

# **An evaluation of the Tax Administration Act 28 of 2011 with reference to its objectives**

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## **DECLARATION**

I, Petra Klopper, declare that the mini-dissertation submitted for assessment is my own and is expressed in my own words. Any uses made within it of the work of authors in any form (e.g. ideas, quotations, text, tables) are properly acknowledged at the point of their use. A full list of the references has been included.

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Date: .....

**PETRA KLOPPER**

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**Soli Deo Gloria!**

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## **SUMMARY AND KEY TERMS**

The Tax Administration Act (28 of 2011) (TAA) came into effect during October 2012 and introduced several new concepts and changes in terms of tax administration from the previous provisions set out in the various tax acts. The TAA extends the powers afforded to the South African Revenue Service (SARS) to a significant degree. In terms of the Short Guide to the Tax Administration Act (TAAG), these extended powers are specifically aimed at targeting tax evaders and non-compliant taxpayers. Critics of the TAA have commented that these extensive powers may have been granted to the detriment of compliant taxpayers.

One of the main objectives stated in the TAA expresses an aspiration to improve the balance between the powers of SARS and the rights of taxpayers in order to ensure a fair, efficient and cost effective tax system. The question arises whether these objectives have been achieved, considering the extent of the powers granted to SARS in terms of the TAA.

This study aimed to document the changes introduced by the TAA from the previous tax administrative provisions contained in the Income Tax Act (58 of 1962) (ITA). The study focused on the most significant changes and new concepts introduced by the TAA, namely: the establishment of a Tax Ombud; the extensive information gathering powers of SARS and the understatement penalty regime. These changes were critically evaluated against the afore-mentioned objectives of the TAA in order to determine whether these objectives have been achieved.

The study also examined international best practices in terms of tax administration employed by the revenue authorities of Canada and the United Kingdom (UK) as well as the guidelines for effective tax administration researched by the Organisation for Economic Co-Operation and Development (OECD). This enabled the recommendations for improvements to the TAA.

This study was performed by giving preference to and performing a critical comparison and analysis on various original sources, i.e. different acts and government publications from various countries, as well as the OECD guidelines, rather than relying only on

previous studies performed on this topic, to independently establish what the changes and differences between the relevant provisions are.

The study found that, in general, the TAA fails to meet the stated objectives. The extensive powers afforded to SARS with regards to information gathering are not balanced out by sufficient remedies made to protect rights of taxpayers in the event that SARS abuses these powers. Taxpayers have to seek relief from the court which is a costly recourse and, as a result, increases the administrative cost and burden of taxpayers.

The study recommends improvements to the TAA in order to enhance the relationship between taxpayers and SARS and to achieve the objective of striking a balance between the powers of SARS and the rights of taxpayers. It is advised that the TAA incorporate sufficient provisions to give effect to the protection of the taxpayers' rights to administrative fairness through more effective remedies. Further research into the constitutionality of the provisions of the TAA could also help to identify areas for improvement in this regard.

### **Key terms**

Tax administration / SARS / taxpayers.

## LIST OF ABBREVIATIONS

ATO	Australian Tax Office
Constitution	Constitution of the Republic of South Africa (107 of 1996)
CITA	Canadian Income Tax Act (R.S.C., 1985, c. 1 (5 <sup>th</sup> Supp.))
CRA	Canadian Revenue Agency
FTA	Forum on Tax Administration
HRMC	Her Majesty's Revenue and Customs of UK
IT	Income Tax
ITA	Income Tax Act (58 of 1962)
IRS	Internal Revenue Service of USA
OECD	Organisation for Economic Co-Operation and Development
OM	Memorandum on the Objects of the Tax Administration Act, 2011
PAJA	Promotion of Administrative Justice Act (3 of 2000)
N/a	Not applicable
NRP	National Research Programme
PwC	PricewaterhouseCoopers Incorporated
RTP	Reportable Tax Position
RPI	Return Preparer Initiative
SARS	South African Revenue Service
SCOF	Standing Committee on Finance
SSO	Senior SARS Official
SSMO	SARS Service Monitoring Office
TAA	Tax Administration Act (28 of 2011)
TALA (2012)	Tax Administration Laws Amendment Act (21 of 2012)
TALA (2013)	Tax Administration Laws Amendment Act (39 of 2013)
TALA (2014)	Tax Administration Laws Amendment Act (44 of 2014)
TAAG	Short Guide to the Tax Administration Act
TAO	Taxpayer Assistance Order
TAS	Taxpayer Advocate Service
UK	United Kingdom
USA	United States of America
VATA	Value-Added Tax Act (89 of 1991)
VDP	Voluntary Disclosure Programme

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## **CHAPTER 1: INTRODUCTION AND OBJECTIVES**

### **1.1 INTRODUCTION**

The introduction of the TAA stirred up great controversy regarding the powers extended to SARS and the limited protection provided to taxpayers. Commentators described the provisions in certain cases as “absurd” and causing “great concern” for tax practitioners and taxpayers (PricewaterhouseCoopers Inc., 2012: 8, 17).

### **1.2 BACKGROUND TO RESEARCH AREA**

During the 2005 South African budget review a project to draft a Tax Administration Bill was announced. The project was aimed at removing duplication of certain generic administrative provisions in various tax acts and to provide a single piece of legislation. As a result of the project the TAA was drafted and promulgated on 4 July 2012. The new act was implemented and became operational in October 2012 (SARS, 2011b).

The TAA aims to prescribe the powers and duties of the Commissioner, SARS and its officials and the Minister of Finance, and to prescribe the rights and obligations of taxpayers (PricewaterhouseCoopers Inc., 2012:13).

The tax acts affected by the TAA include:

- Diamond Export Levy (Administration) Act (14 of 2007);
- Estate Duty Act (45 of 1955);
- Income Tax Act (58 of 1962) (ITA);
- Mineral and Petroleum Resources Royalty (Administration) Act (29 of 2008);
- Securities Transfer Tax Administration Act (26 of 2007);
- Skills Development Levies Act (9 of 1999);
- Transfer Duty Act (40 of 1949);
- Unemployment Insurance Contributions Act (4 of 2002); and
- Value-Added Tax Act (89 of 1991) (VATA) (Schedule 1 of the TAA).

Although new concepts, definitions and changes to existing administrative provisions were introduced in the TAA, certain administrative provisions are still contained in the specific tax acts listed above. Some of the provisions contained in the specific tax acts include additional requirements that have to be complied with. Consequently taxpayers and tax practitioners need to ensure compliance not only with the provisions of the specific tax act, but also the provisions of the TAA.

(PricewaterhouseCoopers Inc., 2012: 12).

### **1.3 LITERATURE REVIEW OF RESEARCH AREA**

In the Objects Memorandum (OM) of the TAA (2011:178), it was announced that the South African tax legislation was outdated, necessitating a review of tax administration provisions. South Africa was in need of a “modern legislative framework” in order to adapt to new developments and to minimise costs involved in the administration of taxes. The TAA aims to update the administration surrounding tax collection, to consolidate all generic administrative provisions prescribed in the various tax acts, and to align contradicting provisions in current tax acts.

The OM (2011:178) includes the following objectives in order to achieve a “modern legislative framework”:

- Improve the balance between the powers of SARS and rights of taxpayers in order to ensure equity and fairness.
- A transparent, informative and simple tax administrative system.
- Improve the efficiency and minimise administrative costs and burden of taxpayers.
- A system that is effective, minimises non-compliance and is adaptable to new technological and commercial developments.

A survey conducted on [www.surveymonkey.com](http://www.surveymonkey.com) (cited by Gilfer, 2013), collected data on the view of tax practitioners and taxpayers with regards to: SARS audits; reports on findings; and following up on litigation. The survey revealed results that contradict the objectives of fairness and balance and indicate that SARS officials are abusing the powers extended to them by the TAA.

The survey also highlights the fact that taxpayers are not able to afford the hourly rates charged by tax specialists, defeating the objective of the TAA to lower the costs of administration. As at 5 June 2013, 72 responses were received and the results are summarised in Table 1-1 below.

**Table 1-1: Summary of Survey: “Your view of SARS in audits, letters of findings and follow up litigation” conducted by [www.surveymonkey.com](http://www.surveymonkey.com) (cited by Gilfer, 2013)**

Question	% Yes Responses	% No Responses	% Not applicable
1. Do you think SARS acts fairly when they commence an audit and do not explain to you precisely why they are conducting the audit?	17.81%	82.19%	
2. Have you undergone a SARS audit in the last 2 years?	76.39%	23.61%	
3. Did the SARS auditors give you adequate reasons at the commencement of the audit?	9.72%	70.83%	19.44%
4. Do you think SARS auditors showed sufficient level of competence during the audit?	19.72%	56.34%	23.94%
5. Did SARS provide you with letter of findings at the conclusion of the audit?	52.78%	27.78%	19.44%
6. Can you afford to pay R4,750 per hour plus VAT for specialist tax advice when a SARS audit commences?	9.72%	90.28%	

The OM (2011: 179) emphasises the duty on SARS to maintain the integrity of the tax system in order for taxpayers to perceive the tax system as being fair. This study therefore focuses only on the following two of the four objectives listed above as these are deemed to directly impact taxpayers’ rights and affect their view of the tax system:

1. To improve the balance between the powers of SARS and rights of taxpayers in order to ensure equity and fairness.
2. To improve efficiency and minimise administrative costs and burden of taxpayers.

In terms of Section 2 of the TAA, the following purpose statements are listed:

- aligning the administration of various tax acts;
- prescribing the rights and obligations of tax practitioners and taxpayers;
- prescribing the power and duties of tax administrators (e.g. SARS, Minister of Finance, Tax Ombud and the Commissioner); and
- giving effect to the objectives of tax administration.

To give effect to the above purpose statements, the TAA introduced various changes in comparison to the previous legislation in terms of the ITA which greatly extend the powers of SARS officials, especially when collecting information during audits, or otherwise, and pursuing non-compliant taxpayers OM (2011:179). It is considered important for taxpayers to be fully aware of the powers of SARS to administrate the tax acts and to understand their rights in terms of the TAA (Zerbst, 2013). Based on the comparison performed in Annexure A, only the following three of the new provisions introduced by the TAA that most significantly impact the powers of SARS and the rights of taxpayers, were selected for further examination:

- The Tax Ombud's office. This body aims to contribute to the rights of taxpayers and achieve a counterbalance to the extended powers granted to SARS (TAAG, 2013:15).
- Information gathering powers of SARS. SARS and its officials are granted extended authority in terms of information gathering (TAAG, 2013:23).
- The understatement penalty regime. The penalty regime has changed significantly from the previous "additional tax" levied in terms of the old provisions of the ITA (TAAG, 2013:78). The objective of the new penalty regime is to target non-compliant taxpayers (OM, 2011:199).

#### **1.4 MOTIVATION OF TOPIC ACTUALITY**

Many critics and commentators on the TAA claims that an imbalance exists between the rights of taxpayers and the powers granted to SARS. The power remains with SARS, in certain cases leaving compliant taxpayers with insufficient protection against the misuse of power by SARS officials (Croome, 2013a; PricewaterhouseCoopers Inc., 2012:5).

In terms of Section 4 of the TAA, if the TAA is silent or is inconsistent with regards to the administration of a tax act, the provisions of the relevant tax act shall prevail. PricewaterhouseCoopers Inc. (2012:5) comments on these provisions and notes that it could result in duplication of efforts, as taxpayers and tax practitioners will have to look at the specific tax act in conjunction with the TAA in order to determine potential mismatches between provisions described in the particular tax act and those described by the TAA.

Tax acts are complicated and not easily understood by the general taxpayer who is not tax literate (Irsherwood, 2013), and it seems that the TAA does not make it easier to comprehend, which poses the question whether the TAA achieves the objective to lessen the administrative burden on taxpayers.

It should also be noted that only practices generally prevailing (Section 5(1) of the TAA) as set out in an official publication are legally binding. An official publication is defined in Section 1 of the TAA to mean “a binding general ruling, interpretation note, practice note or public notice issued by a senior SARS official or the Commissioner”. Taxpayers rely on the guidelines issued by SARS in order to understand the practical application of a tax provision. However, these guidelines do not constitute a public notice and are therefore not binding. As a result, taxpayers are at risk of non-compliance even when they rely on the guidelines issued by SARS (PricewaterhouseCoopers Inc., 2012:12). The TAA therefore increases the risk of non-compliance by taxpayers and requires the implementation of good risk management policies and practices (Geldenhuys, 2013).

An example of good risk management practice to minimise the risk of non-compliance, penalties and fines, is to obtain the professional advice of tax specialists (Van der Zwan, 2013). However, the results of the survey in Table 1-1 on p.4 indicate that 90.28% of the respondents have stated that they consider the expensive hourly rates charged by tax specialists unaffordable.

These considerations raise the question of whether the TAA achieves its objectives of fairness and minimising the administrative burden of taxpayers. If taxpayers are not able to rely on the guidelines issued by SARS, they will have to incur substantial costs to obtain the advice of a tax specialist, in order to ensure compliance.

Previous research has been conducted in on various Sections of the TAA, including the Tax Ombud, the extensive information gathering powers of SARS and the understatement penalty regime, (Mthimunye, 2013; Croome, 2012; Croome, 2013; Van Zyl, 2014). However, limited research has been conducted on how the specific changes introduced by the TAA to the old administrative provisions, in terms of the ITA, actually achieve (or fail to achieve) the objectives of the TAA as set out in the OM.

Considering the points mentioned above, research into the provisions of the TAA weighted against its objectives could be valuable to tax practitioners and taxpayers. This mini-dissertation documents the approach that was followed to identify certain shortcomings of the TAA in meeting its objectives and makes recommendations to improve the TAA in order to ensure fairness for all parties involved, namely, SARS, tax practitioners and taxpayers.

## **1.5 RESEARCH QUESTIONS**

The research aimed to address the following questions:

- i. Does the Tax Administration Act (28 of 2011) achieve its objectives of fairness and minimising the administrative burden of taxpayers?
- ii. Does the Tax Administration Act (28 of 2011) conform to the best practices and guidelines for tax administration as identified by the Organisation for Economic Co-Operation and Development (OECD)?

## **1.6 OBJECTIVES OF THE MINI-DISSERTATION**

The primary objectives of the study were to determine whether the TAA achieves its objectives and to determine how the objectives of the tax administration system of South Africa conform to the guidelines of the OECD.

These primary objectives were addressed by focusing on the following three secondary objectives:

- i. To determine the changes introduced by the provisions of the TAA to the several old administrative provisions included in the ITA and to understand how these changes achieve, or fail to achieve, the objectives of fairness and minimising the

administrative burden of taxpayers, as set out in the OM. This secondary objective is covered in Chapter 2 of the mini-dissertation and reports only on the most significant new concepts and changes identified, namely: the Tax Ombud; information gathering; and the understatement penalty regime.

- ii. To understand the best practices and guidelines identified by the OECD as well as the practices followed by other OECD countries, which could provide possible suggestions for improvements to the current legislation in respect of the focus areas identified above. Canada and the UK, both OECD countries, are highlighted as benchmarks in terms of tax administration in the OM (2011:183) and were therefore specifically selected as part of this study.

This objective represents the aggregation of the following sub-objectives:

- to examine the practices followed by Canada and the UK, and other OECD countries identified which may yield suggested improvements, with regards to the areas identified in objective (i);
- to identify practices and guidelines that overall contribute to the objectives of the OM as researched in objective (ii); and
- to critically analyse all of these practices and guidelines against the new provisions of the TAA as identified in objective (i).

This secondary objective is covered in Chapter 3 of the mini-dissertation.

- iii. To recommend possible alternatives or improvements to the TAA, where its provisions do not meet the objectives. This secondary objective is covered in Chapter 4 of the mini-dissertation.

## **1.7 SCOPE AND LIMITATIONS OF THE RESEARCH TOPIC**

The scope of the dissertation was limited in order to provide answers to the stated problem and to achieve the set objectives. The study was limited to the examination of new tax administrative provisions in respect of Income Tax (IT) that most significantly impact the powers and duties of SARS and the rights and obligations of taxpayers.

The study also examined the best practices and guidelines as identified by the OECD and only extended to specific examinations of the tax practices employed by Canada, the UK and where appropriate, the other OECD countries identified during the

examination of the OECD guidelines and publications that were relevant to the study, namely Australia and the United States of America (USA).

The study provides recommendations to improve the TAA in achieving the objectives examined in Chapter 3 and was limited to the areas of focus identified in Chapter 2.

Any reference to a natural person as a man or a woman should be construed to include the other gender.

The dissertation only took into account amendments made by the Tax Administration Laws Amendment Act (44 of 2014) (TALA, 2014) that were promulgated on 20 January 2015.

## **1.8 RESEARCH DESIGN**

The research methods applied in order to address the objectives as set out in par. 1.6 consisted of a literature review and a comparative analysis of the provisions of the TAA against the previous provisions of the ITA and are summarised in Table 1-2 below.

### **1.8.1 ONTOLOGY**

The ontology in the study is of a relativist view of the world, where knowledge is viewed as a single marvel with more than one interpretation (Coetzee, Van der Zwan & Schutte, 2014).

