

Draft Tax Administration Bill (TAB)

**23 November 2010
Informal Briefing of
Committees On Finance**

Overview by Commissioner: SARS

Key Policy Objectives

IMPORTANCE OF EFFECTIVE REVENUE COLLECTION

- Optimum revenue collection is essential to meet Government's socio-economic priorities, such as:
 - Health Care
 - Education
 - Infrastructure
 - Employment
 - Requirements of growth path
- SARS is the institution created to effect optimum revenue collection

SARS' MANDATE

- SARS' objectives are the efficient and effective:
 - Collection of revenue, and
 - Control over the import, export, manufacture, movement, storage or use of certain goods
- To achieve its objectives SARS must secure the efficient and effective, and widest possible, enforcement of national Tax and Customs legislation

TAX LEGISLATION

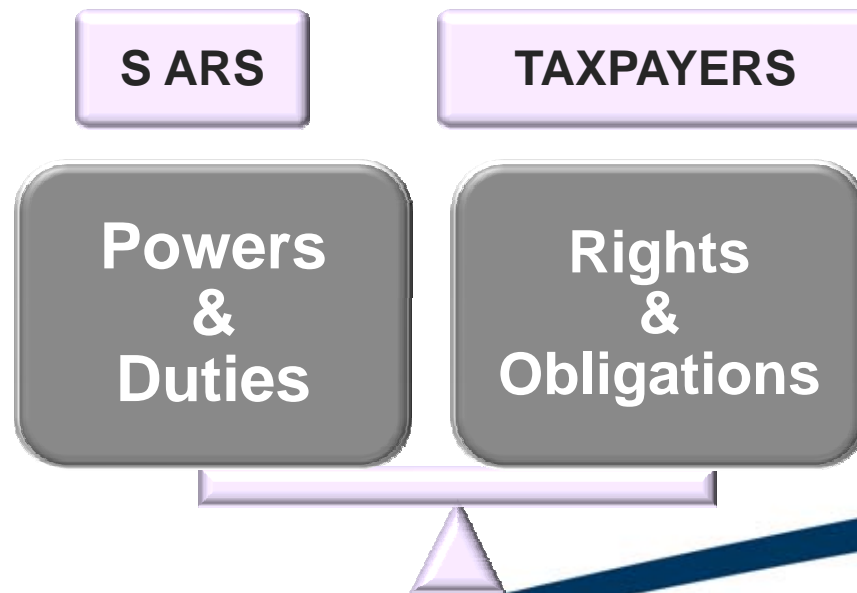
- Tax legislation comprises two aspects:
 - Tax liability provisions
 - Tax administration provisions
- TAB only deals with tax administration
- Modern framework is required for:
 - Administration of the collection of revenue
 - Consolidating duplicate & aligning disparate requirements in existing law

WHY A TAX ADMINISTRATION ACT?

- Rationale for tax administrative review:
 - Adapting to fast developing world
 - Lowering Cost of Tax Administration
- TAB incorporates into one piece of legislation:
 - Certain generic administrative provisions
 - Currently duplicated in the different tax Acts
- Simplification of provisions > enhance clarity of law

BALANCE BETWEEN SARS' POWERS & TAXPAYER RIGHTS

TAB seeks to achieve a **balance** between powers & duties of SARS *and* rights & obligations of taxpayers thereby enhancing **equity** and **fairness** of tax administration



REWRITE OF INCOME TAX ACT

- TAB is **preliminary step** to the **re-write** of the Income Tax Act & assists in re-write by dividing the work into **more manageable parts** – administrative part comprises about 25% of Act



MODERNISATION PLATFORM

- The TAB seeks to provide a foundation for **further modernisation** in the context of:



INTENDED IMPACT OF TAB

- A **simplified** and **harmonised** TAB should benefit both taxpayers & SARS
- **Compliance burden** on taxpayers should reduce as:
 - Taxpayers will have only one administration Act
 - Act sets out all duties & rights with regard to all tax laws in simplified form
- **Administrative burden** on SARS should reduce as:
 - Unnecessary & duplicate provisions simplified
 - Inefficient or ineffective provisions removed

