

**DRAFT EXPLANATORY MEMORANDUM ON THE DRAFT TAX
ADMINISTRATION BILL, 2009**

1. PURPOSE OF THE BILL

- 1.1.** The drafting of the Tax Administration Bill (“the TAB”) was announced in the 2005 Budget Review as a project to incorporate into one piece of legislation certain generic administrative provisions, which are currently duplicated in the different tax Acts.
- 1.2.** The scope of the project has since been extended so that it can now be seen as a preliminary step to the re-write of the Income Tax Act, 1962. It will assist in dividing the work of the re-write into more manageable parts, since the administrative part of the Income Tax Act comprises about 25% of the Act.

2. OBJECTS OF THE BILL

- 2.1.** Generally, the TAB seeks to provide a single body of law that outlines common procedures, rights and remedies and to achieve a balance between the rights and obligations of both SARS and taxpayers in a transparent relationship.
- 2.2.** The drafting of the TAB focused on reviewing the current administrative provisions of the tax Acts administered by SARS, excluding the Customs and Excise Act, 1964, and harmonising these provisions across taxes to the extent possible.
- 2.3.** The TAB takes account of the constitutional rights of taxpayers, but does not seek to re-codify them, because all legislation, including the TAB, must be read together with the provisions of the Constitution. Particularly the right to administrative justice as well as the application of the fairness requirements are very fact and context specific. Codifying them in respect of every administrative action by SARS will be an almost impossible task and may only serve to unnecessarily limit or expand these rights.
- 2.4.** Apart from consolidating and harmonising existing provisions, the TAB seeks to provide a foundation for further modernisation of the administration of the tax Acts and to close certain gaps identified by the review and experts.
- 2.5.** In drafting the TAB, due regard was given to the principles of international best practice in tax administration, namely:
- Equity and fairness to ensure that the tax system is fair and also perceived to be fair, which should in turn enhance compliance;
 - Certainty and simplicity so that tax administration is not seen as arbitrary but transparent, clear and as simple as the complexity of the system allows;
 - Efficiency, where compliance and administration costs are kept to a minimum and payment of tax is as easy as possible; and
 - Effectiveness, so that the right amount of tax is collected, active or passive non-compliance is kept to a minimum, and the system remains flexible and dynamic to keep pace with technological and commercial development.
- 2.6.** The TAB also extends SARS’ powers, for example its information gathering, assessment and collection powers. The purpose of the TAB in this regard is the extension of powers to more effectively target tax evaders who demonstrate

certain behaviour, not ordinarily compliant taxpayers. Thus the power to search a premise without a warrant is narrowly circumscribed, for example a senior SARS official must be satisfied that there may be an imminent removal or destruction of records. This power is largely similar to powers granted to other law enforcement agencies. Jeopardy assessments, the power to seize assets for 24 hours during which a court application for a preservation order must be made, and the like are clearly aimed at securing the collection of taxes where it would otherwise be in doubt due to a taxpayer's behaviour, such as the dissipation of assets or actions to frustrate the collection of tax debts.

3. DISCUSSION

The layout of the TAB largely follows the administrative “life cycle” of a taxpayer. Tax procedure inevitably follows a time sequence, commonly referred to as a “step by step” approach. This is reflected in the Chapter headings, i.e.:

Chapter 1:	Definitions
Chapter 2:	General Administration Provisions
Chapter 3:	Registration
Chapter 4:	Returns and Records
Chapter 5:	Information Gathering
Chapter 6:	Confidentiality of Information
Chapter 7:	Advance Rulings
Chapter 8:	Assessments
Chapter 9:	Dispute Resolution
Chapter 10:	Tax Liability and Payment
Chapter 11:	Recovery of Tax
Chapter 12:	Interest
Chapter 13:	Refunds
Chapter 14:	Write-off or Waiver of Tax Debts
Chapter 15:	Penalties
Chapter 16:	Additional Tax
Chapter 17:	Criminal Offences
Chapter 18:	Reporting of Unprofessional Conduct
Chapter 19:	Miscellaneous
Chapter 20:	Transitional Provisions

As stated above, the TAB seeks to provide a foundation for further modernisation of the administration of the tax Acts and to close certain gaps identified by the review and experts mentioned above.

4. SUMMARY OF PROPOSED CHANGES TO CURRENT LAW AND PURPOSE THEREOF:

4.1. Chapter 1: Definitions

New provisions:

Terms that are currently defined in the tax acts retain the meaning so assigned for purposes of applying the TAB to the relevant tax act, unless they are specifically

defined in Chapter 1 of the TAB which terms are defined for purposes of the application of the TAB only.

The TAB introduces several new terms, indicated in *italics*, such as *biometrical information*, *confidential information*; *relevant information*, *serious tax offence*, *taxable event* and *tax*. In some Chapters or Parts terms specific to that Chapter or Part are also defined, and are indicated in ‘inverted commas’. This should enable taxpayers to understand when a term is used in a defined context and when not.

A *tax act* is an important definition in the TAB, as it serves to include the TAB, an Act and a portion of an Act administered by the Commissioner, but excludes the Customs and Excise Act. *Tax*, in turn, is widely defined as a tax, duty, levy, royalty, fee, charge, contribution, additional tax, penalty, interest and any other moneys imposed under a *tax act*. This wide definition is to ensure the application of the TAB across taxes

4.2. Chapter 2: General Administration Provisions

New provisions:

- *Purpose of the TAB*: Clause 2 describes the purpose of the TAB, and clause 3 the ambit of administration of the tax acts (which includes the TAB).
- *Application of the TAB*: In terms of clause 4, the TAB applies to every person who is liable to comply with a provision of a tax act (whether personally or on behalf of another person).
- *Tax payable in Rand*: Clause 5 provides that tax is payable in Rand, i.e. SARS will not accept payment of tax in any foreign currency.
- *Ambit of administrative powers*: Clause 6 provides that the exercise of any power or obligation under a tax act by a SARS official, including whatever may be fairly regarded as incidental to or consequential upon such powers or obligations, must be related to and within the ambit of the purpose and ambit of the administration of the tax acts.

Decision making levels: Generally in a tax administration Act the general administration provisions place the day to day administration of the tax laws in the hands of a statutory body (SARS) or a specific office holder (the Commissioner). In terms of current law, unless a power is specifically assigned to the Commissioner personally, any SARS official acting under the direction, supervision and control of the Commissioner may exercise powers, duties and obligations even where the law states that “the Commissioner” may or must perform a specific action. To ensure the reservation of more serious powers for the Commissioner or senior SARS officials and to counteract the abuse of powers the TAB, in clause 6, departs from this approach by dividing the ‘Administration of the Act’ into three tiers of decision making. This approach is also aligned with what happens in practice. In terms of the new “three tier decision making levels”, powers, duties or functions may be exercised by:

- the Commissioner personally (assigned power/function) or a senior SARS official to whom a power has been delegated by him for a specific purpose;

- senior SARS officials authorised by the Commissioner to exercise more serious and impactful powers or functions; or
- SARS officials or SARS in general.
- *Limitations on SARS' powers*: The TAB imposes limitations on the powers of SARS officials in administering tax to further counteract abuse. These include:
 - *Conflict of interest provisions* (clause 7): These provisions, for example, prohibit a SARS official from becoming involved in the administration of a tax act matter relating to a person with whom the official has or had a personal, family or business relationship. The provisions will be supplemented by more specific internal policy guidelines.
 - *Identity Cards* (clause 8): This provision compels a SARS official to carry a SARS identification card, which card must be shown whenever the official exercises a power or duty in person.
 - *Withdrawal or amendment of decision* (clause 9): The withdrawal or amendment of a decision made by a SARS official is largely similar to the current law provisions, except for a clarification that the withdrawal or amendment may also be requested by the taxpayer concerned.
 - *Delegations* (clause 10): A SARS official acting under a delegation must be so delegated in writing with the mandate or authority specified.
 - *Authority to act in Legal Proceedings* (clauses 11 and 12): These provisions place limitations on SARS as to who may deal with and the manner in which legal proceedings to which the Commissioner or SARS is a party must be dealt with (for example, the laying of criminal charges). Clause 12 deals with who has the right of appearance on behalf of the Commissioner in proceedings before the Tax Court or higher courts.
- *Powers and duties of the Minister*: Clause 13 provides that the Minister may delegate his powers to the Deputy-Minister. 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.

