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## STATE PRESIDENT'S OFFICE

No. 591

4 July 2012

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 28 of 2011: Tax Administration Act, 2011.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

[                    ]    Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_                Words underlined with a solid line indicate insertions in existing enactments.

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*(English text signed by the President)*  
*(Assented to 2 July 2012)*

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# ACT

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

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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**CHAPTER 1**

**DEFINITIONS**

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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:

- “**additional assessment**” is an assessment referred to in section 92;
- “**administration of a tax Act**” has the meaning assigned in section 3(2); 20
- “**administrative non-compliance penalty**” has the meaning assigned in section 208;
- “**assessment**” means the determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer or assessment by SARS;
- “**biometric information**” means biological data used to authenticate the identity 25 of a natural person by means of—
  - (a) facial recognition;
  - (b) fingerprint recognition;
  - (c) voice recognition;
  - (d) iris or retina recognition; and 30
  - (e) other, less intrusive biological data, as may be prescribed by the Minister in a regulation issued under section 257;
- “**business day**” means a day which is not a Saturday, Sunday or public holiday, and for purposes of determining the days or a period allowed for complying with the provisions of Chapter 9, excludes the days between 16 December of each year 35 and 15 January of the following year, both days inclusive;
- “**Commissioner**” means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the SARS Act or the Acting Commissioner designated in terms of section 7 of that Act;
- “**company**” has the meaning assigned in section 1 of the Income Tax Act; 40
- “**connected person**” means a connected person as defined in section 1 of the Income Tax Act;
- “**Customs and Excise Act**” means the Customs and Excise Act, 1964 (Act No. 91 of 1964);
- “**date of assessment**” means— 45
  - (a) in the case of an assessment by SARS, the date of the issue of the notice of assessment; or
  - (b) in the case of self-assessment by the taxpayer—
    - (i) if a return is required, the date that the return is submitted; or
    - (ii) if no return is required, the date of the last payment of the tax for the tax 50 period or, if no payment was made in respect of the tax for the tax period, the effective date;
- “**date of sequestration**” means—
  - (a) the date of voluntary surrender of an estate, if accepted by a court; or
  - (b) the date of provisional sequestration of an estate, if a final order of 55 sequestration is granted by a court;
- “**Diamond Export Levy Act**” means the Diamond Export Levy Act, 2007 (Act No. 15 of 2007);

**“Diamond Export Levy (Administration) Act”** means the Diamond Export Levy (Administration) Act, 2007 (Act No. 14 of 2007);  
**“document”** means anything that contains a written, sound or pictorial record, or other record of information, whether in physical or electronic form;  
**“effective date”** is the date described in section 187(3), (4) and (5); 5  
**“Estate Duty Act”** means the Estate Duty Act, 1955 (Act No. 45 of 1955);  
**“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;  
**“income tax”** means normal tax referred to in section 5 of the Income Tax Act; 10  
**“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;  
**“international tax agreement”** means an agreement entered into with the government of another country in accordance with a tax Act; 15  
**“jeopardy assessment”** is an assessment referred to in section 94;  
**“judge”** means a judge of the High Court of South Africa, whether in chambers or otherwise;  
**“magistrate”** means a judicial officer as defined in section 1 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), whether in chambers or otherwise; 20  
**“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; 25  
**“original assessment”** is an assessment referred to in section 91;  
**“practice generally prevailing”** has the meaning assigned in section 5;  
**“premises”** includes a building, aircraft, vehicle, vessel or place;  
**“prescribed rate”** has the meaning assigned in section 189(3); 30  
**“presiding officer”** is the person referred to in section 50(1);  
**“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;  
**“public officer”** is an officer referred to in section 246(1), (2) and (3); 35  
**“reduced assessment”** is an assessment referred to in section 93;  
**“relevant material”** means any information, document or thing that is foreseeably relevant for tax risk assessment, assessing tax, collecting tax, showing non-compliance with an obligation under a tax Act or showing that a tax offence was committed; 40  
**“reportable arrangement”** has the meaning assigned in section 35;  
**“representative taxpayer”** has the meaning assigned in section 153(1);  
**“responsible third party”** has the meaning assigned under section 158;  
**“return”** means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is the basis on which an assessment is to be made by SARS; 45  
**“SARS”** means the South African Revenue Service established under the SARS Act;  
**“SARS Act”** means the South African Revenue Service Act, 1997 (Act No. 34 of 1997); 50  
**“SARS confidential information”** has the meaning assigned under section 68(1);  
**“SARS official”** means—  
 (a) the Commissioner,  
 (b) an employee of SARS; or  
 (c) a person contracted by SARS for purposes of the administration of a tax Act 55  
 and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner;  
**“Securities Transfer Tax Act”** means the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007);  
**“Securities Transfer Tax Administration Act”** means the Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007); 60  
**“self-assessment”** means a determination of the amount of tax payable under a tax Act by a taxpayer and—

- (a) submitting a return which incorporates the determination of the tax; or
- (b) if no return is required, making a payment of the tax;
- “**senior SARS official**” is a SARS official referred to in section 6(3);
- “**serious tax offence**” means a tax offence for which a person may be liable on conviction to imprisonment for a period exceeding two years without the option of a fine or to a fine exceeding the equivalent amount of a fine under the Adjustment of Fines Act, 1991 (Act No. 101 of 1991); 5
- “**shareholder**” means a person who holds a beneficial interest in a share in a company as defined in the Income Tax Act;
- “**Skills Development Levies Act**” means the Skills Development Levies Act, 1999 (Act No. 9 of 1999); 10
- “**tax**”, for purposes of administration under this Act, includes a tax, duty, levy, royalty, fee, contribution, penalty, interest and any other moneys imposed under a tax Act;
- “**taxable event**” means an occurrence which affects or may affect the liability of a person to tax; 15
- “**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; 20
- “**tax debt**” means an amount of tax due by a person in terms of a tax Act;
- “**tax offence**” means an offence in terms of a tax Act or any other offence involving fraud on SARS or on a SARS official relating to the administration of a tax Act;
- “**Tax Ombud**” is the person appointed by the Minister under section 14;
- “**tax period**” means, in relation to— 25
  - (a) income tax, a year of assessment as defined in section 1 of the Income Tax Act;
  - (b) provisional tax or employees’ tax, skills development levies as determined in section 3 of the Skills Development Levies Act, and contributions as determined in section 6 of the Unemployment Insurance Contributions Act, the period in respect of which the amount of tax payable must be determined under the relevant tax Act; 30
  - (c) value-added tax, a tax period determined under section 27 of the Value-Added Tax Act or the period or date of the taxable event in respect of which the amount of tax payable must be determined under that Act;
  - (d) royalty payable on the transfer of mineral and petroleum resources, a year of assessment as defined in section 1 of the Mineral and Petroleum Resources Royalty (Administration) Act; 35
  - (e) the levy on diamond exports as determined under section 2 of the Diamond Export Levy Act, the assessment period referred to in section 1 of the Diamond Export Levy (Administration) Act; 40
  - (f) securities transfer tax, 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) a jeopardy assessment, the period determined under this Act; 45
- “**taxpayer**” has the meaning assigned under section 151;

- “**taxpayer information**” has the meaning assigned under section 67(1)(b);
- “**taxpayer reference number**” is the number referred to in section 24;
- “**thing**” includes a corporeal or incorporeal thing;
- “**this Act**” includes the regulations and a public notice issued under this Act;
- “**Transfer Duty Act**” means the Transfer Duty Act, 1949 (Act No. 40 of 1949); 5
- “**understatement penalty**” means a penalty imposed by SARS in accordance with Part A of Chapter 16;
- “**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 10 1991);
- “**withholding agent**” has the meaning assigned under section 156.

**CHAPTER 2**

**GENERAL ADMINISTRATION PROVISIONS**

*Part A* 15

*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; 20
  - (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.

**Administration of tax Acts** 25

- 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—
    - (i) anything that may affect the liability of a person for tax in respect of a previous, current or future tax period; 30
    - (ii) a taxable event; or
    - (iii) the obligation of a person (whether personally or on behalf of another person) to comply with a tax Act;
  - (b) ascertain whether a person has filed or submitted correct returns, information or documents in compliance with the provisions of a tax Act; 35
  - (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 tax overpaid;
  - (f) investigate whether an offence has been committed in terms of a tax Act, and, if so— 40
    - (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’ powers and duties under a tax Act to ensure that an obligation imposed by or under a tax Act is complied with; 45

- (h) perform any other administrative function necessary to carry out the provisions of a tax Act; and
  - (i) give effect to the obligation of the Republic to provide assistance under an international tax agreement.
- (3) If SARS has, in accordance with an international tax agreement, received a request for— 5
- (a) information, SARS may obtain the information requested for transmission to the competent authority of the other country as if it were relevant material required for purposes of a tax Act and must treat the information obtained as if it were taxpayer information; 10
  - (b) the conservancy or the collection of an amount alleged to be due by a person under the tax laws of the requesting country, SARS may deal with the request under the provisions of section 185; or
  - (c) the service of a document which emanates from the requesting country, SARS may effect service of the document as if it were a notice, document or other communication required under a tax Act to be issued, given, sent or served by SARS. 15

**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. 20
- (2) If this Act is silent with regard to the administration of a tax Act and it is specifically provided for in the relevant tax Act, the provisions of that tax Act apply.
- (3) In the event of any inconsistency between this Act and another tax Act, the other Act prevails.

**Practice generally prevailing** 25

5. (1) A practice generally prevailing is a practice set out in an official publication regarding the application or interpretation of a tax Act.
- (2) Despite any provision to the contrary contained in a tax Act, a practice generally prevailing set out in an official publication, other than a binding general ruling, ceases to be a practice generally prevailing if— 30
- (a) the provision of the tax Act that is the subject of the official publication is repealed or amended to an extent material to the practice, from the date the repeal or amendment becomes effective;
  - (b) a court overturns or modifies an interpretation of the tax Act which is the subject of the official publication to an extent material to the practice from the date of judgment, unless— 35
    - (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 40
  - (c) the official publication is withdrawn or modified by the Commissioner, from the date of the official publication of the withdrawal or modification.
- (3) A binding general ruling ceases to be a practice generally prevailing in the circumstances described in section 85 or 86. 45

**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. 50



(2) Powers and duties which are assigned to the Commissioner by this Act must be exercised by the Commissioner personally but he or she may delegate such powers and duties in accordance with section 10.

(3) Powers and duties required by this Act to be exercised by a senior SARS official must be exercised by— 5

- (a) the Commissioner;
- (b) a SARS official who has specific written authority from the Commissioner to do so; or
- (c) a SARS official occupying a post designated by the Commissioner for this purpose. 10

(4) The execution of a task ancillary to a power or duty under subsection (2) or (3) may be done by—

- (a) an official under the control of the Commissioner or a senior SARS official; or
- (b) the incumbent of a specific post under the control of the Commissioner or a senior SARS official. 15

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

(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. 20

**Conflict of interest**

7. The Commissioner or a SARS official may not exercise a power or become involved in a matter pertaining to the administration of a tax Act, if— 25

- (a) the power or matter relates to a taxpayer in respect of which the Commissioner or the official has or had, in the previous three years, a personal, family, social, business, professional, employment or financial relationship presenting a conflict of interest; or
- (b) other circumstances present a conflict of interest, 30  
that will reasonably be regarded as giving rise to bias.

**Identity cards**

8. (1) SARS must issue an identity card to each SARS official exercising powers and duties for purposes of the administration of a tax Act.

(2) When a SARS official exercises a power or duty for purposes of the administration of a tax Act in person, the official must produce the identity card upon request by a member of the public. 35

(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 or notice by SARS** 40

9. (1) A decision made by a SARS official and a notice to a specific person issued by SARS, excluding a decision given effect to in an assessment or a notice of assessment—

- (a) is regarded as made by a SARS official, authorised to do so or duly issued by SARS, until proven to the contrary; and
- (b) may in the discretion of a SARS official described in subparagraphs (i) to (iii) 45  
or at the request of the relevant person, be withdrawn or amended by—
  - (i) the SARS official;
  - (ii) a SARS official to whom the SARS official reports; or
  - (iii) a senior SARS official.

(2) If all the material facts were known to the SARS official at the time the decision was made, a decision or notice referred to in subsection (1) may not be withdrawn or 50

amended with retrospective effect, after three years from the later of the—

- (a) date of the written notice of that decision; or
- (b) date of assessment or the notice of assessment giving effect to the decision (if applicable).

**Part C** 5

**Delegations**

**Delegations by the Commissioner**

**10.** (1) A delegation by the Commissioner under section 6(2)—

- (a) must be in writing;
- (b) becomes effective only when signed by the person to whom the delegation is made; 10
- (c) is subject to the limitations and conditions the Commissioner may determine in making the delegation;
- (d) may either be to— 15
  - (i) a specific individual; or
  - (ii) the incumbent of a specific post; and
- (e) may be amended or withdrawn by the Commissioner.

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

**Part D** 20

**Authority to act in legal proceedings**

**Legal proceedings on behalf of Commissioner**

**11.** (1) No SARS official other than the Commissioner or a SARS official duly authorised by the Commissioner may institute or defend civil proceedings on behalf of the Commissioner. 25

(2) For purposes of subsection (1), a SARS official who, on behalf of the Commissioner, institutes litigation, or performs acts which are relied upon by the Commissioner in litigation, is regarded as duly authorised until proven to the contrary.

(3) A senior SARS official may lay a criminal charge relating to a tax offence described in section 235. 30

**Right of appearance in proceedings**

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

(2) A senior SARS official may appear in the tax court or a High Court only if the person— 35

- (a) is an advocate duly admitted under— 40
  - (i) the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or
  - (ii) a law providing for the admission of advocates in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996; or
- (b) is an attorney duly admitted and enrolled under— 45
  - (i) the Attorneys Act, 1979 (Act No. 53 of 1979); or
  - (ii) a law providing for the admission of attorneys in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996.

**Part E**

**Powers and duties of Minister**

**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— 5
- (a) be exercised or performed by the Minister personally; and
  - (b) except for the powers under sections 14 and 257, be delegated by the Minister to the Deputy Minister or Director-General of the National Treasury.
- (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. 10

**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. 15
- (2) The person appointed under subsection (1) or (3) may be removed by the Minister for misconduct, incapacity or incompetence.
- (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. 20
- (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 25
  - (c) may not at any time during the preceding five years have been convicted (whether in the Republic or elsewhere) of—
    - (i) theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); or 30
    - (ii) any other offence involving dishonesty, for which the person has been sentenced to a period of imprisonment exceeding two years without the option of a fine or to a fine exceeding the amount prescribed in the Adjustment of Fines Act, 1991 (Act No. 101 of 1991). 35

**Part F**

**Powers and duties of Tax Ombud**

**Office of Tax Ombud**

15. (1) The staff of the office of the Tax Ombud must be employed in terms of the SARS Act and be seconded to the office of the Tax Ombud at the request of the Tax Ombud in consultation with the Commissioner. 40
- (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. 45
- (4) The expenditure connected with the functions of the office of the Tax Ombud is paid out of the funds of SARS.

**Mandate of Tax Ombud**

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

- (2) In discharging his or her mandate, the Tax Ombud must— 5
  - (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; 10
  - (e) facilitate access by taxpayers to complaint resolution mechanisms within SARS to address complaints; and
  - (f) identify and review systemic and emerging issues related to service matters or the application of the provisions of this Act or procedural or administrative provisions of a tax Act that impact negatively on taxpayers. 15

**Limitations on authority**

- 17.** The Tax Ombud may not review—
  - (a) legislation or tax policy;
  - (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; 20
  - (c) a matter subject to objection and appeal under a tax Act, except for an administrative matter relating to such objection and appeal; or
  - (d) a decision of, proceeding in or matter before the tax court. 25

**Review of complaint**

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

- (2) The Tax Ombud may— 30
  - (a) determine how a review is to be conducted; and
  - (b) determine whether a review should be terminated before completion.
- (3) In exercising the discretion set out in subsection (2), the Tax Ombud must consider such factors as—
  - (a) the age of the request or issue;
  - (b) the amount of time that has elapsed since the requester became aware of the issue; 35
  - (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 for not doing so. 40
- (5) To determine whether there are compelling circumstances, the Tax Ombud must consider factors such as whether—
  - (a) the request raises systemic issues; 45
  - (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— 5
  - (a) report directly to the Minister;
  - (b) submit an annual report to the Minister within five months of the end of SARS' financial year; and
  - (c) submit a report to the Commissioner quarterly or at such other intervals as may be agreed. 10
- (2) The reports must—
  - (a) contain a summary of at least ten of the most serious issues encountered by taxpayers and identified systemic and emerging issues referred to in section 16(2)(f), including a description of the nature of the issues;
  - (b) contain an inventory of the issues described in subparagraph (a) for which— 15
    - (i) action has been taken and the result of such action;
    - (ii) action remains to be completed and the period during which each item has remained on such inventory; or
    - (iii) no action has been taken, the period during which each item has remained on such inventory and the reasons for the inaction; and 20
  - (c) contain recommendations for such administrative action as may be appropriate to resolve problems encountered by taxpayers. 20
- (3) The Minister must table the annual report of the Tax Ombud in the National Assembly.

**Resolution and recommendations 25**

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

**Confidentiality 30**

- 21. (1) The provisions of Chapter 6 apply with the changes required by the context for the purpose of this Part.
- (2) SARS must allow the Tax Ombud access to information in the possession of SARS that relates to the Tax Ombud's powers and duties under this Act.
- (3) The Tax Ombud and any person acting on the Tax Ombud's behalf may not disclose information of any kind that is obtained by or on behalf of the Tax Ombud, or prepared from information obtained by or on behalf of the Tax Ombud, to SARS, except to the extent required for the purpose of the performance of functions and duties under this Part. 35

**CHAPTER 3 40**

**REGISTRATION**

**Registration requirements**

- 22. (1) A person—
  - (a) obliged to apply to; or
  - (b) who may voluntarily, 45
 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 prescribed form and manner;
  - (b) apply for registration for one or more taxes in the prescribed form and manner; and 5
  - (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 registered or applying for registration under a tax Act may be required to submit biometric information in the prescribed form and manner if the information is required to ensure— 10
- (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, may be regarded not to have applied for registration until all the particulars and documents have been provided to SARS. 15
- (5) Where a taxpayer that is obliged to register with SARS under a tax Act fails to do so, SARS may register the taxpayer for one or more tax types as is appropriate under the circumstances.

**Communication of changes in particulars**

23. A person who has been registered under section 22 must communicate to SARS within 21 business days any change that relates to— 20
- (a) postal address;
  - (b) physical address;
  - (c) representative taxpayer;
  - (d) banking particulars used for transactions with SARS; 25
  - (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. 30
- (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 documents submitted to SARS. 35
- (4) SARS may regard a return or other document submitted by a person to be invalid if it does not contain the reference number referred to in subsection (3) and must inform the person accordingly if practical.

