

Release of the Draft Tax Administration Bill for Second Round of Public Comment

Background

The drafting of the Tax Administration Bill (TAB) was announced in the 2005 Budget Review as a project “to incorporate into one piece of legislation certain generic administrative provisions, which are currently duplicated in the different tax Acts. These provisions include, for example, the objection and appeal procedures, search and seizure provisions, provisions relating to secrecy and collection processes.” The scope of the project has since been extended so that it can now be seen as a preliminary step to the re-write of the Income Tax Act, 1962, since the administrative part of the Act comprises about 25% of the Act.

A first round of public comment on the TAB took place over the period 29 October 2009 to 28 February 2010, during which many useful comments were received and discussions held with tax practitioners’ organisations. Thereafter:

- Changes were made to the TAB in the light of the comments and further review;
- The TAB was submitted to external constitutional experts for a constitutional review, to the Office of the Chief State Law Adviser and to Cabinet; and
- Consequential amendments to the other tax Acts were drafted.

Cabinet has approved the introduction of the TAB before Parliament and the release of this draft of the TAB is a step in that process.

Objects of the TAB

Generally, the TAB seeks to provide a single body of law that outlines common procedures, rights and remedies and to achieve a balance between the rights and obligations of both SARS and taxpayers in a transparent relationship. The TAB takes account of the constitutional rights of taxpayers but does not seek to re-codify them.

The drafting of the TAB focused on reviewing the current administrative provisions of the tax Acts administered by SARS, to close certain gaps identified by the review and seeks to provide a foundation for further development and simplification of the administration of the tax Acts and systems.

- **Draft Tax Administration Bill, 2010**
- **Schedule A - Schedule of Amendments**
- **Memorandum of Objects**

Commentary period

Public comments to SARS may be submitted to the under-mentioned addresses on the provided **Comment Sheet Template** until **15 December 2010**:

- **email:** policycomments@sars.gov.za, with the subject "Draft Tax Administration Bill"
- **Mail:** Legal & Policy Division – Draft Tax Administration Bill, SARS, PO Box 402, Pretoria, 0001

Noteworthy changes and new concepts in the TAB

The TAB seeks to integrate tax Acts, while incorporating and harmonising provisions dealing with modernisation issues with current provisions. Examples are as follows:

Interpretation

- Terms defined in the tax Acts retain their meaning unless they are specifically defined in the TAB, in which case the TAB definition applies
- Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of a tax Act are, to the extent not regulated in a tax Act, now regulated by the TAB.

General Administration Provisions

- *Decision making:* A new framework of decision making to ensure serious powers are only dealt with at a more senior level and to limit discretion at lower levels of administration.
- *Tax Ombud's Office:* A new framework for a Tax Ombud's Office to provide simple remedies to taxpayers affected by failures by SARS to fully respect taxpayer rights. The framework draws on those of the Canadian Taxpayer Ombudsman and the UK Revenue Adjudicator. The creation of this office was foreshadowed when the new court rules and the SARS Service Monitoring Office were announced in 2003, when the then Minister of Finance stated that -

"Once SARS's processes and procedures have improved sufficiently, the next important step that will be taken in emulating international standards will entail an important role for an Ombud"

Registration of taxpayers & returns and records

- *Single registration:* Single registration for all taxes in pursuit of creating a single view of a taxpayer.
- *Biometric information:* Biometric information may be required for registration but is subject to enhanced confidentiality.
- *Modernisation:* More generic return provisions to cater for future development and simplification such as a full self-assessment regime.

Return information and information gathering powers

- *Third party information:* Extended third party information gathering powers for purposes of, amongst others, the pre-population of returns.
- *Limitation of requests:* The limitation of requests for information from third parties to records maintained by them.
- *Interviews:* Interviews at SARS offices aimed at clarifying issues of concern to SARS to render further inquiries or an audit unnecessary.
- *Identifiable taxpayers:* The extension of information gathering to include information in respect of identifiable taxpayers and classes of taxpayers.
- *Specificity:* The requirement that information requested by SARS must be reasonably specific.
- *Reports to taxpayers:* The provision of regular audit reports and notice of final conclusion of the audit, including a letter of findings, to which a taxpayer may respond before assessments are issued.
- *Criminal investigations:* The separation of audits and criminal investigations by SARS to ensure that effect is given to the rights of taxpayers who are suspects in a criminal investigation.
- *Search & seizure:* Provision is made for SARS to conduct a search & seizure without a warrant if such warrant cannot be obtained in time to prevent the removal or destruction of records.
- *Privilege:* Procedures to handle claims of legal privilege in respect of records seized.