### **1.8.2 RESEARCH PARADIGM**

The paradigm used in the study when conducting the research was an interpretivist paradigm and was aimed at gaining a better understanding (Coetzee, Van der Zwan & Schutte, 2014) of the old provisions of the ITA in terms of tax administration and the new provisions of the TAA.

### **1.8.3 RESEARCH METHODOLOGY**

The study followed a combination of critical theory and doctrinal methodology.

McKerchar (2008) describes doctrinal research as the traditional or 'black letter law' approach which is typified by the systematic process of identifying, analysing, organising and synthesising statutes, judicial decisions and commentary. It is typically a

library based undertaking, focused on reading and conducting intensive, scholarly analysis.

Critical theory aims to critique or challenge assumptions (Coetzee, Van der Zwan & Schutte, 2014).

The study identified the changes and new concepts introduced to tax administration by the TAA from the previous provisions contained in the ITA. The study critically analysed the new provisions introduced by the TAA against its stated objectives as well as the international practices followed by Canada, the UK and the guidelines of the OECD in terms of tax administration through a literature review of publications released by the revenue authorities of Canada and the UK as well as publications by the OECD.

#### **1.8.4 APPROACH FOLLOWED TO ANSWER THE RESEACH QUESTION**

An inductive reasoning approach was followed in the study. This approach was considered to be appropriate as the dissertation commenced with the identification of the new concepts and changes introduced by the TAA and then used those that most significantly impact the powers of SARS and the rights of taxpayers to reach conclusions as to whether the TAA meets its objectives and conform to international best practices (Mouton, 2001:118).

This study was performed by focusing on and performing a critical comparison and analysis of various original sources, i.e. different acts and government or OECD publications, rather than only evaluating previous studies performed on this topic, to independently establish what the changes and differences between the relevant provisions are.

**Table 1-2: Research Method**

<b>Research objective</b>	<b>Research method</b>
Refer to par. 1.6 (i)	<p>The research objective was firstly achieved through performing a critical analysis of the TAA against the several administrative provisions included in the ITA. The analysis was performed in order to identify the new concepts introduced by the TAA and changes from the old administrative provisions and to list the administrative provisions still housed in the ITA. Information for the analysis was sourced by means of the review of literature which mainly consisted of publications in the Gazette, text books on the practical application of ITA and existing literature of commentators on the TAA.</p> <p>Secondly, a critical evaluation and understanding of the objectives as set out in the OM was performed. The selected objectives were compared to the changes introduced by the TAA (identified in the analysis above) in order to identify the areas where the TAA achieve or fail to achieve its objectives.</p>
Refer to par. 1.6 (ii)	<p>This research objective was achieved through a critical evaluation and understanding of international practices and guidelines of the OECD in respect of tax administration in order to critically analyse the new provisions of the TAA against these guidelines. Information for the analysis was sourced by means of the review of literature which mainly consisted of publications by the OECD and revenue authorities of Canada, UK and other OECD countries identified during the study.</p>
Refer to par. 1.6 (iii)	<p>The guidelines and best practices identified in 1.6 (ii) above were considered in order to conceptualise the recommendations.</p>

## **1.9 OVERVIEW**

The dissertation is presented in the following Chapters:

### **CHAPTER 1**

#### **Introduction and objectives**

The purpose of this Chapter was to determine the research questions and the objectives that the research has to achieve. This Chapter also outlines the research methodology followed by the study.

### **CHAPTER 2**

#### **Changes in tax administration introduced by the TAA evaluated against its objectives**

This Chapter covers the objective of identifying and understanding the new concepts and provisions in terms of tax administration that were introduced by the TAA and how these changes achieve, or fail to achieve the objectives of the TAA as set out in the OM. The research objective as identified in par. 1.6 (i) on p. 6, is addressed in this Chapter.

This Chapter firstly reports on the analysis performed on the provisions of the TAA and the old administrative provisions contained in the ITA with a focus on only the following significant new concepts and changes:

- The Tax Ombud.
- The powers of SARS and its officials with regards to information gathering.
- The understatement penalty regime.

Secondly, the above focus areas are evaluated against the following two objectives of the TAA, as set out in the OM, in order to conclude whether the changes identified achieve, or fail to achieve, the objectives:

- To improve the balance between the powers of SARS and the rights of taxpayers in order to ensure equity and fairness
- To improve efficiency and to minimise administrative costs and burden of taxpayers.

## **CHAPTER 3**

### **International tax administration practices**

This Chapter documents the process followed to identify and understand international practices and guidelines for tax administration recommended by the OECD and addresses the research objective as identified in par. 1.6 (ii) on p. 7. The provisions identified in Chapter 2 were analysed against these guidelines and international practices. The analysis enabled the conceptualisation of the recommendations and improvements included in Chapter 4 of the mini-dissertation. This evaluation was based on the literature review of publications by the OECD and the revenue authorities of Canada, the UK and, where relevant, other OECD countries.

## **CHAPTER 4**

### **Summary, recommendations and conclusion**

In this Chapter, a summary of the conclusions reached in Chapter 2 and 3 of the mini-dissertation is provided which addresses the research objective as identified in par. 1.6 (iii) on p. 7. The recommendations, alternatives and/or improvements as identified in Chapter 3 of the mini-dissertation, are listed.

## **CHAPTER 2: CHANGES IN TAX ADMINISTRATION INTRODUCED BY THE TAA EVALUATED AGAINST ITS OBJECTIVES**

### **2.1 INTRODUCTION**

This Chapter firstly addresses the objective to identify, understand and report the changes introduced by the TAA, in terms of tax administration, from the several old administrative provisions included in the ITA. Secondly this Chapter evaluates the changes identified during the analysis performed above, against the selected objectives of the TAA as set out in the OM. This Chapter addresses the research objective as identified in par. 1.6 (i) on p. 6.

The main motivation behind the drafting of the TAA was to align and consolidate the various generic tax administration provisions into one piece of legislation. Although taxpayers may be familiar with many of the provisions contained in the TAA, however the TAA also introduced various new provisions and concepts, some of which aim to enhance the rights of taxpayers whilst others extend the powers granted to SARS without providing the necessary protection for taxpayers against the potential abuse of power by SARS officials (PricewaterhouseCoopers Inc., 2012:5).

SARS issued a second version of a Short Guide to the Tax Administration Act (TAAG) in June 2013. The TAAG provides assistance to taxpayers in understanding their rights and obligations in terms of the TAA (TAAG, 2013:2) and highlights the new provisions introduced by the TAA. This guide notes that some administrative provisions that are specific to the administration of a certain type of tax should be complied with as described in those specific tax acts, but that taxpayers must ensure that they comply with the administrative provisions set out in both acts (TAAG, 2013:4). The guide uses the example of the requirements for keeping records: the TAA contains generic administrative requirements for recordkeeping for Value Added Tax purposes, however, the VATA contains additional requirements which should also be adhered to (TAAG, 2013:4).

On the one hand, the TAAG reassures compliant taxpayers that the TAA will result in better service delivery and lower administrative costs, while on the other hand, it warns tax evaders against the authority granted to SARS in order to ensure collection of taxes

(TAAG, 2013:5). It is therefore important for taxpayers to understand the TAA in order to be compliant. This will require an in-depth understanding of the TAA. (Croome, 2013b).

This Chapter of the mini-dissertation identifies the new concepts and provisions in terms of tax administration that are introduced by the TAA. The TAA consists of twenty Chapters which introduce various changes from the previous administrative provisions of the ITA. Annexure A to the mini-dissertation contains tables that briefly summarises the comparisons performed between the provisions prescribed in each Chapter of the TAA and the equivalent old provisions of the ITA for each Chapter of the TAA and highlights the most significant changes identified.

As mentioned in par. 1.3 on p. 2, the following three areas of focus were selected for further examination in this study:

- The Tax Ombud's office. This body aims to contribute to the rights of taxpayers and achieve a counterbalance to the extended powers granted to SARS (TAAG, 2013:15).
- Information gathering powers of SARS. SARS and its officials are granted extended authority in terms of information gathering (TAAG, 2013:23).
- The understatement penalty regime. The penalty regime has changed significantly from the previous "additional tax" levied in terms of the old provisions of the ITA (TAAG, 2013:78). The objective of the new penalty regime is to target non-compliant taxpayers (OM, 2011:199).

This Chapter will also take a closer look at the selected objectives of the TAA as discussed in Chapter 1, i.e.:

1. to improve the balance between the powers of SARS and the rights of taxpayers;  
and
2. to minimise the administrative costs and burden of taxpayers.

These objectives are evaluated against the provisions identified in the comparison performed (i.e. between the old administrative provisions of the ITA and the provisions of the TAA) on the selected areas above. Those provisions that fall short of the stated objectives and those that contribute positively towards the stated objectives are

identified. The evaluation against the objectives is performed in order to identify areas for improvement.

## **2.2 THE TAX OMBUDS'S OFFICE**

Part F to Chapter 2 of the TAA specifically contains the provisions with regards to the powers and duties of the Tax Ombud and represents an entirely new concept in the South African context. This is the first area of focus identified for this study.

### **2.2.1 MOTIVATION FOR A TAX OMBUD'S OFFICE**

The purpose of the Tax Ombud, established in terms of the TAA, is to enhance the rights of taxpayers. The role is similar to the Tax Adjudicator's Office of the UK and the Tax Ombudsman of Canada (Croome, 2013b; Mthimunye, 2013:4).

The SARS Service Monitoring Office (SSMO), established in 2002, was the first step in an effort to establish a mechanism to protect taxpayers' rights where SARS fails to follow appropriate procedures. Previous Minister of Finance, Pravin Gordhan, stated at the launch of the SSMO that the next step, once the processes and procedures of SARS have improved significantly, would be to establish an Ombud who would ensure that international standards are followed (OM, 2011:183).

The rationale for establishing the Tax Ombud was as follows (OM, 2011:183):

- It would represent an independent mechanism available to taxpayers as a recourse, contributing to the balance between the powers of SARS and the rights of taxpayers.
- It would result in greater alignment of tax administration with international best practice, specifically the Tax Ombudsman of Canada and the Tax Adjudicator of the UK.
- It would potentially create cost effective and readily available internal remedies in line with the Constitution of the Republic of South Africa (107 of 1996) (Constitution).

In October 2013, the then Minister of Finance, Mr Pravin Gordhan, appointed the new Tax Ombud, retired Gauteng Judge President Bernard Ngoepe, for a term of three years. Judge Ngoepe stated that it is the objective of the Tax Ombud's office to provide mechanisms of addressing administrative challenges and to lower the costs for taxpayers. According to the Minister of Finance, Judge Ngoepe possesses the

necessary knowledge, experience and skills to ensure that the correct balance between the powers of SARS and the rights of taxpayers are achieved. (Croome, 2013d).

## **2.2.2 POWERS AND DUTIES OF THE TAX OMBUD**

In terms of Section 15(1) of the TAA, staff from the SARS office are seconded to the Tax Ombud's office and employed in terms of the SARS Act (34 of 1997). The cost of the office of the Tax Ombud is funded by SARS (Section 15(4) of the TAA).

In terms of Section 16 of the TAA, the mandate of the Tax Ombud is to deal with complaints of an administrative, service or procedural nature arising from the application of the provisions of a tax act. The Tax Ombud's office does not deal with disagreements on the interpretation of law or matters subject to objection or appeal (Section 17 of the TAA). The Tax Ombud's office can therefore only review an administrative matter relating to an objection, appeal or legal proceeding (Croome, 2013d).

Section 16(2) of the TAA lists the duties of the Tax Ombud and includes:

- review complaints and resolve it through mediation or conciliation where necessary;
- act independently;
- resolve complaints by following informal, fair and cost-effective procedures;
- provide taxpayers with information regarding the mandate of the Tax Ombud and the procedures to follow in order to lodge a complaint;
- help taxpayers to access the complaint resolution mechanisms available within SARS; and
- identify and review issues that bring to light procedures and administrative provisions within the TAA and tax acts that negatively impact taxpayers.

The Tax Ombud may not review (Department of National Treasury, 2014a; Section 17 of the TAA):

- a policy, whether it is a legislative, SARS or tax policy;
- practice generally prevailing;
- any matter subject to an objection or appeal to the extent that it does not relate to an administrative matter in respect of an objection or appeal;
- tax court decisions or proceedings.

It is important to note that in terms of the transitional provisions (Section 259 of the TAA), the Tax Ombud may not review any matters that arose more than one year before his date of appointment unless requested by the Minister of Finance.

The Tax Ombud is required to report to the Minister of Finance and not the Commissioner, within five months from SARS' financial year end (Section 19 of the TAA). The report must be tabled in the National Assembly and is therefore subject to the oversight of the Parliament (Croome, 2013d). The Tax Ombud should submit a quarterly report to the Commissioner, or at other intervals as agreed upon.

In terms of Section 20(2) of the TAA, the decisions and recommendations made by the Tax Ombud are not binding to SARS. The Tax Ombud's Office should only communicate resolutions and recommendations to SARS and identified SARS officials (Section 21 of the TAA). SARS is only required to make available any information necessary for the Tax Ombud to execute his duties.

### **2.2.3 THE COMPLAINT RESOLUTION PROCESS OF THE TAX OMBUD'S OFFICE**

The process to be followed when a complaint is reported is determined in Section 18 of the TAA. Unless compelling circumstances prevail, as determined in accordance with Section 18(5), a taxpayer firstly has to go through all the internal complaint resolution mechanisms available within SARS before reporting a complaint to the Tax Ombud (Section 18(4) of the TAA). SARS is still to clarify exactly what mechanisms are included. One of these mechanisms is the SSMO, established in 2002.

The Tax Ombud has an official website which includes information on the mandate, mission and vision of the Tax Ombud's Office and the process to follow when lodging a complaint. It is emphasised that taxpayers should distinguish between matters relating to the interpretation of the law and the administration of the law. Only the latter is within the mandate of the Tax Ombud (Department of National Treasury, 2014a).

As indicated on the website (Department of National Treasury, 2014a) the process to be followed for an administrative complaint is outlined as follows:

- Resolve the complaint at a SARS branch.
- Escalate to SARS's Operational Service Escalation and Support.

- Lodge a complaint with the Tax Ombud.
- Lodge a complaint with the Public Protector.

The Tax Ombud promises that the Tax Ombud's office will do anything in its power to resolve the problem, but warns that the matter may be closed if there is a lack of evidence. The complaint resolution efforts of the Tax Ombud's office include (Department of National Treasury, 2014a):

- Review of the complaint and drafting of a preliminary assessment of the complaint.
- Communication to SARS of the complaint and supporting evidence.
- Evaluation of SARS's response to the complaint and performing further investigation where the response was unsatisfactory.
- Turnaround time for resolving complaints are set at 15 business days from receipt of the complaint. The aggrieved taxpayer will be notified if it is not possible to keep to the turnaround deadline.
- A summary of the outcome of the complaint, called the close-out report, will be sent to the aggrieved taxpayer and SARS.
- The Tax Ombud's office will remain objective throughout the process and make recommendations where needed.
- The Tax Ombud does not make decisions but rather recommendations for corrective action which may include:
  - For service related issues, a formal apology.
  - Correction of errors.
  - Reasons in writing.

When reviewing a complaint, the Tax Ombud must exercise his discretion and consider various factors such as the age of the request; time that has lapsed since awareness of the issue; seriousness of the matter; whether the request was made in good faith; and the results of other mechanisms exhausted during the complaint reporting process (Section 18(3) of the TAA). In terms of Section 18(2) of the TAA, Tax Ombud may determine the manner in which the review will be conducted and when the review should be terminated.

#### **2.2.4 THE PROVISIONS IN RESPECT OF THE TAX OMBUD'S OFFICE EVALUATED AGAINST THE SELECTED OBJECTIVES OF THE TAA**

From the above investigation into the purpose and function of the Tax Ombud, it appears that the establishment of the Tax Ombud was a great effort to enhance the rights of taxpayers. However, a critical analysis of the purpose and function of the Tax Ombud against the selected two objectives of the TAA, namely to promote fairness and to minimise the administrative costs and burden for taxpayers, points out certain weaknesses:

- i. Based on the fact that staff from the SARS office were seconded to the Tax Ombud's office and that the cost of the office of the Tax Ombud is funded by SARS (Sections 15(1) and 15(2) of the TAA), it is questionable whether the Tax Ombud's office could be considered sufficiently independent. The TAAG (2013:15), however, states that SARS employees are utilised for their knowledge of the internal processes of SARS and that this utilisation will ease the administration of the confidentiality of taxpayers' affairs. The Tax Ombud also reports to the Minister of Finance, which could impact the independence of the Tax Ombud (PriceWaterhouseCoopers Inc., 2012:18), if he feels pressure to keep the Minister of Finance satisfied and shelter him from the embarrassment of unlawful acts committed by SARS (PCF Attorneys, 2014). A lack of independence will negatively impact the rights of taxpayers and as a result, the objective to balance the powers of SARS and the rights of taxpayers will not be met.
- ii. No decision made by the Tax Ombud is binding on SARS (Section 20(2) of the TAA). This raises the question whether the Tax Ombud has any power to force SARS into a corrective action in order to defend the rights of taxpayers against the abuse of powers by SARS and actively contributes to achieve the fairness and equity objective of the TAA.
- iii. The process for a taxpayer to have a complaint resolved (i.e. first exhaust other complaint resolution mechanisms such as lodging a complaint with the SSMO) is tedious and time consuming (Croome, 2013d). It has been submitted by SAICA that the SSMO should be completely removed from the process (Mthimunye, 2013:35). This protracted process seems to be in conflict with the objective set in the OM that

the tax system must be efficient and minimise administrative burdens. The only exception to the process is found in Section 18(5)(c) of the TAA. In terms of this Section, the Tax Ombud may not require a taxpayer to first follow internal complaint mechanisms if he is of the opinion that a result will not be produced within a reasonable time.

