



INSTITUTE OF ACCOUNTING & COMMERCE

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# The Professional

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## Special points of interest:

- Budget Speech—22 February 2012
- Dividend tax effective date—1 April 2012 (Gazette 34873 Notice 1073)
- TAB introduces compound interest.

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## Tax Administration Bill

The Tax Administration Bill ("TAB") was published late 2011. This new Bill is expected to be enacted in 2012. It is expected to change the way tax is generally administered and will replace numerous sections in various tax acts.

According to the Bill, the purpose of the proposed Act would be to:

- Provide for the effective and efficient collection of tax;
- Align the administrative provisions of tax Acts and the consolidation of these provisions into one piece of legislation;
- Determine SARS' powers and duties;
- Establish a Tax Ombud and to determine its duties and powers;
- Provide requirements in respect of tax registrations, return submissions and duty to keep records;

- Clarify SARS powers in respect of information gathering and search and seizure procedures;
- Provide for the recovery of tax and interest, issuing of advance tax rulings, refund of excess payments, write-off and compromise of tax debts;
- Provide for the imposition and remittance of administrative non-compliance and understatement penalties;
- Provide for a voluntary disclosure programme;
- Provide for the reporting of unprofessional conduct by tax practitioners.

The Act will apply to every person liable to comply with a provision of a tax Act (whether personally or on behalf of another person) and is binding on SARS.



Where the Tax Administration Act is silent with regard to the administration of a tax Act and it is specifically provided in that tax Act, the provisions of the tax Act will apply.

Where there are any inconsistencies between the Tax Administration Act and another tax Act, the tax Act will prevail.

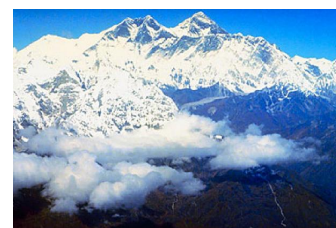
## From the editor

With this first newsletter of the new year I wish to share this quote from Frederick Nietzsche:

*On the mountains of truth you can never climb in vain: either you will reach a point higher up today, or you will be training your powers so that you will be able to climb higher tomorrow.*

This is a special TAB issue, highlighting the most important sections which may impact on our members.

As always, your comments and suggestions will be much appreciated.



May this year be filled with positive challenges and growth.



*A business that  
makes nothing  
but money is a  
poor business.*

**Henry Ford**

## TAB definitions

It is important to consider the definitions contained in the TAB as it influences the interpretation of the Act.

### Assessment

It is the determination of the amount of a tax liability or refund, by way of self-assessment by the taxpayer (e.g. VAT) or assessment by SARS (e.g. Income Tax).

### Date of assessment

- Assessment by SARS—date notice of assessment was issued ;
- Self assessment—if a return is required, date return was submitted;
- Self assessment—if a return is not required, date of last payment of the tax for that period, or if no payment was made in respect of the tax for the tax period, the effective date.

### Return

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.

### Self-assessment

Determination of the amount of tax payable by a taxpayer under a Tax Act and submitting a return which include the tax determination, or if a return is not required, making payment of the tax.

### Business day

Monday—Friday, excluding public holidays. For purposes of dispute resolution (objection, appeal, tax board, tax court and settlements), it will also exclude the days between 16 December and 15 January of the following year.

### Document

Anything that contains a written, sound or pictorial record, or other record of information, whether in physical or electronic form.

### Tax

The definition of 'tax' is very wide and Includes any tax, duty, levy, royalty, fee, contribution, penalty, interest and any other moneys imposed under a tax Act.

Tax Act refers to Acts listed in section 4 of the SARS Act, but excludes the Customs and Excise Act.