**CHAPTER 4**

**RETURNS AND RECORDS 40**

*Part A*

*General*

**Submission of return**

25. (1) A person required under a tax Act to submit or who voluntarily submits a return must do so— 45
- (a) in the prescribed form and manner; and

(b) by the date specified in the tax Act or, in its absence, by the date specified 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. 5

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

(5) SARS may, prior to the issue of an original assessment by SARS, request a person to submit an amended return to correct an undisputed error in a return. 10

(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. 15

(8) An extension under subsection (6) or (7) does not affect the deadline for paying the tax.

**Third party returns**

26. The Commissioner may by public notice require a person who employs, pays amounts to, receives amounts on behalf of or otherwise transacts with another person, or has control over assets of another person, to submit a return with the required information in the prescribed form and manner and by the date specified in the notice. 20

**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. 25

**Statement concerning accounts**

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 30
- (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). 35

**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; 40
- (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—

- (a) has submitted a return for the tax period; 45

- (b) is required 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. 5
- (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. 10

**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; 15
  - (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, books of account or documents referred to in section 29 in a form acceptable to the official. 20

**Inspection of records**

- 31.** The records, books of account and documents referred to in section 29 whether in the form referred to in section 30(1) or in a form authorised under section 30(2), must at all reasonable times during the required periods under section 29, be open for inspection by a SARS official in the Republic for the purpose of— 25
- (a) determining compliance with the requirements of sections 29 and 30; or
  - (b) an inspection, audit or investigation under Chapter 5.

**Retention period in case of audit, objection or appeal 30**

- 32.** Despite section 29(3), if—
- (a) records are relevant to an audit or investigation under Chapter 5 which the person subject to the audit or investigation has been notified of or is aware of; or
  - (b) a person lodges an objection or appeal against an assessment or decision under section 104(2), 35
- the person must retain the records relevant to the audit, objection or appeal until the audit is concluded or the assessment or the decision becomes final.

**Translation**

- 33.** (1) In the case of information that is not in one of the official languages of the Republic, a senior SARS official may by notice require a person who must furnish the information to SARS, to produce a translation in one of the official languages determined by the official within a reasonable period. 40
- (2) A translation referred to in subsection (1) must—
- (a) be produced at a time and at the place specified by the notice; and 45
  - (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 and in section 212, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings: 5

**'arrangement'** means any 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 on a redemption amount;

**'financial reporting standards'** means, in the case of a company required to submit financial statements in terms of the Companies Act, 2008 (Act No. 71 of 2008), financial reporting standards prescribed by that Act, or, in any other case, the Generally Accepted Accounting Practice or appropriate financial reporting standards that provide a fair presentation of the financial results and position of the taxpayer; 10 15

**'participant'**, in relation to an 'arrangement', means—

(a) a 'promoter'; or

(b) a company or trust which directly or indirectly derives or assumes that it derives a 'tax benefit' or 'financial benefit' by virtue of an 'arrangement';

**'pre-tax profit'**, in relation to an 'arrangement', means the profit of a 'participant' resulting from that 'arrangement' before deducting normal tax, which profit must be determined in accordance with 'financial reporting standards' 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'; 20 25

**'promoter'**, in relation to an '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** 30

35. (1) An 'arrangement' is a reportable arrangement if it is listed in terms of subsection (2) or if a 'tax benefit' is or will be derived or is assumed to be derived by any 'participant' by virtue of the 'arrangement' and the 'arrangement'—

(a) contains provisions in terms of which the calculation of interest as defined in section 24J of the Income Tax Act, finance costs, fees or any other charges is wholly or partly dependent on the assumptions relating to the tax treatment of that 'arrangement' (otherwise than by reason of any change in the provisions of a tax Act); 35

(b) has any of the characteristics contemplated in section 80C(2)(b) of the Income Tax Act, or substantially similar characteristics; 40

(c) gives rise to an amount that is or will be disclosed by any 'participant' in any year of assessment or over the term of the 'arrangement' as—

(i) a deduction for purposes of the Income Tax Act but not as an expense for purposes of 'financial reporting standards'; or

(ii) revenue for purposes of 'financial reporting standards' but not as gross income for purposes of the Income Tax Act; 45

(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 50

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 Commissioner may list an 'arrangement' by public notice, if satisfied that the 'arrangement' may lead to an undue 'tax benefit'.

(3) This section does not apply to an excluded 'arrangement' referred to in section 36. 5

**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 10
  - (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; 15
- (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). 20

(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'. 25

(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 30
- (b) in a specific manner or form that enhances or will enhance a 'tax benefit'.

(4) The Commissioner may determine an 'arrangement' to be an excluded 'arrangement' by public notice, if satisfied that the 'arrangement' is not likely to lead to an undue 'tax benefit'. 35

**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. 40

(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'. 45

(4) The 'arrangement' must be disclosed within 45 business days after an amount is first received by or has accrued to a 'participant' or is first paid or actually incurred by a 'participant' in terms of the 'arrangement'.

(5) SARS may grant extension for disclosure for a further 45 business days, if reasonable grounds exist for the extension. 50

**Information to be submitted**

**38.** The ‘promoter’ or ‘participant’ must submit, in relation to a reportable arrangement, in the prescribed form and manner and by the date specified—

- (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’; 5
- (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’; 10
- (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. 15

**CHAPTER 5**

**INFORMATION GATHERING**

*Part A*

*General rules for inspection, verification, audit and criminal investigation*

**Selection for inspection, verification or audit** 20

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

**Authorisation for SARS official to conduct audit or criminal investigation**

**41.** (1) A senior SARS official may grant a SARS official written authorisation to conduct a field audit or criminal investigation, as referred to in Part B. 25

(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, a member of the public is entitled to assume that the official is not a SARS official so authorised. 30

**Keeping taxpayer informed**

**42.** (1) A SARS official involved in or responsible for an audit under this Part must, in the form and in the manner as may be prescribed by the Commissioner by public notice, provide the taxpayer with a report indicating the stage of completion of the audit. 35

(2) Upon conclusion of the audit or a criminal investigation, and where—

(a) the audit or investigation was inconclusive, SARS must inform the taxpayer accordingly within 21 business days; or

(b) the audit identified potential adjustments of a material nature, SARS must within 21 business days, or the further period that may be required based on the complexities of the audit, provide the taxpayer with a document containing the outcome of the audit, including the grounds for the proposed assessment or decision referred to in section 104(2). 40

(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. 45

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

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

(6) SARS may under the circumstances described in subsection (5) issue the assessment or make the decision referred to in section 104(2) resulting from the audit and the grounds of the assessment must be provided to the taxpayer within 21 business days of the assessment or the decision referred to in section 104(2), or the further period that may be required based on the complexities of the audit. 5

**Referral for criminal investigation** 10

43. (1) If at any time before or during the course of an audit it appears that a person may have committed a serious tax offence, the investigation of the offence must be referred to a senior SARS official responsible for criminal investigations for a decision as to whether a criminal investigation should be pursued.

(2) Relevant material gathered during an audit after the referral, must be kept separate from the criminal investigation and may not be used in criminal proceedings instituted in respect of the offence. 15

(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; 20
- (b) it is decided to terminate the investigation; or
- (c) after referral of the case for prosecution, a decision is made not to prosecute.

**Conduct of criminal investigation**

44. (1) During a criminal investigation, SARS must apply the information gathering powers in terms of this Chapter with due recognition of the taxpayer's constitutional rights as a suspect in a criminal investigation. 25

(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 43.

(3) Relevant information obtained during a criminal investigation may be used for purposes of audit as well as in subsequent civil and criminal proceedings. 30

**Part B**

*Inspection, request for relevant material, audit and criminal investigation*

**Inspection**

45. (1) A SARS official may, for the purposes of the administration of a tax Act and without prior notice, arrive at a premises where the SARS official has a reasonable belief that a trade or enterprise is being carried on and conduct an inspection to determine only— 35

- (a) the identity of the person occupying the premises;
- (b) whether the person occupying the premises is registered for tax; or 40
- (c) whether the person is complying with sections 29 and 30.

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

**Request for relevant material** 45

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

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

(3) A request by SARS for relevant material from a person other than the taxpayer is limited to the records maintained or that should reasonably be maintained by the person in relation to the taxpayer. 5

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

(5) SARS may extend the period within which the relevant material must be submitted on good cause shown. 10

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

(7) A senior SARS official may direct that relevant material be provided under oath or solemn declaration.

(8) A senior SARS official may request relevant material that a person has available for purposes of revenue estimation. 15

**Production of relevant material in person**

47. (1) A senior SARS official may, by notice, require a person, whether or not chargeable to tax, to attend in person at the time and place designated in the notice for the purpose of being interviewed by a SARS official concerning the tax affairs of the person, if the interview— 20

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

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

(2) The senior SARS official issuing the notice may require the person interviewed to produce relevant material under the control of the person during the interview. 25

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

(4) A person may decline to attend an interview, if the distance between the place designated in the notice and the usual place of business or residence of the person exceeds the distance prescribed by the Commissioner by public notice. 30

**Field audit or criminal investigation**

48. (1) A SARS official named in an authorisation referred to in section 41 may require a person, with prior notice of at least 10 business days, to make available at the person's premises specified in the notice relevant material that the official may require to audit or criminally investigate in connection with the administration of a tax Act in relation to the person or another person. 35

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

(a) state the place where and the date and time that the audit or investigation is due to start (which must be during normal business hours); and 40

(b) indicate the initial basis and scope of the audit or investigation.

(3) SARS is not required to give the notice if the person waives the right to receive the notice.

(4) If a person at least five business days before the date listed in the notice advances reasonable grounds for varying the notice, SARS may vary the notice accordingly, subject to conditions SARS may impose with regard to preparatory measures for the audit or investigation. 45

(5) A SARS official may not enter a dwelling-house or domestic premises, except any part thereof used for the purposes of trade, under this section without the consent of the occupant. 50

**Assistance during field audit or criminal investigation**

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

- (a) making available appropriate facilities, to the extent that such facilities are available;
  - (b) answering questions relating to the audit or investigation; and
  - (c) submitting relevant material as required.
- (2) No person may without just cause— 5
- (a) obstruct a SARS official from carrying out the audit or investigation; or
  - (b) refuse to give the access or assistance as may be required under subsection (1).
- (3) The person may recover from SARS after completion of the audit (or, at the person's request, on a monthly basis) the costs for the use of photocopying facilities in accordance with the fees prescribed in section 92(1)(b) of the Promotion of Access to 10 Information Act.

**Part C**

**Inquiries**

**Authorisation for inquiry**

50. (1) A judge may, on application made *ex parte* by a senior SARS official grant an 15 order in terms of which a person described in section 51(3) is designated to act as presiding officer at the inquiry referred to in this section.
- (2) An application under subsection (1) must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is 20 based.
- (3) A senior SARS official may authorise a person to conduct an inquiry for the purposes of the administration of a tax Act.

**Inquiry order**

51. (1) A judge may grant the order referred to in section 50(2) if satisfied that there 25 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. 30
- (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 35
  - (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 40 officer thinks fit.
- (2) The presiding officer must ensure that the recording of the proceedings and evidence at the inquiry is of a standard that would meet the standard required for the proceedings and evidence to be used in a court of law.
- (3) A person has the right to have a representative present when that person appears 45 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 relevant material is referred to in the notice with reasonable specificity. 5

#### **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*bis* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944). 10

#### **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. 15
- (3) Section 69 applies with the 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. 20

#### **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— 25
- (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. 30

#### **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 despite the fact that a civil or criminal proceeding is pending or contemplated against or involves the person, a witness or potential witness in the inquiry, or another person whose affairs may be investigated in the course of the inquiry. 35

### **Part D**

#### **Search and seizure**

#### **Application for warrant** 40

59. (1) A senior SARS official may, if necessary or relevant to administer a tax Act, authorise an application for a warrant under which SARS may enter a premises where relevant material is kept to search the premises and any person present on the premises and seize relevant material.
- (2) SARS must apply *ex parte* to a judge for the warrant, which application must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based. 45

(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** 5

**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. 10

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

(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; 15

(c) the premises to be searched; and

(d) the fact that relevant material as defined in section 1 is likely to be found on the premises.

(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. 20

**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. 25

(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 any 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; 30

(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. 35

(4) The SARS official must make an inventory of the relevant material seized in the form, manner and at the time that is reasonable under the circumstances and provide a copy thereof to the person. 40

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

(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. 45

(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) 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— 50

(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; 5
  - (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, 10

a SARS official 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 may not enter a dwelling-house or domestic premises, except any part thereof used for purposes of trade, under this section without the consent of the occupant. 15

**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 owner or person in control of the premises so consents in writing; or
  - (b) if the senior SARS official on reasonable grounds is satisfied that— 20
    - (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. 25

- (2) A SARS official must, before carrying out the search, inform the owner or person in control of the premises—
  - (a) that the search is being conducted under this section; and
  - (b) of the alleged failure to comply with an obligation imposed under a tax Act or tax offence that is the basis for the search. 30

(3) Section 61(4) to (8) applies to a search conducted under this section.

- (4) A SARS official may not enter a dwelling-house or domestic premises, except any part thereof used for purposes of trade, under this section without the consent of the occupant. 35

**Legal professional privilege**

- 64. (1) If SARS foresees the need to search and seize relevant material that may be alleged to be subject to legal professional privilege, SARS must arrange for an attorney from the panel appointed under section 111 to be present during the execution of the warrant. 40

(2) An attorney with whom SARS has made an arrangement in terms of subsection (1) may appoint a substitute attorney to be present on the appointing attorney's behalf during the execution of a warrant.

(3) If, during the carrying out of a search and seizure by SARS, a person alleges the existence of legal professional privilege in respect of relevant material and an attorney is not present under subsection (1) or (2), SARS must seal the material, make arrangements with an attorney from the panel appointed under section 111 to take receipt of the material and, as soon as is reasonably possible, hand over the material to the attorney. 45

- (4) An attorney referred to in subsections (1), (2) and (3)— 50
  - (a) is not regarded as acting on behalf of either party; and
  - (b) must personally take responsibility—
    - (i) in the case of a warrant issued under section 60, for the removal from the premises of relevant material in respect of which legal privilege is alleged; 55

- (ii) in the case of a search and seizure carried out under section 63, for the receipt of the sealed information; and
- (iii) if a substitute attorney in terms of subsection (2), for the delivery of the information to the appointing attorney for purposes of making the determination referred to in subsection (5). 5

(5) The attorney referred to in subsection (1) or (3) must within 21 business days make a determination of whether the privilege applies and may do so in the manner the attorney deems fit, including considering representations made by the parties.

(6) If a determination of whether the privilege applies is not made under subsection (5) or a party is not satisfied with the determination, the attorney must retain the relevant material pending final resolution of the dispute by the parties or an order of court. 10

(7) The attorney from the panel appointed under section 111 and any attorney acting on behalf of that attorney referred to in subsection (1) must be compensated in the same manner as if acting as Chairperson of the tax board. 15

**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; 20
  - (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— 25
  - (a) return some or all of the seized material; and
  - (b) pay the costs of physical damage caused during the conduct of a search and seizure.

(2) If SARS refuses the request, the person may apply to a High Court for the return of the seized material or payment of compensation for physical damage caused during the conduct of the search and seizure. 30

(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. 35

**CHAPTER 6**

**CONFIDENTIALITY OF INFORMATION**

**General prohibition of disclosure**

- 67.** (1) This Chapter applies to—
  - (a) SARS confidential information as referred to in section 68(1); and 40
  - (b) taxpayer information, which means any information provided by a taxpayer or obtained by SARS in respect of the taxpayer, including biometric information.

(2) An oath or solemn declaration undertaking to comply with the requirements of this Chapter in the prescribed form, must be taken before a magistrate, justice of the peace or commissioner of oaths by— 45

- (a) a SARS official and the Tax Ombud, before commencing duties or exercising any powers under a tax Act; and
- (b) a person referred to in section 70 who performs any function referred to in that section, before the disclosure described in that section may be made.

(3) In the event of the disclosure of SARS confidential information or taxpayer information contrary to this Chapter, the person to whom it was so disclosed may not in 50

any manner 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

(5) The Commissioner may, for purposes of protecting the integrity and reputation of SARS as an organisation and after giving the taxpayer at least 24 hours' notice, disclose taxpayer information to the extent necessary to counter or rebut false allegations or information disclosed by the taxpayer, the taxpayer's duly authorised representative or other person acting under the instructions of the taxpayer and published in the media or in any other manner. 10

**SARS confidential information and disclosure**

**68.** (1) SARS confidential information means information relevant to the administration of a tax Act that is—

- (a) personal information about a current or former SARS official, whether deceased or not; 15
  - (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; 20
  - (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— 25
    - (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— 30
      - (aa) inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or 35
      - (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; 40
  - (g) information, the disclosure of which could reasonably be expected to prejudice the economic interests or financial welfare of the Republic or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic, including a contemplated change or decision to change a tax or a duty, levy, penalty, interest and similar moneys imposed under a tax Act or the Customs and Excise Act; 45
  - (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 50
  - (j) information relating to the security of SARS buildings, property, structures or systems.
- (2) A person who is a current or former SARS official—
- (a) may not disclose SARS confidential information to a person who is not a SARS official; 55
  - (b) may not disclose SARS confidential information to a SARS official who is not authorised to have access to the information; and

- (c) must take the precautions that may be required by the Commissioner to prevent a person referred to in paragraph (a) or (b) from obtaining access to the information.
- (3) A person who is a SARS official or former SARS official may disclose SARS confidential information if— 5
  - (a) the information is public information;
  - (b) authorised by the Commissioner;
  - (c) disclosure is authorised under any other Act which expressly provides for the disclosure of the information despite the provisions in this Chapter;
  - (d) access has been granted for the disclosure of the information in terms of the Promotion of Access to Information Act; or 10
  - (e) required by order of a High Court.

**Secrecy of taxpayer information and general disclosure**

69. (1) A person who is a current or former SARS official must preserve the secrecy of taxpayer information and may not disclose taxpayer information to a person who is not a SARS official. 15

(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— 20
  - (i) to the South African Police Service or the National Prosecuting Authority, if the information relates to, and constitutes material information for the proving of, a tax offence;
  - (ii) as a witness in civil or criminal proceedings under a tax Act; or
  - (iii) the taxpayer information necessary to enable a person to provide such information as may be required by SARS from that person; 25
- (b) under any other Act which expressly provides for the disclosure of the information despite the provisions in this Chapter;
- (c) by order of a High Court; or
- (d) if the information is public information.

(3) An application to the High Court for the order referred to 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. 30

(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. 35

(5) 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 an Act or rule of court will yield or yielded no or disappointing results; 40
- (c) the information is central to the case; and
- (d) the information does not constitute biometric information.

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

- (a) to the taxpayer; or
- (b) with the written consent of the taxpayer, to another person. 45

(7) Biometric information of a taxpayer may not be disclosed by SARS except under the circumstances described in subsection (2)(a)(i).