4.3. Chapter 3: Registration

New provisions:

- *Single registration for all taxes* (clause 14): The TAB, in pursuit of creating a single view of a taxpayer in SARS' systems, provides a framework for the single registration, whether obligatory or voluntary, for all taxes by taxpayers. In this regard:
 - Single registration can be effected using a single form; and
 - A single registration period, 21 days, applies across taxes from the date that a taxpayer becomes liable or entitled to register for a specific tax.

Biometrical information (which may include fingerprints; facial recognition; vocal recognition and iris or retina recognition) may be required for registration. This will be implemented as a 1st phase in VAT registration from a date to be announced by the Minister of Finance by Notice in the Gazette in terms of sections 33 and 37(1)(c) of the Taxation Laws Second Amendment

Act, 2009 (Act No. 18 of 2009). The main advantages of biometrics over standard identification and validation systems are:

- Biometric traits cannot be lost or forgotten (while identity documents and passwords can);
- Biometric traits are difficult to copy, share and distribute (while passwords and reference numbers can be made available on websites of hackers); and
- Biometrics requires the person being authenticated to be present at the time and point of authentication.

Furthermore, in view of the highly private nature of biometrical information, additional protection in the context of the disclosure thereof is afforded in the confidentiality of information Chapter to the extent that not even a High Court may order the disclosure thereof.

- *Continuation of registration* (clause 15): The provision of updated information, including any change in postal, physical and electronic address, is required under this clause. A person who fails to provide all particulars and documents required for a specific registration will be deemed not to have applied for registration until those particulars and documents are provided.
- *Taxpayer reference number* (clause 16): The use of the taxpayer reference number allocated upon registration is compulsory in all correspondence with SARS. This is aimed at ensuring more efficient processing of taxpayer communication, particularly once a single registration number for all taxes is implemented.

4.4. Chapter 4: Returns and Records

New provisions:

- *Generic terms for future modernisation*: In this Chapter more generic return provisions have been drafted to cater for future modernisation of the tax system, for example, a full self-assessment system which system can be described as follows:
 - Self-assessment is a mechanism applied as part of a tax collection system.
 - Under self-assessment, the taxpayer is required to report the basis of assessment (e.g. taxable income), to submit a calculation of the tax due and, usually, to simultaneously pay any outstanding tax as calculated.
 - The role of SARS would be to check that the taxpayer has correctly disclosed the income and has claimed no exemptions, deductions or allowances to which it is not entitled, and otherwise to ensure that the correct amount of tax is paid.
 - It contrasts with the role of SARS in a system where it is responsible for establishing the tax due, normally by means of an assessment, and demanding payment within a prescribed period.
- *Amended returns*: Such returns may, for example, be required where certain *bona fide* errors were made in the original return to ensure the assessment is correct rather than issuing an assessment based on the incorrect return necessitating a more protracted process of issuing a correct assessment. If the

assessment is issued, the error can still be rectified by the submission of a corrected return.

- *Third Party Returns*: Third party returns required in respect of certain information or income, for example those listed in section 69 of the Income Tax Act, will now be listed in a public notice, issued from time to time by the Commissioner, indicating what information, including information regarding assets under the control or on the premises of third parties (e.g. Yacht Clubs), in respect of the different taxes is required, and the form, manner and due dates for the submission of information returns by affected third parties.
- *Record retention*: Regarding records, a new requirement that records must be kept in their original form in an orderly fashion and in a safe place is added. This is to ensure the orderly and safe retention of the records and efficient access thereto during a 5 year period. A translation requirement is added in respect of information that is not in one of the official languages of the Republic.
- *Notice of leaving RSA*: This is a provision obliging certain taxpayers (listed in a public notice) who intend to leave the RSA for a period longer than 6 months to inform SARS accordingly. It is aimed at enabling SARS, for example, to ensure that taxes such as VAT or PAYE are paid up to date and if not, to take urgent collection steps. Also, where the taxpayer is a suspect in a tax evasion investigation, SARS may deem it necessary to take appropriate steps. This provision is predominantly aimed at non-compliant taxpayers involved in serious tax offences or who has substantial amounts of outstanding tax debts over an extended period.
- *Reportable arrangements*: No significant changes were made to reportable arrangements, except for moving the penalty provision to the penalties Chapter.

4.5. Chapter 5: Information gathering

SARS' information gathering powers are substantially supplemented or extended by the TAB. This is essentially to address the problem that too many requests for information by SARS result in protracted debates as to SARS' entitlement to certain information. This is contrary to the internationally established principle that a revenue agency's resources or energy should not be wasted on disputes over whether or not it is *entitled* to have access to a particular item of information, but should rather be focused on ensuring that all taxpayers pay the correct amount of tax on time based on timely available information. In respect of SARS' new information gathering powers, taxpayer's rights are amplified and made more explicit to counterbalance such powers.

New provisions:

SARS' new powers include:

- *Requests for information* (clause 33(1)): The ambit of such requests by SARS is extended to objectively identifiable taxpayers. For example, a *taxable event* may indicate that a person potentially liable for tax exists, but SARS does not have the person's name or other details.

- *Classes of taxpayers* (clause 33(2)): Information procurement from third parties in respect of identified classes of taxpayers, for example taxpayers involved in certain types of anti-avoidance structures, is now specifically included. The information may be required, for purposes of, amongst others, the pre-population of tax returns and audits.
- *Informal examination at a SARS office* (clause 34): SARS may require a person to attend a meeting at a SARS office for purposes of being interviewed regarding the person summoned or another person's tax affairs, and to produce certain information in person. The potential benefit of this interview is that it may resolve issues of concern on a co-operative basis, without further audit or investigation, including approaching third parties for information or conducting field audits.
- *Search and seizure* (clause 55): The extension of search and seizure powers to enable SARS to conduct a search and seizure without a warrant if such warrant cannot be obtained in time to prevent the imminent removal or destruction of records, i.e. in effect to stop a crime in progress. This power should assist in addressing the problem of tax evaders who, upon approach by SARS, waste no time to destroy all records and evidence of their fraudulent activities and details of income derived.

Taxpayer's new obligations and rights:

- *Assistance during audit* (clause 38): Taxpayers are now obliged to give SARS reasonable assistance during field audits and execution of search and seizure warrants. This is to ensure the effective and efficient conclusion of field audits without impediments as a result of obstructive taxpayers refusing reasonable assistance, including answering questions as well as practical assistance such as working space and facilities. For example, if the taxpayer has a photocopier on the premises, it should be available to SARS for use at SARS' costs. Failure to provide such reasonable assistance constitutes a criminal offence.
- *Rights of taxpayer during audit* (clause 39):
 - A taxpayer is entitled to progress reports from SARS regarding an ongoing audit in the form, within the periods and in the manner as may be prescribed by the Commissioner by public notice.
 - A taxpayer must receive notification of the final outcome of the audit whether inconclusive or material discrepancies are found, and an audit findings letter must be sent to the taxpayer unless the taxpayer waives this right.
 - The taxpayer may respond to the audit findings in writing and within the prescribed period before the assessment based on the audit is issued. An extension if reasonably required may be given by SARS for the response to the audit findings.
 - *Exception:* SARS need not comply with the above where the audit progress report, audit findings letter or response to the audit findings by the taxpayer may impede or prejudice the purpose, progress (e.g. prescription) or outcome of the audit.

