

## Response to Standing Committee on Finance

Draft Tax Administration Amendment Bill, 2012  
6 November 2012 (Corrected)

Presenter: Franz Tomasek



**SARS** South African  
Revenue Service

### One stop border posts (Clause 1)

- ⇒ This provision should be inserted into Customs and Excise Act, 1964
  - The proposal extends beyond the Customs and Excise Act, 1964, to other border control legislation. The proposed location of the provision has been cleared with the State Law Adviser



2 **SARS** South African  
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## Provisional tax penalties (Clause 15)

- ⇒ The existing system should be retained for taxpayers with a taxable income of more than R1 million, (i.e. the penalty may be levied if SARS is not satisfied that it was seriously calculated and will not automatically be levied at 20 per cent)
  - The proposal ensures that all provisional taxpayers are treated in the same way
  
- ⇒ There is no opportunity for the taxpayer to request remission of the penalty. The discretion to remit the penalty should be extended
  - As part of the proposal clause 15(c) of the draft Bill amends paragraph 20(2) to permit SARS to waive part or all of the penalty imposed if satisfied that the estimate was seriously calculated and not deliberately or negligently understated



## Provisional tax penalties (Clause 15)

- ⇒ The change will drive up costs. A turnover of R30 million, the threshold for monthly VAT payments, should, therefore, be used in place of the R1 million taxable income threshold currently used
  - The timing of the exercise of a discretion affects the timing of the provision of information, rather than the need to provide it
  - Using a VAT threshold in an income tax environment would have anomalous results
  - According to the 2012 Tax Statistics the number of taxpayers with taxable incomes over R1 million is modest

	2009	2010	2011
Companies	25,721	24,085	21,799
Individuals	56,356	54,725	63,408



## Recognised controlling body (Clauses 23 and 55 – 59)

- ⇒ There is a risk that there may be a period where there are no bodies that can specifically be recognised
  - Effective date for membership in a recognised controlling body of 1 April 2013 inserted
  
- ⇒ The proposed date of 1 April 2013 is too early and 1 July 2013 or later would be preferable
  - SARS has begun engaging with bodies on the steps to be taken for recognition if the legislation is adopted
  - Recognition of controlling bodies should be possible in early 2013
  - Deadline falls after 2013 Budget so unanticipated difficulties can be evaluated and taken into account if necessary



## Recognised controlling body (Clauses 23 and 55 – 59)

- ⇒ Minimum qualification, experience and continuing professional education criteria should be tax specific
  - The overall requirement is that that they be “relevant and effective”
  - Relevance must be judged in the context of this provision appearing in the Tax Administration Act, 2011, and being administered by the Commissioner
  
- ⇒ The share of the costs of the panel of retired judges may be unaffordable for smaller bodies
  - Amended to provide that the panel may only be appointed on request or if the Minister is satisfied that the relevant recognised body’s disciplinary process is ineffective
  - Provision made that one member of the panel may hear cases



## Recognised controlling body (Clauses 23 and 55 – 59)

- ⇒ If the criteria for recognition of a controlling body are met the law should indicate that the Commissioner must recognise the body
  - The use of the word “may” serves to indicate that it is the Commissioner who has the discretion to determine whether the requirements have been met
  - A body that feels that the discretion has been inappropriately exercised will be able to take the Commissioner on review
  
- ⇒ The Legal Practice Bill has not yet been enacted, so the reference to the South African Legal Practice Council is inappropriate
  - The reference to the SALPC has been removed and replaced with appropriate references in terms of the Attorneys Act, 1979, and the Admission of Advocates Act, 1964



## Professional privilege for tax practitioners

- ⇒ There are a number of countries in which a limited statutory privilege is extended to tax advice provided by tax advisers who are not lawyers. In view of the fact that tax practitioners are now being regulated by law, such a limited statutory privilege should be granted now
  - Complex issue with mixed international precedent at best
  - Arguments for extending privilege must be balanced against strong policy reasons for not extending it
  - Tax practitioners remain largely self-regulated and the success or otherwise of the model still has to be evaluated

