

CHAPTER 9

TAX ADMINISTRATION

CONTENTS

9.1	Introduction	202
9.2	Arrangement of chapters and sections of the TAA	203
9.3	Definitions	203
9.4	General administrative provisions	204
9.5	Registration of taxpayers	205
9.6	E-Filing	205
9.7	Returns and records	205
9.8	Assessments	206
9.9	Dispute resolution	207
9.9.1	Burden or onus of proof	207
9.9.2	Objection	207
9.9.3	Appeal against disallowed objection	208
9.9.4	Alternative dispute resolution	209
9.9.5	Settlement of disputes	210
9.10	Tax liability and payment	210
9.11	Recovery of tax	210
9.12	Interest	211
9.13	Refunds	211
9.14	Administrative non-compliance penalties	211
9.15	Penalties	212
9.16	Reporting of unprofessional conduct	212
9.17	General provisions	212

9.1 INTRODUCTION

The Tax Administration Act (No. 28 of 2011) was promulgated on 4 July 2012. It came into effect on 1 October 2012 (except for certain provisions relating to interest on tax).

The Tax Administration Act incorporates into one piece of legislation certain tax administration provisions that are generic to all tax Acts and administrative provisions currently duplicated in the different tax Acts.

The Tax Administration Act has 272 sections, which are divided into 20 chapters. The most important aspects of the TAA as they pertain to tax compliance at a fundamental level are covered in this chapter.

The TAA applies to a variety of tax Acts. For the purposes of the topics covered in this book, the significant Acts include the Income Tax Act and the VAT Act. However, it is important to note that any administrative provision in a *particular* Act takes preference over a similar provision in the TAA.

Learning objectives

At the end of this chapter, you should have an overview of:

- How the Tax Administration Act interacts with the various tax Acts
- The basics of tax administration insofar as it relates to routine tax compliance

9.2 ARRANGEMENT OF CHAPTERS AND SECTIONS OF THE TAA

Chapter 1 – section 1 – Definitions

Chapter 2 – sections 2 to 21 – General administration provisions

Chapter 3 – sections 22 to 24 – Registration of taxpayers

Chapter 4 – sections 25 to 39 – Returns and records

Chapter 5 – sections 40 to 66 - Information gathering

Chapter 6 – sections 67 to 74 – Confidentiality of information

Chapter 7 – sections 75 to 90 – Advance rulings

Chapter 8 – sections 91 to 100 – Assessments

Chapter 9 – sections 101 to 150 – Dispute resolution

Chapter 10 – sections 151 to 168 – Tax liability and payment

Chapter 11 – sections 169 to 186 – Recovery of tax

Chapter 12 – Sections 187 to 189 – Interest [certain provisions have not yet come into effect]

Chapter 13 – Sections 190 to 191 – Refunds

Chapter 14 – Sections 192 to 207 – Write off or compromise of tax debts

Chapter 15 – Sections 208 to 220 – Administrative non-compliance penalties

Chapter 16 – Sections 221 to 233 – Understatement penalty

Chapter 17 – Sections 234 to 238 – Criminal offences

Chapter 18 – Sections 239 to 243 – Reporting of unprofessional conduct

Chapter 19 – Sections 244 to 257 – General provisions

Chapter 20 – Sections 258 to 272 – Transitional provisions

Not all these Act chapters are considered in this book.

9.3 DEFINITIONS

Section 1 of the TAA sets out a number of definitions which apply to the Act as a whole. Important definitions are dealt with in the various discussions to follow, but the following are useful to note at this stage:

An ‘**assessment**’ is the *determination* of the *amount* of a tax liability or refund, either by way of

- Self-assessment (for example, VAT, provisional tax, dividends tax, stamp duty or transfer duty)
- An assessment by SARS (for example, income tax or estate duty)

A self-assessment is any return in which the amount of tax due appears on the return. In a VAT return, the vendor calculates the VAT due and this is shown on the return. In the case of an income tax return the amount of tax due is not shown on the return. The income tax is calculated by SARS (either automatically by the SARS computer when a return is submitted by e-filing, or manually by means of a determination made by a SARS official), and the tax due is shown on a separate assessment. In the unlikely event that a return is not required, a ‘self-assessment’ is the payment of the tax.