(8) 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. 50

**Disclosure to other entities**

**70.** (1) A senior SARS official may provide to the Director-General of the National Treasury taxpayer information or SARS confidential 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 5
  - (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 10
- (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; 15
- (b) the Chairperson of the Board administering the National Student Financial Aid Scheme, the name and address of the employer of a person to whom a loan or bursary has been granted under that scheme, for use in performing the Chairperson's functions under the National Student Financial Aid Scheme Act, 1999 (Act No. 56 of 1999); 20
- (c) a commission of inquiry established by the President of the Republic of South Africa under a law of the Republic, the information to which the Commission is authorised by law to have access; and
- (d) to an employer (as defined in the Fourth Schedule to the Income Tax Act) of an employee (as defined in the Fourth Schedule), but only the income tax reference number, identity number, physical and 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. 25 30

(3) 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, 1989 (Act No. 90 of 1989), or those Regulations; 35
- (b) the Financial Services Board, the information as may be required for the purpose of carrying out the Board's duties and functions under the Financial Services Board Act, 1990 (Act No. 97 of 1990); 40
- (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). 45

(4) A senior SARS official may disclose to an organ of state or institution listed in a regulation issued by the Minister under section 257, information to which the organ of state or institution is otherwise lawfully entitled to and for the purposes only of verifying the correctness of the following particulars of a taxpayer: 50

- (a) name and taxpayer reference number
- (b) any identifying number;
- (c) physical and postal address and other contact details;

- (d) employer's name, address and contact details; and
- (e) other non-financial information as the organ of state or institution may require for purposes of verifying paragraphs (a) to (d).
- (5) The information disclosed under subsection (2) or (3) may only be disclosed by SARS or the persons or entities referred to in subsection (2) or (3) to the extent that it is— 5
  - (a) necessary for the purpose of exercising a power or performing a regulatory function or duty under the legislation referred to in subsection (2) or (3); and
  - (b) relevant and proportionate to what the disclosure is intended to achieve as determined under the legislation. 10
- (6) SARS must allow the Auditor-General to have access to information in the possession of SARS that relates to the performance of the Auditor-General's duties under section 4 of the Public Audit Act, 2004 (Act No. 25 of 2004).
- (7) Despite subsections (1) to (5), a senior SARS official may not disclose information under this section if satisfied that the disclosure would seriously impair a civil or criminal tax investigation. 15

**Disclosure in criminal, public safety or environmental matters**

- 71.** (1) If so ordered by a judge under this section, 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 20
  - (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— 25
- (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 the offence; or
  - (c) of an imminent and serious public safety or environmental risk. 30
- (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, 35
- make an *ex parte* application to a judge in chambers 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 respective direction and control, if— 40
- (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, 45
- 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).
- (5) SARS must be given prior notice of at least 10 business days of an application under subsection (4) unless the judge, based on urgency, allows a shorter period and SARS may oppose the application 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. 50

**Self-incrimination**

- 72.** (1) A taxpayer may not refuse to comply with his or her obligations in terms of legislation to complete and file a return or an application on the grounds that to do so might incriminate him or her, and an admission by the taxpayer contained in a return, application, or other document submitted to SARS by a taxpayer is admissible in criminal proceedings against the taxpayer for an offence under a tax Act, unless a competent court directs otherwise. 55

(2) An admission by the taxpayer of the commission of an offence under a tax Act 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— 5

- (a) a copy, certified by SARS, of the recorded particulars of an assessment or decision referred to in section 104(2) relating to the taxpayer;
- (b) access to information submitted to SARS by the taxpayer or by a person on the taxpayer's behalf; and 10
- (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 copies in accordance with the fees prescribed in section 92(1)(b) of the Promotion of Access to Information Act. 15

**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— 20

- (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 25
- (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: 30

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

**'applicant'** means a person who submits an 'application' for a 'binding private ruling' or a 'binding class ruling'; 35

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

**'binding class ruling'** means a written statement issued by SARS regarding the application of a tax Act to a specific 'class' of persons in respect of a 'proposed transaction'; 40

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

**'binding general ruling'** means a written statement issued by a senior SARS official under section 89 regarding the interpretation of a tax Act or the application of a tax Act to the stated facts and circumstances; 45

**'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';

**'class'** means—

- (a) shareholders, members, beneficiaries or the like in respect of a company, association, pension fund, trust, or the like; or 50
- (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 ‘binding class ruling’ applies; 5

‘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 a ‘binding effect’ within the meaning of section 88;

‘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 10

‘transaction’ means any transaction, deal, business, arrangement, operation or scheme and includes a series of transactions.

**Purpose of advance rulings** 15

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

**Scope of advance rulings**

77. SARS may make an ‘advance ruling’ on any provision of a tax Act. 20

**Private rulings and class rulings**

78. (1) SARS may issue a ‘binding private ruling’ upon ‘application’ by a person in accordance with section 79.

(2) SARS may issue a ‘binding class ruling’ upon ‘application’ by a person in accordance with section 79. 25

(3) SARS may make a ‘binding private ruling’ or ‘binding class ruling’ subject to the conditions and assumptions as may be prescribed in the ruling.

(4) SARS must issue the ruling to the ‘applicant’ at the address shown in the ‘application’ unless the ‘applicant’ provides other instructions, in writing, before the ruling is issued. 30

(5) A ‘binding private ruling’ or ‘binding class ruling’ may be issued in the prescribed form and manner, must be signed by a senior SARS official and must contain the following:

(a) a statement identifying it as a ‘binding private ruling’ or as a ‘binding class ruling’ made under this section; 35

(b) the name, tax reference number (if applicable), and postal address of the ‘applicant’;

(c) in the case of a ‘binding class ruling’, a list or a description of the affected ‘class members’;

(d) the relevant statutory provisions or legal issues; 40

(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. 45

(6) In the case of a ‘binding class ruling’, the ‘applicant’ alone is responsible for communicating with the affected ‘class members’ regarding the ‘application’ for the ruling, the issuance, withdrawal or modification of the ruling, or any other information or matter pertaining to the ruling.



**Applications for advance rulings**

79. (1) An ‘application’ must be made in the prescribed form and manner.
- (2) An ‘application’ for a ‘binding private ruling’ may be made by one person who is a party to a ‘proposed transaction’, or by two or more parties to a ‘proposed transaction’ as co-applicants, and if there is more than one ‘applicant’, each ‘applicant’ must join in designating one ‘applicant’ as the lead ‘applicant’ to represent the others. 5
- (3) An ‘application’ for a ‘binding 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; 10
  - (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; 15
  - (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’; 20
  - (f) the proposed ruling being sought, including a draft of the ruling;
  - (g) the relevant statutory provisions or legal issues; 25
  - (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 relevant authorities either considered by the ‘applicant’ or of which the ‘applicant’ is aware, as to whether those authorities support or are contrary to the proposed ruling being sought; 30
  - (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’; 35
  - (l) the ‘applicant’s’ consent to the publication of the ruling by SARS in accordance with section 87; and
  - (m) in the case of an ‘application’ for a ‘binding class ruling’— 40
    - (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. 45
- (6) An ‘application’ must be accompanied by the ‘application’ fee prescribed under 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’. 50
- (8) An ‘applicant’ may withdraw an ‘application’ for a ruling at any time.
- (9) A co-applicant to a ‘binding private ruling’ referred to in subsection (2) may withdraw from an ‘application’ at any time.
- (10) A withdrawal does not affect the liability to pay fees under section 81. 55

**Rejection of application for advance ruling**

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

- (a) requests or requires the rendering of an opinion, conclusion or determination regarding—
  - (i) the market value of an asset; 5
  - (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; 10
  - (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 15
  - (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 20
  - (iii) an issue that is the same as or substantially similar to an issue that is—
    - (aa) currently before SARS in connection with an audit, investigation or other proceeding involving the ‘applicant’ or a ‘class member’ or a connected person in relation to the ‘applicant’ or a ‘class member’;
    - (bb) the subject of a policy document or draft legislation that has been published; or 25
    - (cc) subject to dispute resolution under Chapter 9;
- (c) involves the application or interpretation of a general or specific anti-avoidance provision or doctrine;
- (d) involves an issue— 30
  - (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; 35
  - (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; 40
  - (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 45
- (f) requests SARS to rule on the substance of a ‘transaction’ and disregard its form.

(2) The Commissioner may publish by public notice a list of additional considerations in respect of which the Commissioner may reject an ‘application’. 50

(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 for advance rulings**

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

- (a) an ‘application’ fee; and 5
- (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. 10

(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’. 15

**Binding effect of advance rulings**

**82.** (1) 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. 20

(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 a person in any proceedings, including court proceedings.

(4) A ‘binding private ruling’ or ‘binding class ruling’ may not be cited in any proceeding, including court proceedings, other than a proceeding involving an ‘applicant’ or a ‘class member’, as the case may be. 25

(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** 30

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

- (a) the provision or provisions of the Act at issue are the subject of the ‘advance ruling’;
- (b) the person’s set of facts or ‘transaction’ are the same as the particular set of facts or ‘transaction’ specified in the ruling; 35
- (c) the person’s set of facts or ‘transaction’ falls 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 ‘binding private ruling’, the person is an ‘applicant’ identified in the ruling; and 40
- (f) in the case of a ‘binding class ruling’, the person is a ‘class member’ identified in the ruling.

**Rulings rendered void**

**84.** (1) A ‘binding private ruling’ or ‘binding class ruling’ is void *ab initio* if— 45

- (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. 50

(2) For purposes of this section, a fact described in subsection (1) is considered material if it would have resulted in a different ruling had SARS been aware of it when the original ruling was made.

**Subsequent changes in tax law**

**85.** (1) Despite any provision to the contrary contained in a tax Act, an ‘advance ruling’ ceases to be effective if—

- (a) a provision of the tax Act that was the subject of the ‘advance ruling’ is repealed or amended in a manner that materially affects the ‘advance ruling’, in which case the ‘advance ruling’ will cease to be effective from the date that the repeal or amendment is effective; or 5
- (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— 10
  - (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*. 15

(2) An ‘advance ruling’ ceases to be effective upon the occurrence of any of the circumstances described in subsection (1), whether or not SARS publishes a notice of withdrawal or modification.

**Withdrawal or modification of advance rulings**

**86.** (1) SARS may withdraw or modify an ‘advance ruling’ at any time. 20

(2) If the ‘advance ruling’ is a ‘binding private ruling’ or ‘binding class ruling’, SARS must first provide the ‘applicant’ with notice of the proposed withdrawal or modification and a reasonable opportunity to object to the decision.

(3) SARS must specify the date the decision to withdraw or modify the ‘advance ruling’ becomes effective, which date may not be earlier than the date— 25

- (a) the decision is delivered to an ‘applicant’, unless the circumstances in subsection (4) apply; or
- (b) in the case of a ‘binding general ruling’, the decision is published.

(4) SARS may withdraw or modify a ‘binding private ruling’ or a ‘binding class ruling’ retrospectively if the ruling was made in error and if— 30

- (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 35
- (c) the effect of the ruling will materially erode the South African tax base and it is in the public interest to withdraw or modify the ruling retrospectively.

**Publication of advance rulings** 40

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

(2) A ‘binding private ruling’ or ‘binding class ruling’ must be published by SARS for general information in the manner and in the form that the Commissioner may prescribe, but without revealing the identity of an ‘applicant’, ‘class member’ or other person identified or referred to in the ruling. 45

(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. 50

(5) An ‘applicant’ for a ‘binding class ruling’ may consent in writing to the inclusion of information identifying it or the ‘proposed transaction’ 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. 5

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

(8) Subsection (2) does not— 10

(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. 15

**Non-binding private opinions**

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

(2) A ‘non-binding private opinion’ may not be cited in any proceedings including court proceedings, other than proceedings involving the person to whom the opinion was issued. 20

**Binding general rulings**

**89.** (1) A senior SARS official may issue a ‘binding general ruling’ that is effective for either— 25

(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 30

(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. 35

(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). 40

**Procedures and guidelines for advance rulings**

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

**CHAPTER 8**

**ASSESSMENTS 45**

**Original assessments**

**91.** (1) If a tax Act requires a taxpayer to submit a return which does not incorporate a determination of the amount of a tax liability, SARS must make an original assessment

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

(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. 5

(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. 10

(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 15 the period described in section 104, request SARS to issue a reduced assessment or additional assessment by submitting a complete and correct return.

**Additional assessments**

92. If at any time SARS is satisfied that an assessment does not reflect the correct application of a tax Act to the prejudice of SARS or the  *fiscus*, SARS must make an additional assessment to correct the prejudice. 20

**Reduced assessments**

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

(a) the taxpayer successfully disputed the assessment under Chapter 9; 25

(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— 30

(i) SARS; or

(ii) the taxpayer in a return.

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

**Jeopardy assessments** 35

94. (1) SARS may make a jeopardy assessment in advance of the date on which the return is normally due, if the Commissioner is satisfied that it is required to secure the collection of tax that would otherwise be in jeopardy.

(2) In addition to any rights under Chapter 9, a review application against an assessment made under this section may be made to the High Court on the grounds that— 40

(a) its amount is excessive; or

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

(3) In proceedings under subsection (2), SARS bears the burden of proving that the making of the jeopardy assessment is reasonable under the circumstances. 45

**Estimation of assessments**

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

(a) fails to submit a return as required; or

(b) submits a return or information that is incorrect or inadequate. 50

(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 issue to the taxpayer assessed a notice of the assessment made by SARS stating— 5
- (a) the name of the taxpayer;
  - (b) the taxpayer’s taxpayer reference number, or if one has not been allocated, any other form of identification;
  - (c) the date of the assessment; 10
  - (d) the amount of the assessment;
  - (e) the tax period in relation to which the assessment is made;
  - (f) the date for paying the amount assessed; and
  - (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— 15
- (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. 20

**Recording of assessments**

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

**Withdrawal of assessments**

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

**Period of limitations for issuance of assessments**

- 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; 40
  - (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— 45
    - (i) date of the last payment of the tax for the tax period; or
    - (ii) effective date, if no payment was made in respect of the tax for the tax period;

- (d) in the case of—
    - (i) an additional assessment if the—
      - (aa) amount which should have been assessed to tax under the preceding assessment was, in accordance with the practice generally prevailing at the date of assessment, not assessed to tax; or 5
      - (bb) full amount of tax which should have been assessed under the preceding assessment was, in accordance with the practice, not assessed;
    - (ii) a reduced assessment, if the preceding assessment was made in accordance with the practice generally prevailing at the date of that assessment; or 10
    - (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. 15
  - (2) Subsection (1) does not apply to the extent that—
    - (a) in the case of assessment by SARS, the fact that the full amount of tax chargeable was not assessed, was due to—
      - (i) fraud;
      - (ii) misrepresentation; or 20
      - (iii) non-disclosure of material facts;
    - (b) in the case of self-assessment, the fact that the full amount of tax chargeable was not assessed, was due to—
      - (i) fraud;
      - (ii) intentional or negligent misrepresentation; 25
      - (iii) intentional or negligent non-disclosure of material facts; or
      - (iv) the failure to submit a return or, if no return is required, the failure to make the required payment of tax;
    - (c) SARS and the taxpayer so agree prior to the expiry of the limitations period; or 30
    - (d) 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 or decision** 35
- 100.** (1) An assessment or a decision referred to in section 104(2) is final if, in relation to the assessment or decision—
- (a) it is an assessment described—
    - (i) in section 95(1) and no return described in section 91(5)(b) has been received by SARS; or 40
    - (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 settled under Part F of Chapter 9;
  - (e) an appeal has been determined by the tax board and there is no referral to the tax court under section 115; 45
  - (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. 50
- (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); and 55
  - (b) subsection (1)(g), SARS may not make an additional assessment.



**CHAPTER 9**

**DISPUTE RESOLUTION**

*Part A*

*General*

**Definitions** 5

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

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

‘**decision**’ means a decision referred to in section 104(2); 10

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

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

**Burden of proof**

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

(a) that an amount, transaction, event or item is exempt or otherwise not taxable; 15

(b) that an amount or item is deductible or may be set-off;

(c) the rate of tax applicable to a transaction, event, item or class of taxpayer;

(d) that an amount qualifies as a reduction of tax payable;

(e) that a valuation is correct; or

(f) whether a ‘decision’ that is subject to objection and appeal under a tax Act, is 20  
incorrect.

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

**Rules for dispute resolution** 25

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

(2) The ‘rules’ may provide for alternative dispute resolution procedures under which 30  
SARS and the person aggrieved by an assessment or ‘decision’ 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 35  
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 40  
objection;

(b) a decision under section 107(2) not to extend the period for lodging an appeal;  
and

(c) any other decision that may be objected to or appealed against under a tax Act.

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

(4) A senior SARS official may extend the period prescribed in the 'rules' within which objections must be made if satisfied that reasonable grounds exist for the delay in lodging the objection. 5

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

(a) for a period exceeding 21 business days, unless a senior SARS official is satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection;

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

(c) if the grounds for objection are based wholly or mainly on a change in a practice generally prevailing which applied on the date of assessment or the 'decision'.

### Forum for dispute of assessment or decision 15

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

### Decision on objection

**106.** (1) SARS must consider a valid objection in the manner and within the period prescribed under this Act and the 'rules'. 20

(2) SARS may disallow the objection or allow it either in whole or in part.

(3) If the objection is allowed either in whole or in part, the assessment or 'decision' must be altered accordingly.

(4) SARS must, by notice, inform the taxpayer objecting or the taxpayer's representative of the decision referred to in subsection (2), unless the objection is stayed under subsection (6) in which case notice of this must be given in accordance with the 'rules'. 25

(5) The notice must state the basis for the decision and a summary of the procedures for appeal. 30

(6) If a senior SARS official considers that the determination of the objection or an appeal referred to in section 107, whether on a question of law only or on both a question of fact and a question of law, is likely to be determinative of all or a substantial number of the issues involved in one or more other objections or appeals, the official may—

(a) designate that objection or appeal as a test case; and 35

(b) stay the other objections or appeals by reason of the taking of a test case on a similar objection or appeal before the tax court,

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

### Appeal against assessment or decision

**107.** (1) After delivery of the notice of the decision referred to in section 106(4), a taxpayer objecting to an assessment or 'decision' may appeal against the assessment or 'decision' to the tax board or tax court in the manner, under the terms and within the period prescribed in this Act and the 'rules'. 40

(2) A senior SARS official may extend the period within which an appeal must be lodged for— 45

(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. 50

(4) If an assessment or 'decision' has been altered under section 106(3), the assessment or 'decision' as altered is the assessment or 'decision' against which the appeal is noted.

(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. 5

**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 10
  - (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 15**

109. (1) An appeal against an assessment or ‘decision’ must in the first instance be heard by a tax board, if—

- (a) the tax in dispute does not exceed the amount the Minister determines by public notice; and
- (b) a senior SARS official and the ‘appellant’ so agree. 20

(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. 25

(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. 30

**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 35
  - (b) if the chairperson, a senior SARS official, or the taxpayer considers it necessary—

- (i) an accountant who is a member of the panel referred to in section 120; and
- (ii) a representative of the commercial community who is a member of the panel referred to in section 120. 40

(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 Division of the High Court with jurisdiction in the area where the tax board is to sit, by public notice appoint advocates and attorneys to a panel from which a chairperson of the tax board must be nominated from time to time. 45

- (2) The persons appointed under subsection (1)—
- (a) hold office for five years from the date the notice of appointment is published in the public notice; and 50
  - (b) are eligible for reappointment as the Minister thinks fit.