In conclusion, the intended purpose of Tax Ombud's Office (i.e. to ensure that the provisions of the tax acts in terms of tax administration are applied fairly to taxpayers and that SARS' actions are conducted in a manner that is procedurally fair) is welcomed (Mthimunye, 2013:2). However, the lack of independence and power of the Tax Ombud may counteract the effectiveness thereof and as a result the objectives of the TAA is not met.

### **2.3 INFORMATION GATHERING POWERS OF SARS**

The second area of focus of this study was the information gathering powers of SARS that were previously regulated in terms of Sections 74 to 74D of the ITA. These Sections have been repealed and were replaced with Chapter 5 of the TAA. The TAA increased the powers of SARS to gather, inspect, verify and audit information. These provisions of the TAA are summarised below in Table 2-1 below, with the corresponding repealed Sections of the ITA.

Chapter 5 of the TAA contains some of the changes that have the greatest impact on the powers of SARS and the rights of taxpayers. A detailed evaluation thereof is subsequently discussed.

**Table 2-1: Chapter 5 of the TAA vs the ITA: information gathering powers of SARS**

Description / Part	Section in TAA	Section in ITA	Changes / New provisions
Part A: General rules for Inspection, Verification, Audit and Criminal investigations (refer par. 2.3.1)	40 – 44	74, 74A  74B  -  -	<ol style="list-style-type: none"> <li>1. Selection basis can be random or risk based (no similar previous provision). (par. 2.3.1.1)</li> <li>2. May assume that it is not an authorised SARS official if no authorisation letter is presented (no similar previous provision). (par. 2.3.1.2)</li> <li>3. Requirement to keep taxpayers informed throughout the audit and to provide grounds for an assessment as a result from an audit (no similar previous provision). (par. 2.3.1.3)</li> <li>4. Serious tax offences must be referred to an SSO (no similar previous provision). (par. 2.3.1.4)</li> </ol>
Part B: Inspection (par. 2.3.2), Request for Relevant Information (par. 2.3.3), Audit and Criminal investigation (par. 2.3.4)	45 – 49	74A – 74B	<ol style="list-style-type: none"> <li>1. Unannounced inspections (previously notice was required/has limited powers), unlimited hours.</li> <li>2. Extended powers granted to SARS to request relevant material.</li> <li>3. Criminal investigations and field audits.               <ol style="list-style-type: none"> <li>3.1 Separation of criminal investigations from field audits (previously not separated).</li> <li>3.2 Minimum notice period of 10 business days (previously no specific notice period prescribed).</li> <li>3.3 Taxpayer may request the notice period to be varied (no similar previous provision).</li> <li>3.4 Taxpayers are required to cooperate (no similar previous provision).</li> </ol> </li> </ol>
Part C: Inquiries (refer par. 2.3.5)	50 – 58	74C	<ol style="list-style-type: none"> <li>1. The judge must be satisfied that the inquiry yields helpful relevant material (previously no similar requirement)</li> </ol>
Part D: Search and Seizures (refer par. 2.3.6)	59 – 66	74D	<ol style="list-style-type: none"> <li>1. Issue of warrant:               <ol style="list-style-type: none"> <li>1.1 A magistrate may issue a warrant in certain cases (previously only a judge was allowed to grant a warrant)</li> <li>1.2 45 days limitation is set to exercise a warrant is set (previously no time limitation)</li> <li>1.3 Taxpayer may refuse access if warrant not presented.</li> </ol> </li> <li>2. Specific actions that a SARS official executing a warrant may and is required to take.</li> <li>3. Search without a warrant (previously no reference to warrantless search and seizures).</li> <li>4. Preservation orders (previously no similar provision in the ITA)</li> <li>5. Legal professional privilege (The ITA did not make provision for legal privilege)</li> </ol>

### **2.3.1 GENERAL**

Part A to Chapter 5 of the TAA contains the general administration provisions in respect of inspections, field audits and criminal investigations. In many respects the new provisions of the TAA are similar to the previous provisions of Section 74 of the ITA, but it introduces additional provisions that contribute to the rights of taxpayers.

According to the OM (2011:179), extended powers are bestowed on SARS in respect of the second area of focus of this study, which is information gathering in order to enhance compliance. The OM (2011:179) recognises that, although most taxpayers are compliant, there is a minority that aim to evade tax. In order to protect the integrity of the tax system, SARS is compelled to actively pursue tax evaders. The tax evasion schemes employed in the past years have become increasingly complex and sophisticated and, as a result, stricter enforcement of powers was necessary to effectively counter these schemes (OM, 2011:179).

In terms of the OM (2011:185), time is wasted by SARS on prolonged debates on SARS' entitlement to information rather than the international view that the focus should be on the collection of the correct amount of tax, based on timely accessible information.

#### **2.3.1.1 SELECTION BASIS FOR AUDITS**

The general provisions contained in Part A of Chapter 2 of the TAA represents the first area identified as being subject to changes with regards to the information gathering powers of SARS.

In terms of the old Section 74A of the ITA, the Commissioner or any officer was allowed to request the taxpayer, or any other person, to supply "any information, document or thing" (orally or verbally), for purposes of administering the ITA. The TAA grants SARS broad powers in selecting a person for inspection, verification or an audit. In terms of Section 40 of the TAA the selection basis can be anything that is relevant to SARS's duty to administer a tax act and includes a random or risk assessment basis. This provision broadens the justification for conducting an audit by preventing taxpayers from

arguing that an audit should only be conducted for the purpose of the administering a tax act (SAIT, 2014).

According to the TAAG (2013:23), the prescribed methods of selection on a random or a risk assessment basis are not applicable to criminal investigations. A person will only be selected for a criminal investigation if there are indications of an offence.

The TAAG (2013:24) further explains what is meant by the random and risk basis selection methods:

- A random selection is simply to perform spot checks on, for example, every 10<sup>th</sup> taxpayer on the tax register.
- A risk based selection is to target taxpayers demonstrating a certain risk profile. This tries to ensure that SARS obtains real-time information to address tax risks and provide timely feedback.

#### **2.3.1.2 AUTHORITY TO CONDUCT A FIELD AUDIT OR CRIMINAL INVESTIGATION**

In terms of the new Section 41 of the TAA, a SARS official must obtain and present an authorisation letter from a SARS Senior Official (SSO) in order to conduct a field audit or criminal investigation or else it may be assumed that the SARS official does not have proper authorisation. The above requirement is only applicable to field audits and criminal investigations and not to inspections.

In terms of the repealed Section 74B of the ITA, an officer could request information, document or thing for purposes of administering the ITA, if authorised by the Commissioner in writing. However there was no obligation on the officer to present the authorisation letter, nor could a taxpayer refuse entry where no authorisation letter was presented.

### **2.3.1.3 REQUIREMENT TO KEEP TAXPAYERS INFORMED AND PROVIDE GROUNDS FOR ASSESSMENT**

The duty of a SARS official to keep taxpayers informed in respect of an audit is a completely new obligation on SARS. Section 42 of the TAA regulates the process that SARS officials must follow during and after an audit in order to keep taxpayers up to date on the progress of the audit.

i. Stage of completion of the audit

A taxpayer has the right to be informed of the stage of the audit, at intervals and in the manner and form prescribed by the Commissioner in a public notice. This includes the following information in respect of the audit (SA, 2012c):

- present scope;
- stage of completion; and
- outstanding relevant material required.

ii. Outcome of the audit

In terms of the TAAG (2013:24), SARS must issue a letter of findings, within 21 business days (or an extended period depending on the complexity of the audit) from completion of the audit, informing the taxpayer that:

- the audit rendered insufficient audit evidence; or
- a potential material adjustment was identified along with the grounds for the proposed assessment or decision. The taxpayer is allowed to respond in writing within 21 business days from receipt of the letter of findings.

The stage of completion report must be presented within 90 days from commencement of the audit and again in 90 day intervals thereafter (Gad, 2013). SARS is not bound to following the above process if the taxpayer waives his right to be informed or if the SARS official is of the opinion that this will obstruct the objective and outcome of the audit (Sections 42(4) and 42(5) of the TAA).

According to Section 42(6) of the TAA, SARS may proceed to issue an assessment and is required to inform the taxpayer of the grounds of the assessment within 21 business days from the date of the assessment. This period could also be extended, depending on the complexity of the audit.

The above obligation on SARS, to keep taxpayers informed during the process of an audit, positively contributes to the rights of taxpayers.

#### **2.3.1.4 SERIOUS TAX OFFENCES**

Sections 43 and 44 of the TAA are new provisions that aim to provide protection for taxpayers' rights in the course of criminal investigations. If the SARS official suspects a taxpayer of committing a serious tax offence during the course of an audit, the matter must be referred to an SSO responsible for making the decision whether a criminal investigation must be launched.

A tax offence, as defined in Section 1 of the TAA, includes any:

- offence in terms of a tax act; or
- fraudulent act on behalf of SARS or its officials in relation to tax administration.

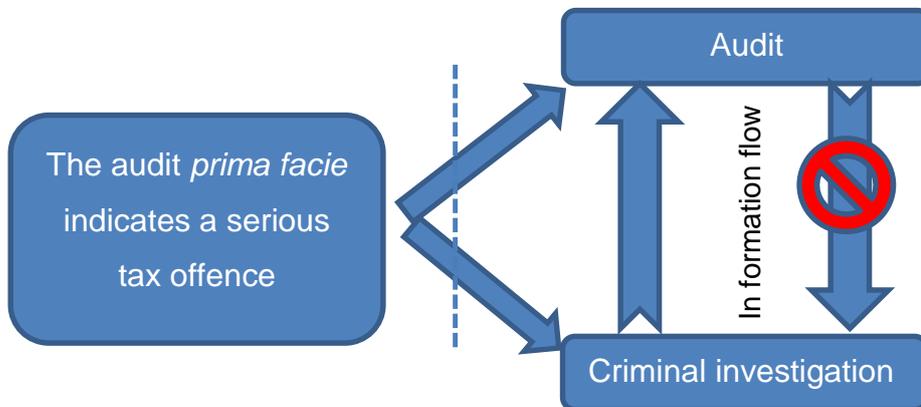
A serious tax offence is defined in Section 1 of the TAA as a tax offence where the person may be charged with two years' imprisonment or the equivalent fine determined in terms of the Adjustment of Fines Act (101 of 1991).

The following is applicable to the relevant material obtained during an audit where a person is suspected of a serious tax offence and referred to an SSO for a criminal investigation:

- i. Material obtained during the audit in terms of Chapter 5 of the TAA:  
The material obtained during the audit before the referral to the SSO may be used in the criminal investigation. The material obtained during the audit after the referral must be kept separate from information obtained during the criminal investigation as it is not admissible in criminal proceedings (TAAG 2013:25).
- ii. Material obtained during the criminal investigation:  
The material is admissible in civil and criminal proceedings and must be returned to the SARS official responsible for the audit once the criminal investigation is finalised. The material may be used in the audit (Sections 44(2) and 44(3) of the TAA).

Refer to Figure 2-1 below for a diagrammatic presentation of the flow of information between an audit and a criminal investigation.

**Figure 2-1: The flow of information (TAAG, 2013:25):**



The guidelines in terms of the flow of information as illustrated in Figure 2-1 above, clearly shows that it is prohibited to pass on audit information via the criminal investigation channel.

The TAA further protects the rights of a person suspected of a serious tax offence as follows (TAAG (2013:25):

- The admission of a taxpayer to an offence during the information gathering process may not be used unless the court orders otherwise (Section 58 of the TAA).
- Information gathered during an inspection or interview may not be used in the criminal investigation (Section 43 of the TAA).
- The SSO must recognise the constitutional rights of the suspect (Section 44 of the TAA).

### **2.3.1.5 GENERAL PROVISIONS IN RESPECT OF FIELD AUDITS EVALUATED AGAINST THE SELECTED OBJECTIVES OF THE TAA**

The general changes introduced by the TAA in respect of field audits and criminal investigations include both provisions that are in favour and not in favour of the taxpayer.

The following changes are welcomed as these provisions positively contribute to the objectives of the TAA to achieve a balance between the powers of SARS and the rights of taxpayers and to minimise the administrative costs and burden of taxpayers:

- According to the OM (2011: 187), the purpose of separating field audits and criminal investigations was to ensure that effect is given to the constitutional rights of taxpayers that are suspects in a criminal investigation. The information obtained during an audit may not be allowed in criminal proceedings if the taxpayer was not informed that he or she was also being investigated for a criminal offence, which is fair and to the benefit of taxpayers.
- The obligation placed on SARS, in terms of Section 42 of the TAA, to keep taxpayers informed, should lessen the frustration that taxpayers experienced previously during an audit, i.e. hearing nothing from SARS for long periods and receiving a demand to submit information on short notice (Croome, 2013b).

On the other hand, there is an overall shortcoming of the TAA in meeting its objectives in that the TAA does not include fairness provisions to assist taxpayers where SARS fails to adhere to its obligations when conducting a field audit or criminal investigation:

- With regards to the requirement to keep taxpayers informed, the TAA does not prescribe any consequences in cases where SARS does not adhere to the deadlines. The only remedy available to taxpayers is to approach the civil courts to grant an interdict and force the SARS official to carry out his duties under Section 42 of the TAA, which is a costly, time consuming and a burdensome option and does not contribute to either of the selected objectives of the OM (Croome & Brink, 2013).
- A taxpayer is required to provide assistance to SARS during a field audit or criminal investigation (Section 49 of the TAA). Failure to do so is a criminal offence (Section 234(l) of the TAA). SARS is granted protection against taxpayers who do not

co-operate, however the TAA does not make specific provision to protect taxpayers against SARS officials who do not act professionally, ethically, fairly, transparently, accountably and without bias, as required in terms of Section 4(2) of the TAA. There is therefore an imbalance between the powers of SARS and the protection of the rights of taxpayers. Taxpayers' only remedy is to seek relief in terms of Section 172 of the Constitution and approach the court to set aside the conduct of unconstitutional behaviour by a SARS official (Zerbst, 2013)

From the above it could be concluded that there is an imbalance between the powers of SARS and the protection of the rights of taxpayers and, as a result, the objective of equity and fairness is not achieved. Taxpayers are forced to seek relief from the court, which can be a timely and expensive recourse, and therefore does not effectively meet the objective to minimise the administrative burden and costs of taxpayers.

### **2.3.2 INSPECTIONS**

The provisions in terms of Part B of Chapter 5 of the TAA in respect of inspections represents the second area identified as being subject to changes with regards to the information gathering powers of SARS and have significantly changed from the previous provisions in terms of Section 74B of the ITA.

In terms of Section 45 of the TAA, the objectives when performing an inspection are now clearly defined. An inspection may only be carried out for the purpose of administering a tax act, and SARS is only allowed to determine the following:

- the identity of the occupant of the premises;
- whether the occupant has complied with the tax registration provisions; and
- whether the person complies with the provisions in respect of maintaining records.

The powers of SARS are also greatly extended from the previous provisions (PricewaterhouseCoopers Inc., 2012:32):

- The TAA allows for inspection without prior notice (i.e. unannounced inspections). In terms of Section 74B of the ITA, the same obligations applied to both an audit and

an inspection. Therefore the officer conducting an inspection was also required to give reasonable prior notice.

- The TAA contains no requirement for an authorisation letter for a SARS official in order to conduct an inspection. The provisions in terms of Section 41 of the TAA require a SARS official to produce an authorisation letter in order to conduct a field audit and criminal investigation. This requirement is not extended to inspections, as was the case in terms of the previous Sections 74B(1) and (4) of the ITA. It should be noted that, similar to Sections 45(1) and 45(2) of the TAA, the premises that may be inspected were limited to business premises. Dwellings or domestic premises may not be inspected without the consent of the occupant, except the areas used for trade purposes (Sections 45(1) and 45(2) of the TAA).
- In terms of the TAA, there are no restriction on the hours during which an inspection may be performed, which is in contrast with the previous provisions of Section 74B(2)(b) which limited inspections to normal business hours.