- *Separation of audit and criminal investigation* (clauses 40 and 41): Audits and criminal investigations of serious tax offences by SARS are separated to ensure that the rights of taxpayers who are suspects in a criminal investigation are given effect to. The use of audit information wherein a taxpayer incriminates him- or herself in criminal proceedings may be inadmissible if a taxpayer has not been informed that he or she was also being investigated for criminal offences.
- *Seizure of alleged privileged information* (clause 57): Specific provisions are included to cater for the seizure and adjudication of information alleged to be subject to legal professional privilege.

4.6. Chapter 6: Confidentiality of Information

The information protection laws of most countries are based on the basic principle that personal information should not be used for purposes incompatible with the purpose for which it was collected. Therefore, most tax systems wherein certain basic rights of citizens are entrenched in a constitution such as the right to privacy regulate that taxpayers have a right to expect that any information provided by them is treated in confidence for tax purposes only and that their affairs will not be disclosed to third parties, including other organs of state. This form of data protection is reinforced by the mandatory protection of SARS' records by section 35(1) of the Promotion of Access to Information Act, 2000, and further underpinned by case law wherein strict requirements are laid down before a court will order disclosure of tax information.

However, in several developed jurisdictions it is recognised that it is important that tax information is available to other organs of state within proper limits. Specifically, it is recognised that in the context of law enforcement:

- Where certain information is likely to be of value to a criminal investigation, it is in the public interest that tax information is available to law enforcement agencies within certain limits.
- Such limited disclosure will ensure that there is a potential for information flow in two directions, i.e. between a revenue authority and law enforcement agencies and *visa versa*.

New provisions:

The secrecy provisions are now aligned across taxes, are more explicit as to who is subject thereto, are drafted in a more logical sequence and disclosure is made stricter.

- *General prohibition of disclosure* (clause 59):
 - *SARS information* is distinguished from *taxpayer information* and different disclosure rules apply.
 - The general prohibition rule, read with the definition of *SARS official*, is now specifically applicable to the Commissioner, an employee of SARS or a person contracted by SARS for purposes of the administration of a tax act, whether formerly or currently so employed or contracted.
 - All SARS officials, including a person contracted by SARS, are obliged to take an oath of secrecy. Failure to take the oath before commencing duties is a statutory offence.

- The general prohibition of disclosure rule is now specifically applicable to information *unlawfully* obtained by any person, including the media. This would apply, for example, where a current or former SARS official discloses information *contrary* to the secrecy provisions to the media, in which case the media would be prohibited from publishing the information.
- A new exception to the general prohibition of disclosure rule is that the *Commissioner* may, for purposes of protecting the integrity and reputation of SARS as an organisation, disclose information to *counter* or rebut false allegations or information disclosed in the media or in any other public manner by a taxpayer or the taxpayer's representative.
- *SARS information* (clause 60): A new definition of SARS information is included and the disclosure of confidential *SARS information* is regulated and criminalised. *SARS information* includes, for example, confidential information such as internal policies, legal opinions and memorandums. *SARS information* is distinguished from *taxpayer information* and different disclosure rules apply. The disclosure of confidential *SARS information* to a SARS official who is not authorised to have access to the information is also prohibited
- *Secrecy of taxpayer information and disclosure* (clause 61): The general rule in this regard, i.e. that a person who is a current or former SARS official may not disclose taxpayer information to a person who is not a SARS official, has the following exceptions:
 - *In the course of performance of duties under a tax act*, which includes disclosure:
 - to the South African Police Service or the National Prosecuting Authority of information relating to tax offences for purposes of the prosecution thereof;
 - as a witness in any civil or criminal proceedings *under a tax act*; or
 - under any other act which expressly provides for the disclosure of the information notwithstanding the secrecy provisions, for example section 71(1) of the Prevention of Organised Crime Act, 2000, and sections 36 and 37 of the Financial Intelligence Centre Act, 2001.
 - *Disclosure "by order of a High Court or any higher court"*:
 - The current law provides that a "competent Court" may order disclosure of taxpayer information – this includes a Magistrate's Court, 'Maintenance Court' and a section 205 enquiry by a Magistrate under the Criminal Procedure Act, 1977. This power is now limited to the "High Court" to ensure better protection of taxpayer information.
 - An application procedure is prescribed which requires at least 15 days notice to SARS, and the criteria that the High Court must consider for purposes of any disclosure order.
 - In order to give effect to the secrecy provisions, the Commissioner would be obliged to oppose an application for disclosure to a High Court, especially where it appears from the outset that the criteria established in case law for such disclosure are not complied with.

- *Disclosure to organs of state/institutions including National Treasury* (clause 62):
 - Only information necessary for purposes of carrying out duties by the relevant organs of state may be disclosed.
 - Such disclosure includes a qualification that SARS officials may not disclose information if they are satisfied that disclosure would seriously impair or prejudice a civil or criminal tax investigation.
- *Disclosure to SAPS or NPA of information regarding non-tax offences* (clause 63):
 - An application for a court order for the disclosure of information regarding specified types of serious offences may be brought by means of *ex parte* Court application by SARS, or by the South African Police Service or the National Prosecuting Authority.
 - Under current law only SARS may initiate such proceedings, but this does not adequately cater for circumstances where the SAPS or the NPA has reason to believe that such information is in the possession of SARS and wishes to apply for the disclosure thereof.
 - An application procedure is prescribed which requires at least 5 days notice by the party initiating the application.
- *Disclosure to taxpayer of own records* (clause 65): A taxpayer is entitled to:
 - Access to information which the taxpayer provided to SARS;
 - A certified copy of the recorded particulars of an assessment; and
 - Information obtained by SARS, from third parties or other sources, provided that a request for this information is made under the Promotion of Access to Information Act, 2000 (“PAIA”). This would entitle SARS, where necessary, to refuse disclosure on an applicable basis of refusal listed in PAIA, for example where disclosure is premature and will prejudice the outcome of an investigation, or reveal the identity of an informant.
- *Publication of names of offenders* (clause 66): The information regarding a convicted tax offender which may be published, after all appeal rights have been exhausted, excludes such offender’s *address* and may only refer to the area of residence of the person.

4.7. Chapter 7: Advance Rulings

The advance ruling system currently regulated in the Income Tax Act and the Value-Added Tax Act is incorporated as a whole in the TAB.

The provisions establish the framework for the system and set out basic rules regarding the application process, fees, exclusions and refusals, the effect of rulings, the impact of subsequent law changes, retrospectivity and the publication of rulings. Specific rules are also prescribed in respect of the three primary types of rulings, i.e. binding general rulings, binding private rulings and binding class rulings. No significant changes were effected to the current provisions.

4.8. Chapter 8: Assessments

Generally, more generic terms regarding assessments are used to include future modernisation initiatives such as a full self-assessment system.