(3) The Minister may terminate an appointment made under this section at any time for misconduct, incapacity or incompetence.

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

(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. 5

(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. 10

(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 convenor of the tax board. 15

(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. 20

**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. 25

(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. 30

(5) A senior SARS official must appear at the hearing of the appeal in support of the assessment or 'decision'.

(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. 35

(7) If a third party prepared the 'appellant's' return involved in the assessment or 'decision', that third party may appear on the 'appellant's' behalf.

(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). 40

(9) If neither the 'appellant' nor anyone authorised to appear on the 'appellant's' behalf appears before the tax board at the time and place set for the hearing, the tax board may confirm the assessment or 'decision' in respect of which the appeal has been lodged—

(a) at the request of the SARS representative; and 45

(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 or 'decision' under subsection (9), the 'appellant' may not thereafter request that the appeal be referred to the tax court under section 115. 50

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

(12) If the tax board allows the appeal under subsection (11), SARS may not thereafter refer the appeal to the tax court under section 115. 55

(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 an assessment or ‘decision’, must decide the matter in accordance with this Chapter. 5

(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’. 10

**Referral of appeal to tax court**

**115.** (1) If the ‘appellant’ or SARS is dissatisfied with the tax board’s decision or the Chairperson fails to deliver the decision under section 114(2) within the prescribed 60 business day period, the ‘appellant’ or SARS may within 21 business days, or within the further period as the Chairperson may on good cause shown allow, after the date of the notice referred to in section 114(3) or the expiry of the period referred to in section 114(2), require, in writing, that the appeal be referred to the tax court for hearing. 15

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

*Part D* 20

*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. 25

(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’. 30

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

**Constitution of tax court**

**118.** (1) 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; 35

(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. 40

(2) If the president of the tax court, a senior SARS official or the ‘appellant’ so requests, the representative of the commercial community referred to in subsection (1)(c) must—

(a) if the appeal relates to the business of mining, be a registered mining engineer; or 45

(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

(5) The Judge-President of the Division of the High Court with jurisdiction in the area where the relevant tax court is situated, may direct that the tax court consist of three judges or acting judges of the High Court (one of whom is the president of the tax court) and the members of the court referred to in subsections (1)(b) and (c) and (2), where necessary, if— 10

(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 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. 15

(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. 20

#### 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. 25

(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 reappointment for a further period or periods as the President of the Republic may think fit.

(4) The President of the Republic may terminate the appointment of a member under this section at any time for misconduct, incapacity or incompetence. 30

(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. 35

#### 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. 40

#### Conflict of interest of tax court members

**122.** (1) A member of the court must withdraw from the proceedings as soon as the member becomes aware of a conflict of interest which may give rise to bias which the member may experience with the case concerned or other circumstances that may affect the member’s ability to remain objective for the duration of the case. 45

(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. 50

**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*. 5

(2) If the tax 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 of the tax court, any other judges, the remaining member, and, if the president deems it necessary, a replacement member. 10

(4) The judgment of the remaining judges and members referred to in subsection (1) or (3) is the judgment of the court. 15

**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 of the tax court may in exceptional circumstances, on request of any person, allow that person or any other person to attend the sitting but may do so only after taking into account any representations that the ‘appellant’ and a senior SARS official, referred to in section 12 appearing in support of the assessment or ‘decision’, wishes to make on the request. 20

**Appearance at hearing of tax court** 25

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

(2) The ‘appellant’ or the ‘appellant’s’ representative may appear at the hearing of an appeal in support of the appeal.

**Subpoena of witness to tax court** 30

**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 just cause fails to— 35

- (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. 40

(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 45
- (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. 50

(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). 5

(6) The president of the tax court may order the costs of a postponement or adjournment resulting from the default of a witness, or a 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— 10

- (a) wilfully insults a judge or member of the tax court;
- (b) wilfully interrupts the tax court proceedings; or
- (c) otherwise misbehaves in the place where the hearing is held,

the president of a tax court may impose upon that person a fine or, in default of payment, imprisonment for a period not exceeding three months. 15

(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** 20

**129.** (1) The tax court, after hearing the ‘appellant’s’ appeal lodged under section 107 against an assessment or ‘decision’, must decide the matter on the basis that the burden of proof as described in section 102 is upon the taxpayer.

(2) In the case of an assessment or ‘decision’ under appeal, the tax court may— 25

- (a) confirm the assessment or ‘decision’;
- (b) order the assessment or ‘decision’ to be altered; or
- (c) refer the assessment back to SARS for further examination and assessment.

(3) In the case of an appeal against an understatement penalty imposed by SARS under a tax Act, the tax court must decide the matter on the basis that the burden of proof is upon SARS and may reduce, confirm or increase the understatement penalty so imposed. 30

(4) 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 by tax court**

**130.** (1) The tax court may, in dealing with an appeal under this Chapter and on application by an aggrieved party, grant an order for costs in favour of the party, if— 35

- (a) the SARS grounds of assessment or ‘decision’ are held to be unreasonable;
- (b) the ‘appellant’s’ grounds of appeal are held to be unreasonable;
- (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 40
- (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. 45

**Registrar to notify parties of judgment of tax court**

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



**Publication of judgment of tax court**

**132.** A judgment of the tax court dealing with an appeal under this Chapter must be published for general information and, unless the sitting of the tax court was public under the circumstances referred to in section 124(2), in a form that does not reveal the ‘appellant’s’ identity.

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**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.

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(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 an intermediate appeal to the Provincial Division, if—

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(i) the president of the tax court has granted leave under the ‘rules’; or

(ii) the appeal was heard by the tax court constituted under section 118(5).

**Notice of intention to appeal tax court decision**

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

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

(a) in which division of the High Court the appellant wishes the appeal to be heard;

(b) whether the whole or only part of the judgment is to be appealed against (if in part only, which part), and the grounds of the intended appeal, indicating the findings of fact or rulings of law to be appealed against; and

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(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—

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(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.

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

**Leave to appeal to Supreme Court of Appeal against tax court decision**

**135.** (1) If an intending appellant wishes to appeal against a decision of the tax court, the ‘registrar’ must submit the notice of intention to appeal lodged under section 134(1)

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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 relevant Division of the High Court may nominate and second another judge or acting judge to act as president of the tax court for that purpose. 5

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

**Failure to lodge notice of intention to appeal tax court decision 10**

**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. 15

**Notice by registrar of period for appeal of tax court decision**

**137.** (1) After the expiry of the time allowed under section 134(1) for the lodging of a notice of intention to appeal, the ‘registrar’ must— 20

- (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. 25

(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 30
- (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). 35

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

**138.** (1) If a person has—

- (a) appealed to the Supreme Court of Appeal from a court established under section 118(5);
- (b) been granted leave to appeal to the Supreme Court of Appeal under section 135; or 40
- (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. 45

(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. 5

**Notice of cross-appeal of tax court decision**

**139.** (1) A cross-appeal against a decision of the tax court in a case in which an appeal has been lodged under section 138, must be noted by lodging a written notice of cross-appeal with the ‘registrar’, serving it upon the opposite party or the opposite party’s attorney and lodging it with the registrar of the court to which the cross-appeal is noted. 10

(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— 15

(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. 20

**Record of appeal of tax court decision**

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

(2) Documents submitted in the tax court which do not relate to the matters in dispute in the appeal may be excluded from the record with the consent of the parties. 25

**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. 30

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

*Part F*

*Settlement of dispute*

**Definitions**

**142.** In this Part, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings: 35

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

‘**settle**’ means, after the lodging of an appeal under this Chapter, to resolve a ‘dispute’ by compromising a disputed liability, otherwise than by way of either SARS or the person concerned accepting the other party’s interpretation of the facts or the law applicable to those facts or of both the facts and the law, and ‘**settlement**’ must be construed accordingly. 40

**Purpose of Part** 45

**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** 5

**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 where settlement is inappropriate** 10

**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; 15
  - (ii) the ‘settlement’ would be contrary to the law or a practice generally prevailing and no exceptional circumstances exist to justify a departure from the law or practice; or
  - (iii) the person concerned has not complied with the provisions of a tax Act and the non-compliance is of a serious nature; 20
- (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** 25

**146.** The Commissioner 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; 30
- (b) SARS’ 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; 35
- (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; 40
- (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 45
- (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’. 50

- (2) A 'settlement' is conditional upon full disclosure of material facts known to the person concerned at the time of 'settlement'.
- (3) A dispute 'settled' in whole or in part must be evidenced by an agreement in writing between the parties in the prescribed format and must include details on—
  - (a) how each particular issue is 'settled'; 5
  - (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. 10
- (5) SARS must, if the 'dispute' is not ultimately 'settled', explain to the person concerned the further rights of objection and appeal.
- (6) 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. 15

**Finality of settlement agreement**

- 148. (1) The settlement 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.
- (2) SARS must adhere to the terms of the agreement, unless material facts were not disclosed as required by section 147(1) or there was fraud or misrepresentation of the facts. 20
- (3) If the person concerned fails to pay the amount due pursuant to the agreement or otherwise fails to adhere to the agreement, a senior SARS official may—
  - (a) regard the agreement as void and proceed with the matter in respect of the original disputed amount; or 25
  - (b) 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**

- 149. (1) SARS must— 30
  - (a) maintain a register of all 'disputes' that are 'settled' under this Part; and
  - (b) document the process under which each 'dispute' is 'settled'.
- (2) The Commissioner must provide an annual summary of 'settlements' to the Auditor-General and to the Minister.
- (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— 35
  - (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. 40

**Alteration of assessment or decision on settlement**

- 150. (1) If a 'dispute' between SARS and the person aggrieved by an assessment or 'decision' is 'settled' under this Part, SARS may, despite anything to the contrary contained in a tax Act, alter the assessment or 'decision' to give effect to the 'settlement'. 45
- (2) An altered assessment or 'decision' referred to in subsection (1) is not subject to objection and appeal.

**CHAPTER 10**

**TAX LIABILITY AND PAYMENT**

*Part A*

*Taxpayers*

**Taxpayer** 5

**151.** In this Act, taxpayer means—

- (a) a person chargeable to tax;
- (b) a representative taxpayer;
- (c) a withholding agent;
- (d) a responsible third party; or 10
- (e) a person who is the subject of a request to provide assistance under an international tax agreement.

**Person chargeable to tax**

**152.** A person chargeable to tax is a person upon whom the liability for tax due under a tax Act is imposed and who is personally liable for the tax. 15

**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; 20
- (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. 25

(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 30
- (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) moneys to which the representative taxpayer is entitled or has the manage- 35  
ment 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 repre- 40  
sented;
- (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 taxpayer**

**155.** A representative taxpayer is personally liable for tax payable in the representative taxpayer’s representative capacity, if, while it remains unpaid— 5  
 (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. 10

**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. 15

**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) An 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. 20

**Responsible third party**

**158.** In this Act, responsible third party means a person who becomes otherwise liable for the tax liability of another person, other than as a representative taxpayer or as a withholding agent, whether in a personal or representative capacity. 25

**Personal liability of responsible third party**

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

**Right to recovery of taxpayer** 30

**160.** (1) A representative taxpayer, withholding agent or responsible third party who, as such, pays a tax is entitled—  
 (a) to recover the amount so paid from the person on whose behalf it is paid; or  
 (b) to retain out of money or assets in that person’s possession or that may come to that person in that representative capacity, an amount equal to the amount so paid. 35  
 (2) Unless otherwise provided for in a tax Act, a taxpayer on whose behalf an amount deducted or withheld has been paid to SARS by a withholding agent is not entitled to recover from the withholding agent the amount so deducted or withheld.

**Security by taxpayer** 40

**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 frequently failed to pay amounts of tax due;
  - (d) has frequently failed to carry out other obligations imposed under any tax Act which constitutes non-compliance referred to in Chapter 15; or 5
  - (e) is under the management or control of a person who is or was a person contemplated in paragraphs (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. 10
- (3) The security must be of the nature, amount and form that the senior SARS official directs.
- (4) If the security is in the form of cash deposit and the taxpayer fails to make such deposit, it may— 15
- (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 control or are involved in the management of the taxpayer to enter into a contract of suretyship in respect of the taxpayer's liability for tax which may arise from time to time. 20

**Part B** 25

**Payment of tax**

**Determination of time and manner of payment of tax**

- 162.** (1) Tax must be paid by the day and at the place notified by SARS or as specified in a tax Act, and must be paid as a single amount or in terms of an instalment payment agreement under section 167. 30
- (2) SARS may prescribe the method of payment of tax, including electronically.
- (3) Despite sections 96(1)(f) and 167, a senior SARS official may, if there are reasonable grounds to believe that—
- (a) a taxpayer will not pay the full amount of tax;
  - (b) a taxpayer will dissipate the taxpayer's assets; or 35
  - (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 40
  - (ii) provide such security as the official deems necessary.

**Preservation order**

- 163.** (1) A senior SARS official may authorise an *ex parte* application to the High Court for an order for the preservation of any assets of a taxpayer or other person prohibiting any person, subject to the conditions and exceptions as may be specified in the preservation order, from dealing in any manner with the assets to which the order relates. 45
- (2) (a) SARS may, in anticipation of the application and in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax due, seize the assets pending the outcome of an application for a preservation order, which application must commence within 24 hours from the time of seizure of the assets or the further period that SARS and the taxpayer or other person may agree on. 50



- (b) Until a preservation order is made in respect of the seized assets, SARS must take reasonable steps to preserve and safeguard the assets.
- (3) A preservation order may be made if required to secure the collection of tax and in respect of—
- (a) realisable assets seized by SARS under subsection (2); 5
  - (b) the realisable assets as may be specified in the order and which are held by the person against whom the preservation order is being made;
  - (c) all realisable assets held by the person, whether it is specified in the order or not; or
  - (d) all assets which, if transferred to the person after the making of the 10 preservation order, would be realisable assets.
- (4) The court to which an application for a preservation order is made may—
- (a) make a provisional preservation order having immediate effect;
  - (b) simultaneously grant a rule *nisi* calling upon the taxpayer or other person upon 15 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 the taxpayer or other person, anticipate the return day for the purpose of discharging the provisional preservation order if 24 hours' notice of the application has been given to SARS.
- (5) A preservation order must provide for notice to be given to the taxpayer and a 20 person from whom the assets are seized.
- (6) For purposes of the notice or rule required under subsection (4)(b) or (5), if the taxpayer or other person has been absent for a period of 21 business days from his or her usual place of residence or business within the Republic, the court may direct that it will 25 be sufficient service of that notice or rule if a copy thereof is affixed to or near the outer door of the building 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; 30
  - (b) appointing a *curator bonis* in whom the assets of that taxpayer or another person liable for tax vest;
  - (c) realising the assets in satisfaction of the tax debt;
  - (d) making provision as the court may think fit for the reasonable living expenses 35 of a person against whom the preservation order is being made and his or her legal dependants, if the court is satisfied that the person has disclosed under oath all direct or indirect interests in assets subject to the order and that the person cannot meet the expenses concerned out of his or her unrestrained assets; or
  - (e) any other order that the court considers appropriate for the proper, fair and 40 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 asset over which the taxpayer or other person may have effective control and the location of the assets as the court may 45 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 assets concerned or other ancillary order if it is satisfied that—
- (a) the operation of the order concerned will cause the applicant undue hardship; 50 and
  - (b) the hardship that the applicant will suffer as a result of the order outweighs the risk that the assets concerned may be destroyed, lost, damaged, concealed or transferred.
- (10) A preservation order remains in force— 55
- (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.
- (11) In order to prevent any realisable assets that were not seized under subsection (2) 60 from being disposed of or removed contrary to a preservation order under this section,

a senior SARS official may seize the assets if the official has reasonable grounds to believe that the assets will be so disposed of or removed.

(12) Assets seized under this section must be dealt with in accordance with the directions of the High Court which made the relevant preservation order.

**Payment of tax pending objection or appeal** 5

**164.** (1) Unless a senior SARS official otherwise directs in terms of subsection (3)—  
 (a) the obligation to pay tax; and  
 (b) the right of SARS to receive and recover tax,  
 will not be suspended by an objection or appeal or pending the decision of a court of law pursuant to an appeal under section 133. 10

(2) A taxpayer may request a senior SARS official to suspend the payment of tax or a portion thereof due under an assessment if the taxpayer intends to dispute or disputes the liability to pay that tax under Chapter 9.

(3) A senior SARS official may suspend payment of the disputed tax having regard to— 15

- (a) the compliance history of the taxpayer;
- (b) the amount of tax involved;
- (c) the risk of dissipation of assets by the taxpayer concerned during the period of suspension;
- (d) whether the taxpayer is able to provide adequate security for the payment of the amount involved; 20
- (e) whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;
- (f) whether sequestration or liquidation proceedings are imminent;
- (g) whether fraud is involved in the origin of the dispute; or 25
- (h) whether the taxpayer has failed to furnish information requested under this Act for purposes of a decision under this section.

(4) If the payment of tax which the taxpayer intended to dispute was suspended under subsection (3) and subsequently— 30

- (a) no objection is lodged;
- (b) an objection is disallowed and no appeal is lodged; or
- (c) an appeal to the tax board or court is unsuccessful and no further appeal is noted,

the suspension is revoked with immediate effect from the date of the expiry of the relevant prescribed time period or any extension of the relevant time period under this Act. 35

(5) A senior SARS official may deny a request in terms of subsection (2) or revoke a decision to suspend payment in terms of that subsection with immediate effect if satisfied that—

- (a) after the lodging of the objection or appeal, the objection or appeal is frivolous or vexatious; 40
- (b) the taxpayer is employing dilatory tactics in conducting the objection or appeal;
- (c) on further consideration of the factors referred to in subsection (3), the suspension should not have been given; or 45
- (d) there is a material change in any of the factors referred to in subsection (3), upon which the decision to suspend the amount involved was based.

(6) During the period commencing on the day that—

- (a) SARS receives a request for suspension under subsection (2); or
- (b) a suspension is revoked under subsection (5), 50

and ending 10 business days after notice of SARS' decision or revocation has been issued to the taxpayer, no recovery proceedings may be taken unless SARS has a reasonable belief that there is a risk of dissipation of assets by the person concerned.

(7) If an assessment or a decision referred to in section 104(2) is altered in accordance with— 55

- (a) an objection or appeal;

- (b) a decision of a court of law pursuant to an appeal under section 133; or
- (c) a decision by SARS to concede the appeal to the tax board or the tax court or other court of law,

a due adjustment must be made, amounts paid in excess refunded with interest at the prescribed rate, the interest being calculated from the date that excess was received by SARS to the date the refunded tax is paid, and amounts short-paid are recoverable with interest calculated as provided in section 187(1). 5

(8) The provisions of section 191 apply with the necessary changes in respect of an amount refundable and interest payable by SARS under this section.