Secrecy provisions

- *Simplification:* The secrecy provisions are simplified and amplified to ensure that they apply, to persons contracted by SARS, ex SARS employees and persons to whom taxpayer information is unlawfully disclosed.
- *Financial regulation:* Following the proposal in the 2010/2011 Budget Review that the secrecy provisions of the various “regulatory and enforcement agencies under the umbrella of the Minister of Finance” be revised to allow for exchange of information within a legislative framework, provision is made for the disclosure of taxpayer information, subject to certain requirements, to the Financial Services Board, South African Reserve Bank, Financial Intelligence Centre and National Credit Regulator.
- *Basic information:* Provision is also made for the disclosure of taxpayer information such as name, address and identifying number to institutions, which are otherwise lawfully entitled to obtain the information, for purpose of the verification of the information.

Assessments

- *New terminology:* More generic terms are used to include future modernisation initiatives such as full self-assessment systems.
- *Grounds of assessment:* An assessment that differs from a return submitted must go together with a statement of the grounds for the assessment.
- *Estimation of assessments:* The concept of an “estimated assessment” is replaced by the concept of an original, reduced or additional assessment based on an estimation.

- *Jeopardy assessment:* An assessment may be issued in advance of the date on which a return is normally due, essentially to secure the collection of tax that would otherwise be in jeopardy.
- *Period of limitation for issue of assessments:* The limitation period is now aligned across taxes and a three year or five year limitation applies, depending on whether an assessment is issued by SARS or self-assessed.

Dispute Resolution

- *Tax Board decision:* A new 90 day time limitation is imposed for the delivery of a Board decision.
- *Publication of Tax Court judgments:* All judgments may be published in a form that does not reveal the taxpayer's identity, whether marked reportable or not.
- *Tax Court sittings:* A new discretion is granted to the Tax Court to open a hearing to the public in order to balance taxpayer confidentiality with the constitutional mandate for public courts.

Tax liability and payment & recovery

- *Liability:* The categories of persons liable to tax are set out in order to clarify their tax liability and the capacity in which and when they may be liable for tax.
- *Seizure of assets:* Provision is made for seizure of assets about to be dissipated and a preservation of assets order by a High Court that must be applied for by SARS within 24 hours of seizure.
- *Pay-now-argue-later rule:* The discretion to depart from this rule and grant suspension of payment is now based on defined criteria. Suspension may be applied for before a formal objection is lodged.
- *Accounting modernisation – single taxpayer account, allocation of payments and interest:* Provision is made for a broad framework within which:
 - A single taxpayer account with a “rolling balance” may be created;
 - Instalment payment arrangements may be approved;
 - New payment allocation rules may be applied, for example the application of First In First Out (FIFO) in respect of certain payments and tax types;
 - Interest provisions may be aligned across taxes and interest due or payable will be calculated on the daily balance owing and compounded monthly;
 - A refund paid into a wrong account may be collected as if it was a tax; and
 - A refund need not be authorised by SARS until such time that a verification or audit of the refund has been finalised but subject to the payment of interest during this period.
- *Period of limitation on collection of outstanding tax debts:* This period is reduced from 30 to 15 years as it will ensure a more practical and realistic approach to SARS's debt book management
- *Write-off or compromise of tax debts:* These provisions, currently in the form of regulations, have been included in the TAB and are essentially a form of tax debt relief. The circumstances under which it is appropriate to compromise a tax debt are made less restrictive.

Penalties & offences

- *Administrative penalties:* The penalties that may currently be imposed under the Income Tax Act, 1962, have been included in the TAB and will apply across taxes. These penalties essentially target non-compliance with an administrative obligation under a tax Act.
- *Additional tax:* The current open-ended discretion to impose additional tax up to 200% of the tax chargeable is now limited by prescribed behaviours and objective criteria. The onus to prove grounds for the imposition of additional tax and the percentage thereof are now on SARS.
- *Voluntary disclosure programme:* A permanent legislative framework for voluntary disclosure applicable across all tax types is included in the TAB and will include relief from administrative penalties and additional tax.
- *Criminal offences:* Provision is made for general offences with regard to administrative non-compliance, tax evasion and the contravention of secrecy provisions.
- *Tax evasion:* The reverse onus on a taxpayer in the context of tax evasion is qualified, in that a taxpayer whose return reflects a false statement need only show that he or she had reasonable grounds for believing the statement to be true.