‘**Business day**’ is any day other than a Saturday, Sunday or public holiday, and for the purposes of ‘dispute resolution’ it also excludes the days from 16 December to 15 January of the next year.

‘**Company**’ bears the meaning per the Income Tax Act.

‘**Date of assessment**’ – for a self-assessment it is the date the return is submitted

– for a SARS assessment it is the date of the issue of the notice of assessment

(In the unlikely event that a return is not required, the date of assessment is the date of last payment of the tax for the tax period, or an ‘effective date’ set out in section 187.)

‘**Return**’ is a form, declaration, document or other manner of submitting information to SARS. It either incorporates a self-assessment or is the basis on which a SARS assessment is made.

‘**SARS official**’ means—

- (a) the Commissioner,
- (b) an employee of SARS; or
- (c) a person contracted by SARS for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner.

Persons from other organs of State whose services are obtained by SARS are also included in the definition of ‘SARS official’.

A ‘senior SARS official’ is a person who has specific authority in writing from the Commissioner for specific powers and duties, or a person occupying a post designated by the Commissioner for a certain purpose.

A ‘**shareholder**’ is a person who (or which) holds a beneficial interest in a share in a company as defined in the Income Tax Act.

A ‘**tax period**’ is as defined in the particular tax Act for that tax.

A ‘**thing**’ is a corporeal (tangible) or incorporeal (intangible) thing. A table and a chair are examples of corporeal things (things you can touch). A share in a company and a patent are examples of incorporeal things. Although you may be able to touch a share certificate (because it is a piece of paper) you cannot actually ‘touch’ a share. A share is a bundle of rights, which exists in the minds of people. The share certificate and various company documents and legislation record what these rights are.

9.4 GENERAL ADMINISTRATIVE PROVISIONS

Section 2 sets out the purpose of the TAA. Basically, it is to align the administration of the various tax Acts, set out the powers and duties of SARS, and prescribe the rights and obligations of the taxpayers.

Section 3 explains what is meant by administration of a tax Act. Basically, this is the obtaining, by SARS, of information that may affect a person’s tax liability, ensuring that taxpayers comply with the various tax Acts, determining the person’s liability for tax, collecting that tax, and investigating any tax offences.

Section 4 sets out the application of the TAA (to persons subject to any tax Act).

Section 5 sets out what is meant by a practice generally prevailing. A practice has to be set out in an official publication. A practice falls away if it is withdrawn or a court overturns it. An ‘official publication’ is defined in section 1 as:

- A binding general ruling
- An interpretation note
- A practice note
- A public notice issued by a senior SARS official, or by the Commissioner

Note that a SARS Guide is not a practice generally prevailing.

Section 6 sets out the powers and duties of SARS. It is much like section 3 of the Income Tax Act before its amendment by the TAA.

Section 7 states that a SARS official may not act where there is a conflict of interest which could give rise to bias.

Section 8 states that each SARS official must have an identity card. A SARS official need only have an identity card issued by SARS when exercising his or her powers or duties outside of SARS premises.

Section 9 deals with decisions or notices by a SARS official. These do not seem to be limited to discretions (as in the case of section 3 of the Income Tax Act prior to its amendment).

9.5 REGISTRATION OF TAXPAYERS

Section 22 deals with registration requirements in extremely brief terms. A person may be obliged to register under a tax Act, or be able to register voluntarily, in which case that person has to register in terms of the requirements of the TAA. The period of registration is set out in the relevant tax Act. If it is not, the person has 21 business days to register.