**Part C** 10

***Taxpayer account and allocation of payments***

**Taxpayer account**

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

(2) The taxpayer account must reflect the tax due in respect of each tax type included in the account. 15

(3) The taxpayer account must record details for all tax periods of—

- (a) the tax owed;
- (b) any penalty imposed;
- (c) the interest payable on outstanding amounts due;
- (d) any other amount owed; 20
- (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 account, reflecting the amounts currently due and the details that SARS considers appropriate. 25

**Allocation of payments**

**166.** (1) Despite anything to the contrary contained in a tax Act, SARS may 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— 30

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

(2) SARS may apply the first-in-first-out principle described in subsection (1) in respect of a specific tax type or a group of tax types in the manner that may be prescribed by the Commissioner by public notice. 35

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

(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. 40

**Part D**

***Deferral of Payment***

**Instalment payment agreement**

**167.** (1) A senior SARS official may enter into an agreement with a taxpayer in the prescribed form under which the taxpayer is allowed to pay a tax debt in one sum or in 45

instalments, within the agreed period if satisfied that—

- (a) criteria or risks that may be prescribed by the Commissioner by public notice 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. 5
- (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 must be regarded as part payment of the tax debt. 10
- (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 15
  - (c) the financial condition of the taxpayer has materially changed.
- (6) A termination or modification—
- (a) referred to in subsection (4) or (5)(a) takes effect as at the date stated in the notice of termination or modification sent to the taxpayer; and 20
  - (b) referred to in subsection (5)(b) or (c) takes effect 21 business days after notice of the termination or modification is sent to the taxpayer.

**Criteria for instalment payment agreement**

- 168.** A senior SARS official may enter into an instalment payment agreement only if— 25
- (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; 30
  - (d) collection activity would be harsh in the particular case and the deferral or instalment agreement is unlikely to prejudice tax collection; or
  - (e) the taxpayer provides the security as may be required by the official.

**CHAPTER 11** 35

**RECOVERY OF TAX**

*Part A*

*General*

**Debt due to SARS**

- 169.** (1) An amount of tax due or payable in terms of a tax Act is a tax debt due to SARS for the benefit of the National Revenue Fund. 40
- (2) A tax debt due to SARS is recoverable by SARS under this Chapter, and is recoverable from—
- (a) in the case of a representative taxpayer who is not personally liable under section 155, any assets belonging to the person represented which are in the representative taxpayer’s possession or under his or her management or control; or 45
  - (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) SARS need not recover an amount under this Chapter if the amount is less than R100 or any other amount that the Commissioner may determine by public notice, but the amount must be carried forward in the relevant taxpayer account. 5

**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— 10

- (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 limitation on collection of tax**

**171.** Proceedings for recovery of a tax debt may not be initiated after the expiration of 15 years from the date the assessment of tax, or a decision referred to in section 104(2) giving rise to a tax liability, becomes final. 15

**Part B**

**Judgment procedure**

**Application for civil judgment for recovery of tax** 20

**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 may file the statement irrespective of whether or not the amount of tax is subject to an objection or appeal under Chapter 9, unless the obligation to pay the amount has been suspended under section 164. 25

(3) SARS is not required to give the taxpayer prior notice under subsection (1) if SARS is satisfied that giving notice would prejudice the collection of the tax.

**Jurisdiction of Magistrates' Court in judgment procedure** 30

**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 filed with clerk or registrar**

**174.** A certified statement filed under section 172 must be treated as a civil judgment lawfully given in the relevant court in favour of SARS for a liquid debt for the amount specified in the statement. 35

**Amendment of statement filed with clerk or registrar**

**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. 40

(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. 5

*Part C*

*Sequestration, liquidation and winding-up proceedings*

**Institution of sequestration, liquidation or winding-up proceedings**

**177.** (1) SARS may institute proceedings for the sequestration, liquidation or winding-up of a person for a tax debt. 10

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

- (a) is present in the Republic; or
- (b) has assets in the Republic.

(3) If the tax debt is subject to an objection or appeal under Chapter 9 or a further appeal against a decision by the tax court under section 129, the proceedings may only be instituted with leave of the court before which the proceedings are brought. 15

**Jurisdiction of court in sequestration, liquidation or winding-up proceedings**

**178.** Despite any law to the contrary, a proceeding referred to in section 177 may be instituted in any competent court and that court may grant an order that SARS requests, whether or not the taxpayer is registered, resident or domiciled, or has a place of effective management or a place of business, in the Republic. 20

*Part D*

*Collection of tax debt from third parties*

**Liability of third party appointed to satisfy tax debts** 25

**179.** (1) A senior SARS official may by notice to a person who holds or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer, require the person to pay the money to SARS in satisfaction of the taxpayer's tax debt.

(2) A person that is unable to comply with a requirement of the notice, must advise the senior SARS official of the reasons for the inability to comply within the period specified in the notice and the official may withdraw or amend the notice as is appropriate under the circumstances. 30

(3) A person receiving the notice must pay the money in accordance with the notice and, if the person parts with the money contrary to the notice, the person is personally liable for the money. 35

(4) SARS may, on request by a person affected by the 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 of financial management for tax debts** 40

**180.** A person is personally liable for any tax debt of the taxpayer to the extent that the person's negligence or fraud resulted in the failure to pay the tax debt if—

- (a) the person controls or is regularly involved in the management of the overall financial affairs of a taxpayer; and

(b) a senior SARS official is satisfied that the person is or was negligent or fraudulent in respect of the payment of the tax debts of the taxpayer. 45

**Liability of shareholders for tax debts**

**181.** (1) This section applies where a company is wound up other than by means of an involuntary liquidation without having satisfied its tax debt, including its liability as a responsible third party, withholding agent, or a representative taxpayer, employer or vendor. 5

(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. 10

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

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

(5) This section does not apply— 15

- (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 for tax debts**

**182.** (1) A person (referred to as a transferee) who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for consideration below the fair market value of the asset is liable for the tax debt of the taxpayer. 20

(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 25
- (b) the fair market value of the asset at the time of the transfer, reduced by the fair market value of any consideration paid, at the time of payment.

(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. 30

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

**183.** If a person knowingly assists in dissipating a taxpayer’s assets in order to obstruct the collection of a tax debt of the taxpayer, the person is jointly and severally liable with the taxpayer for the tax debt to the extent that the person’s assistance reduces the assets available to pay the taxpayer’s tax debt. 35

**Recovery of tax debts from responsible third parties**

**184.** (1) SARS has the same powers of recovery against the assets of a person referred to in this Part as SARS has against the assets of the taxpayer and the person has the same rights and remedies as the taxpayer has against such powers of recovery. 40

(2) SARS must provide a responsible third party with an opportunity to make representations—

- (a) before the responsible third party is held liable for the tax debt of the taxpayer in terms of section 180, 181, 182 or 183, if this will not place the collection of tax in jeopardy; or 45
- (b) as soon as practical after the responsible third party is held liable for the tax debt of the taxpayer in terms of section 180, 181, 182 or 183.

**Part E****Assisting foreign governments****Tax recovery on behalf of foreign governments**

- 185.** (1) If SARS has, in accordance with an international tax agreement, 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 5
  - (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 a lesser amount. 10
- (2) A request described in subsection (1) must be in the prescribed form and must include a formal certificate issued by the competent authority of the other country stating— 15
- (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; 20
  - (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. 25
- (3) In any proceedings, a certificate referred to in subsection (2) is— 25
- (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 30
  - (c) denies liability but a senior SARS official, based on the statements in the certificate described in subsection (2) or, if necessary, after consultation with the competent authority of the other country, is satisfied that—
- (i) the liability for the amount is not disputed in terms of the laws of the other country; 35
  - (ii) although the liability for the amount is disputed in terms of the laws of the other country, such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or
  - (iii) there is a risk of dissipation or concealment of assets by the person, the official may, by notice, require the person to pay the amount for which the person has admitted liability or the amount specified, on a date specified, for transmission to the competent authority in the other country. 40
- (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. 45
- (6) No steps taken in assistance in collection by any other country under an international tax agreement for the collection of an amount alleged to be due by a person under a tax Act, including a judgment given against a person in the other country for the amount in pursuance of the agreement, may affect the person's right to have the liability for the amount determined in the Republic in accordance with the relevant law. 50



**Part F**

**Remedies with respect to foreign assets**

**Compulsory repatriation of foreign assets of taxpayer**

- 186.** (1) To collect a tax debt, a senior SARS official may apply for an order referred to in subsection (2), if— 5
- (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 outside the Republic for no consideration or for 10 consideration less than the fair market value, which may fully or partly satisfy the tax debt.
- (2) A senior SARS official may apply to the High Court for an order compelling the taxpayer to repatriate assets located outside the Republic within a period prescribed by the court in order to satisfy the tax debt. 15
- (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; 20
  - (c) require the taxpayer to cease trading; or
  - (d) issue any other order it deems fit.
- (4) An order made under subsection (2) applies until the tax debt has been satisfied or the assets have been repatriated and utilised in satisfaction of the tax debt.

**CHAPTER 12** 25

**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— 30
- (a) at the rate provided under section 189; and
  - (b) for the period provided under section 188.
- (2) Interest payable under a tax Act is calculated on the daily balance owing and compounded monthly, and the Commissioner may prescribe by public notice from which date this method of determining interest will apply to a tax type. 35
- (3) The effective date for purposes of the calculation of interest in relation to—
- (a) tax other than income tax or estate duty for any tax period, is the date by which tax for the tax period is due and payable under a tax Act;
  - (b) income tax for any year of assessment, is the date falling seven months after the last day of that year in the case of a taxpayer that has a year of assessment ending on the last day of February, and six months in any other case; 40
  - (c) estate duty for any period, is the earlier of the date of assessment or 12 months after the date of death;
  - (d) a fixed amount penalty referred to in section 210, is the date for payment specified in the notice of assessment of the penalty, and in relation to an increment of the penalty under section 211(2), the date of the increment; 45
  - (e) a percentage based penalty referred to in section 213, is the date by which tax for the tax period should have been paid; and
  - (f) an understatement penalty, is the effective date for the tax understated.
- (4) The effective date in relation to an additional assessment or reduced assessment is 50 the effective date in relation to the tax payable under the original assessment.

(5) The effective date in relation to a jeopardy assessment is the date for payment specified in the jeopardy 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. 5

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

- (a) a natural or human-made disaster;
- (b) a civil disturbance or disruption in services; or
- (c) a serious illness or accident. 10

**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 for the first payment of provisional tax until the earlier of the date on which the payment is made or the effective date for the second payment of provisional tax; and 15
- (b) second payment of provisional tax, is imposed from the effective date for the second payment of provisional tax until the earlier of the date on which the payment is made or the effective date for income tax for the relevant year of assessment. 20

(3) Unless otherwise provided under a tax Act—

- (a) interest on an amount refundable under section 190 is calculated from the later of the effective date or the date that the excess was received by SARS to the date the refunded tax is paid; and 25
- (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. 30

(2) In the case of interest payable with respect to refunds on assessment of provisional tax and employees' tax paid for the relevant 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). 35

(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. 40

(5) If interest is payable under this Chapter and the rate at which the interest is payable has with effect from any date been altered, and the interest is payable in respect of any tax period or portion thereof which commenced before the said date, the interest to be determined in respect of—

- (a) the tax period or portion thereof which ended immediately before the said date; or 45
- (b) 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) A person is entitled to a refund of—
- (a) an amount properly refundable under a tax Act and if so reflected in an assessment; or 5
  - (b) the amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment.
- (2) SARS need not authorise a refund as referred to in subsection (1) until such time that a verification, inspection or audit of the refund in accordance with Chapter 5 has been finalised. 10
- (3) SARS must authorise the payment of a refund before the finalisation of the verification, inspection or audit if security in a form acceptable to a senior SARS official is provided by the taxpayer.
- (4) A person is entitled to a refund under subsection (1)(b) only if the refund is claimed by the person within three years, in the case of an assessment by SARS, or five years, in the case of self-assessment, from the date of the assessment. 15
- (5) If SARS pays to a person by way of a refund any amount which is not properly payable to the person under a tax Act, the amount is regarded as tax that is payable by the person to SARS from the date on which it is paid to the person. 20
- (6) A decision not to authorise a refund under this section is subject to objection and appeal.

**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. 25
- (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 30
  - (b) in respect of which an instalment payment agreement under section 167 or a compromise agreement under section 204 applies.
- (3) An amount is not refundable if the amount is less than R100 or any other amount that the Commissioner may determine by public notice, but the amount must be carried forward in the taxpayer account. 35

**CHAPTER 14**

**WRITE OFF OR COMPROMISE OF TAX DEBTS**

*Part A*

*General provisions* 40

**Definitions**

- 192.** In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings:
- ‘asset’ includes—
- (a) property of whatever nature, whether movable or immovable, corporeal or incorporeal; and 45
  - (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 which is less than the full amount of the tax debt due by that ‘debtor’ in full satisfaction of the tax debt; and 5
  - (b) SARS undertakes to permanently ‘write off’ the remaining portion of the tax debt on the condition that the ‘debtor’ complies with the undertaking referred to in paragraph (a) and any further conditions as may be imposed by SARS;
- ‘**debtor**’ means a taxpayer with an outstanding tax debt; and
- ‘**write off**’ means to reverse a tax debt either in whole or in part. 10

**Purpose of Chapter**

- 193.** (1) As a general rule, it is the duty of SARS to assess and collect all tax debts according to a tax Act and not to forgo any tax debts.
- (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. 15
- (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. 20

**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*** 25

**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 described 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. 30
- (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. 35

**Tax debt uneconomical to pursue**

- 196.** (1) A tax debt is uneconomical to pursue if a senior SARS official is satisfied that the total cost of recovery of that tax debt will in all likelihood exceed the anticipated amount to be recovered in respect of the outstanding tax debt.
- (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— 40
  - (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’; 45

- (d) the likely costs of continuing action to recover the tax debt and the anticipated return from that action, including the 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 5
- (f) any other information available with regard to the recoverability of the tax debt.

**Part C**

**Permanent write off of tax debt**

**Permanent write off of tax debt 10**

**197.** (1) A senior SARS official may authorise the permanent '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. 15

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

**Tax debt 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 is in liquidation or sequestration and it represents the balance outstanding after notice is given by the liquidator or trustee that no further dividend is to be paid or a final dividend has been paid to the creditors of the estate; or 20
- (c) it is owed by a 'debtor' that is subject to a business rescue plan referred to in Part D of Chapter 6 of the 'Companies Act', to the extent that it is not enforceable in terms of section 154 of that Act. 25

(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 tax debt 30**

**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; 35
- (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' a senior SARS official must, in addition to considering the information as referred to in section 150 or 155 of that Act, take into account the information and aspects covered in the provisions of sections 200, 201(1), 202 and 203 with the necessary changes. 45

**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— 5
- (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 of tax debt** 10

- 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 fair market value;
  - (b) the amounts received by or accrued to, and expenditure incurred by, the ‘debtor’ during the 12 months immediately preceding the request; 15
  - (c) the ‘assets’ which have been disposed of in the preceding three years, or such longer period as a senior SARS official deems appropriate, together with their value, the consideration received or accrued, the identity of the person who acquired the ‘assets’ and the relationship between the ‘debtor’ and the person who acquired the ‘assets’, if any; 20
  - (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; 25
  - (f) details of any connected person in relation to that ‘debtor’;
  - (g) the ‘debtor’s’ present sources and level of income and the anticipated sources and level of income for the next three years, with an outline of the ‘debtor’s’ financial plans for the future; and 30
  - (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. 35
- (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— 40
- (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, including existing or future tax benefits, such as carryovers of losses, deductions, credits and rebates. 45
- (2) In determining the position without the ‘compromise’, a senior SARS official must have regard to—

- (a) the value of the ‘debtor’s’ present ‘assets’;
- (b) future prospects of the ‘debtor’, including arrangements which have been implemented or are proposed which may have the effect of diverting income or ‘assets’ that may otherwise accrue to or be acquired by the ‘debtor’ or a connected person in relation to the ‘debtor’; 5
- (c) past transactions of the ‘debtor’; and
- (d) the position of any connected person in relation to the ‘debtor’.

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

**203.** A senior SARS official may not ‘compromise’ any amount of a tax debt under section 200 if— 10

- (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’; 10
- (b) the tax affairs of the ‘debtor’ (other than the outstanding tax debt) are not up to date; 15
- (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; 20
- (e) it may adversely affect broader taxpayer compliance; or
- (f) the ‘debtor’ is a company or a trust and SARS has not first explored action against or recovery from the personal ‘assets’ of the persons who may be liable for the debt under Part D of Chapter 11.

**Procedure for compromise of tax debt** 25

**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 30
- (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 35
- (c) give up specified existing or future tax benefits, such as carryovers of losses, deductions, credits and rebates.

**SARS not bound by compromise of tax debt**

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

- (a) the ‘debtor’ fails to disclose a material fact to which the ‘compromise’ relates; 40
- (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. 45

**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. 5
- (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 10
  - (c) the reason for ‘writing off’ or ‘compromising’ the tax debt. 10

**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. 15
- (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(5), does not disclose the identity of the ‘debtor’ concerned; 20
  - (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. 25

**CHAPTER 15**

**ADMINISTRATIVE NON-COMPLIANCE PENALTIES**

**Part A**

**General**

**Definitions 30**

208. In this Chapter, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings:
- ‘**administrative non-compliance penalty**’ or ‘**penalty**’ means a “penalty” imposed by SARS in accordance with this Chapter, and excludes an understatement penalty referred to in Chapter 16; 35
  - ‘**first incidence**’ means an incidence of non-compliance by a person if no ‘penalty assessment’ under this Chapter 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; 40
  - ‘**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; 45
  - ‘**remittance request**’ means a request for remittance of a ‘penalty’ submitted in accordance with section 215.



**Purpose of Chapter**

209. The purpose of this Chapter is to ensure—
- (a) the widest possible compliance with the provisions of a tax Act and the effective administration of tax Acts; and
  - (b) that an ‘administrative non-compliance penalty’ is imposed impartially, consistently, and proportionately to the seriousness and duration of the non-compliance. 5

*Part B*

*Fixed amount penalties*

**Non-compliance subject to penalty** 10

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— 15

- (a) the failure to pay tax subject to a percentage based penalty under Part C; or
- (b) non-compliance subject to an understatement penalty under Chapter 16.