#### **2.3.2.1 PROVISIONS IN RESPECT OF INSPECTIONS EVALUATED AGAINST THE SELECTED OBJECTIVES OF THE TAA**

The powers of SARS are greatly extended by allowing unannounced inspections without an authorisation letter or restriction to business hours. In order for SARS to perform an inspection, SARS officials will have to search through documents on the premises. Critics have noted that SARS may abuse its powers by performing audits or searches without a warrant based on the provisions associated with inspections (PricewaterhouseCoopers Inc., 2012:32). This is not procedurally fair as it is in conflict with Sections 3(2) and 3(3) of the Promotion of Administrative Justice Act (3 of 2000) (PAJA) which requires sufficient notice as to the nature and purpose of the administrative action. As a result, this extension is in conflict with the equality and fairness objective of the OM.

Once again, the only recourse available to taxpayers is to approach a court on the basis that SARS did not comply with the administrative fairness provision of PAJA, a remedy which could prove to be prohibitively expensive. The objective to minimise the administrative costs of taxpayers is therefore also not met.

### **2.3.3 RELEVANT MATERIAL**

The term relevant material is new and is defined in Section 1 of the TAA to mean “any information, document or thing that in the opinion of SARS is foreseeably relevant for the administration of a tax act as referred to in Section 3”. The previous Section 74B merely referred to “any information, document or thing”.

Therefore the scope of material that may be requested and inspected by SARS is broadened in two ways. Firstly, the discretion to determine whether material is relevant, is entrusted to SARS (TALA, 2014). Secondly, SARS may request any material that is foreseeably relevant in respect of the following, as listed in Section 3 of the TAA:

- The tax liability of a person (in respect of a past, current or future tax period).
- A taxable event.
- To ascertain whether a person is compliant with his obligations in terms of a tax act.
- To determine whether a person has submitted the correct returns, other information and documents as required under a tax act.
- To establish the identity of a person.
- To determine whether a tax offence has been committed.
- To enable SARS to perform any other administrative duty in terms of a tax act and to provide assistance in terms of an international tax agreement.

In the draft response document from National Treasury and SARS to the Standing Committee on Finances (Department of National Treasury, 2014b) in respect of the draft TALA (2014), the following grounds are applied in determining whether information, documents or things are “foreseeably relevant”, and includes:

- A reasonable possibility exists, at the time of the request, that the material will be relevant to the purpose required.
- Once the material is provided, it becomes irrelevant whether it proves to be relevant.
- An information request may not be declined where it is definitely of relevance to an ongoing audit or investigation.
- A clear connection between material and purpose is not necessary, but there should be reasonable possibility that it will be relevant to the purpose.

- Material should be produced and then later a definite determination of relevance should occur.

The draft response document also noted that SARS should be required to provide reasons for requesting relevant material, however, that it will be impractical for SARS to provide reasons for every request. This is also in line with international case law (Australia and New Zealand Banking Group Limited v Konza. 2012 FCA 196; Department of National Treasury, 2014b).

In terms of Section 46 of the TAA, relevant material may be requested by:

- SARS from persons other than the taxpayer, as long as the person is objectively identifiable. The TAAG (2013:23) provides the example of circumstances where SARS is aware of a transaction resulting in a taxable event but does not necessarily know the names of the parties involved;
- an SSO concerning an objectively identifiable class of taxpayer;
- an SSO for purposes of revenue estimation.

The above material must be submitted at the place, in the format (that is reasonably accessible to the taxpayer) (TALA, 2014) and within a time frame specified in the request (Section 46).

An SSO can request a person, chargeable with tax or not, to provide relevant material in the form of an interview in person in order to clear issues and to determine whether further auditing is necessary (Section 47 of the TAA). The SSO must designate the place and time of the interview in the form of a notice prior to the interview. This is not for the purposes of a criminal investigation. A person may lawfully decline an interview where the designated place is more than 200kms from his or her place of business or residence (SA, 2012d). The distance is however increased to 2500kms in the case of listed companies, or where the gross income of the company exceeded R500 million in the preceding tax year, or any company that forms part of a group of companies in relation to the aforementioned (SA, 2012d). No similar provision was included in the ITA.

An SSO may require the information to be provided under oath, solemn declaration or, where necessary, in accordance with the Criminal Procedure Act (51 of 1977).

This provision is similar to the previous Sections 74C(4) and 74D(2) of the ITA, but only in respect of inquiries and search and seizure operations.

The above provisions extend the power of SARS to request material. The following new provisions, have been included in the TAA in order to protect the rights of taxpayers:

- The request for information is limited to obtain relevant material as defined and must relate to the administration of tax acts (Section 46(1) of the TAA).
- Taxpayers are not obliged to provide information or material that should not be reasonably maintained or is not reasonably available (Section 46(3) of the TAA).
- Taxpayers are allowed to decline a request for relevant material if not requested with reasonable specificity (Section 46(6) of the TAA).
- Taxpayers are allowed to decline an interview in person if the distance to the place of interview exceeds a distance determined in a public notice by the Commissioner (Section 47(4) of the TAA).

Overall it can be concluded that the most significant changes introduced by the TAA are in respect of SARS's extensive powers with regards to the broad scope of relevant material that may be requested by SARS (for example forecasts) and the material can now be requested by SARS from any objectively identifiable person, which was not previously the case.

#### **2.3.3.1 PROVISIONS IN RESPECT OF RELEVANT MATERIAL EVALUATED AGAINST THE SELECTED OBJECTIVES OF THE TAA**

The extended scope of material that may be requested by SARS makes no provision for cost recovery to a person who is required to attend an interview. Furthermore, the TAA contains no requirements in respect of minutes of the interview in order to confirm the accuracy of the details noted in the meeting (PricewaterhouseCoopers Inc., 2012:33).

The requirement that relevant material must be submitted within a reasonable period is subjective. In the past, the SARS policy allowed for a minimum period of 14 days, which in many cases may be considered unreasonable depending on the scope of the information requested. A SARS request for information could cover a period of as much as five years (Edward, 2008). Although SARS may extend the period on good cause shown, the provision is open for abuse by SARS in the form of charging an

administrative non-compliance penalty if the relevant information is not submitted within the time specified in the notice (PricewaterhouseCoopers Inc., 2012:33).

Section 3 of the TAA grants SARS the right to also obtain full information in respect of future periods. SARS can therefore request taxpayers to prepare any forward-looking information that is deemed necessary. The OM (2011:186), however, mentions that the information for revenue estimation is limited to information that the taxpayer has available.

Furthermore, there is no obligation on SARS to provide reasons for all requests of relevant material. This is not administratively procedurally fair and therefore the objective of equity and fairness is not achieved.

A taxpayer has, however, the following remedies available to him:

- To request withdrawal or amendment of a request for material (Section 9 of the TAA).
- To lodge a complaint with the SSMO.
- To lodge a complaint with the Tax Ombud's Office.
- To approach the Public Protector (Department of National Treasury, 2014b).

Due to the broad scope of material that may be requested by SARS the administrative burden and cost of compliance for taxpayers has increased. A taxpayer will have to allocate resources and time in order to either:

- obtain or prepare the relevant material requested (Ernest & Young Global Limited, 2014); or
- follow one of resolution processes listed above in order to vary the request.

The objective of the TAA to lower the administrative costs and burden of taxpayers is therefore not achieved.

### **2.3.4 CONDUCTING A FIELD AUDIT OR CRIMINAL INVESTIGATION**

Section 48 of the TAA introduced the following changes in respect of conducting a field audit or criminal investigation:

- The terms field audit and criminal investigation are now separated, although the same rules in terms of Section 48 apply to both.
- The notice period for a field audit or criminal investigation is 10 business days. If a taxpayer wishes to change the period, reasonable grounds for the variation must be submitted to SARS at least 5 business days prior to the commencement date. Previously Section 74B only referred to a “reasonable notice” period.
- The notice of a field audit or criminal investigation is required to include the date, time, place, initial basis and scope of the audit and investigation. The audit may only be performed during normal business hours. The old Section 74B did not include any detailed requirements of what should be included in the notice of a field audit or criminal investigation.
- Section 49 of the TAA now specifically requires taxpayers to cooperate and provide assistance to SARS officials during the course of the audit or investigation and this includes: making available appropriate facilities (e.g. photocopying facilities); answering relevant questions; and providing relevant material.
- In terms of Section 51 of the TALA (2012), the above requirement is extended to any other person on the premises where the audit is carried out. Taxpayers may recover the costs of photocopies made during the audit from SARS, after the completion of the audit. Previously no similar provision was contained in the ITA.
- The obstruction of a SARS official from performing his duties during the audit or investigation is a criminal offence and the taxpayer may be held liable for administrative non-compliance penalties (TAAG, 2013:28). This was not previously provided for in terms of the ITA.

With regards to field audits and criminal investigations, the provisions in terms of the TAA did not significantly change from the previous provisions of the ITA. The TAA now clearly defines the procedures to be followed when SARS conducts a field audit.

#### **2.3.4.1 PROVISIONS IN RESPECT OF CONDUCTING A FIELD AUDIT OR CRIMINAL INVESTIGATION EVALUATED AGAINST THE SELECTED OBJECTIVES OF THE TAA**

In respect of conducting field audits and criminal investigations, the TAA includes the following welcoming change which positively contribute to the selected objectives of the TAA, i.e. to improve the balance between the powers of SARS and the rights of taxpayers and minimise the administrative costs and burden of taxpayers:

- According to the OM (2011: 187), the purpose of separating field audits and criminal investigations was to ensure that effect is given to the constitutional rights of taxpayers that are suspects in a criminal investigation. The information obtained during an audit may not be allowed in criminal proceedings if the taxpayer was not informed that he or she was also being investigated for a criminal offence, which is fair and to the benefit of taxpayers.

The following shortcoming has been identified which does not meet the selected objectives in that the TAA do not include fairness provisions to assist taxpayers where SARS fails to adhere to its obligations when conducting a field audit or criminal investigation:

- A taxpayer is required to provide assistance to SARS during a field audit or criminal investigation (Section 49 of the TAA). Failure to do so is a criminal offence (Section 234(l) of the TAA). SARS is granted protection against taxpayers who do not cooperate, however the TAA does not make specific provision to protect taxpayers against SARS officials who do not act professionally, ethically, fairly, transparently, accountably and without bias, as required in terms of Section 4(2) of the TAA. There is therefore an imbalance between the powers of SARS and the protection of the rights of taxpayers. Taxpayers' only remedy is to seek relief in terms of Section 172 of the Constitution and approach the court to set aside the conduct of unconstitutional behaviour by a SARS official (Zerbst, 2013)

From the comparison performed in par. 2.3.4 above, it can be concluded that there is an overall imbalance between the powers of SARS and the protection of the rights of taxpayers. The objective of equity and fairness is therefore not achieved. Taxpayers are forced to seek relief from the court, a timely and costly recourse, and as a result, it does

not effectively meet the objective to minimise the administrative burden and costs of taxpayers.

### **2.3.5 INQUIRIES**

Provisions with regards to inquiries represent the third area identified as being subject to changes with regards to the information gathering powers of SARS. Similar to the previous provisions of Section 74C of the ITA, Sections 50 to 58 of the TAA allows a judge to grant an inquiry order to an SSO where there is suspicion of non-compliance of a tax act or a tax offence.

The changes from the previous provisions of the ITA are as follows:

- In terms of Section 51(1) of the TAA, the judge, in deciding to grant the order for the inquiry, has to be satisfied not only that there are reasonable grounds to believe that a person is non-compliant or has committed a tax offence (as previously provided for in Section 74C(5) of the ITA), but also that the inquiry will yield relevant material to support this suspicion.

Based on the above, it can be concluded that the provisions in terms of the TAA with regards to inquiries did not change significantly from the old provisions. The additional requirement as stated above positively contributes to the rights of taxpayers and as a result, achieves the objective to balance the powers of SARS and the rights of taxpayers.

### **2.3.6 SEARCH AND SEIZURES**

Search and seizures represents the fourth and final area identified as subject to changes to the information gathering powers of SARS and is examined below.

#### **2.3.6.1 APPLICATION AND ISSUE OF WARRANTS IN TERMS OF THE TAA**

The application of a warrant was previously governed in terms of Sections 74D(1) and 74D(2) of the ITA. In terms of the old provisions, the Commissioner, or any officer, was obligated to apply to a judge for a warrant, prior to the search and seizure operations.

In respect of the application of a warrant to conduct a search and seizure, the following changes from the old provisions were brought into effect in terms of Sections 59 and 60 of the TAA:

- A magistrate is now also allowed to approve the warrant, but only if the estimated tax dispute does not exceed the threshold set for Tax Board cases. This power was previously only granted to a judge of the High Court.
- The period during which a warrant may be executed is limited to 45 business days. This period may be extended if SARS can show good cause for the period to be extended. Previously, there were no time limitation was specified in Section 74D of the ITA.

With regards to the issuance of a warrant, the key principles from the old provisions, remain the same, namely, that the judge (or magistrate) may issue a warrant if he is satisfied that there is reasonable grounds to believe that the taxpayer is non-compliant with his obligations in terms of a tax act or has committed a tax offence (Bovjin, 2011:40).

### **2.3.6.2 EXECUTION OF WARRANTS IN TERMS OF THE TAA**

Section 61 of the TAA brings into effect the following changes in respect of the execution of a warrant:

- A person may refuse access if the SARS official does not present a warrant (Section 61(2) of the TAA). However, when the owner or manager of the premises is not present, the official must attach a copy of the warrant in a noticeable place on the premises, which effectively allows the SARS official to search the premises without the owner present. Note that there are also circumstances in terms of Section 63 where no warrant is required. Refer to par. 2.3.6.3 below. Previously, the Commissioner was allowed to carry out a search and seizure, at any time, and without prior notice. Section 74D did not contain similar requirements to Section 61(2) of the TAA.
- The TAA lists actions that a SARS official may take when performing a search and seizure in Section 61(3) and includes:
  - Opening of things that the official suspects to contain relevant material.

- Retaining computers and storage devices.
- Copying of relevant material.
- Requesting a person to explain relevant material.
- Stopping and boarding of aircrafts, vessels or vehicles.

In terms of the old Section 74D(1)(c) of the ITA, any officer referred to in the warrant was allowed to open or remove anything which he suspects to contain any information, documents or things that may provide evidence of the non-compliance of the taxpayer with his obligations under a tax act. Section 74D(1) did not specify any other actions that the officer may take in conducting the search and seizure operation.

Section 61(3) of the TAA therefore broadens the scope allowable conduct during search (Bovjin, 2011:47).

- The SARS official is required in terms of Section 61(4) to keep inventory of all material seized, in a form and manner that is practical under the circumstances, and provide a copy thereof to the relevant person. Previously, no such obligation was placed on the officer conducting the search and seizure operation. As such, Section 61(4) restricts the powers of the SARS official conducting the search and seizure to a certain extent (Bovjin, 2011:47).
- Section 61(5) of the TAA states that a SARS official should conduct the search and seizure operation with a strict regard to decency and order. Section 74D of the ITA did not make any similar reference, except that the search of any person must be conducted by an officer of the same gender.
- In terms of Section 66(4), the court may authorise SARS to keep copies of the original material seized even if the warrant is set aside by the court. This provision is considered to be unconstitutional since it effectively allows the execution of an unlawful warrant (PricewaterhouseCoopers Inc., 2012:36).

On the one hand, the provisions in terms of the TAA with regards to the execution of warrants introduced a few positive changes from the old provisions, in that the TAA now clearly sets out the actions that a SARS official may and is required to take (refer to Sections 61(4) and 62(5) of the TAA).

On the other hand, the scope of allowable actions while carrying out a search and seizure is also broadened (refer Sections 61(3) and 66(4) of the TAA).

### **2.3.6.3 WARRANTLESS SEARCH AND SEIZURES**

As mentioned in 2.3.6.2 above, in terms of the old provisions of Section 74D of the ITA, the Commissioner was allowed to conduct search and seizure operations at the premises of the taxpayer, without prior notice, if he obtained a warrant authorised by a judge. Section 74D did not make reference to warrantless search and seizures.

Section 63 of the TAA, now allows for warrantless search and seizures. Warrantless search and seizure operations are allowed in one of the following circumstances:

- The person agrees to the search and seizure in writing.
- The SSO has reasonable grounds to believe that:
  - there is a possibility that the relevant material will be destroyed or removed;
  - a search warrant would have been issued, had one been applied for; and
  - the time delay to obtain the warrant will defeat the purpose of the search and seizure.

The SSO must inform the owner of the premises, before commencing the search, that the search is being conducted in terms of this Section as well as the grounds for performing the search (e.g. the alleged tax offence). If the owner is not present, the owner should be informed as soon as possible subsequent to the seizure (Section 53 of the TALA (2012)). The search may only be conducted at business premises unless the occupant of the house or dwelling gives his consent to SARS to search the private dwelling.

Section 66 of the TAA contains provisions for circumstances where damages were caused to property during a search and seizure. The affected person may request that SARS to reimburse damages caused to property or apply to the High Court if SARS dismisses the request. No such provision was previously contained in Section 74D of the ITA.

#### **2.3.6.4 PROVISIONS IN RESPECT OF SEARCH AND SEIZURES EVALUATED AGAINST THE SELECTED OBJECTIVES OF THE TAA**

The changes introduced by the TAA contain positive additions to the previous legislation. For example: the obligation on SARS to conduct the search and seizure in an orderly manner and with decency; the requirement to keep an inventory list of all material seized; and the right granted to a person affected by a search and seizure to recover costs from SARS for damages caused to property caused during the search and seizure.

