

## **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 unnecessary 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 when 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 **26<sup>th</sup> 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 1<sup>st</sup> 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:<br>Income Tax Act | Current Provisions:<br>Value-Added Tax Act                                      |
|------------------------------|--------------------|---------------------------------------|---|
| <b>CHAPTER 1 DEFINITIONS</b> |                    |                                       |   |
| 1.                           | <b>Definitions</b> | “administration of a tax act”         | Definition in section 74(1)<br><br><b>New</b>                                   |
|                              |                    | “additional assessment”               | <b>New</b>  |
|                              |                    | “assessment”                          | Definition in section 1<br><br><b>New</b><br>No definition – see section 31     |
|                              |                    | “biometrical information”             | <b>New</b><br>1 <sup>st</sup> phase TL2AA,09: Included in section 23(2) VAT Act |
|                              |                    | “Commissioner”                        | Definition in section 1   |
|                              |                    | “company”                             | Definition in section 1   |
|                              |                    | “Customs and Excise Act”              | <b>New</b><br>Definition in section 1   |
|                              |                    | “day”                                 | <b>New</b><br>“Business day” is defined in section 1                            |
|                              |                    | “document”                            | <b>New</b><br>Previously only defined fpo section 74(1)                         |
|                              |                    | “due date”                            | <b>New</b><br>Prev. used in definition of “assessment” section 1                |
|                              |                    | “Income Tax Act”                      | <b>New</b><br>Specific reference in TAB   |
|                              |                    | “information”                         | Definition in s74(1)  |
|                              |                    | “judge”                               | Definition in s74(1)  |
|                              |                    | “Minister”                            | Definition in section 1   |
|                              |                    | “prescribed rate”                     | Definition in section 1   |
|                              |                    | “premises”                            | Definition in s74(1)  |
|                              |                    | “presiding officer”                   | <b>New</b><br>Indirectly defined in section 74C(2) & (3)                        |
|                              |                    | “relevant material”                   | <b>New</b>  |
|                              |                    | “reportable arrangement”              | section 80M   |
|                              |                    |                                       | <b>New</b>  |

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

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

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

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

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

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

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

| C.   | TAB Header  | Current Provisions:<br>Income Tax Act                            | Current Provisions:<br>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<br>[TL2AA, 2009: Changes to be effected in this Bill] | Section 36                                 |
| <b>Part C: Taxpayer Account &amp; Allocation</b>         |   |  |  |
| 159  | Taxpayer account  | Section 89ter  | New  |
| 160  | Allocation of payments  | New<br>Part section 89ter  | New<br>Part section 40(4)                  |
| <b>Part D: Deferral of Payment</b>                       |   |  |  |
| 161  | Instalment payment agreement                                  | New<br>Part section 89(1) – ‘payment in instalments’             | New  |
| 162  | Criteria for instalment payment agreement                     | New  | New  |
| <b>CHAPTER 11: RECOVERY OF TAX</b>                       |   |  |  |
| <b>Part A: General</b>                                   |   |  |  |
| 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<br>Previously dealt with in Prescription Act                 | New  |
| <b>Part B: Judgment Procedure</b>                        |   |  |  |
| 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 reinstatement of proceedings      | Section 91(1)  | Section 40(2)(b)                           |
| <b>Part C: Sequestration &amp; Liquidation</b>           |   |  |  |
| 171  | Institution of proceedings                                    | Section 91(1)  | Section 40(2)(c)                           |
| 172  | Jurisdiction of court   | New  | New  |
| <b>Part D: Collection of Tax Debt From Third Parties</b> |   |  |  |
| 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:<br>Income Tax Act | Current Provisions:<br>Value-Added Tax Act  |
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| 175  | Person assisting in dissipation of assets     | New                                   | New   |
| <b>Part E: Assisting Foreign Governments</b>           |   |                                       |   |
| 176  | Tax recovery on behalf of foreign governments | Section 93                            | Section 75(1)   |
| <b>Part F: Remedies With Respect to Foreign Assets</b> |   |                                       |   |
| 177  | Foreign assets of taxpayer                    | New                                   | New   |
| <b>CHAPTER 12: INTEREST</b>                            |   |                                       |   |
| 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 89 <i>quin</i>                | Section 45A   |
| <b>CHAPTER 13: REFUNDS</b>                             |   |                                       |   |
| 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)   |
| <b>CHAPTER 14: WRITE OFF OR WAIVER OF TAX DEBTS</b>    |   |                                       |   |
| <b>Part A: General</b>                                 |   |                                       |   |
| 183  | Definitions                                   | Section 91A & regulations             | No provision but section 91A ITA applies to VAT   |
| 184  | Purpose                                       | "                                     | "   |
| 185  | Application of Chapter                        | "                                     | "   |
| <b>Part B: Temporary write-off of tax debt</b>         |   |                                       |   |
| 186  | Temporary write off of tax debt               | "                                     | "   |
| 187  | Tax debts uneconomical to pursue              | "                                     | "   |
| <b>Part C: Write-off of tax debt</b>                   |   |                                       |   |
| 188  | Write off of tax debt                         | "                                     | "   |
| 189  | Tax debts irrecoverable at law                | "                                     | "   |
| 190  | Procedure for writing off a tax debt          | "                                     | "   |
| <b>Part D: Compromise of Tax Debt</b>                  |   |                                       |   |
| 191  | Compromise of tax debt                        | "                                     | "   |
| 192  | Request by debtor for compromise              | "                                     | "   |

| C.  | TAB Header   | Current Provisions:<br>Income Tax Act | Current Provisions:<br>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   | "                                     | "   |
| <b>Part E: Records &amp; Reporting</b>      |  |                                       |   |
| 197   | Register of tax debts written off or compromised                       | "                                     | "   |
| 198   | Reporting by Commissioner of tax debts written-off or compromised      | "                                     | "   |
| <b>CHAPTER 15: ADMINISTRATIVE PENALTIES</b> |  |                                       |   |
| <b>Part A: General</b>                      |  |                                       |   |
| 199   | Definitions  | Section 75B regulations               | New   |
| 200   | Purpose  | "                                     | New   |
| <b>Part B: Fixed Amount Penalties</b>       |  |                                       |   |
| 201   | General penalty for non-compliance                                     | "                                     | New   |
| 202   | Fixed amount penalty table   | "                                     | New   |
| 203   | Reportable arrangement   | New<br>Based on section 80S           | New   |
| <b>Part C: Percentage Based Penalty</b>     |  |                                       |   |
| 204   | Percentage based penalty   | Section 75B regulations               | Sections 39(1)(a), 39(2)(a), 39(4)(a), 39(5)(a), 39(6)(a) |
| <b>Part D: Procedure</b>                    |  |                                       |   |
| 205   | Procedures for imposing penalty  | Section 75B regulations               | New   |
| 206   | Procedure to request remittance  | "                                     | New   |
| <b>Part E: Remedies</b>                     |  |                                       |   |
| 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)                                      |
| <b>CHAPTER 16: ADDITIONAL TAX</b>           |  |                                       |   |
| 212   | Definitions  | Section 76                            | Section 60  |

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

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