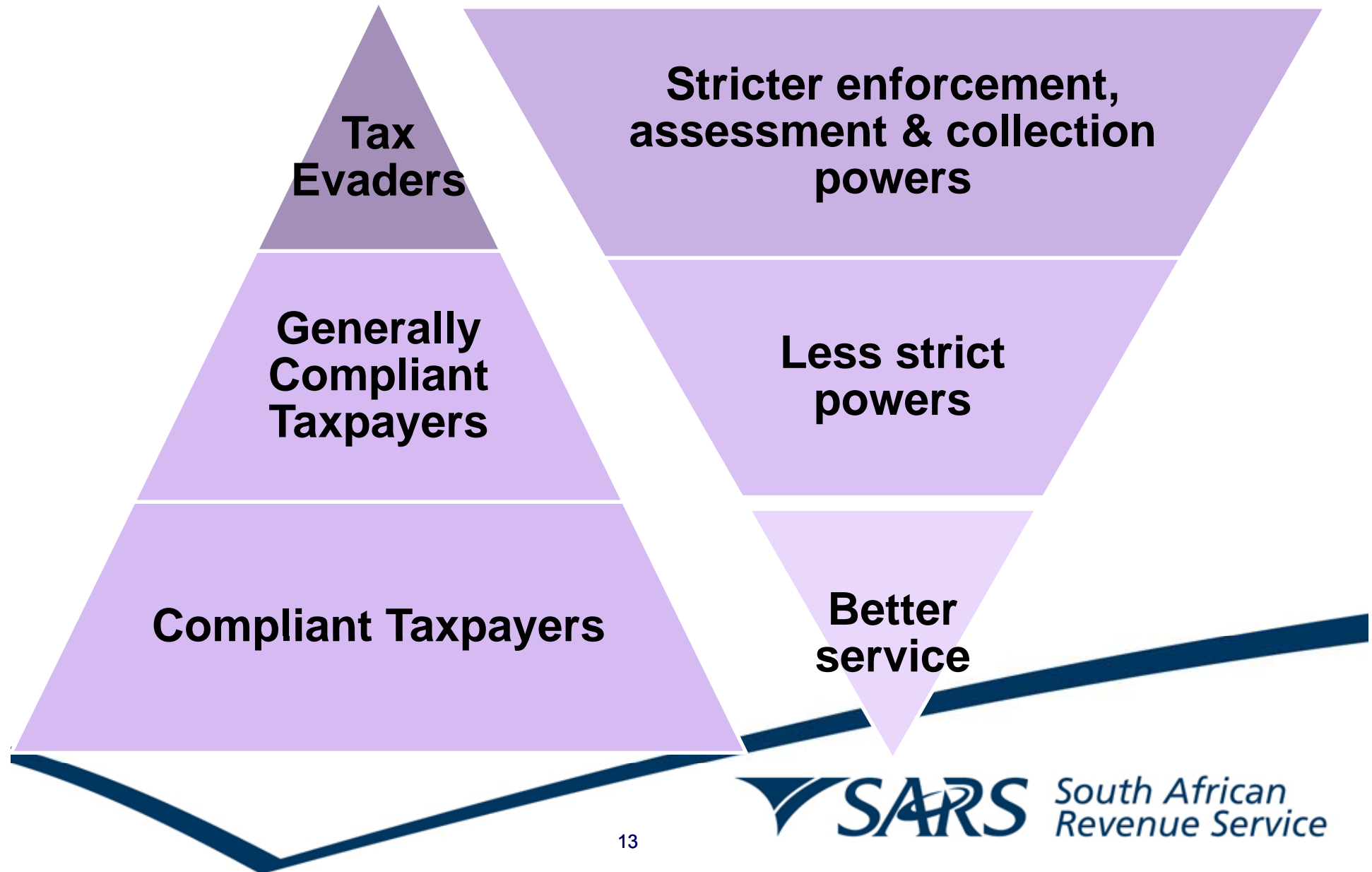
TAB PROCESS TO DATE

- SARS was **assisted** during drafting by:
 - International tax experts from IM F
 - Local constitutional experts
 - Internal SARS stakeholders & National Treasury
- Closed **workshop** with **external tax experts** May'09
- **First draft** for public comment: period 29 Oct'09 to 28 Feb'10 & external workshop on First Draft in March'10
- **Constitutional review** by external constitutional experts & **pre-certification** by State Law Advisers
- Workshop with **Economic Sectors Cluster** in Aug'10
- **Cabinet** approval for introduction in Parliament 1 Sep'10
- **Second draft** for public comment: period 29 Oct'10 to 15 Dec'10