The TAA contains no provisions to protect taxpayers against circumstances where SARS oversteps its boundaries in respect of search and seizures and taxpayers will have to approach the court to set aside unconstitutional behaviour by a SARS official in terms of Section 172 of the Constitution. (Bovjin, 2011:137; Zerst, 2013). Furthermore, the TAA does not prescribe the level of detail to which the inventory list must be kept or afford the opportunity for the person being searched to confirm the completeness of the list.

With regards to warrantless search and seizures, the powers of SARS are greatly extended with limited recourse available to taxpayers where an SSO abuses these powers. Prior to the insertion of Section 74D to the ITA in 1996, Section 74(3) of the ITA allowed for warrantless search and seizures. Section 73(4) was widely criticised for violating a taxpayer's right to privacy and therefore being in contravention with Section 13 of the Constitution (Bovjin, 2011:20). The same criticism is therefore valid in respect of the warrantless search and seizures provisions contained in the TAA.

The grounds for performing a warrantless search and seizure, in terms of Section 63 of the TAA, are ultimately subject to the discretion of an SSO as to whether reasonable grounds exist. Bovijn (2011:71-78) researched the "reasonable grounds" criterion for warrantless search and seizures to determine exactly what such grounds entail. Bovijn (2011:73) notes that there are no clear guidelines in existing tax cases indicating when the criterion for reasonable grounds are met and that most cases require a degree of discretion.

Bovijn (2011:78) concludes that objective facts must be known. In other words, a SARS official cannot merely *bona fide* believe, for example, that a risk exists that the taxpayer will destroy documents. It must be substantiated with facts that are objectively known to exist.

The reasonable grounds criterion, however, still leaves opportunity for abuse of power by SARS officials. The SARS official will ultimately have to put him or herself in the position of a judge or magistrate (Bovijn, 2011:89) and it may be of concern whether the SARS official possesses the same competence as a judge to exercise such discretion. The SARS will ultimately act as the judge as well as the jury (Rawoot, 2009). The only remedy available to taxpayers is for a court to review the reasonableness of the grounds, an expensive recourse available only after the damage has been done (PricewaterhouseCoopers Inc., 2012:36).

Overall, it can be concluded that the TAA, in respect of search and seizures, does not meet its objectives. The objectives of the TAA are to ensure fair treatment of taxpayers and to minimise their administrative costs and burden. The extended authority described in this Section could not be considered fair to taxpayers and may lead to increased administrative costs and burden.

#### **2.3.6.5 LEGAL PROFESSIONAL PRIVILEGE**

The final new concept introduced by Chapter 5 of the TAA is the right of professional privilege. The ITA did not make provision for legal professional privilege. The doctrine of legal professional privilege was regarded a key right in terms of common law (Gad & Devnarain, 2013).

Section 64 of the TAA now makes provision for this common law right in circumstances where SARS anticipates, or a person claims, that relevant material is subject to legal professional privilege. SARS is required to seal all privileged information and material, and arrange for an independent attorney, appointed by the Minister of Finance, to take delivery of the sealed information. The appointed attorney is required to determine within 21 business days whether legal privilege applies and retain the relevant material until any disputes in respect of the material are resolved or so ordered by the court.

The new provisions in respect legal professional privilege contribute to both selected objectives. The rights of taxpayers are positively affected, whilst lessening the administrative burden of taxpayers as they do not have to seek relief from a court to enforce this common law right.

## **2.4 THE PENALTY REGIME**

The penalty regime is the third and final focus area identified by this study. The understatement penalty imposed in terms of Chapter 16 of the TAA was previously regulated in terms of Section 76 of the ITA and was known as additional tax. In addition to the old provisions, the failure to pay the correct tax amount where no return is required is now also considered to be an understatement in terms of Section 221 of the TAA.

In terms of the old provisions an additional tax of up to 200% could be imposed by SARS on an additional assessment. The Commissioner could also remit or reduce the penalty if the additional assessment was not issued due to fraud or tax evasion. In most cases SARS only imposed a percentage based penalty rather than additional tax (Kriel, 2012). This unrestricted discretionary power of SARS to remit a penalty in terms of the old provisions has now been materially restricted in terms of the new provisions of Sections 221 to 224 of the TAA (Van Zyl, 2014:906).

The penalty imposed in respect of an understatement has been criticised as an area of concern since the penalties imposed are harsher in comparison to previous legislation (Irsherwood, 2013, Van Zyl, 2014:919). The new penalty regime in terms of the TAA are explained below.

### 2.4.1 UNDERSTATEMENT PENALTY

In terms of Section 222(1) of the TAA, in the event of an 'understatement', a taxpayer must pay an understatement penalty.

An 'understatement' is defined in Section 221 of the TAA as:

"any prejudice to SARS or the *fiscus*  
as a result of—

- (a) a default in rendering a return;
- (b) an omission from a return;
- (c) an incorrect statement in a return; or
- (d) if no return is required, the failure to pay the correct amount of 'tax'."

According to Van Zyl (2014:906) the new understatement penalty can be seen as an "automatic default penalty" due to the mandatory nature thereof, i.e. SARS has to impose an understatement penalty if an understatement has occurred, unless the understatement is due to a *bona fide inadvertent* error.

The phrase, *bona fide inadvertent* error, is not defined in the TAA. SARS has indicated that they will publish guidance on the meaning of the phrase for use by taxpayers and SARS officials. At the time of submission of this mini-dissertation, no guidance has been published by SARS. Until such time, taxpayers will remain at the mercy of SARS to correctly apply their discretion (Croome, 2014b; Van Zyl, 2014:910).

The understatement penalty is equal to the highest applicable percentage in terms of the table in Section 223(1) of the TAA, multiplied by the shortfall or unpaid tax amount determined in terms of Section 222(2) to (4) of the TAA. An understatement penalty may also be imposed on an estimated assessment determined in accordance with Section 95 of the TAA (Section 223(2) of the TAA).

The penalty percentages table imposed in terms of Section 223(1) is based on five behaviours and four conducts and is illustrated in Table 2-2 below (effective from 16 January 2014 in terms of the TALA (2013)).

**Table 2-2: Understatement penalty percentage table (Kriel, 2012; TAA Section 223(1))**

Behaviour	Standard case	Obstructive or repeat case	Voluntary disclosure	
			After notification of audit or investigation	Before notification of audit or investigation
i. Substantial understatement	10%	20%	5%	0%
ii. Reasonable care not taken in completing return	25%	50%	15%	0%
iii. No reasonable grounds for tax position	50%	75%	25%	0%
iv. Gross negligence	100%	125%	50%	5%
v. Intentional tax evasion	150%	200%	75%	10%

Only the following terms, referred to in the table, is defined in Section 221 of the TAA:

- A “substantial understatement” is when the prejudice to SARS exceeds the greater of 5% of the proper amount of tax chargeable or refundable, or R1 000 000.
- A “repeat case” is a recurrence of one of the behaviours in Table 2-2 above within five years.
- A “tax position” is any assumption taken in a tax return and specifically includes whether or not an amount, transaction or item is: taxable, deductible (or may be set off), subject to a lower tax rate or qualifies for a rebate.

The TAAG (2013:80-81) aims to provide meanings for the following terms:

- “Gross negligence” means to do something or not to do something with a total disregard of the consequences (TAAG, 2013:80).
- “Intentional tax evasion” means to purposefully take actions to reduce or extinguish a tax amount payable or inflate a tax refund (TAAG, 2013:81).

The decision to determine a taxpayer’s behaviour and whether it is a standard case or a repeat case lies with SARS (TAAG, 2013:79). The only instance where a taxpayer may

not be liable for an understatement penalty is the case where the taxpayer approaches SARS before the notification of an audit. In terms of the previous Section 76 of the ITA, unless the additional tax was levied due to a taxpayer's intention to evade tax, the Commissioner had the discretion to remit the additional tax or a portion thereof.

In terms of Section 223 of the TAA, SARS is only allowed to remit a penalty for a substantial understatement if the taxpayer made full disclosure and obtained a tax opinion from a registered tax practitioner before the due date of the return. The tax opinion must:

- be based on complete disclosure of all facts of the arrangement: if the opinion is in respect of the substance over form doctrine or any anti-avoidance regulations of a tax act, the taxpayer must demonstrate that all steps of the arrangement was disclosed in full to the tax practitioner;
- include a confirmation that the opinion is most likely to hold up in court: the TAA does not provide any clarity on what is considered to be "most likely than not" which places a great deal of risk on both the tax practitioner and the taxpayer.

In all other cases the only recourse available to taxpayers is to lodge an objection or appeal. SARS has to prove the facts that formed the basis for imposing an understatement penalty (Section 102(2) of the TAA).

The understatement penalty regime in terms of the TAA significantly changes the previous "additional tax" provisions in terms of the ITA. Under the new penalty regime, penalties imposed can be higher and limited opportunity is offered to SARS to remit the penalty. It is therefore more detrimental to taxpayers than the previous provisions of Section 76 of the ITA (Irsherwood, 2013).

#### **2.4.1.1 PROVISIONS IN RESPECT OF THE UNDERSTATEMENT PENALTY REGIME EVALUATED AGAINST THE SELECTED OBJECTIVES OF THE TAA**

The understatement penalty regime imposes stricter rules to punish tax offenders. However, taxpayers who make honest mistakes are also severely impacted (Kriel, 2012). The only event in which a taxpayer will not be held liable for an understatement penalty is when the taxpayer approached SARS before the notification of an audit or in respect of *bona fide inadvertent errors* (Croome, 2013i; Croome, 2014b).

The phrase *bona fide inadvertent error* is currently not defined and taxpayers are at risk of being punished for every mistake that is made, whether intentional or not (Kriel, 2012). Pressure is thus placed on taxpayers and tax practitioners to take greater care to not make mistakes when completing tax returns and implement sufficient controls in order to mitigate the risk of being subjected to the understatement penalty (Van der Zwan, 2013).

In the past, SARS demonstrated greater leniency in waiving a late payment interest imposed as a result of an electronic payment only reflecting in its bank account the day after the payment deadline date. Under the new penalty regime in terms of the TAA, companies have found that SARS will impose an understatement penalty even if the payment is one minute late. This has resulted in companies experiencing the new penalty regime in terms of the TAA as an opportunity that is abused by SARS to increase their collection of interest and penalties.

(Ernest & Young Global Limited, 2014).

As mentioned, previously, the OM (2011:179) recognises that there is a minority that of taxpayers who aim to evade tax and consequently aims to counter tax evasion. However, these provisions may have an effect contrary to another aim envisaged by the OM, namely to make sufficient provision for the protection of the rights of compliant taxpayers. Compliant taxpayers may become demoralised and lose faith in the integrity of the tax system if they are unfairly penalised as a result of an aggressive effort by SARS to pursue non-compliant taxpayers.

One of the recourses available to taxpayers is to obtain a tax opinion from a registered tax practitioner which adheres to the requirements as set out in Section 223(3)(b) of the TAA in order to show that reasonable care has been taken (Van Zyl, 2014: 915). This will increase the cost of compliance for taxpayers (Irsherwood, 2013). Furthermore, the new provisions in respect of persons allowed to be registered as tax practitioners may also result in an increase in the cost of the services of registered tax practitioners, decreasing the affordability of such services to some taxpayers. Refer to par. 2.4.3 on p. 49.

Another remedy available to an aggrieved taxpayer is to lodge a complaint with the Tax Ombud. Taxpayers should note however that the pay-now-argue-later principle still applies even if a complaint is being reviewed by the Office of the Tax Ombud. The Office of the Tax Ombud warns taxpayers to pay all tax amounts due and payable, to avoid interest and penalties that will be charged on delayed payments (Department of National Treasury, 2014a).

From the above it is evident that the understatement penalty regime in terms of the TAA could increase the compliance costs for taxpayers and as a result the objective to minimise these costs are not met. The penalty is also based on five behaviours and four conducts which are subject to the discretion of SARS, without granting SARS the equivalent discretion to remit a penalty imposed and therefore the objective of equity is also not achieved.

#### **2.4.2 VOLUNTARY DISCLOSURE PROGRAMME**

In Table 2-2 above, understatement penalties are substantially reduced where a taxpayer has made a voluntary disclosure of the understatement before or after the notification of an audit. It is therefore considered relevant to the study to research the changes introduced by the TAA in respect of the Voluntary Disclosure Programme (VDP).

Prior to the TAA, SARS invited taxpayers and tax practitioners to participate in the SARS VDP during the period 1 November 2010 to 31 October 2011. The main purpose of this temporary VDP was to collect taxes by encouraging taxpayers to disclose defaults. A default refers to any action from the taxpayer that resulted in an incorrect tax

amount or refund. In return the taxpayer could qualify for relief from penalties, interest, additional tax and legal prosecution (Croome, 2013g; SARS, 2011a).

The TAA now contains a permanent VDP in part B of Chapter 16 which is similar to the initial VDP. According to the TAAG (2013:81) the objective of the VDP is to encourage voluntary compliance and to assist SARS in managing a better tax system. The changes from the original VDP are as follows:

- The VDP only applies to tax defaults. In terms of the previous VDP, relief in respect of tax defaults and exchange control violations could also be applied for (Croome, 2013g; SARS, 2011a; SAIT, 2013).
- The scope of relief provided has been limited. In terms of Section 229 of the TAA, interest or penalties as the result of the late payment of tax or not meeting the filing deadline will not be waived. Taxpayers will have to seek relief from such penalties under the provisions of that specific legislation (Croome, 2013g). In terms of the previous VDP, taxpayers could receive up to 100% relief from interest and penalties, however, penalties for late submission of returns or late payments may have been charged (SARS, 2011a).
- The relief in respect of an understatement penalty does not extend to the behaviour of gross negligence or intentional evasion. In these circumstances a taxpayer could still be held liable for an understatement penalty under the VDP of 5% to 10% in comparison to the previous VDP which offered relief of 50% to 100% of the interest imposed (PricewaterhouseCoopers Inc., 2012:77; SARS, 2011a). It should be noted that if SARS is approached outside of the VDP, the normal percentages of Section 223 will apply which ranges from 5% to 75% (Croome, 2013g).

The permanent VDP in terms of the TAA does not introduce significant changes from the previous temporary VDP, however, the new VDP offers less relief to taxpayers from penalties and interest (SAIT, 2013).

#### **2.4.2.1 PROVISIONS IN RESPECT OF THE VOLUNTARY DISCLOSURE PROGRAMME EVALUATED AGAINST THE SELECTED OBJECTIVES OF THE TAA**

The VDP of the TAA offers a permanent opportunity for taxpayers to obtain relief from penalties and interest, however, limited relief afforded by the new VDP in respect of penalties and interest may make it less attractive for taxpayers to submit applications compared to the old VDP (SAIT, 2013; Croome, 2013g).

Furthermore, the average turnaround time for the applications under the new VDP regulated in terms of the TAA is 182 days (SARSA, 2014). It is important to note that the pay-now-argue-later principle still applies regardless of whether a taxpayer awaits the finalisation of a VDP application (Croome, 2013a). Interest will still be levied on late payment of the tax in question. The VDP may therefore not provide the relief that taxpayers would hope for in respect of lowering administrative costs which includes interest (Croome, 2013g) and therefore does not achieve the objective of minimising the administrative costs of taxpayers.

Although the VDP does not necessarily lessen the administrative costs of taxpayers in terms of penalties and interest, it does however offer an opportunity to taxpayers to come clean with regards to their defaults and possibly obtain relief (SAIT, 2013). This achieves the objective of fairness in order to promote compliance.

#### **2.4.3 REGISTRATION OF TAX PRACTITIONERS**

A penalty for a substantial understatement may be remitted by SARS if the taxpayer made full disclosure and obtained a tax opinion from a registered tax practitioner (Section 223 of the TAA). Therefore, the new provisions in the TAA in respect of the registration of tax practitioners are considered below.

The provisions of the TAA in respect of registration of tax practitioners and the reporting of unprofessional conduct of tax practitioners have been extended significantly from the previous provisions of Sections 67A and 105A of the ITA.

One of the material changes is that tax practitioners are required to be members of a controlling body as recognised in terms of Section 240A of the TAA by 1 July 2013 or

within 21 business days from the first date that the person performs the duties of a tax practitioner. Tax practitioners who fail to register will be guilty of a criminal offence in terms of Chapter 17 of the TAA.

Only the following controlling bodies are currently recognised by the Commissioner in terms of Section 240A of the TAA:

- General Council of the Bar of South Africa, a Bar Council and a Society of Advocates.
- The Independent Regulatory Board for Auditors.
- Similar statutory bodies approved by the Minister, e.g. the South African Institute for Chartered Accountants and South African Institute of Professional Accountants.

The Commissioner may review an association seeking recognition as a controlling body based on certain criteria (Section 240A(2) of the TAA). When a body no longer meets the requirements, the Commissioner may notify the body to take corrective steps within a specified timeframe and withdraw the recognition if the body fails to do so. This will not just impact the association but also its tax practitioner members (Section 240A(6) of the TAA).

