

## Media Releases 2009

### Release of the Draft Tax Administration Bill for Public Comment

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**Pretoria, 30 October 2009** – The South African Revenue Service (SARS) today releases the draft Tax Administration Bill (the TAB) for a first round of public comment by 26 February 2010.

#### Background

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

#### Objects of the TAB

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

The drafting of the TAB focused on reviewing the current administrative provisions of the tax Acts administered by SARS, excluding the Customs & Excise Act, 1964, and harmonising these provisions across taxes as far as possible. The drafting of the TAB was also informed by a comparative evaluation of the tax administration laws of other countries and involved the assistance of international tax experts and local constitutional experts.

#### Presentation of the TAB

The layout of the TAB largely follows the administrative “life cycle” of a taxpayer. The TAB begins with general provisions and registration, runs through assessment and recovery of tax, and concludes with the reporting of unprofessional conduct and transitional provisions. Measures to assist in understanding the TAB include shorter sections, shorter sub-sections and the use of less formalistic language.

#### Noteworthy changes in the TAB

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 mentioned above. Some examples of the changes are as follows.

- The introduction of a framework for the single registration of taxpayers for all tax types.
- The extension of third party information reporting for purposes of, amongst others, the pre-population of returns.
- The reservation of more serious powers for senior SARS officials only.
- The extension of SARS's information gathering powers, including interviews at SARS offices and the gathering of information in respect of identified classes of taxpayers.
- The provision of monthly audit reports to a taxpayer undergoing a field audit and notice of final conclusion of the audit, including a letter of findings a taxpayer may respond to before an assessment is issued.
- The separation of audits and criminal investigations by SARS to ensure that the rights of taxpayers who are suspects in a criminal investigation are given effect to.
- The power 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.
- The insertion of a requirement that an assessment that is not issued in accordance with a return be accompanied by a statement of the grounds for the assessment
- The insertion of a number of provisions to deal with the securing of the collection of taxes that would otherwise be in jeopardy due to the actions of a taxpayer, including the right to issue an assessment in advance of the date it would normally be issued and to seize a taxpayer's assets for up to 24 hours while a court is approached to prevent the dissipation of the assets.

- The publication of all judgments of the Tax Court in a form that does not reveal the taxpayer's identity, whether marked reportable or not, to ensure that taxpayers and SARS are placed on an equal footing with respect to knowledge of these persuasive judgments.
- The creation of a framework to support the modernisation of SARS's accounting system, within which—
  - a single taxpayer account with a "rolling balance" may be created,
  - instalment payment arrangements may be approved,
  - new payment allocation rules may be applied, for example the application of the First-In-First-Out rule, and
  - interest provisions may be aligned across taxes and interest due or payable may be calculated on a compound basis.
- The replacement of the discretionary system of imposing additional tax of up to 200% to penalise non-compliance with a system imposing penalties based on specific behaviours and factors. The onus to prove the grounds for the imposition of additional tax is placed on SARS
- The modification of the onus on a taxpayer, whose return reflects a false statement, in a criminal prosecution, so that the taxpayer now only has the onus to show that he or she had reasonable grounds for believing the statement to be true.

### **Explanatory notes**

In order to assist commentators working through the TAB, a document reflecting the current Income Tax and VAT provisions on which many clauses of the TAB are based will be published together with the TAB. A brief explanatory memorandum highlighting significant changes will also be published.

### **Commentary period**

The TAB will be published on the [Draft Tax Administration Bill for Public Comment](#) page.

Public comments can be submitted to the following addresses until the deadline of **26 February 2010**:

E-mail: [policycomments@sars.gov.za](mailto:policycomments@sars.gov.za) , with the subject "Draft Tax Administration Bill"

Mail: Legal & Policy Division – Draft Tax Administration Bill, SARS, P O Box 402, Pretoria, 0001

**ENDS**