**Fixed amount penalty table**

211. (1) For the non-compliance referred to in section 210, SARS must impose a ‘penalty’ in accordance with the following Table: 20

**Table: Amount of Administrative Non-Compliance 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— 35

- (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 40
- (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: 45

- (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; 50
- (c) a company that forms part of a “group of companies” as defined in section 1 of the Income Tax Act, which group includes a company described in item (a) or (b); or

- (d) a person or entity, exempt from income tax under the Income Tax Act but liable to tax under another tax Act, whose gross receipts or accruals exceed R30 million.
- (4) SARS may, except in the case of persons referred to in subsection (3)(a) to (c), if the taxable income of the relevant person for the 'preceding year' is unknown or that person was not a taxpayer in that year—
  - (a) impose a 'penalty' in accordance with item (ii) of column 1 of the Table; or
  - (b) estimate the amount of taxable income of the relevant person for the 'preceding year' based on available relevant material and impose a 'penalty' in accordance with the applicable item 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 item in that column with effect from the date of the imposition of the 'penalty' issued under subsection (4).

**Reportable arrangement penalty**

- 212.** (1) A 'participant' who fails to disclose the information in respect of a reportable arrangement as required by section 37 is liable to a 'penalty', for each month that the failure continues (up to 12 months), in the amount of—
- (a) R50 000, in the case of a 'participant' other than the 'promoter'; or
  - (b) R100 000, in the case of the 'promoter'.
- (2) The amount of 'penalty' determined under subsection (1) is doubled if the amount of anticipated 'tax benefit' for the 'participant' by reason of the arrangement (within the meaning of section 35) exceeds R5 000 000, and is tripled if the benefit exceeds R10 000 000.

**Part C**

**Percentage based penalty**

**Imposition of percentage based penalty**

- 213.** (1) If SARS is satisfied that an amount of tax was not paid as and when required under a tax Act, SARS must, in addition to any other 'penalty' or interest for which a person may be liable under this Chapter, impose a 'penalty' equal to the percentage of the amount of unpaid tax as prescribed in the tax Act.
- (2) In the event of a 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' imposed;
  - (c) the date for paying the 'penalty';
  - (d) the automatic increase of the 'penalty'; and
  - (e) a summary of procedures for requesting remittance of the 'penalty'.
- (2) A 'penalty' is due upon assessment and must be paid—
- (a) on or before the 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 an adjustment to the 'penalty' in accordance with section 211(2) or 213(2). 5

**Procedure to request remittance of penalty**

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

- (2) The 'remittance request' must include— 10
  - (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. 15
- (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 20
  - (b) fraud involved in the origin of the non-compliance or the grounds for remittance.
- (4) SARS may extend the period referred to in subsection (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 grounds exist for the late receipt of the 'remittance request'; or 25
  - (b) a circumstance referred to in section 218(2) rendered the person incapable of submitting a timely request.

**Part E** 30

**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 35
- (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; 40  
or
  - (b) an incidence of non-compliance described in section 210 if the duration of the non-compliance is less than five business days,
 SARS may, in respect of a 'penalty' imposed under section 210 or 212, remit the 'penalty', or a portion thereof if appropriate, up to an amount of R2 000 if SARS is satisfied that— 45
  - (i) reasonable grounds 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 R100 000. 50
- (3) In the case of a penalty imposed under section 213, SARS may remit the 'penalty', or a portion thereof, if SARS is satisfied that—

- (a) the 'penalty' has been imposed in respect of a 'first incidence' of the non-compliance described in section 210, 212 or 213, or involved an amount of less than R2 000;
- (b) reasonable grounds for the non-compliance exist; and
- (c) the non-compliance in issue has been remedied. 5

**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. 10

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

- (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; 15
- (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 Commissioner; 20
  - (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;
- (f) serious financial hardship, such as— 25
  - (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 30**

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

**Objection and appeal against decision not to remit penalty**

**220.** A decision by SARS not to remit a 'penalty' in whole or in part is subject to objection and appeal under Chapter 9. 35

**CHAPTER 16**

**UNDERSTATEMENT PENALTY**

*Part A*

*Imposition of understatement penalty 40*

**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 understatement penalty percentage table reflected in section 223 within five years of the previous case; 45

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

**'tax'** means tax as defined in section 1, excluding a penalty and interest;  
**'tax position'** means an assumption underlying one or more aspects of a tax return, including whether or not—

- (a) an amount, transaction, event or item is taxable;
- (b) an amount or item is deductible or may be set-off; 5
- (c) a lower rate of tax than the maximum applicable to that class of taxpayer, transaction, event or item applies; or
- (d) an amount qualifies as a reduction of tax payable; and

**'understatement'** means any prejudice to SARS or the *fiscus* in respect of a tax period as a result of— 10

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

**Understatement penalty** 15

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

(2) The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table in section 223 to the shortfall determined under subsections (3) and (4). 20

(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; 25
- (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). 30

(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. 35

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

**Understatement penalty percentage table** 40

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

1 Item	2 Behaviour	3 Standard case	4 If obstructive, or if it is a 'repeat case'	5 Voluntary disclosure after notification of audit	6 Voluntary disclosure before notification of audit	45 50 60
(i)	'Substantial understatement'	25%	50%	5%	0%	
(ii)	Reasonable care not taken in completing return	50%	75%	25%	0%	65
(iii)	No reasonable grounds for 'tax position' taken	75%	100%	35%	0%	

1 Item	2 Behaviour	3 Standard case	4 If obstructive, or if it is a 'repeat case'	5 Voluntary disclosure after notification of audit	6 Voluntary disclosure before notification of audit	18 5 20
(iv)	Gross negligence	100%	125%	50%	5%	
(v)	Intentional tax evasion	150%	200%	75%	10%	

(2) An understatement penalty for which provision is made under this Chapter is also chargeable in cases where—

(a) an assessment based on an estimation under section 95 is made; or 25

(b) an assessment agreed upon with the taxpayer under section 95(3) is issued.

(3) SARS must remit a 'penalty' imposed for a 'substantial understatement' if SARS is satisfied that the taxpayer—

(a) made full disclosure of the arrangement, as defined in section 34, that gave rise to the prejudice to SARS or the *fiscus* by no later than the date that the relevant return was due; and 30

(b) was in possession of an opinion by a registered tax practitioner, as defined in section 239, that—

(i) was issued by no later than the date that the relevant return was due; 35

(ii) took account of the specific facts and circumstances of the arrangement; and

(iii) confirmed that the taxpayer's position is more likely than not to be upheld if the matter proceeds to court.

### Objection and appeal against decision not to remit understatement penalty

224. A decision by SARS not to remit an understatement penalty is subject to objection and appeal under Chapter 9. 40

### Part B

#### Voluntary disclosure programme

#### Definitions

225. In this Part, unless the context indicates otherwise, the following term, if in single quotation marks, has the following meaning: 45

'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; 50

(b) the correct amount of tax not being paid by the taxpayer; or

(c) an incorrect refund being made by SARS.

#### Qualifying person for voluntary disclosure

226. (1) A person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief, unless that person is aware of— 55

(a) a pending audit or investigation into the affairs of the person seeking relief; or

(b) an audit or investigation that has commenced, but has not yet been concluded.

(2) A senior SARS official may direct that a person may apply for voluntary disclosure relief, despite the provisions of subsection (1), where the official is of the view, having regard to the circumstances and ambit of the audit or investigation, that— 60

- (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 SARS' resources. 5
- (3) A person is deemed to be aware of a pending audit or investigation, or that the 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; 10
  - (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 a pending audit or investigation, or that the audit or investigation has commenced.

**Requirements for valid voluntary disclosure** 15

227. The requirements for a valid voluntary disclosure are that the disclosure must—
- (a) be voluntary;
  - (b) involve a 'default' which has not previously been disclosed by the applicant or a person referred to in section 226(3);
  - (c) be full and complete in all material respects; 20
  - (d) involve the potential imposition of an understatement penalty 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** 25

228. A senior SARS official may issue a non-binding private opinion, as defined in section 75, 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** 30

229. Despite the provisions of a tax Act, SARS must, pursuant to the making of a valid voluntary disclosure by the applicant and the conclusions of the voluntary disclosure agreement under section 230—
- (a) not pursue criminal prosecution for a statutory offence under a tax Act arising from the 'default' or a related common law offence; 35
  - (b) grant the relief in respect of any understatement penalty to the extent referred to in column 5 or 6 of the understatement penalty percentage table in section 223; and
  - (c) grant 100 per cent relief in respect of an administrative non-compliance penalty that was or may be imposed under Chapter 15 or a penalty imposed under a tax Act, excluding a penalty imposed under that Chapter or in terms of a tax Act for the late submission of a return or a late payment of tax. 40

**Voluntary disclosure agreement**

230. The approval by a senior SARS official of a voluntary disclosure application and relief granted under section 229, must be evidenced by a written agreement between SARS and the qualifying person who is liable for the outstanding tax in the prescribed format 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 understatement penalty payable; 50

- (c) the arrangements and dates for payment; and
- (d) relevant undertakings by the parties.

**Withdrawal of voluntary disclosure relief**

**231.** (1) In the event that, subsequent to the conclusion of a voluntary disclosure agreement under section 230, it is established that the applicant failed to disclose a matter that was material for purposes of making a valid voluntary disclosure under section 227, a senior SARS official may— 5

- (a) withdraw any relief granted under section 229;
- (b) regard an amount paid in terms of the voluntary disclosure agreement to constitute part payment of any further outstanding tax in respect of the relevant ‘default’; and 10
- (c) pursue criminal prosecution for a 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. 15

**Assessment or determination to give effect to agreement**

**232.** (1) If a voluntary disclosure agreement has been concluded under section 230, SARS may, despite anything to the contrary contained in a tax Act, issue an assessment or make a determination for purposes of giving effect to the agreement.

(2) An assessment issued or determination made to give effect to an agreement under section 230 is not subject to objection and appeal. 20

**Reporting of voluntary disclosure agreements**

**233.** (1) The Commissioner must annually provide to the Auditor-General and to the Minister a summary of all voluntary disclosure agreements concluded in respect of applications received during the period. 25

- (2) The summary must—
- (a) subject to section 70(5), not disclose the identity of the applicant, and must be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister, as the case may be; and
- (b) contain details of the number of voluntary disclosure agreements and the amount of tax assessed, which must be reflected in respect of main classes of taxpayers or sections of the public. 30

**CHAPTER 17**

**CRIMINAL OFFENCES**

**Criminal offences relating to non-compliance with tax Acts** 35

- 234.** A person who wilfully and without just cause—
- (a) fails or neglects to register or notify SARS of a change in registered particulars as required in Chapter 3;
  - (b) fails or neglects to appoint a representative taxpayer or notify SARS of the appointment or change of a representative taxpayer as required under section 153 or 249; 40
  - (c) fails or neglects to register as a tax practitioner as required under section 240;
  - (d) fails or neglects to submit a return or document to SARS or issue a document to a person as required under a tax Act;
  - (e) fails or neglects to retain records as required under this Act; 45
  - (f) submits a false certificate or statement under Chapter 4;
  - (g) issues an erroneous, incomplete or false document required under a tax Act to be issued to another person;
  - (h) refuses or neglects to—



- (i) furnish, produce or make available any information, document or thing, excluding information requested under section 46(8);
  - (ii) reply to or answer truly and fully any questions put to the person by a SARS official;
  - (iii) take an oath or make a solemn declaration; or 5
  - (iv) attend and give evidence, as and when required in terms of this Act;
  - (i) fails to comply with a directive or instruction issued by SARS to the person under a tax Act;
  - (j) fails or neglects to disclose to SARS any material facts which should have been disclosed under this Act or to notify SARS of anything which the person is required to so notify SARS under a tax Act; 10
  - (k) obstructs or hinders a SARS official in the discharge of the official's duties;
  - (l) refuses to give assistance required under section 49(1);
  - (m) holds himself or herself out as a SARS official engaged in carrying out the provisions of this Act; 15
  - (n) fails or neglects to comply with the provisions of sections 179 to 182, if that person was given notice by SARS to transfer the assets or pay the amounts to SARS as referred to in those sections; or
  - (o) dissipates that person's assets or assists another person to dissipate that other person's assets in order to impede the collection of any taxes, penalties or interest, 20
- is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.

**Criminal offences relating to evasion of tax** 25

**235.** (1) A person who with intent to evade or to assist another person to evade tax or to obtain an undue refund 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; 30
- (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; 35
- (d) makes use of, or authorises the use of, fraud or contrivance; or
- (e) makes any false statement for the purposes of obtaining any refund or of exemption from tax,

is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding five years. 40

(2) Any person who makes a statement in the manner referred to in subsection (1) must, unless the person proves that there is a reasonable possibility that he or she was ignorant of the falsity of the statement and that the ignorance was not due to negligence on his or her part, be regarded as guilty of the offence referred to subsection (1).

(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). 45

**Criminal offences relating to secrecy provisions**

**236.** A person who contravenes the provisions of section 67(2) or (3), 68(2), 69(1) or (6) or 70(5) is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years. 50

**Criminal offences relating to filing return without authority**

237. A person who—  
 (a) submits a return or other document to SARS under a forged signature;  
 (b) uses an electronic or digital signature of another person in an electronic communication to SARS; or  
 (c) otherwise submits to SARS a communication on behalf of another person, 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. 5

**Jurisdiction of courts in criminal matters**

238. A person charged with a tax offence 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. 10

**CHAPTER 18**

**REPORTING OF UNPROFESSIONAL CONDUCT**

**Definitions 15**

239. In this Chapter, unless the context otherwise indicates, the following terms, if in single quotation marks, have the following meanings:  
 ‘controlling body’ means a body established, whether voluntarily or under a law, with power to take disciplinary action against a person who, in carrying on a profession, contravenes the applicable rules or code of conduct for the profession; and  
 ‘registered tax practitioner’ means a practitioner registered under section 240. 20

**Registration of tax practitioners**

240. (1) Every natural person who—  
 (a) provides advice to another person with respect to the application of a tax Act; or  
 (b) completes or assists in completing a document to be submitted to SARS by another person in terms of a tax Act,  
 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. 25 30  
 (2) The provisions of this section do not apply in respect of a person who—  
 (a) provides the advice or completes or assists in completing a document solely for no consideration to that person or his or her employer or a connected person in relation to that employer or that person; 35  
 (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; 40  
 (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). 45

- (3) A person may not register as a tax practitioner under subsection (1) if the person—
- (a) during the preceding five years has been removed from a related profession; and
  - (b) during the preceding five years has been convicted (whether in the Republic or elsewhere) of—
    - (i) theft, fraud, forgery or uttering a forged document, perjury or an offence under the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); or
    - (ii) any other offence involving dishonesty, for which the person has been sentenced to a period of imprisonment exceeding two years without the option of a fine or to a fine exceeding the amount prescribed in the Adjustment of Fines Act, 1991 (Act No. 101 of 1991).

**Complaint to controlling body of tax practitioner**

- 241.** A senior SARS official may lodge a complaint with a ‘controlling body’ if a ‘registered tax practitioner’ or person who carries on a profession governed by the ‘controlling body’, did or omitted to do anything with respect to the affairs of a taxpayer, including that person’s affairs, that in the opinion of the official—
- (a) was intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer under a tax Act;
  - (b) by reason of negligence on the part of the person resulted in the avoidance or undue postponement of the performance of an obligation imposed on the taxpayer under a tax Act; or
  - (c) constitutes a contravention of a rule or code of conduct for the profession which may result in disciplinary action being taken against the ‘registered tax practitioner’ or person by the body.

**Disclosure of information regarding complaint and remedies of taxpayer**

- 242.** (1) Despite section 69, the senior SARS official lodging a complaint under section 241 may disclose the information relating to the person’s tax affairs as in the opinion of the official is necessary to lay before the ‘controlling body’ to which the complaint is made.
- (2) Before a complaint is lodged or information is disclosed, SARS must deliver to the taxpayer and the person against whom the complaint is to be made notification of the intended complaint and information to be disclosed.
- (3) The taxpayer or that person may, within 21 business days after the date of the notification, lodge with SARS an objection to the lodging of the complaint or disclosure of the information.
- (4) If on the expiry of that period of 21 business days no objection has been lodged or, if an objection has been lodged and SARS is not satisfied that the objection should be sustained, a senior SARS official may thereupon lodge the complaint as referred to in section 241.

**Complaint considered by controlling body**

- 243.** (1) The complaint is to be considered by the ‘controlling body’ according to its rules.
- (2) A hearing of the matter where details of a person’s tax affairs will be disclosed, may be attended only by persons whose attendance, in the opinion of the ‘controlling body’, is necessary for the proper consideration of the complaint.
- (3) The ‘controlling body’ and its members must preserve secrecy in regard to the information as to the affairs of a person as may be conveyed to them by SARS or as may otherwise come to their notice in the investigation of the complaint and must not communicate the information to a person other than the person concerned or the person against whom the complaint is lodged, unless the disclosure of the information is ordered by a competent court of law.

**CHAPTER 19**

**GENERAL PROVISIONS**

**Deadlines**

- 244.** (1) If—
- (a) a day notified by SARS or specified in a tax Act for payment, submission or other action; or 5
  - (b) the last day of a period within which payment, submission or other action under a tax Act must be made,
- falls on a Saturday, Sunday or public holiday, the action must be done not later than the last business day before the Saturday, Sunday or public holiday. 10
- (2) The Commissioner may prescribe the time of day by which a payment, submission or other action must be done, and if it is done after that time on the day it is regarded as done on the first business day following the specified day.
- (3) 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— 15
- (a) reasonable grounds exist for the delay and the application is submitted within 21 days of the deadline; or
  - (b) the delay is due to a circumstance referred to in section 218(2)(a) to (e) or any other circumstance of analogous seriousness and the application is submitted within three years of the deadline. 20

**Power of Minister to determine date for submission of returns and payment of tax**

- 245.** (1) Despite any other provision of a tax Act, if the date for the submission of a return or the payment of tax is the last day of the financial year of the Government, the Minister may by public notice 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. 25
- (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**

- 246.** (1) Every company carrying on business or having an office in the Republic must at all times be represented by an individual residing in the Republic. 30
- (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; 35
  - (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. 40
- (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. 45

(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).

**Company address for notices and documents** 5

**247.** (1) A company referred to in section 246(1) must, within the period referred to in section 246(2)(d), appoint a place within the Republic approved by SARS at which SARS may serve, deliver or send the company a notice or other document provided for under a tax Act.

(2) Every notice, process, or proceeding which under a tax Act may be given to, served upon or taken against a company referred to in section 246(1), may be given to, served upon, or taken against its public officer, or if at any time there is no public officer, any officer or person acting or appearing to act in the management of the business or affairs of the company or as agent for the company. 10

**Public officer in event of liquidation or winding-up** 15

**248.** In the event of a company referred to in section 246(1) being placed in voluntary or compulsory liquidation, the liquidator or liquidators duly appointed are required to exercise in respect of the company all the functions and assume all the responsibilities of a public officer under a tax Act during the continuance of the liquidation.

**Default in appointing public officer or address for notices or documents** 20

**249.** (1) No appointment is deemed to have been made under section 246(2) until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to SARS.

(2) A company must—

- (a) keep the office of public officer constantly filled and must at all times maintain a place for the service or delivery of notices in accordance with section 247(1); and 25
- (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** 30

**250.** (1) A form, notice, demand or other document issued or given by or on behalf of SARS or a SARS official under a tax Act is sufficiently authenticated if the name of SARS or the name or official designation of 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. 35

(3) Subsection (2) applies to other documents submitted to SARS by or on behalf of a person.