Recognised controlling bodies are required to submit a report on its members and its compliance with Chapter 18 (i.e. Reporting of Unprofessional Conduct) of the TAA as prescribed by the Commissioner. The Minister of Finance may also appoint a panel of retired judges or similar persons to review complaints lodged by an SSO. This may be done at the request of the body or where the disciplinary procedures of the body are deemed inadequate by the Minister of Finance. Both SARS and the body will be liable for the costs of the panel.

In terms of Section 240(2) of the TAA, a person providing advice solely in respect of the Customs and Excise Act (91 of 1964) is no longer excluded from persons required to register as tax practitioners (Section 67(2)(e) of the ITA). The old provisions were aimed at persons completing or assisting in the completion of a document, which is now limited to the completion of a return only.

An important new provision for tax practitioners is contained in Section 240(3) of the TAA, which prohibits the following persons from registering as a tax practitioners:

- any person who was terminated from a related profession by a controlling body for serious misconduct within the past five years; or
- any person who was found guilty of a fraudulent or any dishonest offence within the past five years and was sentenced to prison for two years or an equivalent fine exceeding the amount prescribed in terms of the Prevention and Combating of Corrupt Activities Act (12 of 2004).

Section 241 of the TAA adds the following additional circumstances to the previous provisions of Section 105A of the ITA regarding cases where a complaint against a registered tax practitioner may be lodged:

- Where due diligence was not exercised in preparing or assisting in the preparation of documents relating to the application of a tax act.
- Where the practitioner has procrastinated in finalising of a matter before SARS.
- Where the practitioner has issued opinions encouraging gross negligence, incompetence or recklessness and that are clearly in contrast with the law.
- Gross negligence in general when exercising duties as a tax practitioner.
- Knowingly providing or assisting in providing false and misleading information.
- Directly or indirectly bribing or threatening a SARS official in order to influence the official with regards to a tax matter.

The period allowed for a tax practitioner to object to a notification from SARS with regards to a complaint to a controlling body has been decreased from 30 days (Section 105A(3)(c) of the ITA) to 21 business days (Section 242(3) of the TAA).

In conclusion, the rules and regulations governing tax practitioners have significantly changed. All tax practitioners are now forced to belong to a controlling body and ensure that their tax knowledge is up to date and in line with national standards.

#### **2.4.3.1 PROVISIONS IN RESPECT OF THE REGISTRATION OF TAX PRACTITIONERS EVALUATED AGAINST THE SELECTED OBJECTIVES OF THE TAA**

The stricter rules imposed by the TAA in respect of tax practitioners, i.e. the requirement for membership to a controlling body, will on the one hand benefit taxpayers as it will enhance the quality of tax practitioner services. These new provisions may protect taxpayers who rely on tax practitioners' expertise and knowledge of the tax system in order to be compliant and therefore achieves the objective to balance the powers of SARS and the rights of taxpayers.

However, this also places tax practitioners who are currently not a members of a controlling body in a very difficult position, especially where they are unable to obtain the necessary qualification to adhere to the requirements of the controlling body. As a result the number of professionals who are officially qualified to assist taxpayers has decreased (Badham, 2013:2). This may result in an increase in the costs to taxpayers of the services of tax practitioners and therefore the provision does not achieve the objective to minimise the administrative costs of taxpayers.

#### **2.5 CONCLUSION**

Based on the comparisons performed in this Chapter between the old provisions of the ITA and the new provisions of the TAA, it was found that, in general, with the establishment of the new legislation in terms of the TAA, significant changes have been made in terms of tax administration, specifically with regards to the granting of extensive powers to SARS and its officials.

Overall, compared to the selected objectives of the TAA, the following can be concluded with:

- With regards to the objective of the TAA to balance the powers of SARS and the rights of taxpayers, the TAA achieves the objective in general, with the exception of the information gathering powers of SARS. SARS is granted extensive powers with limited fairness provisions for taxpayers.
- With regards to the objective of the TAA to lower the administrative burden and cost of taxpayers, in general, the TAA unfortunately does not accomplish this objective. The lack of specific remedies afforded by the TAA to taxpayers where SARS and its

officials do not adhere to their obligations in terms of the TAA, increases the costs that taxpayers will have to incur in order to obtain relief. There is currently no provision under the TAA granting taxpayers the right to recover the costs from SARS other than approaching the High Court to award costs against SARS (Croome, 2013a).

The results of the comparison performed in this Chapter on the changes from the ITA to the TAA and how these changes achieve, or lack to achieve the objectives of the TAA, are summarised below:

- The Tax Ombud's office was established to look after the rights of taxpayers. The purpose of the Tax Ombud's office is to review taxpayers' complaints relating to a tax administrative matter or procedure and to make recommendations to SARS to resolve the matter. The Tax Ombud, however, cannot direct SARS into corrective action in order to defend the rights of taxpayers against the abuse of powers by SARS. It is questioned whether the Tax Ombud actively contributes to achieve the fairness and equity objective of the TAA. The protracted process to follow before a taxpayer can lodge a complaint with the Tax Ombud also hampers the objective to minimise the administrative burden of taxpayers.
- The information gathering powers of SARS have been greatly extended, specifically with regards to relevant material that may be requested and warrantless searches that may be performed. A positive change has been made to taxpayers' rights in terms of SARS' responsibility to keep taxpayers informed during the process of the audit. However, the TAA re-introduced warrantless search and seizures with limited recourse available to taxpayers where SARS abuses its powers. Taxpayers will have to seek relief from a court. As a result, both of the selected objectives are not achieved.
- The "additional tax" penalty regime of the previous Section 76 of the ITA, has been replaced with an understatement penalty regime which is based on the five behaviours and four conducts of taxpayers that are targeted at tax-evaders. No understatement penalty is imposed to *bona fide inadvertent errors*, however the phrase is not defined and no guidelines have been published on the interpretation of

the phrase at the time of the study. The aggressive efforts to counter non-compliant taxpayers through the new penalty regime may be to the detriment of honest taxpayers and as a result does not achieve the objective of equity and fairness. Furthermore, the costly remedies (for example to seek relief from a court or obtain specialist advice from an independent tax practitioner) available to taxpayers who were erroneously affected by the enforcement of the penalty regime, do not achieve the objective of reducing the administrative costs of taxpayers.

- The TAA contains a permanent VDP which is similar to the initial VDP. However, provides limited relief in respect of interest and penalties for taxpayers in comparison to the old VDP and as a result does not achieve the objective of minimising the administrative costs to taxpayers.
- The new strict regulations of the TAA in respect of tax practitioners presents new challenges to controlling bodies and tax professionals. However, this will force professionals to remain up to date with developments in the tax industry which in return will enhance the quality of South Africa's revenue services (Badham, 2013:3). This supports the rights of taxpayers. However, the possible increase in cost of the services of tax practitioners will increase the administrative costs of taxpayers.

Also refer to Table 2-3 below for a summative comparison between the changes introduces to tax administration in terms of the provisions of the TAA and the selected objectives of the OM.

Chapter 3 of the mini-dissertation examines current international best practices and the guidelines of the OECD that are relevant to the areas of focus identified in Chapter 2 as well as the two objectives of the OM that were examined.

**Table 2-3: Summary of the comparison between the changes introduced to tax administration by the provisions of the TAA and the selected objectives**

New provision	Description	Objective of the TAA		Relevant paragraph in Chapter 2 of the dissertation
		Balance the powers of SARS and the rights of taxpayer	Minimise administrative costs and burden of taxpayers	
Tax Ombud	An independent mechanism available to taxpayers to review tax administrative complaints after all other complaints resolution mechanisms have been exhausted.	✓	x	2.2.4
	Lack of power to direct SARS into a corrective action	x	x	2.2.4
Information gathering powers	Obligation of SARS to keep taxpayers informed on the stage of completion of the audit and issue a letter of findings.	✓	✓	2.3.1.3
	Unannounced inspections	x	x	2.3.2.1
	Request for relevant material	x	x	2.3.3.1
	Search without a warrant	x	x	2.3.6.3
Penalty regime	The penalty is based on five behaviours and four conducts and targets at tax-evaders. No understatement penalty is imposed for <i>bona fide</i> inadvertent errors.	x	x	2.4.1
VDP	Afford taxpayers the opportunity to regularise prior tax violations.	✓	x	2.4.2.1
	Limited relief provided to taxpayers, specifically in respect of interest and penalties on late payment of taxes.	✓	x	2.4.2.1
Tax practitioners	Require all tax practitioners to be registered with a controlling body.	✓	x	2.4.3.1

**Legend:**

✓ - Achieves objective

x - Fails to achieve objective

## **CHAPTER 3: INTERNATIONAL TAX ADMINISTRATION PRACTICES**

### **3.1 INTRODUCTION**

This Chapter addresses the research objective as identified in par. 1.6 (ii) on p. 7. It discusses the guidelines for tax administration recommended by the OECD and the practices followed by Canada, the UK and other OECD countries identified which may suggest improvements to current legislation in terms of the TAA.

This Chapter focuses on those practices and guidelines that are relevant to the specific areas as identified in Chapter 2 of the dissertation, namely:

- The Tax Ombud or similar body.
- Information gathering powers of revenue authorities.
- Penalty regimes, including VDP's.

In addition to the above, this Chapter examines practices and guidelines that contribute to achieving the two objectives of the OM, also as examined in Chapter 2.

These practices and guidelines are analysed against the provisions of the TAA identified in Chapter 2, in order to identify areas for improvement and to make recommendations to align the TAA with international trends in terms of tax administration.

As indicated in Chapter 2, the purpose of the drafting of the TAA was to address the need for a “modern legislative framework” in order to adapt to new developments and to minimise costs involved in the administration of taxes (OM, 2011:178). The development in terms of tax administration in South Africa shows a renewed focus on enforcing compliance through extended powers to SARS in respect of (TAAG, 2013:5):

- Obtaining information by conducting inspections, audits and investigations.
- Tax collection.
- Penalties enforced in the event of non-compliance.

It should, however, be recognised that the TAA has also made an effort to address the objective to lessen the administrative burden of taxpayers. One example is the so called single registration process introduced by Section 24 of the TAA. A single taxpayer

reference number is allocated to a registered taxpayer in respect of one or more taxes. Previously individual tax reference numbers were allocated per tax type. The single registration process aims to lessen the administrative burden of taxpayers as they will now only have one account and only need to submit one form to register (TAAG, 2013:17).

The analyses performed in Chapter 2 of the mini-dissertation identified a great focus on the part of SARS to counter tax evaders by affording extensive powers to SARS. SARS requires sufficient power to protect the integrity of the tax system and enforce compliance. However, the aggressive approach by SARS to pursue tax evasion may be to the detriment of honest and compliant taxpayers. In order to encourage compliance amongst taxpayers, it is also important to ensure that sufficient mechanisms are made available to protect their rights.

Guidelines published by the OECD in order to achieve cooperative compliance and to improve the service of revenue authorities to taxpayers are examined in this Chapter in order to obtain an understanding of how a delicate balance between the powers of revenue authorities and the rights of the taxpayers, with regards to tax administration, can be achieved.

Chapter 3 also compares the tax administration systems of Canada and the UK (both OECD countries) to the TAA in order to evaluate how far South Africa has come in developing a modern legislative framework in respect of tax administration. This Chapter will also examine practices followed by other OECD countries that may recommend improvements to the TAA.

The OM (2011:183) specifically highlights Canada and the UK as benchmarks in terms of tax administration. This is also substantiated by a study conducted by PricewaterhouseCoopers Incorporated (PwC) and the World Bank entitled "Paying taxes 2014" that considers tax systems all over the world from a business perspective. The objective of the study was to provide useful information for the development of good tax policies and to facilitate benchmarking of tax systems relevant to a specific group of economies (PricewaterhouseCoopers Inc., 2014:7). The study recognised South Africa as one of the countries that lowered administrative burdens and made

payment of taxes easier through merging taxes (PricewaterhouseCoopers Incorporated Inc., 2014:13).

The following countries are listed in the top 10 (of the 189 countries included in the study) tax systems (PricewaterhouseCoopers Inc., 2014:165):

- |                         |              |
|-------------------------|--------------|
| 1. United Arab Emirates | 6. Ireland   |
| 2. Qatar                | 7. Bahrain   |
| 3. Saudi Arabia         | 8. Canada    |
| 4. Hong Kong            | 9. Oman      |
| 5. Singapore            | 10. Kiribati |

The ranking of the tax systems took into account factors such as the total tax rate, time to comply and number of tax payments (PricewaterhouseCoopers Inc., 2014:165).

The study makes specific reference to the Canadian tax system which is ranked in 8<sup>th</sup> place and has improved its ranking from 11<sup>th</sup> place in 2012 by lightening the burden on taxpayers especially in respect of small private businesses (PricewaterhouseCoopers Inc., 2014:124).

The improvement in the ranking of Canada is mainly due to the following two factors (PricewaterhouseCoopers Inc., 2014:124):

- reduction in the corporate tax rate on the first CAD500,000 of annual profits; and
- systematic simplifications with regards to electronic reporting, filing, payments and tax compliance regulations.

South Africa is ranked in the 24<sup>th</sup> place and the UK is ranked in the 14<sup>th</sup> place (PricewaterhouseCoopers Inc., 2014:165). Based on the ranking of the tax systems of Canada and the UK and the fact that these two countries were used as benchmarks in drafting the TAA, is considered to be of value to examine the practices followed by Canada as well as the UK in terms of tax administration for purposes of the research objective of Chapter 3. The study of this Chapter will not be limited to Canada and the UK, where practices of other OECD countries are highlighted by the OECD.

### **3.2 THE TAA IN COMPARISON TO THE OECD GUIDELINES AND THE TAX ADMINISTRATION PRACTICES OF CANADA, THE UNITED KINGDOM AND OTHER OECD COUNTRIES**

In order to identify areas for improvement and to make recommendations regarding the areas of focus identified in Chapter 2, the following was examined:

- Relevant guidelines published by the OECD's Forum of Tax Administration (FTA).
- Tax administration practices followed by the revenue authorities of the following OECD countries:
  - Canada;
  - the UK; and
  - other OECD countries identified in this Chapter that may suggest possible improvements.

The OECD's FTA published the following documents that provide useful guidelines for effective tax administration:

- Cooperative Compliance: A Framework: From Enhanced Relationship to Cooperative Compliance (OECD, 2013b).
- Working smarter in structuring the administration, in compliance, and through legislation (OECD, 2012).
- Compliance Risk Management: Use of Random Audit Programs (OECD, 2004).

In addition to the above, during 2013 the OECD analysed data in respect of tax administration of 52 emerging countries of which 35 were OECD countries and 17 were non-OECD countries. The data used was obtained by conducting a survey amongst revenue authorities and examining corporate documents (OECD, 2013a:17).

South Africa was one of the non-OECD countries that took part in the survey. The publication provides useful information regarding elements that are fundamental to modern tax administration and highlights good practices followed by both OECD and non-OECD countries (OECD, 2013a:17).

Table 3-1 below provides a summative comparison between South Africa, Canada and the UK with regards to the tax administration practices of revenue authorities in respect of the following areas of interest examined in Chapter 2:

- Tax Ombud or similar independent special body.
- Information gathering powers.
- Penalty regime.
- Voluntary disclosure programmes.

The most significant differences between South Africa, Canada and the UK, as highlighted by the comparison in Table 3-1, are:

- Taxpayers' rights are defined in a SARS Service Charter as opposed to being formally defined by a law or other statute.
- SARS is allowed to seize documents without a warrant.
- Limited relief is provided in respect of penalties under the VDP in terms of the TAA.

The guidelines published by the OECD, as listed on p. 59, together with each of the differences identified from the comparison performed in Table 3-1, are further examined to obtain an understanding of the practices followed by these countries in order to make recommendations on how South Africa could improve.

**Table 3-1: A summative comparison of specific tax administration provisions between South Africa, Canada and the UK (OECD, 2013a:47, 282, 327-328, 331)**

	Administrative provision	South Africa	Canada	United Kingdom
Tax Ombud & Taxpayer's rights	Special body dealing with taxpayer's complaints	✓	✓	✓
	Special legal framework for the body dealing with taxpayer's complaints	✓	✓	✓
	The special body is independent from the revenue body	✓	✓	✓
	The special body reports on systematic issues	✓	✓	✓
	The special body has the power to make decisions and instruct the revenue body to take corrective action	x	x	x
	The special body can direct the tax authority to reimburse aggrieved taxpayers for costs incurred due to mistakes and delays on behalf of the tax authority	x	x	✓
	Taxpayers rights contained in tax law or other statutes	x	✓	✓
	Taxpayers rights contained in administrative documents	✓	✓	✓
	Legal professional privilege applies	✓	✓	✓
Information gathering powers	May arrange for seizure of tax debtor's assets in order to collect taxes	✓	✓	✓
	Power to obtain relevant information	✓	✓	✓
	Powers extends to third parties	✓	✓	✓
	Taxpayers required to submit reports on request	✓	✓	✓
	May obtain information from other government departments	✓	✓	✓
	Enter business without a search warrant or taxpayer's consent	✓	✓ (in civil matters)	x
	Enter dwelling without a search warrant or taxpayer's consent	✓	x	x
	Seize documents without consent or search warrant	✓	x	x
	May request a search warrant without the assistance of other government agencies	✓	✓	x
	May serve a search warrant without the assistance of other government agencies	✓	✓	✓
Penalty framework	General administrative penalty framework for personal income tax, corporate income tax and VAT	✓	✓	✓
	Penalty takes into account the taxpayer's accountability / behaviour	✓	✓	✓
	Remit penalties under certain circumstances	✓	✓	✓
	Lower penalties afforded in cases of voluntary disclosure	✓ (limited)	✓	✓
	Voluntary disclosure programme in place	✓	✓	✓

**Legend:**

✓ - Yes

x - No

### **3.2.1 THE TAX OMBUD**

#### **3.2.1.1 OECD GUIDELINES**

Administrative reviews and especially the role of an Ombudsman are important mechanisms in protecting the rights of taxpayers and contribute to the integrity of the tax system and taxpayers' experience of the tax system as being fair (OECD, 2013a:320-321).