New provisions:

- *Assessments* (clause 83): Generally, an assessment by SARS may be based on the return information or other information available or obtained in respect of the taxpayer.
- *Notice of assessment* (clause 84): The requirements for a valid assessment are set out. Also, the following additional information must be provided by SARS:
 - In the case of an estimated assessment or an additional assessment, a summary of the information upon which the assessment is based.
 - In the case of any other assessment that is not or only partially based on a return submitted by the taxpayer, a statement of the grounds for the assessment.
 - In the case of a jeopardy assessment, the grounds for believing that the tax would otherwise be in jeopardy.
- *Estimated assessment* (clause 85): To counteract non-filing or late filing, SARS may issue an estimated assessment, without a return being filed, based on information readily available to it. The estimated assessment provisions have been changed to also use it as a debt collection tool in respect of non-filers of returns. The issue of the assessment based on available information will create a tax debt collectable from a defaulting taxpayer, but a taxpayer is still required to submit a correct return within the prescribed time period. Where SARS is not satisfied with the information in the return, it may use information available or obtained by it in addition to return information and issue an assessment as described in clause 83. Provision is still made for an agreed assessment, if a taxpayer is unable to submit an accurate return.
- *Additional assessment* (clause 86): Simplified grounds when additional assessments may be issued are introduced to effect alignment across taxes – a new concept ‘prejudice to SARS or the *fiscus*’ is now used as a basis for the issue of additional assessments. This general concept is used essentially to cater for all circumstances in a tax act which may give rise to an additional assessment.
- *Reduced assessment* (clause 87): Changes were effected to current law to clarify that a reduced assessment will also be issued as a result of an error made by the taxpayer in a return, for example the omission of deductions to which the taxpayer would otherwise be entitled to. The time limitation for the issue of reduced assessments is 3 years after the date of the assessment qualifying for a reduction.
- *Jeopardy assessment* (clause 88): Jeopardy assessments, also known as a ‘protective assessment’, are introduced which may be issued in advance of the date on which the return is normally due in order to secure the early collection of tax that would otherwise be in jeopardy or where there is some danger of tax being lost by delay. A jeopardy assessment may be issued where the taxpayer, for example, tries to place assets beyond the reach of SARS’ collection powers when an investigation into the taxpayer’s tax affairs is

initiated, or where procedural time limits for raising an assessment may otherwise expire. An affected taxpayer may apply to a High Court for a review of the assessment on the basis that the amount thereof is excessive or that the circumstances on which SARS relied to justify a jeopardy assessment do not exist.

- *Period of limitations for issuance of an assessment* (clause 91): The periods of limitation for the issue of an assessment by SARS is:
 - In the case of an assessment by SARS, 3 years after the date of the previous assessment;
 - In the case of self-assessment, 5 years after the date of the self-assessment by the taxpayer;
 - In the case of a tax for which no return is required, after the expiration of five years from the date of the payment of the tax.

The normal exception rule of no limitation in the case of fraud, misrepresentation or non-disclosure of material facts applies. SARS and the taxpayer may also agree prior to the expiry of the limitation period that the limitations do not apply or may be extended.
- *Finality of assessment* (clause 92): All instances where an assessment would become final and conclusive are listed in this clause. This is done for the sake of clarity, as under current law they would typically be spread through a tax act.

4.9. Chapter 9: Dispute resolution

New provisions:

Current provisions have been simplified by shorter sections and ordering the provisions in a more logical sequence.

- *Burden of proof* (clause 94): The rule has been changed to align it across taxes. The burden of proving the grounds for the imposition and percentage of additional tax is placed on SARS.
- *Objection against assessment or decision* (clause 96): A taxpayer may object against:
 - any assessment where the taxpayer is aggrieved by the assessment;
 - any decision that may be objected to or appealed against under a tax act; or
 - any decision by SARS not to extend the period for objection or appeal where the taxpayer requested such extension.
- *Decision of Tax Board* (clause 106): The Tax Board is available as a more informal forum to resolve tax disputes involving tax in dispute of less than R500 000 and should be a more expedited process than an appeal to the Tax Court. The Tax Board's decision period (90 days) is prescribed to avoid current problems where chairpersons take, for example, up to 2 years to deliver the decision. If the chairperson fails to deliver the decision within the 90 day period, the taxpayer may require that the appeal be referred to the Tax Court on a *de novo* ('anew') basis.

- *Conflict of interest – Tax Court members* (clause 114): This provision obliges members to withdraw where there is a conflict of interest, whether on own volition or upon application by either of the parties.
- *Cost order* (clause 122): Where a cost order is granted in favour of SARS in the Tax Court or a higher court, this amount will in terms of the TAB constitute funds of SARS within the meaning of section 24 of the SARS Act. The main reason for including recovered legal costs in SARS' budget is that cost orders are intended to reimburse a party for its legal costs. This is not achieved if SARS uses its own money to pay for legal proceedings, which in some protracted matters can be extremely high. The money paid pursuant to a cost order in favour of SARS is then paid into the National Revenue Fund. This approach is similar to the treatment of fees paid for advance rulings as SARS' own funds.
- *Publication of Tax Court judgments* (clause 124): All judgments must be published for general information whether marked reportable or not – the reason for this is essentially to address complaints that currently only SARS has the benefit of access to unreported and unpublished judgments.
- *Payment for transcripts by the Registrar or copies of record of evidence* (clause 126(3) and (4)): Better regulation of this process, which will require amendments to rule 29 of the rules issued under section 107A of the Income Tax Act, is effected here. Provision is also made for the inclusion of fees paid to the Registrar for transcripts into SARS' own funds.
- *Settlement provisions* (clause 139(10)): These provisions are changed to cater more clearly for the implications of and rights of SARS where the taxpayer defaults after conclusion of the settlement. The change essentially enables SARS to choose between regarding the settlement agreement as 'breached' as a result of which the full disputed amount is still owing (and the dispute must continue) or enforcing "specific performance" of the settled amount in which event the dispute is regarded as finalised

4.10. Chapter 10: Tax Liability and Payment

New provisions:

- *New categories of persons liable to tax* (clauses 143 to 151): This Chapter includes new categories of persons liable to tax in order to simplify and clarify the tax liability of different persons, and the capacity in which they may be liable for tax debts. The circumstances when a tax liability in respect of each category of person will arise both in representative capacities and personal capacities are then described. The categories are:
 - Persons ('primary') chargeable to tax
 - Representative taxpayers
 - Withholding agents
 - Responsible third parties

Provision is also made for a *right to indemnity* to which a representative taxpayer, withholding agent and responsible third party is entitled after paying the tax debt in issue (clause 152). Under certain circumstances a taxpayer, in any of the listed categories, may be required to provide security for purposes

of safeguarding the collection of tax, for example, where the taxpayer is a withholding agent who has repeatedly failed to withhold or pay the tax due (clause 153).