### Tax period

- Income Tax—year of assessment;
- Provisional tax, PAYE, SDL, UIF—periods determined in terms of the relevant Acts;
- VAT—tax period determined under s27 of the VAT Act;
- Royalty—year of assessment as defined in the Mineral and Petroleum Resources Royalty (Administration) Act;
- Levy on Diamond Exports—SI section 1 of the Diamond Export Levy (Administration) Act;
- Security Transfer Tax—the period referred to in section 3 of the Securities Transfer Tax Administration Act;
- Any other tax—the period or date of the taxable event in respect of which the amount of tax payable must be determined under the relevant tax Act

## Practice generally prevailing

Practice generally prevailing is a practice set out in an official SARS publication regarding the application and interpretation of a Tax Act. Official publication mean binding general rulings, Interpretation Notes, Practice Notes or public notices issued by senior SARS officials or the Commissioner. It will therefore not include historical actions (or lack thereof) by various SARS branch offices and it would be dangerous to rely on these 'unofficial' practices where

transactions are not treated in accordance with tax law.

Practice generally prevailing set out in an official publication (excluding binding general ruling) ceases to be practice generally prevailing if:

- Provisions of the relevant tax Act is repealed or amended to an extent that is material to the practice;
- A court overturns or modifies the interpretation of the relevant provisions

of the Tax Act materially, unless the decision is under appeal or fact specific;

- SARS withdraws or modifies the official publication.

Binding general rulings cease to be binding where SARS withdraws the ruling or where the underlying legislation is amended or repealed.



## SARS officials

### Conflict of interest

The Commissioner or another SARS official may not exercise a power or become involved in a matter pertaining to the administration of a Tax Act if it relates to a tax payer the SARS official has/had one of the following relationships in the previous 3 years: personal, family, social, business, professional, employment or any other relationship presenting a conflict of interest.

### Identity

SARS must issue identity cards to all SARS officials exercising powers and other administrative duties. Any member of the public can request the SARS official to produce the

identity card when exercising powers or duties. The SARS official has to comply with this request. If the SARS official does not produce the identity card, the requestor can assume that the person is not a SARS official, i.e. the taxpayer is not obliged to comply with any tax related requests for information.

### Decisions and notices

A decision made by a SARS official and a notice issued to a specified person (excluding assessments) is regarded as made by a SARS official until proven to the contrary. Tax payers therefore need to comply with written requests signed by SARS officials.

SARS officials may withdraw these decisions and notices.

If all the material facts were known to the SARS official at the time the decision was made, the decision/notice may not be withdrawn or amended with retrospective effect after 3 years from the later of:

- the date of the written notice of the decision or notice, or
- the date of assessment giving effect to the notice or decision



## Tax Ombud

The Minister of Finance must appoint a Tax Ombud for a term of 3 years. The Tax Ombud is accountable to the Minister and must have a good background in customer services and tax law.

The Tax Ombud has to review and address complaints

by taxpayers regarding **service matters or procedural or administrative matters.**

The Ombud must review the complaint and, if necessary, resolve it through mediation or conciliation. The Ombud must act independently when

reviewing complaints and must facilitate access by taxpayers to complaint resolution mechanisms within SARS to address complaints.

The Minister may remove this person from office for misconduct, incapacity or incompetence.

*Business is a combination of war and sport.*

**André Maurois**

## Review of complaints

Taxpayers can submit complaints to the Tax Ombud in respect of administrative problems including unreasonable delays in response from SARS. When drafting such a complaint it is important to address the factors the Tax Ombud would consider.

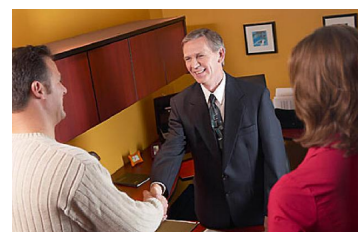
The Tax Ombud must consider the following factors when reviewing complaints:

- Age of the request or issue;
- The amount of time lapsed since the requestor became aware of the issue;
- Nature and seriousness of the issue;
- Whether the request was made in good faith;
- Findings of other redress mechanisms with respect to the request.

The Tax Ombud may only review a request if the applicant exhausted the available

complaint resolutions mechanisms in SARS, unless there are compelling circumstances for not doing so, e.g.

- The request raises systemic circumstances;
- Exhausting the complaints resolution mechanisms would cause undue hardship or is unlikely to provide results within a reasonable period.