The OECD emphasises the importance of an independent relationship of such a special body to the revenue body. The following independent special bodies are listed as examples (OECD, 2013a:45):

- The Taxpayer Advocate of the US.
- Australia's Inspector General of Taxation.
- Columbia's Taxpayer Advocate.
- United Kingdom's Taxpayers' Adjudicator.
- Canada's Tax Ombudsman.
- South Africa's Tax Ombud.

As mentioned in par. 2.2.2 on p. 17, in terms of Section 20(2) of the TAA, no decision made by the Tax Ombud is binding to SARS. This is in contrast with the practice of the Taxpayer Advocate of the USA who is allowed to issue TAO's that may direct the IRS to release a levy or to refrain from taking a certain action against a taxpayer in collection of taxes (Mthimunye, 2013:53). In addition to examining the practices followed by Canada and the UK, the power of the Taxpayer Advocate of the USA to issue TAO is also examined in order to identify useful practices.

#### **3.2.1.2 CANADA**

In Table 3-2 on p. 66, the role of the Tax Ombud of South Africa is compared to the Tax Ombudsman of Canada and Tax Adjudicator of the UK. From the comparison performed, it is evident that South Africa's Tax Ombud's Office has been developed in accordance with the Tax Ombudsman of Canada (SARS, 2011c:4; Croome, 2013d), in terms of the mandate, limitations, complaint process and recommendations with the exception that no process is available to a Canadian taxpayer who is unhappy with the

outcome of a matter. South African taxpayers are in a better position compared to Canadian taxpayers, since they can lodge a complaint with the Public Protector if the Tax Ombud was unable resolve the matter.

### **3.2.1.3 UNITED KINGDOM**

One important difference identified by the comparison in Table 3-2, is the power of the office of the Taxpayers' Adjudicator of the UK to direct Her Majesty's Revenue and Customs (HRMC) to reimburse aggrieved taxpayers for costs incurred due to mistakes and delays on behalf of the HRMC. Even though the Taxpayers' Adjudicator is not granted any power under a legislative framework to require the HRMC to act on recommendation, the HRMC has indicated that all the recommendations of the Taxpayers' Adjudicator have been acknowledged by the HRMC (Leyland & Anthony, 2013:126; Croome, 2013d).

Similar to the Public Protector in South Africa, the UK has a Parliamentary Ombudsman (Mthimunye, 2013).

### **3.2.1.4 UNITED STATES**

The Taxpayer Advocate of the USA has the power to issue Taxpayer Assistance Orders (TAO's). The motivation for issuing TAO's is to promote the IRS to provide better services to taxpayers through a higher level of review and consideration to expedite cases where needed (IRS, 2014).

In terms of the Internal Revenue Code of the US Section 7811, the National Taxpayer Advocate (NTA) has the power to issue a TAO where a taxpayer has or will suffer "significant hardship" as a result of the Internal Revenue Service's administration of the law (IRS, 2014).

All of the following factors must be met in order for a TAO to be considered (IRS, 2014):

- A "significant hardship" must be or will be suffered by the taxpayer if a TAO is not granted.
- The cause of the significant hardship is due to actions by the IRS in administering the law.

- It is not within the ambit of the mandate of the Taxpayer Advocate Service (TAS) to remediate the taxpayer's case matter.
- The IRS did not act on the recommendations of the TAS or the Operation Division is not satisfied with the outcome of the actions taken by the TAS in resolving the matter.

The IRS (2014) defines "significant hardship" to include:

- a direct danger of hostile action;
- the taxpayer experienced a delay of more than 30 days to resolve issues with his or her tax account;
- if relief is not afforded the taxpayer will incur substantial costs for example professional consultations or professional representatives;
- the taxpayer will suffer permanent or long-term damage or harm if relief is not provided; and
- the taxpayer has or will experience a significant privation and not merely a personal or economical inconvenience due to the manner in which IRS has carried out its power to administer the law.

TAO's may not be issued in respect of criminal investigations, except in cases with exceptional circumstances (IRS, 2014).

A TAO will typically direct the IRS to follow one of the following actions (IRS, 2014):

- release a levy; or
- to take, cease or refrain from taking a certain action, for example, relating to the collection of taxes.

Upon receipt of the TAO the revenue body official can agree to the order and take action within the timeframe stipulated in the order or appeal against the order with a written request that the order must be reconsidered. The Local Taxpayer Advocate can either modify, rescind or sustain the appeal. If the Local Taxpayer Advocate decides to sustain the appeal, the appeal will be forwarded to the Area Director, who can decide whether to modify, rescind or sustain the TAO (IRS, 2014).

### **3.2.1.5 SOUTH AFRICA**

The practices employed by the TAA with regards to the Tax Ombud's office are very similar to the practices followed by Canada and the TAA has made great strides to establish a body to review taxpayer complaints and other administrative tax issues.

However, in comparison to the UK and the USA the Tax Ombud lacks sufficient power to direct SARS to take corrective action: the Taxpayers' Adjudicator of the UK may direct the HRMC to reimburse aggrieved taxpayers for costs incurred due to mistakes and delays on behalf of the HRMC (refer to par. 3.2.1.3 on p. 63) and the Taxpayer Advocate of the US has the mandate to issue TAO's requiring the IRS to discontinue actions to recover tax liabilities of a taxpayer until a matter has been resolved between the Taxpayer Advocate and the IRS (refer to par. 3.2.1.4 on p. 63).

The Tax Ombud Office of South Africa lacks determinative power as it can only recommend and not force SARS to corrective action (Section 20(2) of the TAA). It is therefore recommended that the powers of the Tax Ombud of South Africa are extended to include the power to issue TAO's and direct SARS to reimburse taxpayers for administrative costs incurred due to inefficiencies of SARS to ensure fairness to taxpayers.

Based on the above examination, the Tax Ombud in South Africa compares favourably to similar systems in the countries selected for comparison, which shows that the Tax Ombud is in line with international best practice. In general, taxpayers should benefit from the Tax Ombud's Office that is established in terms of the TAA as it is an additional complaint mechanism made available to taxpayers to protect their rights in administrative tax matters.

**Table 3-2: Tax Ombud of South Africa vs Taxpayers' Ombudsman of Canada and the Tax Adjudicator of the UK**

	Description of function	South Africa (Department of National Treasury, 2014a)	Canada (Office of the Tax Ombudsman, 2014)	UK (Adjudicator's Office, 2014)
<b>Mandate</b>	Assist, advise and inform the Minister of any service related matter to a taxpayer by the revenue body.	✓	✓	✓
	Uphold the rights of taxpayers and provide an independent and impartial view of complaints from taxpayers with regards to the services provided by the revenue body.	✓	✓	✓
	Make recommendations to the Minister to correct systematic service and fairness issues discovered at the revenue body.	✓	✓	✓
	Create awareness of taxpayers' rights and the role of the Tax Ombud's Office.	✓	✓	✓
	To ensure that the revenue body respects the rights of taxpayers as set out in a taxpayer service charter or other equivalent law or statute.	✓	✓	✓
<b>Limitations</b>	Review complaints only after all other internal complaint resolution mechanisms have been exhausted	✓	✓	✓
	Do not review matters relating to tax / departmental / government policy or program legislation	✓	✓	✓
	Do not review matters before the courts or other body with specific jurisdiction	✓	✓	✓
	Do not review matters that arose more than one year before the appointment of the Ombudsman	✓	✓	x
	Complaints on ongoing investigations	x	x	✓
	Complaints investigated by the Parliamentary Ombudsman or Public Protector or similar statutory body	✓	✓	✓
	Cannot direct the revenue body to take action	✓	✓	✓
<b>Complaint process</b>	First point of reference is to exhaust all other internal complaint resolution mechanisms within the revenue body	✓	✓	✓
	When a taxpayer is not satisfied with the outcome delivered from the internal mechanisms, a complaint may be lodged at the Tax Ombud	✓	✓	✓
	Screening: The matter will not be reviewed by the Tax Ombud if it was not first attempted to be resolved with the revenue body or falls outside of the mandate of the Tax Ombud. The Tax Ombud's office will refer the taxpayer to the appropriate areas within the revenue body.	✓	✓	✓
	Review: A review officer is allocated to the case and review the matter and decide whether the complaint is reasonable and fair based on the circumstances (e.g. a report from the revenue body on how they handled the complaint)	✓	✓	✓
	End of review: The outcome of the review will be sent to the revenue body and the matter will be resolved either with mediation or recommendation	✓	✓	✓
	Follow up: The Tax Ombud's office will follow up with the revenue body on recommendations made to them	✓	✓	✓
	If the taxpayer is still unhappy with the outcome, the matter can be elevated to the Public Protector / Parliamentary Ombudsman	✓	x	✓
<b>Recommendations</b>	The revenue body should provide further reasons	✓	✓	✓
	The revenue body must correct a misunderstanding or oversight	✓	✓	✓
	The revenue body must apologise	✓	✓	✓
	The revenue body should change a policy, procedure or make a change to systems or applications or service code	✓	✓	✓
	Reimburse the taxpayer for costs incurred due to mistakes or delays of the revenue body (e.g. postage, telephone calls, professional advise)	x	x	✓
	Make a payment to the taxpayer to recognise distressed caused	x	x	✓

**Legend:**

✓ - Yes

x - No

### **3.2.2 TAXPAYERS' RIGHTS FORMALLY DEFINED IN LAW OR OTHER STATUTE**

One of the main objectives of the Tax Ombud is to enhance the relationship between SARS and taxpayers and to protect their rights (Botha, 2014:22). From the comparison performed in Table 3-1 above, it was noted that in addition to a special independent body, similar to the Tax Ombud of South Africa, to protect the rights of taxpayers, both Canada and the UK has defined taxpayers' rights in a tax law or other statute. This topic was therefore also selected for further examination in order to identify potential recommendations to improve the rights of South African taxpayers.

#### **3.2.2.1 OECD GUIDELINES**

The OECD recommends that revenue authorities define taxpayers' rights in a Service Charter or Taxpayers Charter. This can either be done by following an administrative approach (for example a service charter published on the website of the relevant revenue body) or by formally codifying taxpayers' rights into a law or other statute (for example a Taxpayer's Bill of Rights) (OECD, 2013a:277).

The OECD provides the following reasons as to why a revenue body will prefer to adopt an administrative approach (OECD, 2013a:277):

- It is quicker to develop and implement an administrative document than drafting legislation.
- The form of language used in an administrative document is easier to understand and more "reader-friendly" than language used in legislation.
- The scope can be broader, for example, the inclusion of rights in respect of service which is not suitable for a legislative approach.
- Allows for flexibility with regards to changes in the needs of taxpayers.
- Administrative resolution mechanisms cost less and are quicker than a statutory approach.

However, the OECD lists the following benefits of a codified approach (OECD, 2013a:277):

- Strengthen the taxpayers' perception of the revenue body's commitment to the initiative and provide taxpayers with reassurance of the tax system.

- Improve promptness, devotion and attitude of staff.
- Endurance due to the fact that the document will be less likely to change.
- Documents will be subjected to established mechanisms of contest and remediation.

From the above it can be concluded that the overall benefit of an administrative approach is the flexibility and lower cost to make changes to these documents. The overall benefits of a codified approach, on the other hand, are the enhancement of taxpayers' perception of the revenue authority and the likelihood that staff will adhere to its requirements (OECD, 2013a:277). The codified approach is therefore considered to be the better approach in the context of equity, fairness and cooperative compliance.

### **3.2.2.2 CANADA**

Taxpayers' rights are formally codified and defined in terms of the Taxpayers Bill of Rights that governs the relationship between taxpayers and the Canada Revenue Agency (CRA). The taxpayers' rights are summarised as follows (Office of the Tax Ombudsman, 2014):

- “the right to be treated professionally, courteously, and fairly (Taxpayer Bill of Rights, Article 5);
- the right to complete, accurate, clear, and timely information from the CRA (Taxpayer Bill of Rights, Article 6);
- the right to lodge a service complaint and to be provided with an explanation of the CRA findings (Taxpayer Bill of Rights, Article 9);
- the right to have the costs of compliance taken into account when tax legislation is administered (Taxpayer Bill of Rights, Article 10);
- the right to expect the CRA to be accountable (Taxpayer Bill of Rights, Article 11);
- the right to expect the CRA to publish service standards and report annually (Taxpayer Bill of Rights, Article 13);
- the right to expect the CRA to warn you about questionable tax schemes in a timely manner (Taxpayer Bill of Rights, Article 14);
- the right to be represented by a person of your choice (Taxpayer Bill of Rights, Article 15).”

Internationally, Canada has taken the lead in providing sufficient protection of taxpayers' rights. In August 2013 Canada's Taxpayer's Ombudsman announced an amendment to the Taxpayers Bill of Rights to address taxpayers' "fear of reprisal" and boost taxpayers' belief and confidence in the integrity of the tax system. Article 16 to the Taxpayers Bill of Right reads, "You have the right to lodge a service complaint and request a formal review without the fear of reprisal". The intention of the amendment is to give taxpayers the comfort that the CRA will treat them impartially and affords taxpayers the right to complain about the Canada Revenue Agency without fear (Van der Walt & Botha, 2014).

### **3.2.2.3 UNITED KINGDOM**

The HRMC adopted an administrative approach and released a so called "Your Charter" during November 2009 which contains the principles that the HRMC must adhere to in order to ensure that taxpayers are dealt with fairly (Croome, 2010: 288).

The "Your Charter" sets out the following rights of taxpayers (HRMC, 2014:1):

- respect;
- help and support from the HRMC;
- to be treated with honesty and fairness;
- professionalism and integrity;
- counter action of people who do not adhere to the rules;
- confidentiality of information;
- representation by someone else; and
- keep administrative costs to a minimum.

In return, the HRMC expects taxpayers to be honest, respectful and take reasonable care when dealing under the tax system (HRMC, 2014:1).

### 3.2.2.4 SOUTH AFRICA

Internationally, revenue authorities have started to see taxpayers as customers and employed strategies to better their services. In line with this international trend, SARS released a Service Charter on 19 October 2005 and set out the service levels that taxpayers can expect from SARS. The purpose of the Service Charter was to that public expectations are achieved with measurable performance standards. (Stiglingh & Smulders, 2008).

At the date of writing this mini-dissertation, this formal SARS Service Charter could not be located. Critics have viewed this as a matter of “out of sight, out of mind” (Croome, 2014a). As a result, a review of historic articles was performed in order to obtain information in respect of the SARS Service Charter.

According to Edward (2005), the SARS Service Charter promised to:

- Answer 90% of calls to SARS within 20 minutes.
- Attend to 95% of visitors to the SARS office within 15 minutes.
- Respond to 80% of requests made by e-mail or post within 21 business days.
- Process and assess 80% of income tax returns within a maximum of 90 business days.
- Process VAT returns within 20 working days. 90% of returns submitted electronically will be processed within 4 hours and manual submissions within 24 hours.

The service charter emphasised a taxpayer’s right to privacy in accordance with the Constitution (Edward, 2005).

At the date of writing this mini-dissertation, the only current (publicly available) publication of service levels that taxpayers may expect from SARS, could be found on the SARS website and includes the following (SARS, 2014b):

- “We will deal with you in a friendly and professional way.
- We will treat the issue that you raise seriously.
- We won’t treat you differently from other people just because you have raised an issue.

- We will acknowledge the issue you have raised, give you the name of the person dealing with it and let you know when you can expect a reply.”

Currently in South Africa, taxpayers’ rights are protected by the Bill of Rights contained in the Constitution (Goldswain, 2012:2; Croome, 2014a). In Canada, taxpayer’s rights are governed in terms of the Taxpayers Bill of Rights, and in the UK, the HRMC released a charter called the “Your Charter” to ensure fair dealing with taxpayers.