- *Day, time and place for payment of tax* (clause 154): These requirements are aligned across taxes, and provision is made for an earlier due date for payment or the provision of acceptable security where there is a risk of dissipation of assets to evade or frustrate the collection of tax.
- *Preservation of assets order* (clause 155): New provisions are included which are aimed at the securing of the collection of taxes that would otherwise be in jeopardy due to the actions of a taxpayer, including the right to seize a taxpayer's assets for up to 24 hours. During this period, SARS must apply for a preservation order by a High Court.
- *Payment of tax pending objection or appeal* (clause 156):
 - Clarity regarding the fact that the obligation to pay tax, which arises upon the issue of an assessment, is not 'automatically' suspended by an objection or appeal is provided. The obligation can only be suspended by a senior SARS official upon request by the taxpayer.
 - In view of the fact that the due date for the payment of an assessment is normally before the due date for lodging an objection and to cater for pre-objection requests for adequate reasons, a suspension request may be made before an objection is lodged. However, such suspension will automatically fall away if no objection is lodged. If the objection is lodged but is based on frivolous or vexatious grounds, the suspension may be revoked.
 - The discretion to suspend payment or to revoke it is based on specific criteria, to enable a taxpayer before applying for a suspension to understand what criteria must be met to qualify for a suspension.
 - A new obligation is placed on the senior SARS official to periodically review the suspension (on a risk basis) during the dispute, and to revoke the suspension in the case of dissipation risks or delaying tactics employed by the taxpayer.
 - A taxpayer who pays and whose objection is upheld is entitled to interest at the prescribed rate, and not 4% points below that rate as is the case with overpayments of provisional tax, from the date of payment of the disputed amount.
- *Taxpayer account and allocation of payment* (clauses 157 to 158): A framework to support the modernisation of SARS's accounting system is created, within which—
 - a single taxpayer account with a "rolling balance" may be created; and
 - payment allocation rules may be applied, for example, the application of the First-In-First-Out rule.
- *Deferral of payment* (Part D of Chapter): Effect is given to the deferment of the payment of tax by the creation of a procedure for the conclusion of an instalment payment agreement between SARS and the taxpayer. This is essentially a debt relief mechanism if the applicable criteria to qualify for such an arrangement are met. A senior SARS official may enter into such an agreement with a taxpayer, under which the taxpayer may be allowed to pay a tax debt in a single sum after a prescribed period or in instalments.

4.11. Chapters 11 and 12: Recovery of Tax and Interest

Generally, the right to collect tax from responsible third parties is aimed at strengthening SARS' collection powers—

- in respect of transactions involving the transfer of assets offshore; or
- where certain events result in the limitation or frustration of the collection of outstanding tax debts by SARS.

In addition, the potential personal liability of parties involved in the financial affairs of a company should serve as encouragement to comply with the tax laws by ensuring correct and timely payment of tax.

No major changes were effected in respect of the provisions enabling SARS to assist in the collection of foreign taxes.

New provisions:

- *Period of limitation on collection of outstanding tax debts* (clause 163): The current 30 year prescription period, prescribed in the Prescription Act, 1969, is now prescribed in the TAB and is reduced to 15 years. This will ensure a more practical and realistic approach to SARS' debt book management.
- *Appointment of third party to satisfy tax debts* (clause 171): This relates to the so-called 'agent appointment' effected under, for example, section 99 of the Income Tax Act, 1962. The use of the term 'agent' was considered unnecessary – any third party who holds or will hold assets, belonging to a taxpayer or who owes or will owe any money to the taxpayer may by notice be required to transfer the assets or pay the amounts to SARS. The remedies of SARS against any failure by the third party to comply are set out in clause 176.
- *Personal liability of person involved in financial management* (clause 172): A person who controls or is regularly involved in the management of the overall financial affairs of a taxpayer with outstanding tax debts may be held personally liable for such debts where a senior SARS official is satisfied of negligence or fraud on the part of such person in the payment of tax debts of the taxpayer.
- *Liabilities of shareholders and liabilities of transferee* (clauses 173 to 174): Provision is made for the liability of shareholders who receive assets from a company with outstanding tax debts within one year of its winding-up, and the liability of transferees who are connected persons in relation to the transferor and who receive property for no or below fair market value.
- *Assistance in dissipating assets* (clause 175): A person assisting a taxpayer in the dissipation of assets to avoid or frustrate the collection of tax may be held jointly and severally liable with the taxpayer for the tax debt.
- *Remedies against third parties* (clause 176): The remedies of SARS against any a third party who fails to pay its liability under clauses 171 to 175 include:
 - The same remedies against the third parties in respect of assets of any kind vested in or under the control or management of such third parties as it would have against any person liable to pay any tax, and

- The same remedies against the property of the third parties as SARS has against the property of the taxpayer.
- *Repatriating foreign assets* (clause 178): Where a taxpayer has offshore assets which could be utilised to satisfy tax debts, provision is made that SARS may apply for a Court order to compel the repatriation of these assets. The Court may impose certain sanctions where the taxpayer fails to comply, for example imprisonment based on contempt of court, or the imposition of other limitations, for example requiring the taxpayer to cease trading until the taxpayer has complied with the court order.

Chapter 12 creates *inter alia* a framework to support the modernisation of SARS's accounting system regarding interest, within which interest provisions may be aligned across taxes and interest due or payable calculated on the daily balance owing and compounded monthly. No provision is made for the remittance of interest – interest is simply considered to be compensation for the loss of the time value of money to the *fiscus*.

4.12. Chapter 13: Refunds

This Chapter caters for the payment of refunds by SARS to a taxpayer. No major changes were effected to current law, except for a provision that refunds paid into a wrong account by SARS may be collected as if they were taxes. Absent such a provision SARS, pursuant to paying amounts into incorrect accounts, will only be able to recover the amounts through protracted common law remedies such as enrichment.

4.13. Chapter 14: Write off or Waiver of tax debts

These provisions are essentially a form of tax debt relief which may be afforded to taxpayers under certain prescribed circumstances. No major changes were made to current law.

4.14. Chapter 15: Penalties

The administrative penalties introduced under section 75B of the Income Tax Act are included in the TAB so as to apply across taxes. These penalties essentially target non-compliance with an obligation under a tax act that does not include elements of tax evasion. Tax evasion is addressed under the additional tax provisions.

New provisions:

- Targeted non-compliance is not specified but the penalties may be imposed in respect of non-compliance with any obligation under any tax act *and* referred to in a public notice issued by the Commissioner.
- The administrative penalty of R1 million or more for failure to report a reportable arrangement has been changed to ensure that the amount of the penalty is imposed on a more proportionate basis. Remittance remedies available to other administrative penalties are now also available to this penalty.

4.15. Chapter 16: Additional Tax

The open-ended discretion to impose additional tax up to 200% under current law is now fettered as it conferred too broad a discretion on a SARS official who may not have had the required expertise or guidance for this purpose. The fettering of a too wide discretion is not only permitted but mandated by the Constitution, mostly in order to give effect to the right to equality (by ensuring consistent treatment of taxpayers in comparable circumstances) and the right to administrative justice.

New provisions:

- Additional tax under the TAB now predominantly targets serious non-compliance such as conduct that includes elements of tax evasion, and the percentage additional tax imposed must be based on specified behaviour. A table of additional tax percentages based on specified and defined (where required) behaviour is included.
- The onus to prove the grounds for imposition and the applicable percentage of additional tax now rests on SARS.
- Provision is made that both administrative penalties and additional tax cannot be imposed in respect of the same non-compliance.

4.16. Chapter 17: Criminal Offences

All statutory offences are now included in a single Chapter and not spread throughout the tax acts. Provision is made for non-compliance offences, tax evasion and contravention of secrecy provisions. Criminal sanction under this Chapter may be pursued by SARS in addition to imposing an administrative penalty or additional tax.

New provisions:

- *Tax evasion 'reverse onus'*: The current reverse onus on the taxpayer has been removed. SARS has been advised that this onus will not survive a constitutional challenge and was replaced by a 'lesser onus'. The taxpayer will only need to prove that there is a reasonable possibility that the taxpayer was ignorant of the falsity of the fraudulent statement and that such ignorance was not due to negligence.
- *Decision to lay a complaint of statutory tax evasion*: This decision can now be taken by a senior SARS official, and not only by the Commissioner.

4.17. Chapter 18 to 19: Reporting of Unprofessional Conduct and Miscellaneous

No major changes were effected, except for the regulation of the issue of tax clearance certificates in clause 240.