TAX COMPLIANCE

- The TAB recognises that:
 - Majority of taxpayers are compliant & want a more modern & responsive revenue administration
 - There is a minority who seek to evade tax or defraud the government
- Tax evasion undermines compliant taxpayers' morale and place an unfair burden on them if not countered
- SARS must actively pursue tax evaders to maintain confidence in integrity of tax system
- Stricter enforcement powers therefore required to target increasingly sophisticated tax evaders

TARGETED POWERS UNDER TAB



CONSTITUTIONAL COMPLIANCE

- TAB designed with due regard of **constitutional rights** of taxpayers & **constitutional obligations** of SARS
- For example, to ensure consistent treatment and greater **equity & fairness**, certain discretionary powers linked to objective criteria
- Constitutionality of TAB reviewed by **external constitutional** experts
- TAB does not seek to re-codify basic rights of taxpayers as they apply in any event, e.g. **right to administrative justice**



INTERNATIONAL BENCHMARKING

- Drafting of TAB was informed by **international best practice** & a comparative evaluation of tax administration laws of other countries
- Countries evaluated have **practical experience** with tax administrative laws over long period
- **Countries** evaluated: Australia, Botswana, Canada, New Zealand, UK, USA

TAB ISSUES

- General reception of TAB positive
- However, during the extended consultative process mainly the following have triggered debate:
 1. Tax Ombud
 2. Secrecy disclosure extension
 3. Ambit of information gathering powers
 4. Search and seizure without warrant
 5. Collection powers extension
- Issues 3 – 5 will be discussed in SARS technical presentation