The TAA merely says that the person must register in the ‘prescribed form and manner’. The section says that if the person has not submitted all the prescribed information, the person is deemed not to have applied for registration.

Section 23 requires the taxpayer to provide SARS with any change in registration particulars, within 21 business days.

Section 24 states that SARS may allocate a tax reference number to a person who registers, and also to a person which SARS registers unilaterally. This reference number has to be used in all correspondence with SARS.

9.6 E-FILING

Registered taxpayers can submit their tax returns online at www.sarsefiling.co.za. In addition, the system can be used to make any tax declarations (such as a voluntary disclosure) as well as pay taxes which are due. Persons registered for e-filing have later deadlines for tax return submissions.

In addition to the above, taxpayers can make a request for a tax return to be corrected. They can object to incorrect assessments and appeal against a disallowance of an objection. They can also upload documents in response to a request by SARS, or as support for any objection or appeal against an assessment.

Taxpayers can access historical returns, notices of assessment, and a statement of account.

The website contains numerous forms and guides related to e-filing.

There are a wide variety of taxes and tools catered for through e-filing, including Income Tax and VAT.

9.7 RETURNS AND RECORDS

Section 25 states that a person who submits a return must do so in the prescribed form and manner. The date of submission is usually set in terms of the particular tax Act. If no date is set in the tax Act, the Commissioner will set a date by public notice. Any extension of time to submit a return does not affect the deadline for paying the tax.

A return must be signed by the taxpayer (or representative) and contain all the information required in terms of the tax Act (or by the Commissioner).

The fact that a person does not receive a return does not affect the obligation to make the return. Prior to the issue of an original assessment, SARS may require an amended return to be submitted, in order to correct an undisputed error.

Section 26 enables the Commissioner, by public notice, to require third parties to submit returns for a person with whom that party transacts with (like employers, banks, asset managers).

Section 27 enables SARS to require a person to submit further or more detailed returns regarding any matter for which a return is required or prescribed by a tax Act.

Section 28 enables SARS to require a person who *submits* financial statements or accounts prepared by *someone else* to submit a statement or certificate issued by *that other person* setting out the extent of the other person’s examination of the books and documents of the taxpayer, and whether or not the entries in the books and documents disclose the true nature of the underlying transactions, etc.

Section 29 sets out the duty to keep records. Generally, the particular tax Act sets out the requirements in this regard. The TAA sets out the period, however, for which these records must be kept.

- Where a person has submitted a return, he has to keep the relevant records for 5 years from the date of submission.
- Where a person is required to submit a return, but has not done so, no period is mentioned. Presumably, the records must be kept indefinitely.

- Where a person is not required to submit a return, but has engaged in an activity with a tax effect, that person must keep the relevant records for 5 years from the end of the relevant tax period.
- Section 1 defines 'tax period' for the various taxes. For income tax, a tax period is a year of assessment. For VAT, a tax period is generally the period in respect of which a VAT return is made.

Section 32 states that if SARS is conducting an audit or investigation, or an assessment or SARS decision is in dispute, the records pertinent to this have to be kept until the audit is completed or the assessment or decision finalised.

Section 30 states that records have to be kept in their original form or in a form specified by SARS (see 'electronic records' below).

Section 31 states that the records have to always be available for inspection by SARS.

Section 33 deals with translation.

Sections 34 to 39 deal with *Reportable Arrangements*. Basically, a reportable arrangement is one in terms of which a 'tax benefit' is or will be derived or is assumed to be derived by *any* participant, *and* – certain other factors are present, as specified in the section. The Commissioner for SARS (CSARS) can also list reportable arrangements by public notice.

- *Section 36* sets out the 'excluded arrangements'. CSARS can also exclude an arrangement by public notice. So far the Minister has excluded arrangements where the tax benefit does not exceed R1 million, or where the tax benefit is not one of the main benefits of the arrangement (or the main benefit).
- *Section 37* sets out the disclosure obligation. The promoter of the arrangement has the primary responsibility. *Section 38* sets out the information to be submitted. *Section 39* states that SARS must issue a 'reportable arrangement reference number' to each participant ('participant' is defined in section 34).

