if the certificate—

- (a) was issued in error; or
- (b) was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts.

## Regulations

**258.** (1) The Minister may make regulations regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) The Minister may, after consultation with the Ombud, make regulations regarding—

- (a) the proceedings of the Ombud;
- (b) the limitations on the jurisdiction of the Ombud, having regard to—
  - (i) the factual or legal complexity of any complaint dealt with by the Ombud;
  - (ii) the nature of the taxpayer whose complaint is dealt with by the Ombud; and
  - (iii) the maximum amount involved in the dispute between the taxpayer and SARS;
- (c) any matter which in terms of this Act is required or permitted to be prescribed; and
- (d) any other matter which it is necessary to prescribe in order to achieve the objects of this Part.

(3) For purposes of the regulations referred to in paragraph (e) of the definition of “biometric information” in section 1, the Minister must publish the draft regulations in the Gazette for public comment and submit the draft regulations to Parliament for parliamentary scrutiny at least 30 days before the draft regulations are published.



## CHAPTER 20 TRANSITIONAL PROVISIONS

### **New taxpayer reference number**

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

### **Appointment of Tax Ombud**

**260.** (1) The Minister must appoint a person as Tax Ombud under section 14 within one year of the commencement of this Act.

(2) The Tax Ombud may not review any matter that arose more than one year before the day on which the Tax Ombud is appointed, unless the Minister requests the Tax Ombud to do so.

### **Provisions relating to secrecy**

**261.** 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 regarded as having taken and subscribed to the oath or solemn declaration under section 67(2).

### **Public officer previously appointed**

**262.** A public officer appointed or regarded as appointed under a tax Act and holding office at the commencement of this Act, is regarded as a public officer appointed under this Act.

### **Appointment of chairpersons of tax board**

**263.** 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 regarded as appointed under the provisions of section 111 until the earlier of—

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

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

**264.** 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 regarded as appointed under the provisions of section 120(1) until the expiry of his or her term of office in terms of the provisions previously in force, or until termination or lapse of his or her appointment in terms of section 120(4).

### **Continuation of court rules**

**265.** 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 103.

### **Delegation by Commissioner**

**266.** (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 regarded as delegated under this Act.

(2) Subsection (1) applies for 90 business 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 regarded as delegated under section 146.

### **Persons authorised to inspect, audit, examine or obtain information**

**267.** If a SARS official was issued a letter authorising him or her to perform certain functions under a tax Act, and the letter is in force immediately before this Act comes into operation, the letter is regarded as issued to the official under section 43.

### **Conduct of inquiries**

**268.** If the Commissioner authorised an inquiry under a tax Act and the inquiry is ongoing before this Act comes into operation, the inquiry is regarded as authorised under section 50.

### **Application of Chapter 15**

**269.** Chapter 15 applies to non-compliance—  
(a) on or after the date this Act comes 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**

**270.** (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 issued under section 103 or 258, respectively, 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**

**271.** (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 debt 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 debt.

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

### **Calculation of interest**

**272.** For purposes of the calculation of interest under section 187(3), and until such time that the Commissioner issues the public notice referred to in that subsection in respect of a tax type, interest must be paid by the taxpayer at the prescribed rate in accordance with the method provided for in the relevant tax Act.

**Amendment of legislation**

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

**Short title and commencement**

**274.** (1) This Act is called the Tax Administration Act, 2010, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

(2) The President may determine different dates for different provisions of this Act to come into operation.