Tax Administration Bill, 11 of 2011

21 September 2011

Response to Public Comment

Standing Committee on Finance

SARS South African Revenue Service

BACKGROUND

- Extensive consultative process over 2 years
  - Two draft Bills released for public comment
  - Workshops with internal stakeholders
  - Workshops with external stakeholders
  - Workshops with other government departments
- Cabinet approval September 2010
- Introduction of Bill in National Assembly June 2011
- SCOF formal briefing by SARS
- SCOF public hearings

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CONSULTATION PROCESS: SIGNIFICANT CHANGES

- Significant changes following public comments:
  - Introduction of Tax Ombud
  - Removal of advance notice of leaving South Africa
  - Limitation of information request to available records
  - Reasonable specificity limitation on information requests
  - Protection of legal professional privilege during seizure
  - Right to claim damages arising from search & seizure
  - Reportable arrangement failure no longer an offence
  - Estimated assessments – burden of proof on SARS
  - Interest 'neutrality' & remittance of interest
  - Security for 'audited' refund
  - Permanent VDP

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PUBLIC HEARINGS : AMENDMENTS NOT RECOMMENDED

- Legal professional privilege
  - No regulation by law
  - Concerns raised in international reviews
- Search without a warrant
  - Only used in narrow circumstances
  - Stricter than 17 other pieces of legislation
  - Constitutional review
  - Comparative support

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PUBLIC HEARINGS: SIGNIFICANT AMENDMENTS RECOMMENDED (1)

Recommended amendments to **Tax Ombud** proposal in response to comments.

- Tax Ombud staff selection driven by Tax Ombud
- Tax Ombud annual report to include systemic or emerging issues
- Tax Ombud annual report to be tabled in Parliament by the Minister of Finance

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PUBLIC HEARINGS: SIGNIFICANT AMENDMENTS RECOMMENDED (2)

- Extension of retention of records during audit
  - Only applies where taxpayer has been notified or is aware of audit
- Limited inspections
  - Retained but further limited to identified business premises
- Interview at SARS office
  - Limited to taxpayer's own affairs
  - Taxpayer's right to decline interview if travel distance is excessive

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PUBLIC HEARINGS: SIGNIFICANT AMENDMENTS RECOMMENDED (3)

- Jeopardy assessments
  - Commissioner's approval required
  - Burden of proof on SARS that making of jeopardy assessment is reasonable
- Third party liability
  - Prior opportunity for representations unless this would place tax in jeopardy
  - Clarify that third party has same rights as original taxpayer would have
- Penalties – % based penalty remittance
- Understatement penalty

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PUBLIC HEARINGS: SIGNIFICANT AMENDMENTS RECOMMENDED (4)

- Percentage based penalties
  - Removal of cap on remittance for first or minor non-compliance
- Substantial understatement penalty
  - Ensure penalty is only applicable to largest taxpayers, only applies if understatement is larger than the greater of R1 million or 5% of the tax properly chargeable
  - Permit waiver of penalty if there has been full disclosure and taxpayer holds well founded opinion that arrangement is more likely than not to be upheld

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Thank You

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