Electronic records

Government Notice No. 787 in *Gazette 35733*, effective 1 October 2012, sets out the electronic form in which records should be kept. An 'acceptable electronic form' is one which satisfies the standard contained in section 14 of the Electronic Communications and Transactions Act (ECT Act).

SARS has to be able to access the records readily, as well as be able to read and correctly analyse them. The electronic copy must be kept in the Republic (unless permission is obtained from a senior SARS official to keep them outside South Africa).

The taxpayer must also keep proper systems documentation.

Section 14 of the ECT Act is fairly vague. It states that the integrity of the record must pass assessment. This is done by considering whether the information has remained complete and unaltered, except for the addition of any endorsement and any change which arises in the normal course of communication, storage and display. One must also consider the purpose for which the information was generated and all other relevant circumstances.

9.8 ASSESSMENTS

Section 91 deals with original assessments. Where a return made by a taxpayer does not incorporate a determination of the amount of the tax liability, SARS has to make the original assessment. Where the tax return incorporates the taxpayer's determination of the amount of the tax liability (e.g. a VAT return), the submission of the return is an original 'self-assessment'.

If no return is required, the payment of the amount of tax due is an original assessment.

If the taxpayer is supposed to submit a return, but does not, SARS may make an estimated assessment under *section 95*.

If SARS issues a taxpayer with an estimated assessment, the taxpayer has 30 business days to request SARS to issue a reduced assessment or additional assessment, by submitting a complete and correct return. This is necessary if the taxpayer wants to object to or appeal against the estimated assessment. *Section 91(6)* states that SARS may extend the period for the submission of the correct return.

Section 92 deals with additional assessments, and *section 93* deals with reduced assessments.

Section 96 sets out what has to be in the notice of assessment. *Section 97* requires the recording of assessments. *Section 98* deals with the withdrawal of assessments. *Section 99* deals with the period of limitations for issuing assessments. In this regard there is a 3-year rule for SARS assessments, and a 5-year rule for self-assessments.

Section 100 deals with the finality of an assessment or decision. An assessment becomes final, for example, in the following cases (the list is not exhaustive):

- No objection has been made, or the objection has been withdrawn.
- After an objection is wholly or partly disallowed, no appeal is filed.
- The dispute has been settled.
- An appeal has been settled by the court and no further appeal is made.
- In certain cases SARS may make additional assessments, but not if an appeal has been determined by a higher court.

9.9 DISPUTE RESOLUTION

Sections 101 to 150 deal with dispute resolution. The rules are the same as existed prior to the implementation of the Tax Administration Act.

The TAA chapter sets out the rules for

- Burden of proof
- Objection and appeal
- The Tax Board (not covered in this book)
- The Tax Court (not covered in this book)
- Appeal to the High Court (not covered in this book)
- The settlement of a dispute

9.9.1 BURDEN OR ONUS OF PROOF

Section 102 states that the taxpayer bears the onus of showing that an amount is not taxable, etc. The only onus resting on SARS is to show that the amount of an estimated assessment under *section 95* is reasonable, or that an understatement penalty under Chapter 16 is based on correct facts. If the taxpayer objects to an assessment, the onus is on the taxpayer to show that the assessment is incorrect.

If the taxpayer appeals against the disallowance of his objection, the onus is on the taxpayer to show, in the tax court, that the tax treatment is incorrect and should be as he thinks is correct. When determining whether the onus has been discharged, the courts will assess the balance of probability with regard to the particular circumstances surrounding the item in question. This means that the taxpayer must show that his interpretation of both the facts and the applicable tax law is more probable than the Revenue Service's interpretation.