## Tax registration

Any person obliged to apply for (or who may apply voluntarily) tax registration under a Tax Act must apply within the period provided for in the Tax Act, or if no period is stipulated, within 21 business days of becoming obliged to register.

Persons may be required to submit biometric information to ensure proper identification of the person and counteracting identity theft and fraud. Biometric information includes facial recognition, fingerprint recognition, voice recognition and iris recognition.

If a person does not provide all the required particulars and documents, it may be deemed that the person has not applied for tax registration.

Failure to register where required to do so is an offence punishable with a fine or imprisonment on conviction. It is therefore crucial to ensure that all the required information accompanies the tax registration forms.

### Tax reference number

SARS may allocate a taxpayer reference number in respect of one or more taxes to each person registered under a Tax Act. SARS may also register and allocate a reference number to a person who is not registered.

SARS may regard a return or any other document submitted by a person to be invalid if it does not contain the taxpayer's reference number. SARS must however notify the taxpayer accordingly, if practical.

*The absolute  
fundamental aim  
is to make  
money out of  
satisfying  
customers.*

**John Egan**

## Submission of returns

A person required under a Tax Act to submit (or who voluntarily submits) a return must do so in the prescribed form and manner and by the date specified in the Tax Act.

The return must contain the prescribed information and be a full and true return. The return must be signed by the taxpayer or by the taxpayer's duly authorized representative. The signatory is regarded to be cognisant of the state-

ments made in the return.

Non-receipt by a person of a return form does not affect the obligation to submit a return (e.g. Vendors are required to request VAT returns from SARS).

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

SARS may extend the time

period for filing a return in a particular case, The Commissioner may also extend the filing deadline generally or for specific classes of persons by public notice.

The above extensions will however not affect the deadline for paying the tax.

SARS may require a person to submit further or more detailed returns regarding any matter for which the return is required.



**Also refer to section 29(1)(e) of the Companies Act 71 of 2008.**

## Statement concerning accounts

Tax practitioners and other accounting officers should be aware that, going forward, they could be required to issue certificates to their clients in respect of accounting work performed.

SARS may require taxpayers who submit financial statements or accounts prepared by another person. (e.g. Accounting officer) to submit a certificate or statement by the preparer of the information.

The certificate should set out the details of—

- 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 (e.g. whether an independent review was performed or schedules was based on information provided by the client); and

- 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.

A person who prepares financial statements or accounts for another person must, (at the request of that other person), submit copy of the certificate to that person. Companies Act 71 of 2008.

## Keeping records

Tax payers must keep the records, books of account or documents that enable them to prove that the requirements of the relevant Tax Acts are complied with as well as any documents specifically required under a Tax Act.

Records must be retained in their original form in an orderly fashion in a safe place or in the form (including electronic form) SARS prescribed in a public notice.

### Also refer to section 28 of the Companies Act 71 of 2008.

#### Retention periods

Records should be retained for a period of five years from the date of the submission of the return or five years from the end of the relevant tax period.

#### Extended retention periods

The required retention period is extended where:

- records are relevant to an audit or investigation which the person subject to the audit or investigation has been notified of or is aware of; or
- a person lodges an objection or appeal against an assessment or decision

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

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.

The translation must

- be produced at a time and at the place specified by the notice; and
- if required by SARS, be prepared and certified by a sworn and accredited translator or another person approved by the senior SARS official



*Hire*

*character.*

*Train skill.*

## Search without warrant

Taxpayers should be aware of their rights in respect of search and seizure procedures.

A warrant is generally required before SARS may search and seize taxpayer property. A senior SARS official may however conduct search and seizure procedures without a warrant if the owner or person in control of the premises so consents in writing or the senior SARS official is satisfied (on reasonable grounds) that—

- there may be an imminent removal or destruction of relevant material likely to be found on the premises;
- If SARS applies for a search warrant under

section 59, a search warrant will be issued; and

- the delay in obtaining a warrant would defeat the object of the search and seizure.

The SARS official must, before carrying out the search, inform the owner or person in control of the premises

- that the search is being conducted under section 63 of TAB; and
- of the alleged failure to comply with an obligation imposed under a Tax Act or tax offence that is the basis for the search.