4.18. Chapter 20 –Transitional Provisions

Provisions are proposed to ensure a smooth transition from current law to the Tax Administration Act.

5. CONSULTATION

- 5.1. The TAB is the product of extensive research regarding the purpose, structure, and function of similar systems in other countries and included an analysis of international models to establish best practice and a review of the existing position in South Africa.
- 5.2. SARS was assisted in the drafting of the TAB and review of current law by international tax experts from the IMF.
- 5.3. A closed workshop with external tax experts and SARS divisional heads or nominees was held in May 2009. During August 2009 discussions were held with representatives from the National Treasury and workshops were held with SARS stakeholders involved in the relevant administrative functions on a day to day basis. A constitutional review by external tax and constitutional experts was also conducted.
- 5.4. Pursuant to the closed workshops, discussions and SARS internal workshops and the constitutional review, the comments received were considered during an extensive internal review of the draft, and resulted in changes to the draft TAB.

6. PARLIAMENTARY PROCEDURE

- 6.1. The closing date for public comment on the TAB is the **26th of February 2010**. The comments received will be considered and required changes effected to the draft Bill and a final constitutional review by the external tax and constitutional experts will be conducted.
- 6.2. After the above process has been finalised the TAB will in all probability be introduced in Parliament during the 1st half of 2010.

Draft Tax Administration Bill, 2009

Note to Draft Bill:

References to Current Provisions in Income Tax Act, 1962, and Value-Added Tax Act, 1991

C.	TAB Header		Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
CHAPTER 1 DEFINITIONS				
1.	Definitions	“administration of a tax act”	Definition in section 74(1)	Definition in section 57(1)
		“additional assessment”	New	New
		“assessment”	Definition in section 1	New No definition – see section 31
		“biometrical information”	New	New 1 st phase TL2AA,09: Included in section 23(2) VAT Act
		“Commissioner”	Definition in section 1	Definition in section 1
		“company”	Definition in section 1	Definition in section 1
		“Customs and Excise Act”	New	Definition in section 1
		“day”	New	New “Business day” is defined in section 1
		“document”	New Previously only defined fpo section 74(1)	New Previously only defined fpo section 74(1)
		“due date”	New Prev. used in definition of “assessment” section 1	New
		“Income Tax Act”	New Specific reference in TAB	Definition in section 1
		“information”	Definition in s74(1)	Definition in section 57(1)
		“judge”	Definition in s74(1)	Definition in section 57(1)
		“Minister”	Definition in section 1	Definition in section 1
		“prescribed rate”	Definition in section 1	Definition in section 1
		“premises”	Definition in s74(1)	Definition in s57(1)
		“presiding officer”	New Indirectly defined in section 74C(2) & (3)	New
		“relevant material”	New	New
		“reportable arrangement”	section 80M	New

C.	TAB Header		Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
		“representative employer” <i>Error! Reference source not found.</i>	Definition in 4 th Sched. par 1	New
		“representative taxpayer”	Definition in section 1	New
		“representative vendor”	New	Sections 46 & s48(1)
		“return”	New	New
		“SARS official”	New	Definition of “officer” in section 57(1)
		“Senior SARS official”	New	New
		“SARS”	New	Definition of “South African Revenue Service” in s1
		“SARS Act”	New	New
		“serious tax offence”	New	New
		“Skills Development Levies Act”	New	New
		“tax”	Definition in section 1	Definition in section 1
		“taxable event”	New	New
		“tax act”	New	New
		“tax board”	section 83A(2)	No definition – section 33A links to section 83A(2)
		“tax court”	s83(2)&(3)	No definition – section 33 links to section 83
		“tax debt”	New	New
		“tax offence”	New	New
		“tax period”	New	New Inclusive of section 1 definition (determined under section 27)
		“taxpayer”	Definition in section 1	New
		“taxpayer reference number”	New	New Definition section 1 “VAT registration number”
		“thing”	Definition section 74	New
		“Unemployment Insurance Contributions Act”	New	New
		“Value-Added Tax”	New	New

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
	Act”		
CHAPTER 2: GENERAL ADMINISTRATION PROVISIONS			
Part A: General			
2.	Purpose of Act	New	New
3.	Tax acts to be administered by SARS	New Section 2 – Act administered by Commissioner	New Section 4 – Act administered by Commissioner
4.	Application of Act	New	New
5.	Currency	New	New
PART B: Powers & Duties of SARS Officials			
6.	Powers and duties	Section 3(1)	Section 5(1)
7.	Conflict of interest	New	New
8.	Identity cards	New	New
9.	Decision, notice, or communication	Section 3	Section 5(2)
Part C: Delegations			
10.	Delegations	New	New
Part D: Authority to Act in Legal Proceedings			
11.	Legal proceedings	New	New
12.	Right of appearance in proceedings	New	New
Part E: Powers & Duties of Minister			
13.	Powers and duties of Minister	Section 4A	New
CHAPTER 3: REGISTRATION			
14.	Registration requirements and sanctions	Section 67(1)	Section 23(1) & (2)
15.	Continuation of registration	Section 67(1A)	Section 23(7)
16.	Taxpayer reference number	New	New
CHAPTER 4: RETURNS & RECORDS			
Part A: General			
17.	Submission of return	Sections 65(1) & 66	Section 28
18.	Third party returns	Section 69	Section 29
19.	Other returns required	Sections 66(8) & (10)	Section 30
20.	Statement concerning account	Section 73	New
21.	Duty to keep records	Sections 73A-C	Section 55(1)
22.	Form of records kept or retained	Section 73A(3)	Sections 55(2), (3) & (4)
23.	Inspection of records	New	New
24.	Retention period where objection or appeal lodged	Section 73C	Section 55(3)

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
25.	Translation	New	Section 57(2) &(3)
Part B: Reportable Arrangements			
26.	Definitions	Section 80T	New
27.	Reportable arrangements	Section 80M	New
28.	Excluded arrangements	Section 80N	New
29.	Disclosure obligation	Section 80O	New
30.	Information to be submitted	Sections 80P & 80R	New
31.	Reportable arrangement reference number	Section 80Q	New
	[Penalties]	Section 80S (penalty) > moved to clause 203	New
Part C: Advance Notice Required			
32.	Leaving the Republic	New	New
CHAPTER 5: INFORMATION GATHERING			
Part A: Request for Information			
33.	Request for information	Section 74A	Sections 57, 57A & 57B
34.	Production of information in person	New	New
Part B: Audit & Investigation			
35.	Authorisation for SARS official to audit and investigate	Section 74(1) definition of “authorisation letter”	Section 57 definition of “authorisation letter”
36.	Audit selection	Section 74B(2)	Section 57B(2)
37.	Field audit	Section 74B	Section 57B
38.	Assistance during audit	New	New
39.	Keeping taxpayer informed	New	New
40.	Referral for investigation	New	New
41.	Criminal investigation	New	New
Part C: Inquiries			
42.	Authorisation for inquiry	Section 74C	Section 57C(1)
43.	Inquiry proceedings	Section 74C(8)	Section 57C(2)
44.	Notice to appear	Section 74C(9)	Section 57C(9)
45.	Legal representation at Inquiry	Section 74C(12)	Section 57C(12)
46.	Powers of presiding officer	Section 74C(8)	Section 57C(8)
47.	Witness fees	Section 74(14)	Section 57C(14)
48.	Confidentiality of proceedings	Section 74C(15)	Section 57C(13)
49.	Incriminating evidence	Section s74C(17)	Section 57C(17)
50.	Inquiry not suspended by civil or criminal proceedings	Section 74C(18)	Section 57C(18)