9.9.2 OBJECTION

Section 104 states that if a taxpayer is aggrieved by an assessment, he may object to the assessment. In addition to objecting to an assessment, a taxpayer may also object to a decision (made by a SARS official) with which he does not agree. The TAA and the various tax Acts set out which decisions may be objected to.

The objection must be in terms of the rules made under *section 103*. These rules are made by the Minister of Finance.

Currently, the rules provide for the following:

1. Prior to lodging an objection, the taxpayer may write to the Commissioner within 30 business days (as defined) after the date of the assessment and request written reasons for the assessment.
2. The Commissioner has 30 days after receiving the notice to show the taxpayer where he has already provided reasons, or if he has not he has 60 days to give such reasons in writing. If the

Commissioner needs more time due to exceptional circumstances or the complexity of the matter, he must advise the taxpayer that he needs a further 45 days.

3. The taxpayer has 30 days from the later of the date of assessment or the date the written reasons are given or indicated as having already been given (see point 2 above) to object to the assessment and deliver the objection to the Commissioner. Where a taxpayer has lodged a late objection and the Commissioner has not condoned it, the Commissioner's decision is subject to objection and appeal by the taxpayer. The period for the objection may not be extended beyond an extra 21 business days unless a senior SARS official is satisfied that exceptional circumstances existed which gave rise to the delay in lodging the objection. An objection (in any event) may not be extended where more than 3 years have lapsed from the date of the assessment or where the grounds are based wholly or mainly on any change in practice generally prevailing on the date of assessment.
4. The objection must be in writing, and must specify in *detail* the grounds upon which it is made (grounds of objection). The objection must be signed by the *taxpayer*.
5. The objection must be in the form prescribed by the Commissioner and must be delivered to the address specified in the assessment. A form 'ADR 1' is used for the objection. A separate ADR 1 form must be used for each year of assessment. The form contains details of the tax in dispute, any penalties, additional tax, and interest. Where the taxpayer submits his return using e-filing, the objection can also be submitted electronically. A different form is used in this case. It is found by clicking on 'Notice of Objection' on the work page.
6. Where the objection does not comply with the above requirements the Commissioner has 60 days to notify the taxpayer. If he does not do so, the objection will be deemed to be valid.
7. The Commissioner has 60 days to request the information, documents or things required to decide on the taxpayer's objection and the taxpayer then has 60 days to comply.
8. On timeous request by the taxpayer he may be given a further 30 days to comply.
9. The Commissioner has 90 days after the objection to decide on it (or 60 days after receiving the further information requested).
10. If the matter is complex, or the circumstances exceptional, the Commissioner may take a further 60 or 90 days (making 120 or 180 'business' days in total) to decide the matter, and must inform the taxpayer of the delay. This delay may also be because of the legal principle or the amount involved.
11. On receipt of an objection from a taxpayer the Commissioner may allow part or the entire objection, and issue a revised assessment, or he might disallow it (section 81(4)).
12. If he disallows the objection, he must notify the taxpayer. If the objection is disallowed in whole or in part, the taxpayer may appeal against that decision (section 83).

9.9.3 APPEAL AGAINST DISALLOWED OBJECTION

Section 106 provides that SARS may allow an objection, disallow it, or allow it only in part. The notice containing SARS's decision must state the basis for the decision, and set out a summary of the procedures for appeal. The taxpayer then has the right to note an appeal against the disallowance.

Currently, the rules state that the notice of appeal must be in writing and must be made within 30 days of the notice disallowing the objection. The notice of appeal is set out on a special form (ADR2), signed by the taxpayer or his representative (in certain circumstances), and contains details of the tax in dispute and the grounds of appeal.

If the notice is lodged late, the Commissioner may accept it if he is satisfied that –

- reasonable grounds exist for the delay (21 business days)
- exceptional circumstances exist (45 business days)

If the Commissioner does not grant an extension, his decision is subject to objection and appeal by the taxpayer. Even though the taxpayer appeals against a disallowance of his objection, he is still required to pay the tax due. If he wins his case in the Tax Court, the tax overpaid will be refunded to him with interest at the prescribed rate.