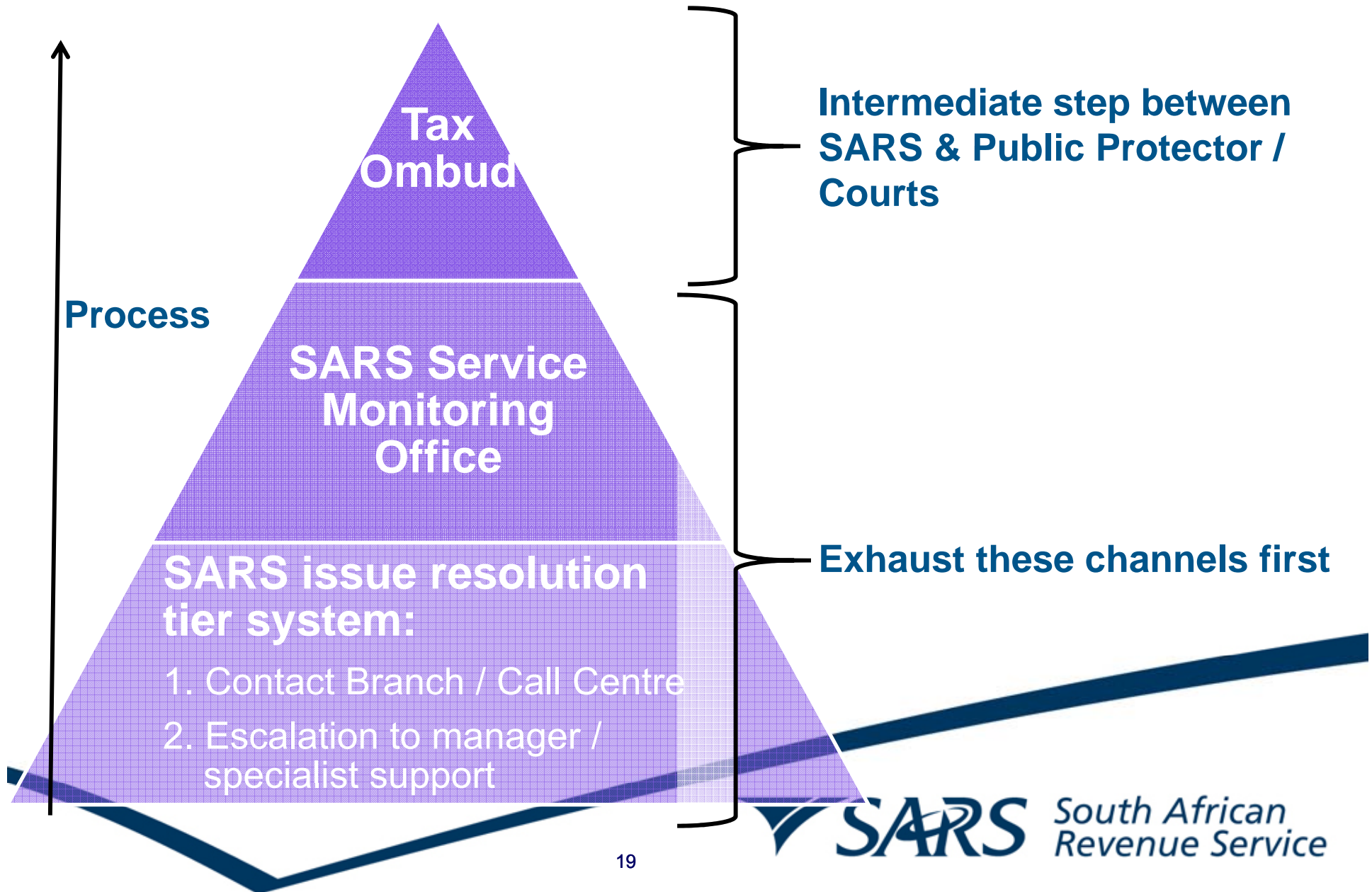
TAX OMBUD: BACKGROUND

- The creation of an independent and effective recourse for taxpayers is in line with the objective of TAB to balance powers & rights
- Background to creation of Tax Ombud:
 - Independent Tax Ombud recommended by Katz Commission
 - Joint Standing Committee on Finance's response was to suggest separate office in Public Protector
 - SARS Service Monitoring Office (SSMO) was intended as first step in improvement
- Creation of Tax Ombud was foreshadowed at launch of SSMO

TAX OMBUD: ROLE

- Tax Ombud is a mechanism to address **service failures** & failures to **respect taxpayer rights**
- Two kinds of disputes with SARS:
 - **Disagreement on interpretation of law:** normal dispute resolution steps i.e. Objection & Appeal> ADR> Tax Board> Tax Court> Normal Court system
 - **Disagreement on administration of law:** administrative issue resolution steps i.e. internal service issue resolution> SSMO> **Tax Ombud** > Public Protector> Normal Court system
- **Taxpayer protection & remedies:** specific in clauses dealing with SARS' powers PLUS general e.g. request to review decisions & Tax Ombud

ADMINISTRATIVE ISSUE RESOLUTION



TAX OMBUD: STRUCTURE & MANDATE

- **Appointment:** Minister of Finance & Minister determines Terms of Office
- **Staffing:** Seconded SARS officials
- **Funding:** SARS' Budget
- **Mandate:** Review complaints regarding service, procedural or administrative matters
- **Powers:** Review and mediatory
- **Reporting:** Directly to Minister of Finance

Secrecy & Disclosure to Financial Regulatory Agencies

SECRECY: WHEN DISCLOSURE SHOULD BE PERMITTED

- The current secrecy and disclosure provisions seek to balance two important but competing interests:
 - Taxpayers' constitutional right to privacy
 - Information needs of government to meet law enforcement & integrity provisions
- Disclosure justified where the public benefit outweighs concerns about individuals' privacy

DISCLOSURE TO FINANCIAL REGULATORS

- Several regulatory and enforcement agencies are subject to secrecy provisions that **limit the ability to share information**, hampering enforcement & the protection of public from e.g. financial exploitation
- TAB therefore proposes the **disclosure of information** to the following **regulatory agencies**:
- Financial Services Board (FSB)
 - South African Reserve Bank (SARB)
 - Financial Intelligence Centre (FIC)
 - National Credit Regulator (NCR)
- TAB only permits disclosure to the extent that the disclosure is:
 - **Necessary** for regulatory functions of agency
 - **Relevant & appropriate** to what the disclosure is intended to achieve

CONCLUSION

- “**Taxes are what we pay for civilised society**”
- Tax funds government goods and services which give concrete **meaning to constitutional rights**
- The **effectiveness of tax administration** impacts fundamentally on:
 - The public’s **confidence** in their tax system
 - The **socio-economic** contract between a citizen and the state
- TAB pursues tax fairness which is grounded in democracy that a tax system is intended to support

Thank you