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. The search must be conducted with strict regard for decency and order, and may only search a person if the official is of the same gender as the person being searched. 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.

#### Limitation

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



**Peter Schutz**



## Estimated assessments

Tax payers should ensure that all relevant information is disclosed on the tax return and submitted within the required period. Failing to do so may result in SARS estimating the tax due as SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate if the taxpayer

- fails to submit a return as required; or
- submits a return or information that is incorrect or inadequate.

SARS must make the estimate based on information readily available to it. There may however be relevant information which is not publicly available which should be considered when determining the taxpayer's tax liability. The onus is on the taxpayer to disclose this information to SARS.

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. The taxpayer should retain copies of correspondence in this regard for future reference.

*Our major obligation is not to mistake slogans for solutions.*

**Edward R. Murrow**

## Jeopardy assessments

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.

A review application against an assessment made under this section may be made to the High Court on the grounds that:

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

SARS does however bear the burden of proving that the making of the jeopardy assessment is reasonable under the circumstances.



## Disclosure of own records

A taxpayer or the taxpayer's duly authorized representative is entitled to obtain—

- a copy, certified by SARS, of the recorded particulars of an assessment or decisions relating to the taxpayer;
- access to information submitted to SARS by the taxpayer or by a person on the taxpayer's behalf; and

- other information relating to the tax affairs of the taxpayer.

### Request

A request for other information relating to tax affairs must be made under the Promotion of Access to Information Act.

### Cost

The person requesting access to information previously submitted to SARS 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.



## Notice of assessment

SARS must issue to the taxpayer assessed a notice of the assessment stating

- the name of the taxpayer;
- the taxpayer's reference number, or if one has not been allocated, any other form of identification;
- the date of the assessment;
- the amount of the assessment;
- the tax period in relation to which the assessment is made;
- the date for paying the amount assessed; and
- a summary of the proce-

dures for lodging an objection to the assessment.

In addition, SARS must give the person assessed a statement of the grounds for the assessment; and in the case of a jeopardy assessment, the grounds for believing that the tax would otherwise be in jeopardy.

The particulars of an assessment and the amount of tax payable thereon must be recorded and kept by SARS. The assessment is not open to public inspection.

SARS may, despite the fact that no objection has been lodged or appeal noted,

withdraw an assessment which

- was issued to the incorrect taxpayer;
- was issued in respect of the incorrect tax period; or
- was issued as a result of an incorrect payment allocation.

Such a withdrawn assessment is regarded not to have been issued.



*There are so many men who can figure costs, and so few who can measure values.*

**Author Unknown**

## Payment of tax pending objection and appeal

Generally, the obligation to pay tax (and SARS' right to receive and recover tax), is not suspended by an objection or appeal or pending the decision of a court of law pursuant to an appeal.

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.

A senior SARS official may suspend payment of the disputed tax having regard

to:

- the compliance history of the taxpayer
- the amount of tax involved;
- the risk of dissipation of assets by the taxpayer concerned during the

period of suspension;

- whether the taxpayer is able to provide adequate security for the payment of the amount involved;
- whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;
- whether sequestration or liquidation proceedings are imminent;
- whether fraud is involved in the origin of the dispute; or
- whether the taxpayer has failed to furnish information requested.

If the payment of tax which the taxpayer intended to dispute was and subsequently no objection is lodged; an objection is disallowed and no appeal is lodged; or an appeal to the tax board or court is unsuccessful and no further ap-

peal is noted, the suspension is revoked with immediate effect from the date of the expiry of the relevant prescribed time period.

A senior SARS official may deny (or revoke a decision to) suspend payment with immediate effect if :

- the objection or appeal is frivolous or vexatious;
- the taxpayer is employing delay tactics; or
- there is a material change in any of the factors upon which the decision to suspend the amount involved was based.

Upon successful objection of appeal, SARS must refund amounts paid in excess with interest at the prescribed rate.



**Pay now, argue later!**



*To be  
successful, you  
have to have  
your heart in  
your business,  
and your  
business in your  
heart.*

**Thomas Watson, Sr.**

## Interest

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.