Where a taxpayer appeals against the disallowance of an objection, the matter can then be dealt with in one of three ways:

- (a) It goes to the Tax Board and possibly to the Tax Court after the Tax Board.
- (b) It goes directly to the Tax Court.
- (c) It goes into the Alternative Dispute Resolution (ADR) process and thereafter to the Tax Board or Tax Court if it is not resolved in the ADR process.

The steps to be followed after an objection is disallowed, and the taxpayer does not accept the disallowance, are as follows:

1. The notice of appeal must be made within 30 days, setting out the grounds of appeal.
2. In the notice of appeal the taxpayer may opt to make use of alternative dispute resolution procedures (ADR procedures).
3. If the taxpayer does not opt for ADR procedures, the Commissioner has 20 days to ask him if he wants to make use of the ADR procedures.

9.9.4 ALTERNATIVE DISPUTE RESOLUTION

The Alternative Dispute Resolution (ADR) process has been developed as a less formal, more cost-effective, and speedier way to resolve tax disputes. It is part of the rules governing the objection and appeal procedures. It applies to all forms of taxes (income tax, VAT, transfer duty, stamp duty, estate duty, donations tax, UIF contributions, and skills development levies).

It is opted for by the taxpayer at the stage that he submits a notice of appeal when his objection to the assessment is disallowed or allowed only in part.

The current position is that the taxpayer indicates on the notice of appeal that he wants to use the ADR process. The important points to note are as follows:

1. ADR procedures must be commenced 20 days after the date of receipt by the Commissioner of the notice of appeal, and finalised not later than 90 days after the receipt by the Commissioner of the notice of appeal or such further period as the Commissioner may agree to.
2. Alternative Dispute Resolution (ADR) may be initiated by the taxpayer in his notice of appeal or by the Commissioner after the receipt of the appeal. The Commissioner then appoints a facilitator (an appropriately qualified officer of SARS) to conduct the process.
3. The facilitator is bound by a code of conduct and he attempts to persuade the taxpayer and the Commissioner to settle the dispute by agreement. The facilitator cannot make a ruling or a decision which binds the Commissioner or the taxpayer. The facilitator must record whether or not agreement is reached. Any agreement must be signed by the taxpayer and the Commissioner's official.
4. The taxpayer has to be personally present at the ADR meeting. He may be accompanied by a representative. In exceptional circumstances the taxpayer may be allowed to be absent.
5. If the ADR results in agreement the Commissioner has 60 days to issue a revised assessment.
6. It is inappropriate to use the ADR procedures in the following circumstances (section 88C):
 - intentional tax evasion or fraud
 - the settlement would be contrary to law or established practice
 - it is in the public interest for the court to clarify the matter
 - pursuing the matter through the courts is suitable for promoting compliance
 - the Commissioner is of the view that the taxpayer's non-compliance with the Act is of a serious nature.
7. Sections 142 to 150 of the TAA set out the circumstances under which the Commissioner may settle a dispute with a taxpayer (i.e. fairness, cost of litigation, complexity, evidentiary difficulties, cost-effective promotion of compliance). The aim is to resolve disputes otherwise than by way of litigation.

8. If the ADR process fails, the Commissioner has 40 days to notify the taxpayer of the hearing of the appeal by the Tax Board. Alternatively the Commissioner has 90 days to meet with the taxpayer to attempt to limit the issues in dispute.
9. Within 15 days of this meeting the parties must prepare a minute recording:
 - the facts that are common cause
 - the facts that are in dispute
 - the issues the court is required to decide on.
10. What then follows, in broad terms, is:
 - the Commissioner states the grounds of assessment (60 or 90 days)
 - the taxpayer states the grounds of appeal (60 days)
 - discovery of documents, information, or things (20 days and 10 days).
 - notice of expert witness
 - pre-trial conference 60 days later (agreement may be reached here)
 - date of hearing (no time limit)
 - dossier of Commissioner
 - sitting of court.
11. Certain periods may be extended by agreement between the parties.
12. ADR procedures are fairly simple and informal. They basically involve trying to reach agreement by discussion between the taxpayer and the representatives of the Commissioner. The facilitator cannot make any ruling binding on the parties.