**Delivery of documents to persons other than companies** 40

**251.** If a tax Act requires or authorises SARS to issue, give, send, or serve a notice, document or other communication to a person (other than a company), SARS is regarded as having 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 5
  - (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 10
  - (ii) the person's last known telefax number.

**Delivery of documents to companies**

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

- (a) delivered to the public officer of the company; 15
- (b) left with a person older than 16 years apparently residing or employed at—
  - (i) the place appointed by the company under section 247; or
  - (ii) where no such place has been appointed by the company, the last known office or place of business of the company;
- (c) sent by post addressed to the company or its public officer at the company or public officer's last known address, which includes— 20
  - (i) an office or place referred to in paragraph (b); or
  - (ii) the company or public officer's last known post office box number or that of the public officer's employer; or
- (d) sent to the company or its public officer's last known electronic address, 25 which includes the—
  - (i) last known email address; or
  - (ii) last known telefax number.

**Documents delivered deemed to have been received**

253. (1) A notice, document or other communication issued, given, sent or served in the manner referred to in section 251 or 252, is regarded as received by the person to whom it was delivered or left, or if posted it is regarded as having been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the addressed place. 30

(2) Subsection (1) does not apply if— 35

- (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— 40

- (a) a notice, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner referred to in section 251 or 252 (excluding paragraphs (a) and (b) thereof)—
  - (i) has not been received by the addressee; or
  - (ii) has been received by that person considerably later than it should have 45 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** 50

254. (1) A notice of assessment or other notice or document issued to a person under a tax Act is not to be considered invalid or ineffective by reason of a failure to comply with the requirements of section 251 or 252 if the person had effective knowledge of the fact of the notice or document and of its content.

(2) A notice of assessment or other notice or document issued under a tax Act is not to be considered invalid or ineffective by reason of defects if it is, in substance and effect, in conformity with this Act, and the person assessed or affected by the notice or document is designated in it according to common understanding.

**Rules for electronic communication**

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**255.** (1) The Commissioner may by public notice make rules prescribing—

- (a) the procedures for submitting a return in electronic format, and for other electronic communications between SARS and other persons; and
- (b) requirements for an electronic or digital signature of a return or communication.

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(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 a 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.

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**Tax clearance certificate**

**256.** (1) A taxpayer may apply to SARS for a tax clearance certificate in the prescribed form and manner.

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(2) SARS must issue or decline to issue the certificate within 21 business days from the date the application is duly filed.

(3) A senior SARS official may provide a taxpayer with a tax clearance certificate only if satisfied that the taxpayer is registered for tax and does not have any—

- (a) tax debt outstanding, excluding a tax debt contemplated in section 167 or 204 or a tax debt that has been suspended under section 164 or does not exceed the amount referred to in section 169(4); or
- (b) outstanding return unless an arrangement acceptable to SARS has been made for the submission of the return.

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(4) A tax clearance certificate must be in the prescribed form and include at least—

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- (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.

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(5) Despite the provisions of Chapter 6, SARS may confirm the validity and expiry date of the certificate upon request by a sphere of government or parastatal.

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(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.

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**Regulations by Minister**

**257.** (1) The Minister may make regulations regarding—

- (a) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act; and

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- (b) any matter which under this Act is required or permitted to be prescribed.
- (2) The Minister may, after consultation with the Tax Ombud, make regulations regarding—
  - (a) the proceedings of the Tax Ombud; and
  - (b) the limitations on the jurisdiction of the Tax Ombud, having regard to— 5
    - (i) the factual or legal complexity of any complaint dealt with by the Tax Ombud;
    - (ii) the nature of the taxpayer whose complaint is dealt with by the Tax Ombud; and
    - (iii) the maximum amount involved in the dispute between the taxpayer and SARS. 10
- (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. 15

**CHAPTER 20**

**TRANSITIONAL PROVISIONS**

**New taxpayer reference number**

**258.** If a person has been allocated a taxpayer, tax or other reference number for purposes of a tax Act before the promulgation of this Act, the number remains in force until the time that SARS allocates a taxpayer reference number to the person under section 24 for purposes of the relevant tax type. 20

**Appointment of Tax Ombud**

**259.** (1) The Minister must appoint a person as Tax Ombud under section 14 within one year of the commencement date of this Act. 25  
 (2) The first Tax Ombud appointed under this Act may not review a matter that arose more than one year before the day on which the Tax Ombud is appointed, unless the Minister requests the Tax Ombud to do so.

**Provisions relating to secrecy**

**260.** A person who took and subscribed to an oath or solemn declaration of secrecy under a tax Act before the commencement date of this Act is regarded as having taken and subscribed to the oath or solemn declaration under section 67(2). 30

**Public officer previously appointed**

**261.** A public officer appointed or regarded as appointed under a tax Act and holding office immediately before the commencement date of this Act, is regarded as a public officer appointed under this Act. 35

**Appointment of chairpersons of tax board**

**262.** An attorney or advocate appointed to the panel of persons who may serve as chairpersons of the tax board under a tax Act, who is on that panel immediately before the commencement date of this Act, is regarded as appointed under the provisions of section 111 until the earlier of— 40  
 (a) the expiry of the attorney or advocate’s appointment under the provisions previously in force; or  
 (b) termination of the attorney or advocate’s appointment under section 111(3).



**Appointment of members of tax court**

**263.** A member of the tax court appointed under a tax Act who is a member immediately before the commencement date of this Act is regarded as appointed under the provisions of section 120(1) until the expiry of his or her term of office in terms of the provisions previously in force, or until his or her appointment in terms of section 120(4) is terminated or lapses. 5

**Continuation of tax board, tax court and court rules**

**264.** (1) A tax board or tax court that was established under a tax Act and exists immediately before the commencement date of this Act, is regarded as established under section 108 or 116, respectively, of this Act. 10

(2) Rules of court issued by the Minister under a tax Act that are in force immediately before the commencement date of this Act continue in force as if they were issued under section 103.

**Continuation of appointment to a post or office or delegation by Commissioner**

**265.** (1) A person appointed to a post or office or delegated by the Commissioner under the SARS Act or a tax Act, which appointment or delegation is in force immediately before the commencement date of this Act, is regarded as appointed or delegated under this Act. 15

(2) Subsection (1) applies until the person is so appointed or delegated under this Act or the appointment or delegation is withdrawn. 20

**Continuation of authority to audit**

**266.** If a SARS official was issued a letter authorising the official to audit under a tax Act, and the letter is in force immediately before the commencement date of this Act, the letter is regarded as issued to the official under section 41.

**Conduct of inquiries and execution of search and seizure warrants** 25

**267.** (1) If the Commissioner authorised an inquiry under a tax Act and a judge granted an order designating a person to act as presiding officer in the inquiry before the commencement date of this Act, the inquiry is regarded as authorised under sections 50 and 51.

(2) If a judge issued a search and seizure warrant under a tax Act that has not been executed before the commencement date of this Act, the warrant is regarded as issued under section 60. 30

**Application of Chapter 15**

**268.** Chapter 15 applies to non-compliance resulting from a continuous failure by a person to comply with an obligation that exists on the date a notice referred to in section 210(2) comes into effect, in which case the date on which the non-compliance occurred will be regarded as the date that notice came into effect. 35

**Continuation of authority, rights and obligations**

**269.** (1) Rules and regulations issued under the provisions of a tax Act repealed by this Act that are in force immediately before the commencement date of this Act, remain in force as if they were issued under section 103 or 257, respectively, to the extent consistent with this Act. 40

(2) Forms prescribed under the authority of a tax Act before the commencement date of this Act, and in use immediately before the date of commencement of this Act, are considered to have been prescribed under the authority of this Act, to the extent consistent with this Act. 45

(3) Rulings and opinions issued under the provisions of a tax Act repealed by this Act and in force immediately before the commencement date of this Act, which have not been revoked, are regarded as having been issued under the authority of this Act to the extent relevant to and consistent with this Act.

(4) An order of a court under the authority of a tax Act and in force immediately before the commencement date of this Act, continues to have the same force and effect as if the provisions had not been repealed or amended, subject to any further order of the court. 5

(5) A right or entitlement enjoyed by, or obligation imposed on, a person under the repealed or amended provisions of a tax Act, that had not been exercised or complied with before the commencement date of this Act, is a valid right or entitlement of, or obligation imposed on, that person in terms of any comparable provision of this Act, as from the date that the right, entitlement or obligation first arose, subject to the provisions of this Act. 10

(6) The commission of an offence before the commencement date of this Act which is a statutory offence under the provisions of a tax Act repealed by this Act, may be investigated by SARS, in the manner referred to in Chapter 5, and prosecuted as if the statutory offence remained in force. 15

**Application of Act to prior or continuing action**

**270.** (1) Subject to this Chapter, this Act applies to an act, omission or proceeding taken, occurring or instituted before the commencement date of this Act, but without prejudice to the action taken or proceedings conducted before the commencement date of the comparable provisions of this Act. 20

(2) The following actions or proceedings taken or instituted under the provisions of a tax Act repealed by this Act but not completed by the commencement date of the comparable provisions of this Act, must be continued and concluded under the provisions of this Act as if taken or instituted under this Act: 25

- (a) a decision by a SARS official in terms of a statutory power to do so;
- (b) a request by a person for the withdrawal or amendment of a decision or notice by SARS, registration for tax, form of record keeping, information, taxpayer record, advance ruling, refund, reduced assessment, suspension of a disputed tax debt, deferral, write off, compromise or waiver of a tax debt and the remittance of interest or a penalty; 30
- (c) an inspection, verification, request for information, audit, criminal investigation, inquiry or search and seizure; 35
- (d) an objection, appeal to the tax board, tax court or higher court, alternative dispute resolution, settlement discussions or other related High Court application;
- (e) suspension of a disputed tax debt;
- (f) a deferment, write off or compromise of a tax debt; or 40
- (g) recovery of a tax debt, including the appointment of an agent to satisfy a tax debt, execution of a civil judgment or sequestration, liquidation or winding-up instituted by SARS or any other related court application. 45

(3) A form, notice, demand or other document issued, given or received by a person or SARS under the provisions of a tax Act repealed by this Act, must be regarded as issued, given or received in terms of any comparable provision of this Act, as from the date that the form, notice, demand or other document was issued, given or received under the repealed provisions. 45

(4) A record kept or retained by a person as required under the provisions of a tax Act repealed by this Act, must be regarded as kept or retained as required under the comparable provisions of this Act from the date that record was kept or retained under the repealed provisions of the tax Act. 50

(5) If the period for an application, objection, appeal or prosecution had expired before the commencement date of this Act, nothing in this Act may be construed as

enabling the application, objection, appeal or prosecution to be made under this Act by reason only of the fact that a longer period is specified in this Act.

(6) Additional tax, penalty or interest which but for the repeal of the legislation in Schedule 1 would have been capable of being imposed, levied, assessed or recovered by the commencement date of this Act, and which has not been imposed, levied, assessed or recovered by the commencement date of this Act, may be— 5

- (a) imposed or levied as if the repeal had not been effected; and
- (b) assessed and recovered under this Act.

(7) Interest arising before the commencement date of this Act must be—

- (a) calculated in accordance with the relevant tax Act until the commencement date; and 10
- (b) regarded as interest due under this Act from the commencement date of the comparable provisions of this Act.

(8) Interest arising on or after the commencement date of this Act but before the date prescribed by the Commissioner under section 187(2) must be— 15

- (a) calculated in accordance with the relevant tax Act until the date prescribed by the Commissioner; and
- (b) regarded as interest due under this Act.

#### **Amendment of legislation**

271. The Acts listed in Schedule 1 are amended to the extent set out in that Schedule. 20

#### **Short title and commencement**

272. (1) This Act is called the Tax Administration Act, 2011, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

(2) The President may determine different dates for different provisions of this Act to come into operation. 25

(3) Subparagraphs (g), (h), (i) and (j) of paragraph 60 of Schedule 1 come into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

(4) Paragraph 78 of Schedule 1 is deemed to have come into operation on 1 January 2011 and applies in respect of premiums incurred on or after that date. 30

(5) Paragraph 184 of Schedule 1 is deemed to have come into operation on 1 March 2010 and applies in respect of a mineral resource transferred on or after that date.

SCHEDULE 1

SECTION 271

No. and year	Short title	Extent of amendment or repeal
Act No. 40 of 1949	Transfer Duty Act, 1949	Amendment of section 1
		<p><b>1.</b> Section 1 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘<b>Commissioner</b>’ means the Commissioner for the South African Revenue Service <u>appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act;</u>”;</p> <p>(b) by the insertion after the definition of “spouse” of the following definition:</p> <p>“ ‘<b>Tax Administration Act</b>’ means <u>the Tax Administration Act, 2011;</u>”;</p> <p>(c) by the renumbering of section 1 to section 1(1); and</p> <p>(d) by the insertion after subsection (1) of the following subsection:</p> <p>“<u>(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.</u>”.</p>
		Amendment of section 3
		<p><b>2.</b> Section 3 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (1A) of the following subsection:</p> <p>“(1A) Where a person who acquires any property contemplated in paragraph (d), (e) or (g) of the definition of “property” fails to pay the duty within the period contemplated in subsection (1), the public officer [as defined in section 101 of the Income Tax Act, 1962 (Act No. 58 of 1962),] of that company and the person from whom the shares or member’s interest are acquired shall be jointly and severally liable for such duty: Provided that the public officer or person from whom the</p>

No. and year	Short title	Extent of amendment or repeal
		<p>shares or member's interest was acquired, may recover any amount of duty paid [by him or her] in terms of this subsection [from—</p> <p>(a) the person who so acquired that property; or</p> <p>(b) in the case of a public officer, from that company] in accordance with section 160 of the Tax Administration Act.”;</p> <p>(b) by the substitution for subsection (1B) of the following subsection:</p> <p>“(1B) Where a person who acquires any property contemplated in paragraph (f) of the definition of “property” fails to pay the duty within the period contemplated in subsection (1), the trust and [the trustees] representative taxpayer of that trust shall be jointly and severally liable for such duty: Provided that the trust or [trustee] representative taxpayer may recover any amount of duty paid in terms of this subsection by the trust or [trustee] representative taxpayer, as the case may be, [from—</p> <p>(a) the person who so acquired that property; or</p> <p>(b) in the case of the trustee, from that trust] in accordance with section 160 of the Tax Administration Act.”; and</p> <p>(c) by the deletion of subsection (3).</p>
		<p><b>Amendment of section 4</b></p>
		<p>3. Section 4 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading:</p> <p>“Penalty [and interest] on late payment of duty”;</p>

No. and year	Short title	Extent of amendment or repeal
		<p>(b) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If any duty in respect of any transaction entered into before 1 March 2005, remains unpaid after the date of the expiration of the period referred to in section 3, [there shall, subject to the provisions of subsection (3), in addition to the unpaid duty, be payable] <u>the Commissioner must in accordance with Chapter 15 of the Tax Administration Act impose a penalty, at the rate of 10 per cent per annum on the amount of the unpaid duty, calculated in respect of each completed month in the period from that date to the date of payment</u>: <b>Provided that if in any case the period referred to in section 3 ended before 1 July 1982 and the said penalty is chargeable or is in part chargeable in respect of any completed month commencing before 1 July 1982 the penalty payable in respect of such completed month and any earlier completed month or months shall be the amount of penalty which would have been payable in terms of this subsection before its amendment by the Revenue Laws Amendment Act, 1982, if the unpaid amount of such duty had been paid on the day after the end of the only or latest of such completed months</b>.”; and</p> <p>(c) by the deletion of subsection (1A).</p>
		<p><b>Amendment of section 10</b></p>
		<p><b>4.</b> Section 10 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The powers conferred and the duties imposed upon the Commissioner by this Act may be exercised or performed by the Commissioner [personally] or by any [officer acting under a delegation from or] <u>SARS official</u> under the control, [or] <u>direction or supervision</u> of the Commissioner.”; and</p>

No. and year	Short title	Extent of amendment or repeal
		<p>(b) by the insertion after subsection (2) of the following subsection:</p> <p>“(3) <u>Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Tax Administration Act.</u>”.</p>
		<p><b>Amendment of section 11</b></p>
		<p>5. Section 11 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:</p> <p>“(a) Where in terms of [subsection (2) of section three] section 3(2) a deposit on account of the duty payable by any person is made pending the determination by the Commissioner of the fair value of the property concerned, of an amount equal to the duty calculated on the consideration paid or payable in respect of the acquisition of the property or on the declared value thereof, as the case may be, and there is given to the Commissioner security to his or her satisfaction for the payment of any balance of transfer duty [or stamp duty] which may still be payable, the Commissioner may in his or her discretion issue to the person liable to pay the duty a certificate that such deposit has been made and that such security has been given.”.</p>
		<p><b>Repeal of sections 11A, 11B, 11C, 11D and 11E</b></p>
		<p>6. Sections 11A, 11B, 11C, 11D and 11E of the Transfer Duty Act, 1949, are hereby repealed.</p>
		<p><b>Amendment of section 13</b></p>
		<p>7. Section 13 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Whenever the Commissioner is satisfied that the duty payable under this Act in respect of the acquisition of any property or the renunciation of any interest in or restriction upon the use or disposal of any property has not been</p>

No. and year	Short title	Extent of amendment or repeal
		<p>paid in full, the Commissioner shall, notwithstanding that the acquisition has already been registered in a deeds registry, recover the difference between the amount of the duty payable and the amount paid <u>in accordance with Chapter 11 of the Tax Administration Act.</u>"; and</p> <p>(b) by the deletion of subsection (2).</p>
		<p><b>Repeal of sections 13A, 13B and 13C</b></p>
		<p>8. Sections 13A, 13B and 13C of the Transfer Duty Act, 1949, are hereby repealed.</p>
		<p><b>Amendment of section 14</b></p>
		<p>9. Section 14 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) <b>[Declarations]</b> <u>A return</u> appropriate to the manner of the acquisition of property in any particular case shall be submitted <b>[electronically, in the form and manner and containing such information as may be prescribed by the Commissioner]</b> by the parties to the transaction whereby the property has been acquired and, if the Commissioner so directs, also by the agent, auctioneer, broker or other person who acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.”; and</p> <p>(b) by the deletion of subsections (4), (6), (7) and (8).</p>
		<p><b>Amendment of section 15</b></p>
		<p>10. Section 15 of the Transfer Duty Act, 1949, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) <b>[Every]</b> <u>In addition to the requirements upon a taxpayer contained in sections 29, 30, 32 and 33 of the Tax Administration Act, every</u> auctioneer or other person</p>