### Compound interest

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. This would be a signifi-

cant change as simple interest currently applies.

### Waiving interest

If a senior SARS official is satisfied that interest payable is payable as a result of circumstances beyond the taxpayer's control, the official may, unless prohibited by a tax Act, allow interest to be waived.

Circumstances beyond the taxpayer's control is however limited to:

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

It is clear that the changes in the interest regime could result in significant cost to taxpayers failing to pay tax on time.

## Liability of shareholders for tax debt

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:

- they receive assets of the company in their capacity as shareholders within one year prior to its winding-up; and
- 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.

The liability of the shareholders is secondary to the liability of the company, i.e. SARS will only address the shareholders if the company cannot pay the tax debt.

Persons who are liable for tax

of a company may avail themselves of any rights against SARS as would have been available to the company.

This section does not apply—

- in respect of a "listed company" within the meaning of the Income Tax Act; or
- in respect of a shareholder of a listed company.

## Application for civil judgment for recovery of tax

SARS may apply for civil judgment where a person fails to pay tax when it is payable.

SARS has to give the person at least **10 business days notice** before applying for such judgment. The application needs to be filed with the clerk or registrar of a competent court by submitting a certified statement setting out the amount of tax payable and certified by SARS as correct.

SARS may file the statement irrespective of whether or not the amount of tax is subject to an objection or appeal, unless the obligation to pay the amount has been suspended.

SARS is not required to give the tax payer prior notice if SARS is satisfied that giving notice would prejudice the collection of the tax.

SARS may withdraw the filed certified statement by sending a notice of withdrawal to the relevant clerk or registrar upon which the statement ceases to have effect.

SARS may subsequently file a new statement setting out tax included in a withdrawn statement.



## Tax debt temporary write off

As a general rule, it is the duty of SARS to assess and collect all tax debts and not to forgo any of these amounts. SARS may however deviate from the strictness and rigidity of the general rule if it would be to the best advantage of the State.

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. This decision to temporarily 'write off' an amount of tax debt does not absolve the 'debtor' from the liability for that tax debt.

The decision may be withdrawn at any time if the senior SARS official is satisfied that the tax debt is no longer uneconomical to pursue and

that the decision to temporarily 'write off' would jeopardise the general tax collection effort.

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.

The senior SARS official will consider the following when deciding whether to temporarily write off the tax debt:

- the amount of the tax debt;
- How long the tax debt has been outstanding;
- 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';
- 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;
- the financial position of the tax debtor, including that person's assets, liabilities, cash flow and possible future income streams; and
- any other information available with regard to the recoverability of the tax debt.



*The superior  
man understands  
what is right;  
the inferior man  
understands what  
will sell.*

**Confucius**

## Permanent write off of tax debts

A senior SARS official may authorize the permanent write off of tax debt:

- to the extent satisfied that the tax debt is irrecoverable at law ; or
- if the debt is 'compromised'

### **Irrecoverable @ law**

A tax debt is irrecoverable at law if:

- it cannot be recovered by action and judgment of a court; or
- 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
- 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.

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

### **Compromise**

A senior SARS official may authorize the 'compromise' of a portion of a tax debt upon request by a tax debtor, if—

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

To 'compromise' a tax debt, a senior SARS official and the 'debtor' must sign an agreement setting out:

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

SARS is not bound by a compromise if the debtor fails to disclose a material fact or supplies materially incorrect information, fails to comply with a provision or condition contained in the agreement or is liquidated before fully complying with the conditions of the agreement.





*The results of  
quality work*

*last longer than*

*the shock of*

*high prices.*

**Author  
Unknown**



## Applying for a compromise

A request by a tax debtor for a tax debt to be compromised must be signed by the debtor and be supported by a detailed statement setting out:

- the 'assets' and liabilities of the 'debtor' reflecting their current fair market value;
- the amounts received by or accrued to, and expenditure incurred by, the debtor during the 12 months immediately preceding the request;
- 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;
- the debtor's future interests in any assets, whether certain or contingent or subject to the exercise of a discretionary power by another person;
- 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;
- details of any connected person in relation to that 'debtor';
- 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

- the debtor's reasons for seeking a compromise.