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
Part D: Search & Seizure			
51.	Application for warrant	Section 74D(1)	Section 57D(1)
52.	Issuance of warrant	Section 74D(3)	Section 57D(3)
53.	Carrying out search	Section 74D(1)	Section 57D(6)
54.	Search of premises not identified in warrant	New	New
55.	Search without warrant	New	New
56.	Legal professional privilege	New	New
57.	Person's right to examine and make copies	Section 74D(10)	Section 57D(10)
58.	Application for return of document or thing	Section 74D(9)	Section 57D(9)
CHAPTER 6: CONFIDENTIALITY OF INFORMATION			
59.	General prohibition of disclosure	Section 4	Section 6
60.	Disclosure of SARS Information	Section 4(1)	Section 6(1)(a), (b)
61.	Secrecy of taxpayer information and disclosure	Section 4(1)	Section 6(1)(a), (b)
62.	Disclosure for non-tax administration purposes	Section 4(1)	Section 6(1)(a), (b)
63.	Disclosure in criminal, public safety, or environmental matters	Section 4(1B)	Section 6(2A)
64.	Self incrimination	New	New
65.	Disclosure to taxpayer of own record	Section 77(2) & 80	New
66.	Publication of names of offenders	Section 75A	Section 62
CHAPTER 7: ADVANCE RULINGS			
67.	Definitions	Section 76B	Section 41A
68.	Purpose	Section 76C	Section 41A
69.	Scope	Section 76D	Section 41A
70.	Private rulings and class rulings	Sections 76P & 76Q	Sections 41A & S41B
71.	Applications	Section 76E	Section 41A
72.	Rejection of application	Section 76G	Section 41A
73.	Fees	Section 76F	Section 41A
74.	Binding effect	Section 76H	Section 41A
75.	Applicability of advance rulings	Section 76J	Section 41A
76.	Rulings rendered void	Section 76K	Section 41A
77.	Subsequent changes in tax law	Section 76L	Section 41A

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
78.	Withdrawal or modification	Section 76M	Section 41A
79.	Publication	Section 76O	Section 41A
80.	Non binding private opinions	Section 76I	Section 41A
81.	General rulings	Section 76P	Section 41A
82.	Procedures and Guidelines	Section 76S	Section 41A
CHAPTER 8: ASSESSMENTS			
83.	Assessments	Section 77	Section 31(1)
84.	Notice of assessment	Section 77	Section 31(2), (4)
85.	Estimated assessment	Section 78	Section 31(3)
86.	Additional assessments	Section 79	Section 31(1)
87.	Reduced assessment	Section 79A	Section 31A
88.	Jeopardy assessment	New	New
89.	Withdrawal of assessment	Section 79B	Section 31B
90.	Recording of assessment	Section 77 & “date of assessment” in section 1	New
91.	Period of limitations for issuance of assessment	New Clause 91(2) > section 79 proviso	New Section 41(d)
92.	Finality of assessment	Sections 78(2); 81(5); 83(18); & 83A(12).	Section 32(5)
CHAPTER 9: DISPUTE RESOLUTION			
Part A: General			
93.	Definitions	New	New
94.	Burden of proof	Section 84	Section 37
95.	Rules for dispute resolution	Section 107A	Section 32(2) & (2A)
Part B: Objection and appeal			
96.	Objection against assessment or decision	Section 81	Section 32(1)
97.	Forum for dispute of assessment	Sections 81(3) & 83(1)	Section 32(2A) & (3)
98.	Decision on objection	Section 81(4)	Section 32(4)
99.	Appeal against assessment	Section 83(1A) – (1C)	Section 33(1)
Part C: Tax Board			
100	Establishment of tax board	Section 83A(2)	Section 33A(1)
101	Jurisdiction of tax board	Section 83A(1)	Section 33A(1)
102	Constitution of tax board	Section 83A(3)	Section 33A(2)
103	Appointment of chairpersons	Section 83A(4)	Section 33A(2)
104	Clerk of tax board	Section 83A(5) & (7)	Section 33A(2)

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
105	Tax board procedure	Section 83A(9)-(11)	Section 33A(2)
106	Decision of tax board	Section 83A(10)(d)	Section 33A(2)
107	Referral of appeal to tax court	Section 83A(13) & (14)	Section 33A(2)
Part D: Tax Court			
108	Establishment of tax court	Sections 83(2) & (3)	Section 33
109	Jurisdiction of tax court	Section 83(7)	Section 33
110	Constitution of tax court	Section 83(4)	Section 33
111	Nomination of president of tax court	Section 83(6)	Section 33
112	Appointment of panel of tax court members	Section 83(5)	Section 33
113	Appointment of registrar of tax court	Section 83(20) & (21)	Section 33
114	Conflict of interest	New	New
115	Death, retirement or incapability of judge or member	Section 83(4C)	Section 33
116	Sitting of tax court not public	Section 83(11)	Section 33
117	Appearance at hearing of tax court	Section 83(12)	Section 33
118	Subpoena of witness	Section 84	Section 33
119	Non-attendance by witness or failure to give evidence	Section 84	Section 33
120	Contempt of tax court	Section 85	Section 33
121	Decision by tax court	Section 83(13)	Section 33
122	Order for costs	Section 83(17)	Section 33
123	Registrar to notify parties of judgement	New Section 83	Section 33
124	Publication of judgment	Section 83(19)	Section 33
Part E: Appeal			
125	Appeal against decision of tax court	Section 86A(1)	S34
126	Notice of intention to appeal	Section 86A(3) and (4)	S34
127	Leave to appeal to Supreme Court of Appeal	Section 86A(5) and (6)	Section 34
128	Failure to lodge notice of intention to appeal	Section 86A(8) and (9)	Section 34
129	Notice by registrar of period for appeal	Section 86A(10)	Section 34
130	Notice of appeal to Supreme Court of Appeal	Section 86A(7)	Section 34

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
131	Notice of cross-appeal	Section 86A(13), (14),(15)	Section 34
132	Record of appeal	Section 86A(17)	Section 34
133	Abandonment of judgment	Section 86A(16)	Section 34
Part F: Settlement of dispute			
134	Definitions	Section 88A	Section 32(2)
135	Purpose of part	Section 88B	Section 32(2)
136	Nature of settlement procedure	New	New
137	Circumstances in which settlement is inappropriate	Section 88C	Section 32(2)
138	Circumstances where settlement is appropriate	Section 88A-H	Section 32(2)
139	Procedure for settlement	Section 88F	Section 32(2)
140	Register of settlements and reporting	Section 88G	Section 32(2)
141	Alteration of assessment on settlement	Section 88H	Section 32(2)
CHAPTER 10: TAX LIABILITY & PAYMENT			
Part A: Taxpayers			
142	Definitions	New	New
143	Taxpayer	New	New
144	A person chargeable to tax	New	New
145	Representative taxpayer	Section 95	Section 46
146	Liability of representative taxpayer	Section 95	Section 48
147	Personal liability of representative taxpayers	Section 97	Section 48(2), (3), (6)
148	Withholding agent	New	New
149	Personal liability of withholding agent	Sections 35(2)(e); 35A(7)&(11); 47G & par 5, 4 th Sched.	New
150	Responsible third party	New	New
151	Personal liability of responsible third party	New Part section 99	New Part section 47
152	Liability of shareholder	Par 16(2C) 4 th Sched.	Section 48(9)
153	Liability of transferee	New Part section 59	New
154	Right to indemnity	Section 96	Section 48(5) right to recover
155	Security	New	Section 43
Part B: Payment of Tax			