No. and year	Short title	Extent of amendment or repeal
		<p>who has effected a sale of property on behalf of some other person shall, for a period of five years from the date on which the sale was effected, keep a record of the sale including a description of the property sold, the person by whom and the person to whom the property has been sold and the price paid for the property.”; and</p> <p>(b) by the deletion of subsections (2) and (3).</p>
		<p><b>Repeal of sections 17, 17A, 17B, 18, 20, 20A, 20C and 20D</b></p>
		<p>11. Sections 17, 17A, 17B, 18, 20, 20A, 20C and 20D of the Transfer Duty Act, 1949, are hereby repealed.</p>
<p>Act No. 45 of 1955</p>	<p>Estate Duty Act, 1955</p>	<p><b>Amendment of section 1</b></p>
		<p>12. Section 1 of the Estate Duty Act, 1955, is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘<b>Commissioner</b>’ means the Commissioner for the South African Revenue Service <u>appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act.</u>”;</p> <p>(b) by the insertion after the definition of “stocks or shares” of the following definition:</p> <p>“ ‘<b>Tax Administration Act</b>’ means <u>the Tax Administration Act, 2011.</u>”;</p> <p>(c) by the renumbering of section 1 to section 1(1); and</p> <p>(d) by the insertion after subsection (1) of the following subsection:</p> <p>“(2) <u>Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.</u>”.</p>

No. and year	Short title	Extent of amendment or repeal
		<b>Amendment of section 6</b>
		<p>13. Section 6 of the Estate Duty Act, 1955, is hereby amended—</p> <p>(a) by the substitution for subsection (2) of the following subsection:</p> <p style="padding-left: 40px;">“(2) The powers conferred and the duties imposed upon the Commissioner by this Act may be exercised or performed by the Commissioner [personally] or by any [officer acting under a delegation from or] SARS official under the control, [or] direction or supervision of the Commissioner.”; and</p> <p>(b) by the substitution for subsection (3) of the following subsection:</p> <p style="padding-left: 40px;">“(3) <u>Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Tax Administration Act.</u>”.</p>
		<b>Amendment of section 7</b>
		<p>14. Section 7 of the Estate Duty Act, 1955, is hereby amended—</p> <p>(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:</p> <p style="padding-left: 40px;">“Every executor or, if he or she is called upon by the Commissioner to do so, any person having the control of or any interest in any property included in the estate, shall submit to the Commissioner a return [in a form, prescribed by him,] disclosing the amount claimed by the person submitting the return to represent the dutiable amount of the estate together with full particulars regarding—”; and</p> <p>(b) by the deletion of subsection (2).</p>
		<b>Repeal of sections 8, 8A, 8B, 8C, 8D and 8E</b>
		<p>15. Sections 8, 8A, 8B, 8C, 8D and 8E of the Estate Duty Act, 1955, are hereby repealed.</p>
		<b>Amendment of section 9</b>
		<p>16. Section 9 of the Estate Duty Act, 1955, is hereby amended—</p> <p>(a) by the insertion after subsection (1) of the following subsection:</p>

No. and year	Short title	Extent of amendment or repeal
		<p>“(1A) If the Commissioner, prior to the issue of a notice of assessment in terms of subsection (1)—  <u>(a) is dissatisfied with any value at which any property is shown in any return; or</u>  <u>(b) is of the opinion that the amount claimed to represent the dutiable amount as disclosed in any return, does not represent the correct dutiable amount,</u>  <u>the Commissioner shall adjust such value or amount and determine the dutiable amount upon which such assessment shall be raised accordingly.”;</u>                      (b) by the deletion of subsection (2); and                      (c) by the insertion of a new subsection (5) after subsection (4):                      “(5) An assessment contemplated in subsection (4)(a) and (b) is deemed to be an assessment by way of self-assessment.”.</p>
		<p><b>Repeal of sections 9A and 9B</b></p>
		<p>17. Sections 9A and 9B of the Estate Duty Act, 1955, are hereby repealed.</p>
		<p><b>Amendment of section 10</b></p>
		<p>18. Section 10 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection;                      “(1) If [any duty remains unpaid at the expiration of a period of thirty days from the date of payment notified in accordance with subsection (2) of section nine, there shall be payable, in addition to the unpaid duty, interest at the rate of six per cent per annum on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment: Provided that, where] the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the <u>prescribed rate [of six per cent per annum]</u> shall be payable as from a date twelve months after the date of death on the difference (if any) between the duty assessed and any deposit (if any) made on account of the duty payable within the said period of twelve months.”.</p>

No. and year	Short title	Extent of amendment or repeal
		<b>Substitution of section 12</b>
		<p>19. The Estate Duty Act, 1955, is hereby amended by the substitution for section 12 of the following section:</p> <p><b>“Duty payable by executor</b></p> <p>12. Notwithstanding anything to the contrary contained in section [eleven] 11, any duty payable under this Act shall be payable by and recoverable from the executor of the estate subject to the duty, to the extent contemplated in Chapters 10 and 11 of the Tax Administration Act [ : <b>Provided that the liability under this section of any executor shall be a liability in his or her capacity as executor only and for an amount not exceeding the available assets in the estate, unless the liability is due to fraud].”</b></p>
		<b>Repeal of sections 12A, 12B, 23, 23bis, 24, 25, 25A and 27</b>
		<p>20. Sections 12A, 12B, 23, 23bis, 24, 25, 25A and 27 the Estate Duty Act, 1955, are hereby repealed.</p>
		<b>Amendment of section 28</b>
		<p>21. Section 28 of the Estate Duty Act, 1955, is hereby amended—</p> <p>(a) by the substitution for the heading of the following heading:</p> <p><b>“[PENALTIES] OFFENCES”;</b></p> <p>(b) by the deletion of subsection (1); and</p> <p>(c) by the deletion in subsection (2) of paragraphs (b) and (b)bis.</p>
		<b>Repeal of sections 28A and 30</b>
		<p>22. Sections 28A and 30 of the Estate Duty Act, 1955, are hereby repealed.</p>

No. and year	Short title	Extent of amendment or repeal
Act No. 58 of 1962	Income Tax Act, 1962	Amendment of section 1
		<p>23. Section 1 of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for the definition of “assessment” of the following definition:</p> <p>“ <b>‘assessment’</b> [means the] <u>has the meaning assigned under section 1 of the Tax Administration Act, and includes a determination by the Commissioner—</u>[, by way of a notice of assessment (including a notice of assessment in electronic form) served in a manner contemplated in section 106(2)—</p> <p>(a) of an amount upon which any tax leviable under this Act is chargeable; or</p> <p>(b) of the amount of any such tax; or]</p> <p>(c) of any loss ranking for set-off; [or]</p> <p>(d) of any assessed capital loss determined in terms of paragraph 9 of the Eighth Schedule[.]; or</p> <p><u>(e) of any amounts to be taken into account in the determination of tax payable on income in future years</u></p> <p>[and for the purposes of Part III of Chapter III includes any determination by the Commissioner in respect of any of the rebates referred to in section 6 and any decision of the Commissioner which is in terms of this Act subject to objection and appeal];”;</p> <p>(b) by the deletion of the definition of “business day”;</p> <p>(c) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ <b>‘Commissioner’</b> means the Commissioner for the South African Revenue Service <u>appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act;</u>”;</p>

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

No. and year	Short title	Extent of amendment or repeal
		<p>(i) by the deletion of the words in the definition of “representative taxpayer” following paragraph (f) but preceding the proviso;</p> <p>(j) by the insertion after the definition of “retirement interest” of the following definition:  <u>“ ‘return’ means a return as defined in section 1 of the Tax Administration Act;”</u>;</p> <p>(k) by the substitution for the definition of “tax” of the following definition:  <u>“ ‘tax’ means tax or a penalty imposed in terms of this Act;”</u>;</p> <p>(l) by the insertion after the definition of “tax” of the following definition:  <u>“ ‘Tax Administration Act’ means the Tax Administration Act, 2011;”</u>;</p> <p>(m) by the substitution for the definition of “taxpayer” of the following definition:  <u>“ ‘taxpayer’ means any person chargeable with any tax leviable under this Act [and includes every person required by this Act to furnish any return];”</u>;</p> <p>(n) by the renumbering of section 1 to section 1(1); and</p> <p>(o) by the insertion after subsection (1) of the following subsection:  <u>“(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.”</u></p>

No. and year	Short title	Extent of amendment or repeal
		<p><b>Amendment of section 2</b></p> <p>24. The Income Tax Act, 1962, is hereby amended by the substitution for section 2 of the following section:</p> <p>“[Act to be administered by Commissioner] <u>Administration of Act</u></p> <p>2. (1) The Commissioner [shall be] <u>is</u> responsible for carrying out the provisions of this Act.</p> <p>(2) <u>Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Tax Administration Act.</u>”.</p>
		<p><b>Amendment of section 3</b></p> <p>25. Section 3 of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) The powers conferred and the duties imposed upon the Commissioner by or under the provisions of this Act may be exercised or performed by the Commissioner [personally,] or by any officer [or person engaged in carrying out the said provisions] under the control, direction or supervision of the Commissioner.”;</p> <p>(b) by the deletion of subsections (2) and (3);</p> <p>(c) by the substitution for subsection (4) of the following subsection:</p> <p>“(4) Any decision of the Commissioner under the following provisions of this Act [shall be] <u>is</u> subject to objection and appeal in accordance with Chapter 9 of the <u>Tax Administration Act</u>, namely—</p>



No. and year	Short title	Extent of amendment or repeal
		<p>(a) the definitions of “benefit fund”, “pension fund”, “pension preservation fund”, “provident fund”, “provident preservation fund”, “retirement annuity fund” and “spouse” in section 1;</p> <p>(b) [section 6, section 8(4)(b), (c), (d) and (e),] <u>section 8(5)(b) and (bA), [section 9D,] section 10(1)(cA), [(e)](e)(i)(cc), [(iA)], (j) and (nB), section 10A(8), section 11(c), (f), (g), (gA), (j)[,] and (l), [(t), (u) and (w),] section 12B(6), section 12C, section 12E, section 12G, section 12J(6), (6A), and (7), section 13, section 14, section 15, section 22(1)[,] and (3) [and (5)], section 23H(2), section 23K, section 24(2), section 24A(6), section 24C, section 24D, section 24I(1) and (7), section 24J(9), section 25A [section 25D], section 27, section [28(2)(cA)]28(9), section 30, section 30A, section 30B, section 31, section 35(2), section 37A, section 37H, section [38(4)]38(2)(a) and (b) and (4), section 44(13)(a), section 47(6)(c)(i), section 57(2), section 62(1)(c)(iii) and (d) and (2)(a) and (4), [section 76A,] section 80B and section [80S] 103(2);</u></p> <p>(c) paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule;</p> <p>(d) paragraph 4 of the Second Schedule;</p> <p>(e) paragraphs 14(6), 18, [19(1),] 20(1)(a) and (2), 20A(1) and (2), 21, 24 and 27 of the Fourth Schedule;</p> <p>(f) paragraphs 10(3) and (4), 11(2) and (7), 12(1) and 13 of the Sixth Schedule;</p> <p>(g) paragraphs 2(h), 3, 6(4)(b), 7(6), (7) and (8), [9 and] 11 and 12A(3) of the Seventh Schedule; and</p> <p>(h) paragraphs 12(5)(c)(i), 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(e) of the Eighth Schedule.”; and</p>

No. and year	Short title	Extent of amendment or repeal
		<p>(d) by the substitution for subsection (6) of the following section:</p> <p>“(6) Any person aggrieved by a decision of the executive officer to approve or to withdraw an approval of a fund in terms of subsection (5) must, notwithstanding section 26(2) of the Financial Services Board Act, 1990, lodge his or her objection with the Commissioner <b>[in the manner contemplated in Part III of Chapter III of this Act]</b> in accordance with the provisions of Chapter 9 of the Tax Administration Act.”.</p>
		<p><b>Repeal of section 4</b></p>
		<p>26. Section 4 of the Income Tax Act, 1962, is hereby repealed.</p>
		<p><b>Amendment of section 4A</b></p>
		<p>27. The Income Tax Act, 1962, is hereby amended by the substitution for section 4A of the following section:</p> <p><b>“Exercise of powers and performance of duties by Minister</b></p> <p>4A. The powers conferred and the duties imposed upon the Minister by or under the provisions of this Act may be exercised or performed by the Minister personally or, <u>except for the power to issue notices or regulations</u>, delegated by the Minister to the Director-General of the National Treasury and the Director-General may in turn delegate the powers and duties so delegated to him or her to any officer or person under his or her control, direction or supervision.”.</p>
		<p><b>Amendment of section 5</b></p>
		<p>28. Section 5 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (7) of the following subsection:</p> <p>“(7) Subject to the provisions of <b>[sections 79 and 102 and the provisions of]</b> the Fourth Schedule, where a taxpayer has been assessed for normal tax in respect of any year of assessment and the rate of the tax payable by <b>[him]</b></p>

No. and year	Short title	Extent of amendment or repeal
		<p>the taxpayer has been subsequently fixed or varied, [his] the taxpayer's assessment for such year shall be adjusted, any amounts paid in excess being refundable to [him] the taxpayer and amounts shortpaid being recoverable from [him] the taxpayer."</p>
		<p><b>Amendment of section 6quat</b></p>
		<p>29. Section 6quat of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:  “(5) Notwithstanding [sections 79 and 81(5)] section 93, 99 or 100 of the Tax Administration Act, an additional or reduced assessment in respect of a year of assessment to give effect to subsections (1) and (1A) may be made within six years from the date of the original assessment in respect of that year.”.</p>
		<p><b>Amendment of section 8</b></p>
		<p>30. Section 8 of the Income Tax Act, 1962, is hereby amended—  (a) by the substitution in subsection (5) for paragraph (bC) of the following paragraph:  “(bC) Any person who, as a former lessor of property referred to in paragraph (bA) or as the owner thereof, has after the termination of the lease of such property consented to the former lessee thereof using, enjoying or dealing with such property as contemplated in the said paragraph, or is deemed to have so consented under the provisions of paragraph (bB)(ii), shall not later than 14 days after the end of three months after the termination of the relevant lease advise the former lessee of the fair market value of such property as determined in accordance with paragraph (bA)[, and shall furnish the Commissioner with a copy of such advice].”; and  (b) by the deletion in subsection (5) of paragraph (c).</p>

No. and year	Short title	Extent of amendment or repeal
		<b>Amendment of section 10</b>
		<p><b>31.</b> Section 10 of the Income Tax Act, 1962, is hereby amended by the deletion in the further proviso to subsection (1)(cA) of paragraph (c).</p>
		<b>Amendment of section 10A</b>
		<p><b>32.</b> Section 10A of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the deletion of subsection (9); and</p> <p>(b) by the substitution for subsection (10) of the following subsection:</p> <p>“(10) Subject to the provisions of section [79] 99 of the Tax Administration Act, the final calculation or recalculation of the capital element as made in relation to the year of assessment referred to in subsection (8) shall, subject to the provisions of subsection (6)(b), be final and conclusive and shall apply in respect of all relevant annuity amounts which become due to any person under the annuity contract in question in any succeeding years of assessment.”.</p>
		<b>Amendment of section 11</b>
		<p><b>33.</b> Section 11 of the Income Tax Act, 1962, is hereby amended by the deletion in paragraph (l) of paragraph (vi) of the proviso.</p>
		<b>Amendment of section 11D</b>
		<p><b>34.</b> Section 11D of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subsection (14) of the following subsection:</p> <p>“(14) Notwithstanding [section 4] Chapter 6 of the Tax Administration Act, the Commissioner may disclose to the Minister of Science and Technology information in relation to research and development as may be required by that Minister for purposes of submitting a report to Parliament in terms of subsection (17).”; and</p>

No. and year	Short title	Extent of amendment or repeal
		<p>(b) by the addition after subsection (18) of the following subsection:</p> <p>“(19) For the purposes of subsection (1), the Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment with respect to a deduction in respect of research and development which has been allowed, where approval has been withdrawn in terms of subsection (10).”.</p>
		<p><b>Amendment of section 12G</b></p>
		<p><b>35.</b> Section 12G of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for subsection (11) of the following subsection:</p> <p>“(11) For purposes of subsections (9) and (10), the Commissioner may, notwithstanding the provisions of sections [79, 81(5) and 83(18)] 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment where an additional industrial investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (9) or (10).”; and</p> <p>(b) by the deletion of subsection (12).</p>
		<p><b>Amendment of section 12I</b></p>
		<p><b>36.</b> Section 12I of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution for the words preceding paragraph (a) in subsection (13) of the following words:</p> <p>“(13) The Commissioner may, notwithstanding the provisions of [section 4] Chapter 6 of the Tax Administration Act—”;</p> <p>(b) by the substitution for subsection (14) of the following subsection:</p> <p>“(14) The Commissioner may, notwithstanding the provisions of [section 79, 81(5) and 83(18)] sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment where an additional investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (12) or (13).”;</p>

No. and year	Short title	Extent of amendment or repeal
		<p>(c) by the deletion of subsection (15); and (d) by the substitution for subsection (21) of the following subsection: “(21) Notwithstanding the provisions of [section 4] Chapter 6 of the Tax Administration Act, the Commissioner must disclose to the Minister of Trade and Industry and the adjudication committee, including any person whose assistance has been obtained by that committee, such information relating to the affairs of any company carrying on an industrial policy project as is necessary to enable the Minister of Trade and Industry and the adjudication committee to perform their functions in terms of this section.”.</p>
		<b>Amendment of section 12J</b>
		<p>37. Section 12J of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (9).</p>
		<b>Amendment of section 23</b>
		<p>38. Section 23 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (d) of the following paragraph: “(d) any tax [, duty, levy, interest or penalty] imposed under this Act [, any additional tax imposed under section 60 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) and] or any interest or penalty [payable in consequence of the late payment of any tax, duty, levy or contribution payable] imposed under any other Act administered by the Commissioner [, the Regional Services Councils Act, 1985 (Act No. 109 of 1985), the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), the Skills Development Levies Act, 1999 (Act No. 9 of 1999), and the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002)].”.</p>

No. and year	Short title	Extent of amendment or repeal
		<b>Amendment of section 23H</b>
		39. Section 23H of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (4).
		<b>Amendment of section 24J</b>
		40. Section 24J of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (11).
		<b>Amendment of section 25A</b>
		41. Section 25A of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (2).
		<b>Amendment of section 35</b>
		<p>42. Section 35 of the Income Tax Act, 1962, is hereby amended—</p> <p>(a) by the substitution in subsection (2)(a) for the words preceding the proviso of the following words:</p> <p style="padding-left: 40px;">“Any person who incurs a liability to pay to any other person who is not a resident any amount referred to in subsection (1), or who receives payment of any such amount on behalf of such other person, shall within 14 days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Commissioner may approve, make a payment (which shall be a final payment made on behalf of such other person) to the Commissioner in respect of such other person’s liability for tax in terms of subsection (1), and shall submit to the Commissioner at the time of such tax payment a [declaration in such form as the Commissioner may prescribe] return.”;</p> <p>(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:</p> <p style="padding-left: 40px;">“(b) Any person making a payment to the Commissioner in terms of paragraph (a) shall, notwithstanding any agreement to the contrary, be entitled to deduct or withhold the amount of such payment from the amount which [he] that person is liable to pay to the aforesaid other person [, or to recover</p>