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.

The debtor must also warrant that the information provided in the application is accurate and complete.

A senior SARS official may request further information to supplement the application.

## Fixed amount penalties

SARS will impose a where there was non-compliance by a person, i.e. failure to comply with an obligation that is imposed by a Tax Act and is listed in a public notice issued by the Commissioner, but excludes:

- the failure to pay tax subject to a percentage based penalty ;
- non-compliance subject to an understatement penalty.

The amount of the 'penalty' 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:

- 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

- 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.

Assessed loss or taxable income for 'preceeding year'	Monthly penalty
Assessed loss	R 250
R0 - R250 000	R 250
R250 001 - R 500 000	R 500
R 500 001 - R 1 000 000	R 1,000
R 1 000 001 - R 5 000 000	R 2,000
R 5 000 001 - R 10 000 000	R 4,000
R 10 000 001 - R 50 000 000	R 8,000
Above R 50 000 000	R 16,000

## Imposing penalties

SARS must give notice of penalty assessments made. The notice must include the following:

- Description of the non-compliance in respect of which the 'penalty' is assessed and its duration;
- the amount of the 'penalty' imposed;
- the date for paying the 'penalty';
- the automatic increase of the 'penalty'; and
- a summary of procedures

for requesting remittance of the 'penalty'.

A person who is aggrieved by a 'penalty assessment' notice may, (on or before the date for payment), request SARS to remit the penalty.

The remittance request must include:

a description of the circumstances which prevented the person from complying with the relevant tax Act ; and the supporting documents and information as may be required by SARS.

SARS may not take collection steps relating to the 'penalty' amount from the day that SARS receives the remittance request to 21 business days after notice has been given of SARS' decision, unless SARS has a reasonable belief that there is:

- a risk that the person will sell his assets; or
- fraud involved in the origin of the non-compliance or the grounds for remittance.



## Remittance of penalties—exceptional circumstances

SARS must, upon receipt of a remittance request, remit the penalty if the person was incapable of complying with the relevant obligation under the relevant tax Act.

These are limited to

- a natural or human-made disaster;
- a civil disturbance or disruption in services;
- a serious illness or accident;
- serious emotional or mental distress;

- any of the following acts by SARS:

- ◊ a capturing error;
- ◊ a processing delay;
- ◊ provision of incorrect information in an official publication or media release issued by the Commissioner;
- ◊ delay in providing information to any person; or
- ◊ failure by SARS to provide sufficient time for an adequate response to a request for information by SARS;

- serious financial hardship, such as—

- ◊ Individual: lack of basic living requirements; or
- ◊ Business: an immediate danger that the continuity of business operations and the continued employment of its employees are jeopardized; or

- any other circumstance of similar seriousness.

A decision by SARS not to remit a 'penalty' in whole or in part is subject to objection and appeal.

*None of us is  
as smart as all  
of us.*

**Japanese  
proverb**

## Remittance of penalties—registration & nominal non-compliance

If a 'penalty' is imposed on a person for a failure to register, SARS may remit the penalty if

- the failure to register was discovered because the person approached SARS voluntarily; and

- the person has filed all returns required under a Tax Act.

SARS may also remit the penalty if it was imposed in respect of:

- a 'first incidence' of the non-compliance ; or

- Other incidences of 'non-compliance' if the duration of the non-compliance is less than five business days.

In these instances, SARS may remit the penalty up to an amount of R2 000 if the non-compliance in issue has been remedied.





## Understatement penalty

If the taxpayer understated the amount of tax, he is liable to pay (in addition to the 'tax' payable for the relevant tax period) an understatement penalty.

It is calculated by applying the highest applicable understatement penalty percentage (see table below) to the shortfall.

### Shortfall

The shortfall is the sum of:

- 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;
- 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
- 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 specified tax rate.

The shortfall must be reduced by the amount of any duplication between the above bullets.

### Tax rate

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.