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
156	Determination of day, time and place for payment of tax	Section 89	Section 38 read with 28(1) and 29
157	Preservation of assets order	New	New
158	Payment of tax pending objection or appeal	Section 88 [TL2AA, 2009: Changes to be effected in this Bill]	Section 36
Part C: Taxpayer Account & Allocation			
159	Taxpayer account	Section 89ter	New
160	Allocation of payments	New Part section 89ter	New Part section 40(4)
Part D: Deferral of Payment			
161	Instalment payment agreement	New Part section 89(1) – ‘payment in instalments’	New
162	Criteria for instalment payment agreement	New	New
CHAPTER 11: RECOVERY OF TAX			
Part A: General			
163	Debt due to SARS	Section 91	Section 40
164	Evidence as to assessment	Sections 92 & 94	Section 42
165	Period of limitations on collection	New Previously dealt with in Prescription Act	New
Part B: Judgment Procedure			
166	Application for civil judgment for recovery of tax	Section 91(1)	Section 40(2)(a)
167	Jurisdiction of Magistrates’ Court	Section 91(2)	Section 40(3)
168	Effect of statement	Section 91(1)	Section 40(5)
169	Amendment of statement	Section 91(bA)	Section 40(2)(b)
170	Withdrawal of statement and reinstitution of proceedings	Section 91(1)	Section 40(2)(b)
Part C: Sequestration & Liquidation			
171	Institution of proceedings	Section 91(1)	Section 40(2)(c)
172	Jurisdiction of court	New	New
Part D: Collection of Tax Debt From Third Parties			
173	Collection from third party debtor	Section 99	Section 47
174	Remedies against agent or person acting in fiduciary capacity	Section 100	Section 49

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
175	Person assisting in dissipation of assets	New	New
Part E: Assisting Foreign Governments			
176	Tax recovery on behalf of foreign governments	Section 93	Section 75(1)
Part F: Remedies With Respect to Foreign Assets			
177	Foreign assets of taxpayer	New	New
CHAPTER 12: INTEREST			
178	General rules	Section 89	Section 39
179	Period over which interest is charged	Section 89(2)	Sections 39(1)(a)(ii), 39(2)(b), 39(3), 39(4)(b), 39(5)(b), and 45(1) in respect of interest on refunds
180	Rate at which interest is charged	Section 89quin	Section 45A
CHAPTER 13: REFUNDS			
181	Refunds of excess payments	Section 102(1) & (2)	Section 44(2)
182	Refunds subject to set-off and deferral	Section 102(3)	Section 44(1), S44(6)
CHAPTER 14: WRITE OFF OR WAIVER OF TAX DEBTS			
Part A: General			
183	Definitions	Section 91A & regulations	No provision but section 91A ITA applies to VAT
184	Purpose	"	"
185	Application of Chapter	"	"
Part B: Temporary write-off of tax debt			
186	Temporary write off of tax debt	"	"
187	Tax debts uneconomical to pursue	"	"
Part C: Write-off of tax debt			
188	Write off of tax debt	"	"
189	Tax debts irrecoverable at law	"	"
190	Procedure for writing off a tax debt	"	"
Part D: Compromise of Tax Debt			
191	Compromise of tax debt	"	"
192	Request by debtor for compromise	"	"

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
193	Consideration of request to compromise tax debt	"	"
194	Circumstances where not appropriate to compromise tax debt	"	"
195	Procedure for compromise	"	"
196	SARS not bound by compromise	"	"
Part E: Records & Reporting			
197	Register of tax debts written off or compromised	"	"
198	Reporting by Commissioner of tax debts written-off or compromised	"	"
CHAPTER 15: ADMINISTRATIVE PENALTIES			
Part A: General			
199	Definitions	Section 75B regulations	New
200	Purpose	"	New
Part B: Fixed Amount Penalties			
201	General penalty for non-compliance	"	New
202	Fixed amount penalty table	"	New
203	Reportable arrangement	New Based on section 80S	New
Part C: Percentage Based Penalty			
204	Percentage based penalty	Section 75B regulations	Sections 39(1)(a), 39(2)(a), 39(4)(a), 39(5)(a), 39(6)(a)
Part D: Procedure			
205	Procedures for imposing penalty	Section 75B regulations	New
206	Procedure to request remittance	"	New
Part E: Remedies			
207	Remittance of penalty for failure to register	"	Section 39(7)(b)
208	Remittance of penalty for nominal or first incidence of non-compliance	"	New
209	Remittance of penalty in exceptional circumstances	"	New
210	Penalty incorrectly assessed	"	New
211	Objection and appeal	"	Section 32(1)(a)(vi)
CHAPTER 16: ADDITIONAL TAX			
212	Definitions	Section 76	Section 60

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
213	Additional tax percentage table	New	New
214	Additional tax on default, omission or evasion	Section 76	Section 60
215	Additional tax on understatement	Section 76	Section 60
216	Payment and recovery of additional tax	Section 76	Sections 60 & 61
CHAPTER 17: CRIMINAL OFFENCES			
217	Criminal offences relating to non-compliance with this Act	Section 75 Par 30 4th Sched.	Section 58
218	Criminal offences relating to evasion of tax	Section 104	Section 59
219	Criminal offences related to secrecy provisions	Section 4(3)	Section 6(6)
220	Filing return without authority	New	New
221	Jurisdiction of courts	Section 105	Section 70
CHAPTER 18: UNPROFESSIONAL CONDUCT			
222	Definitions	Section 105A	Section 63(1)
223	Complaint to Controlling Body	"	Section 63(2)
224	Complaint with Independent Regulatory Board for Tax Practitioners	"	New
225	Disclosure of information regarding complaint and remedies of taxpayer	"	Section 63(3)
226	Complaint considered by controlling body	"	Section 63(4)
CHAPTER 19: MISCELLANEOUS			
227	Deadlines	Section 89sex	New
228	Power of Minister to determine date for submission of returns and payment of tax, interest and penalties	Section 89sept	Section 28(4) & (7)
229	Public officers of companies	Section 101	Sections 46(a) & 48(1)
230	Address for Notices and Documents	Section 101	Section 71
231	Public officer in event of liquidation or winding-up	Section 101	Section 71(2)(d)
232	Default in appointing public officer or address for notices or documents	Section 101	Section 71(2)(d)
233	Authentication of documents	Section 106	Section 71(1)

C.	TAB Header	Current Provisions: Income Tax Act	Current Provisions: Value-Added Tax Act
234	Delivery of documents to persons other than companies	Section 106	Section 71(2)
235	Delivery of documents to companies	Section 106	Section 71(2)
236	Documents delivered deemed to have been received	Section 106	Section 71(3)
237	Defect does not affect validity	Section 106	Section 71(3)
238	Electronic Communication	Section 106	Section 28(7), (8), (9)
239	Tax clearance certificate	New	New
240	Regulations	Section 107	Section 74
CHAPTER 20: TRANSITIONAL PROVISIONS			
241	Provisions relating to secrecy	New	New
242	Public officer previously appointed	New	New
243	Appointment of chairpersons of tax board	New	New
244	Appointment of members of tax court	New	New
245	Continuation of court rules	New	New
246	Delegation by Commissioner	New	New
247	Persons authorised to inspect, audit, examine or obtain information	New	New
248	Conduct of inquiries	New	New
249	Application of Chapter 15	New	New
250	Continuation of Authority	New	New
251	Application of Act to Prior or Continuing Action	New	New
252	Amendment of legislation	New	New
253	Short title and commencement	-	-