Section 164 of the Tax Administration Act provides that a disputed amount of tax must be paid by the taxpayer despite having lodged an objection or noted an appeal, unless a senior SARS official directs otherwise.

9.9.5 SETTLEMENT OF DISPUTES

Part F of the TAA (sections 142 to 150) gives the Commissioner the power to settle disputes with the taxpayer.

Section 142 defines a dispute as a disagreement on the interpretation of either the relevant facts, or the law, or both (arising pursuant to an assessment or a decision of SARS). It states that settlement does not mean that one party has to accept the other's interpretation. It means merely that the tax liability is agreed to.

Section 143 states that although SARS has a duty to collect taxes, there are circumstances where it will be to the best advantage of the State to compromise and settle a dispute. *Section 145* sets out when it would be **inappropriate** to settle, while *Section 146* sets out when it is **appropriate** to settle. *Section 147* sets out the procedures for settlement. *Section 150* provides that the taxpayer's assessment must be altered to reflect the terms of the settlement and is thereafter not subject to objection and appeal.

9.10 TAX LIABILITY AND PAYMENT

Chapter 10 contains sections 151 to 168. This chapter sets out the definition of taxpayer, person chargeable to tax, withholding agent, responsible party, and representative taxpayer. It deals with the liability of each of these persons, and circumstances under which a representative taxpayer, responsible party, or withholding agent, becomes personally liable for the tax.

The time and manner that tax is to be paid is dealt with in Part B of the chapter.

Part C of the chapter deals with the taxpayer account. Although separate accounts are kept for each type of tax, SARS can allocate the payments on a first-in, first-out basis over all taxes due by the person.

Part D allows SARS to enter into instalment payment agreements with the taxpayer.

9.11 RECOVERY OF TAX

Chapter 11 sets out the procedures for collecting tax (*sections 169 to 186*). It deals, for example, with when SARS may institute liquidation or sequestration proceedings against the taxpayer (*section 177*). It also deals with collecting debts from third parties (*section 179*).

Part E deals with tax recovery on behalf of foreign governments. Part F deals with remedies with respect to foreign assets.

9.12 INTEREST

Chapter 12 deals with general interest rules, the period over which interest accrues, and the rate of interest (the prescribed rate) (sections 187 to 189). As at 1 October 2012, only part of this chapter came into effect.

9.13 REFUNDS

Chapter 13 is very short (sections 190 and 191). It states that SARS may audit a refund, but the refund can be made, notwithstanding the audit, if the taxpayer gives security for the tax. The refund has to be claimed within 3 years (SARS assessment) or 5 years (self-assessment) (section 190).

SARS may also set refunds off against other taxes owing by the taxpayer (section 191).

9.14 ADMINISTRATIVE NON-COMPLIANCE PENALTIES

Chapter 15 comprises section 208 to 220.

Administrative *non-compliance* penalties are penalties, for example, for the failure to keep proper records, failure to report any reportable arrangements, non-compliance with a request for information, obstruction of SARS officials, failure to comply with tax obligations or public notices published by the Commissioner for SARS.

- There is a fixed-amount non-compliance penalty (section 210) and a
- percentage-based non-compliance penalty (section 213).

The fixed-amount penalty increases monthly, calculated from one month after the penalty assessment (i.e. it is levied for each month that the non-compliance continues after the date of the penalty assessment) subject to a maximum (35 months or 47 months, depending on whether or not SARS has the taxpayer's current address). The amount depends on the taxpayer's taxable income or assessed loss for the *preceding* year of assessment. Special rules apply for large companies and large exempt institutions.