*Often he who  
does too much  
does too little.*

**Italian proverb**

1 Item	2 Behaviour	3 Standard case	4 If obstructive, or if it is a 'repeat case'	5 Voluntary disclosure after notification of audit	6 Voluntary disclosure before notification of audit
(i)	'Substantial understatement'	25%	50%	5%	0%
(ii)	Reasonable care not taken in completing return	50%	75%	25%	0%
(iii)	No reasonable grounds for 'tax position' taken	75%	100%	35%	0%
(iv)	Gross negligence	100%	125%	50%	5%
(v)	Intentional tax evasion	150%	200%	75%	10%

## Voluntary disclosure

The previous Voluntary Disclosure Programme ended in October 2011. TAB will however introduce a permanent VDP regime to encourage tax compliance. This regime will be very similar to the previous VDP.

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

- a pending audit or investigation into the affairs of the

person seeking relief; or

- an audit or investigation that has commenced, but has not yet been concluded.

### Nature of relief

If the applicant submits a valid voluntary disclosure and the conclusions are documented in a valid voluntary disclosure agreement, SARS will:

- not pursue criminal prosecution for a statutory offence under a tax Act arising from the 'default' or a

related common law offence;

- grant the relief in respect of any understatement penalty to the extent referred to in column 5 or 6 of the understatement penalty percentage and
- grant 100 per cent relief in respect of an administrative non-compliance penalty excluding a penalty imposed for the late submission of a return or a late payment of tax.



## Registration of tax practitioners

All tax practitioners must register with SARS within 30 days of becoming a tax practitioner. This would include every natural person who

- provides advice to another person with respect to the application of a tax Act; or
- completes or assists in completing a document to be submitted to SARS by another person in terms of a tax Act.

A person providing the following services is not required to

register:

- provides the advice or completes or assists in completing a document solely for no consideration ;
- 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;
- provides the advice solely as an incidental or subordinate part of providing goods or other services to another person;
- provides the advice or completes or assists in completing a document solely 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
- provides the advice or completes or assists in completing a document under the **direct supervision** of a person who is registered as a tax practitioner.



## What is happening at SARS?

### Guides

- Comprehensive Guide to Capital Gains Tax (Issue 4)

### Rulings

- BPR 057 was replaced in order to highlight certain facts and to introduce a clarifying note (point 7). (No factual information has been amended)
- No Rulings list was updated

### Acts

- Taxation Laws Second Amendment Act, Act 25 of 2011
- Tax Administration Bill

### Directives

- Tax directive on calculation of value of liabilities according to section 29A of the Income Tax Act

### Court cases

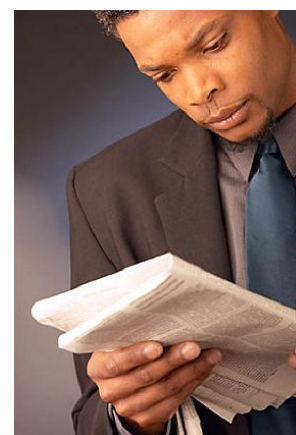
- SCA Judgment – CSARS v South African Custodial Services (Pty) Ltd (131/10) [2011] ZASCA 233 – finality of assessment in terms of s.79A; deductibility of cost of building prison in terms of s.11(a) – (bA)
- Tax Court Judgment relating to set off of mining income
- High Court Judgment re section 74A and section 74B which may be invoked to obtain information in certain circumstances

### Documents for comment

- Proposed amendments of Tax Court Rules—31 January 2012
- Draft Rules and Forms relating to travelers, foreign and agent registration—16 January 2012
- Discussion working document—Proposed VAT apportionment methodology for Category B Municipalities—31 January 2012

*People begin to  
become  
successful the  
minute they  
decide to be.*

**Harvey  
Mackay**



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**MISSION STATEMENT**

It is the aim of the Institute of Accounting and Commerce to promote actively the effective utilisation and development of qualified manpower through the achievement of the highest standards of professional competence and ethical conduct amongst its members.

## January 2012

S	M	T	W	T	F	S
1	2	3	4	5	6	7
8	9 IAC office opens	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				



## February 2012

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22 Budget Speech	23	24	25
26	27	28	29			