The non-compliance penalty does not apply where the percentage-based penalty applies, or where the reportable arrangement penalty applies, or where the understatement penalty applies.

The amount of the penalty is set out in section 211 of the TAA as follows:

Table 9: Fixed amount penalty table

1 Item	2 Assessed loss or taxable income for preceding year	3 'Penalty'
(i)	Assessed loss	R250
(ii)	R0 – R250 000	R250
(iii)	R250 001 – R500 000	R500
(iv)	R500 001 – R1 000 000	R1 000
(v)	R1 000 001 – R5 000 000	R2 000
(vi)	R5 000 001 – R10 000 000	R4 000
(vii)	R10 000 001 – R50 000 000	R8 000
(viii)	Above R50 000 000	R16 000

The percentage-based penalty (per section 213) is imposed where SARS is satisfied that the taxpayer has not paid the tax as and when required under a tax Act. This penalty is equal to a percentage of the tax not paid.

It seems that the amount of the penalty is prescribed in the particular tax Act, and not in the TAA.

A person can request that a penalty be remitted (section 215). This must be done on the prescribed form. This request must contain the grounds and supporting documents. The penalty can only be remitted in exceptional circumstances.

9.15 PENALTIES

Chapter 16 deals with the understatement penalty and voluntary disclosure (not covered in this book). It contains *sections 221 to 233*.

Section 222 sets out the circumstances under which an understatement penalty is paid. The understatement penalty is a percentage in accordance with the table set out in *section 223*, applied to the shortfall of the tax. In looking at the tax rate of the taxpayer, one takes the maximum tax rate applicable to the taxpayer, ignoring any assessed loss or other benefit brought forward from a preceding tax year.

It applies to taxes as defined in *section 1*, which includes all taxes, not just income tax (*section 221* definitions). *Section 221* defines ‘understatement’ as a default in rendering a return, an omission from a return, an incorrect statement in a return, and (if no return is required) the failure to pay the correct amount of tax. ‘Substantial understatement’ is a case where the prejudice to the *fiscus* exceeds the *greater* of 5% of the amount of tax properly chargeable or refundable under a tax Act for the relevant period, or R1 000 000.

Section 223 contains the understatement penalty percentage table:

Table 12: *Understatement Penalty Table*

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

The amount of the understatement penalty is determined by determining which of the behaviours apply, and if more than one applies, then SARS will apply the highest applicable understatement percentage in the penalty table to the shortfall. In other words the percentages are not added together. For example, if a taxpayer’s behaviour involves both that no reasonable grounds exist for a tax position taken, *and* gross negligence, then item (iv) will apply.

Section 221 defines a ‘repeat case’ as one which takes place within 5 years of a previous case.

9.16 REPORTING OF UNPROFESSIONAL CONDUCT

Section 240 requires all tax practitioners to be registered. The aim is to regulate tax practitioners and be able to report a tax practitioner to his or her controlling body if his or her intentional or negligent act resulted in a taxpayer avoiding or unduly postponing performance of a tax obligation.

Tax practitioners are required to be registered with a recognised controlling body (or fall under the jurisdiction of a recognised controlling body) by the later of 1 July 2013 or 21 business days after the date on which that person for the first time provides the advice or completes or assists in completing a tax return. *Section 1* of the TAA defines a return as a form, declaration, document or other manner of submitting information to SARS (which is either a self-assessment or the basis on which an assessment is to be made by SARS).

Section 240A is added to the TAA to deal with the recognition of controlling bodies for tax practitioners. *Section 241* sets out the procedure for a senior SARS official to lodge a complaint, against a tax practitioner, with a recognised controlling body.

9.17 GENERAL PROVISIONS

Chapter 19 contains *sections 244 to 257*. It deals with deadlines, public officers of companies, addresses for delivery of documents and notices, authentication of documents, delivery of documents, and tax clearance certificates.