The CRA and the HRMC are transparent and open about their commitment to ensure better service delivery to taxpayers through formal documents that applies specifically to taxpayers. This in return provides taxpayers with the comfort of knowing that the revenue authorities are mindful of their rights. The quality of a revenue authority’s service levels as well as taxpayers’ belief that they are being treated fairly is fundamental to voluntary tax compliance (Stigling & Smulders, 2008:608). In South Africa there is currently no formal documentation, similar to the CRA and the HRMC, available to taxpayers to remind both taxpayers and SARS officials of taxpayers’ rights (Croome, 2014a).

It is therefore recommended that SARS formally codify a Service Charter within the TAA or compile a Taxpayers Bill of Rights similar to that of Canada to remind SARS of its obligation to treat taxpayers fairly. This could improve taxpayers’ perception of the tax system and will in return contribute to voluntary and cooperative tax compliance (Stigling & Smulders, 2008:608).

### **3.2.3 INFORMATION GATHERING POWERS OF REVENUE AUTHORITIES**

#### **3.2.3.1 OECD GUIDELINES**

##### **3.2.3.1.1 OECD GUIDELINES ON INFORMATION GATHERING POWERS**

One of the objectives of information gathering is for revenue authorities to ascertain whether taxpayers are compliant. The OECD highlights “equality before the law” as one of the key issues of a cooperative compliance framework (OECD, 2013b:42).

In order for taxpayers to take part in a relationship of cooperative compliance there must be a willingness towards transparency and accurate disclosure in order for a revenue

body to be confident that all relevant tax risks are brought under their attention and to enable them to carry out risk assessment processes based on full information. Where taxpayers are not willing to provide information other than what is strictly required by statute, revenue authorities will have to follow more invasive procedures in order to ascertain the tax risks that may be present (OECD, 2013b:46).

The principle of “equality before the law” is the basis for constitutions or common law of most countries and requires that all people who are subject to the same circumstances must be treated the same and any different treatment must be justifiable. The application of this principle with reference to revenue authorities does not mean that all taxpayers should be treated the same (OECD, 2013b:43). The following example with regards to tax audits is provided for explanatory purposes: if one taxpayer was selected for an audit it does not mean that all taxpayers should also be audited. The principle of “equality before the law” requires that the basis for the selection of the taxpayer for an audit must be based on an objective and rational process, for example a risk assessment process (OECD, 2013b:45).

#### **3.2.3.1.1.2 OECD GUIDELINES IN RESPECT OF AUDITS**

The OECD issued an information note that examined the use of random audits as part of an overall compliance strategy focusing on small to medium sized enterprises (OECD, 2004:1).

The advantages of random audits include:

- Identifying high risk taxpayers (OECD, 2004:25).
- Creates awareness amongst taxpayers that any one has a chance of being selected for an audit and as a result encourages compliance (OECD, 2004:25).
- Effective allocation of resources to taxpayers that pose a high risk of non-compliance (OECD, 2004:26).
- Provides scientific data in order to support methods used to select returns for audits which will contribute to taxpayers’ experience of the tax system as fair (OECD, 2004:27).

- Insight into new industries and market segments can assist in developing an audit methodology and techniques for providing industry specific training to revenue officials and maximise the chances of detecting tax evasion (OECD, 2004:27).

This investigation performed by the OECD, however, identified the following problems in respect of random audits:

- Cost: Opportunity costs as a result of directing resources to audits but yielding relatively low returns; cost of training and salary costs (OECD, 2004:21).
- Long periods between the commencement of an audit and the final outcome may render the findings from the audit as worthless. For example, key compliance concerns of a few years back may no longer be relevant or important today (OECD, 2004:22).
- Large random audit programmes may negatively impact public perception as it can be seen as an overly aggressive and invasive approach (OECD, 2004:22).

The information highlights the fact that the public perception of an audit programme is a very important factor for the success and acceptance of a random audit programme (OECD, 2004:22) and refers to the new National Research Programme (NRP) system that was implemented by the IRS. The NRP system of the IRS is therefore also examined in addition to the practices of Canada and the UK.

### **3.2.3.2 CANADA**

The most significant differences in respect of inspections, searches and seizures between the tax administration provisions of Canada in terms of Section 231 of the Canadian Income Tax Act (1985) (CITA) and the TAA are set out in Table 3-3.

### **3.2.3.3 UNITED KINGDOM**

The HRMC's powers to perform search and seizures are regulated under the Police and Criminal Evidence Act 1984. The main differences between the powers of SARS in terms of the TAA and the powers of the HRMC with regards to search and seizures include (Bullock, 2011):

- HRMC is not allowed to perform warrantless search and seizures. All searches must be conducted under a warrant authorised by the Justice of the Peace. In terms of the

TAA, an SSO is allowed to perform warrantless search and seizures in certain circumstances (Section 63 of the TAA).

- HMRC official may not use a warrant to ask questions in relation to the investigation. No such limitation is placed on SARS officials under the TAA.
- HRMC is obligated to provide copies of all the documentation seized to the taxpayer within a reasonable time after the search has been concluded. SARS is not obligated under the TAA to provide copies. In terms of Section 65 of the TAA, a taxpayer has the right to make copies of the relevant material seized, however, at their own cost.

#### **3.2.3.4 UNITED STATES**

The NRP system of the IRS is a less invasive and burdensome approach to audits for taxpayers in that it follows an approach of classifying returns into three groups (OECD, 2004:41) namely:

- returns that are compliant;
- returns that show possible non-compliance and can be verified with the taxpayer with little contact; and
- returns that show possible non-compliance and will require direct contact with the taxpayer.

The IRS will use the NRP to collect data in respect of taxpayers in order to measure compliance in respect of payments, filing and reporting. The data collected will also be used to analyse the effectiveness of the compliance strategies employed by the IRS by measuring reported amounts in taxpayer returns against the amounts as determined by examiners to correct tax returns. Furthermore, the IRS requires the data to update its audit selection systems. The data will enable the IRS to categorise taxpayer returns and to focus audits on those taxpayers that pose a high risk of non-compliance (IRS, 2012).

The system is aimed at obtaining data to update formulas used for selection basis of audits and to provide up-to-date information on specific areas of non-compliance (OECD, 2004:42). The data will be collected from internal sources such as IRS databases and directly from taxpayers (IRS, 2012).

The purpose of the NRP is to lower the administrative burden of taxpayers and to improve workload identification (IRS, 2012).

**Table 3-3: A comparison between the administrative provisions of Canada and the TAA in respect of inspections, searches and seizures**

CITA (Section 231)	TAA (Chapter 5)
<p>An authorised person may at any reasonable time perform an inspection of the business premises of a taxpayer to ensure that all the documents and records are kept as required by the tax act.</p>	<p>No authorisation letter is required to be presented and no limitation to a reasonable time is provided for (Section 45 of the TAA).</p>
<p>The inspection of a dwelling or a house of the taxpayer may not be entered by an authorised person without the consent of the occupant or a warrant issued by a judge on application by the Minister.</p>	<p>Only the business Section of a dwelling may be entered without a warrant (Section 62(2) of the TAA).</p>
<p>A judge may on application by the Minister issue a warrant for the search and seizure of documents or things that may serve as evidence for an offence committed under the act. The application for the warrant must be supported by facts in order to satisfy the judge that reasonable grounds exist for issuing the warrant.</p>	<p>A judge or a magistrate may issue a warrant for the search and seizure. The scope of search and seizures extends to any failure to comply with an obligation under the act and not just a tax offence (Section 60(1)(a) of the TAA).</p> <p>An SSO may perform warrantless search and seizures if:</p> <ul style="list-style-type: none"> <li>• the owner of the premises gives written consent; or</li> <li>• the SSO is satisfied that reasonable grounds exist that the relevant material would have been destroyed if a warrant was issued; or</li> <li>• if the warrant was applied for, the delay in obtaining it will defeat the purpose of the search and seizure (Section 63 of the TAA).</li> </ul>
<p>In respect of inquiries, taxpayers are afforded the right to a witness.</p>	<p>In terms of Section 52(3), a person has the right to have representative present at an inquiry if that person appears as witness in front of the presiding officer.</p>

From the above comparison in Table 3-3, it can be seen that in terms of the TAA, SARS has more power to gather information than the CRA has in terms of CITA. This raises the question whether the powers of SARS granted by TAA is excessive and whether it should be reduced, in line with the practices of Canada, in order to provide for a better balance between the powers of SARS the right of taxpayers.

### **3.2.3.5 SOUTH AFRICA**

In line with the OECD guidelines, risk based audits are performed in terms of the TAA (Section 40 of the TAA). Taxpayers are selected based on demonstrated risk profiles (TAAG (2013:24). Risk profiles are examined by the LBC National Risk Committee (SARS, 2015). No other information is provided by SARS relating to the risk profiling process.

Although the OECD notes that, in cases where taxpayers are not willing to provide information, revenue authorities should follow more invasive procedures to ensure that tax risks are detected (OECD, 2013b:46). The practices followed in respect of information gathering in terms of the TAA are more invasive than those followed in Canada and the UK in the following circumstances:

- Warrantless search and seizures may be conducted by an SSO under certain circumstances (Section 63 of the TAA).
- An SSO are not prohibited from asking questions under a warrant. This practice is not allowed in the UK (refer to par. 3.2.3.3 on p. 73).
- SARS are not obliged to make copies of material seized. Taxpayers may make copies and this will be at their own cost. In the UK the HRMC is obliged to make copies of documents seized (refer to par. 3.2.3.3 on p. 73).

It is therefore recommended that the powers of SARS are reduced, in order to correct the balance between the powers of SARS and the rights of taxpayers, as follows:

- An authorisation letter must be required for an inspection.
- Inspections must be restricted to business hours or reasonable times.
- Incorporate provisions to redress SARS officials who overstep boundaries.
- Limit warrantless searches to criminal investigations.

- In respect of audits, follow a less invasive approach and adopt a system similar to the NRP of the IRS.

### **3.2.4 PENALTY REGIME**

#### **3.2.4.1 OECD GUIDELINES**

According to the OECD, tax penalties should be intended to serve the following three main purposes (OECD, 2013a: 330):

- Deter non-compliant behaviour.
- Punish offenses.
- Enforce compliance.

The most common acts of non-compliance include the failure to (OECD, 2013a:330):

- file a return;
- pay taxes on time; and
- declare tax liabilities correctly.

In most OECD countries the following is applicable in respect of penalty regimes (OECD, 2013a:331):

- a common administrative penalty framework exists for the above-mentioned common tax offenses;
- the penalty raised takes into account the culpability of the taxpayer;
- revenue authorities have the power to remit penalties in certain circumstances;
- revenue authorities are not allowed to publish details of taxpayers penalised for an offense; and
- policies are in place to encourage voluntary disclosure and lower penalties are offered for voluntary disclosure.

### 3.2.4.2 CANADA

Under the CITA, the following penalties are applicable (CRA, 2014):

I. Failure to file (Sections 162(1) and 162(2) of the CITA)

Late submission of a return is penalised at 5% of the unpaid tax plus 1% for every complete month, for a maximum of 12 months that the return remains unfiled. Thus, a maximum penalty of 17% can be applied.

The penalty is increased for corporations in repeat cases. Where a corporation also failed to file a return in any of the preceding three tax years, the penalty is increased to 10% of the unpaid tax plus 2% for every complete month, for a maximum of 20 months that the return remains unfiled. Thus a maximum penalty of 50% can be applied.

II. Non-reporting (Section 163(1) of the CITA)

A corporation that fails to report an amount of income on its tax return and had also done so in any of the preceding three tax years is liable for a penalty of 10% of the unreported income.

III. False statements or omissions (Sections 163(1) and 163(2) of the CITA)

Persons who knowingly or due to gross negligence made or participated in making a false statement or an omission from a tax return are liable for a penalty of the greater of \$100 or 50% on the understated tax amount due to the false statement or omission. A person cannot be charged with a non-reporting of income penalty if it is subject to a false statement penalty.

In terms of the understatement penalty of the TAA, there is no distinction between failure to file, non-reporting or false statements or omissions. All these fall within the definition of an understatement in terms of Section 221 of the TAA. In terms of Section 223 of the TAA the maximum penalty that may be imposed is 200% of the understatement. In terms of Section 163 of the CITA a maximum penalty of 50% of the

unpaid tax may be imposed. Furthermore, the Canadian penalty regime is not based on behaviours and conducts of the taxpayers, and therefore requires less discretion from the revenue authority and its officials in determining the penalty imposed. The TAA is therefore more stringent.

**3.2.4.3 UNITED KINGDOM**

In the UK, the HRMC levies the following penalties on income tax. Similar to the understatement penalty regime of the TAA, the penalties are based on certain behaviours:

I. Inaccuracy penalty

A penalty is levied for any incorrect tax documents or returns and linked to the behaviour of the taxpayer and why the taxpayer made the error. The maximum penalty is 100% of additional tax. However no penalty is levied if reasonable care was taken and this includes (Baker, 2013):

- Proper and accurate recordkeeping.
- Confirming what the correct tax position is when unsure.
- Immediately informing the HRMC when an error on a tax document or return is discovered.

The percentages matrix imposed, based on four behaviours, are illustrated in Table 3-4.

**Table 3-4: Inaccuracy penalty matrix (HRMC, 2012a:3)**

Behaviour	Unprompted disclosure	Prompted disclosure
Reasonable care	0%	0%
Careless	0% - 30%	15% - 30%
Deliberate	20% - 70%	35% - 70%
Deliberate and concealed	30% - 100%	50% - 100%

The percentage within the range is based on the quality of the disclosure, namely telling, helping and giving access to records. The HRMC has the discretion to determine in which percentage range the taxpayer falls (HRMC, 2012a:3).

ii. Failure to notify penalty

The penalty is levied upon failure to notify the HRMC of a tax liability in the correct period, for example a taxpayer who did not notify the HRMC of a capital gain realised on the disposal of an asset (Baker, 2013).

Refer to Table 3-5 below for the penalty matrix. The maximum penalty is 100% and the minimum penalty is 0% if the error was non-deliberate and the taxpayer voluntarily approached the HRMC within 12 months from the date the tax amount became due.

**Table 3-5: Failure to notify penalty matrix (HRMC, 2012b:4)**

Behaviour	Unprompted or prompted disclosure	Penalty
Non-deliberate	Unprompted disclosure within 12 months from tax due date	0% - 30%
	Unprompted disclosure after 12 months from tax due date	10% - 30%
	Prompted disclosure within 12 months from tax due date	10% - 30%
	Prompted disclosure after 12 months from tax due date	20% - 30%
Deliberate	Unprompted	20% - 70%
	Prompted	35% - 70%
Deliberate and concealed	Unprompted	30% - 100%
	Prompted	50% - 100%

The percentage within the range is based on the quality of the disclosure, namely telling, helping and giving access to records (HRMC, 2012b:4).

In terms Section 223(1) of the TAA, a penalty of up to 200% may be levied. Only in the instance where the taxpayer made a *bona fide inadvertent error*, took reasonable care and made voluntarily disclosure of the matter to SARS before notification of an audit, will no penalty be levied. In the United Kingdom no penalty is levied if it can be shown that the taxpayer took reasonable care, regardless of whether the taxpayer disclosed the matter to the HRMC or not.

#### **3.2.4.4 SOUTH AFRICA**

The TAA, in terms of the understatement penalty, is in line with the OECD guidelines listed in 3.2.4.1 above, however, in South Africa, SARS has limited power to remit an understatement penalty (refer to par. 2.4.1 on p. 43).

The understatement penalty regime in terms of the TAA is in line with most OECD countries in the following aspects:

- It is a common administrative penalty framework for not filing a return, late payment of taxes and incorrect declaration of tax liabilities.
- Penalties are based on the behaviour of the taxpayer.
- In limited circumstances, SARS is allowed to remit penalties.
- Lower penalties are offered for voluntary disclosure.

In comparison to the understatement penalty of CITA, the TAA is more onerous:

- The maximum penalty in terms of the TAA is 200% in comparison to the maximum penalty of 50% in terms of CITA.
- The TAA pools all types of offenses into one term, namely an understatement. In terms of CITA there are three categories and the penalty varies based on the severity of the offense.
- The understatement penalty in terms of the TAA grants more power to SARS in that the penalty is based on behaviour and conduct of the taxpayer, which is classified at the discretion of SARS.

The HRMC penalty regime is very similar to the understatement penalty regime in terms of the TAA with regards to the following aspects:

- The percentage penalty imposed varies based on certain behaviours.
- The percentage penalty is reduced when the offense is disclosed to the relevant tax authority.

However, the understatement penalty regime in terms of the TAA is more stringent in the following aspects:

- The maximum penalty imposed by HRMC is 100% in comparison to the 200% maximum penalty imposed by the TAA.
- The HRMC will not impose any penalty where reasonable care has been taken by the taxpayer, regardless of whether the taxpayer disclosed the matter or not. In terms of the TAA, where reasonable care was taken, a taxpayer will pay a penalty of 25% if no disclosure was made, 15% if disclosure was made after notification of an audit, and 0% if disclosure was made before the audit.
- The HRMC distinguishes between two categories of offenses, namely inaccuracy and failure in comparison with the TAA which views both as an understatement.

Overall, it can be concluded that the understatement penalty regime in terms of the TAA is more rigorous in comparison to Canada and the UK. Furthermore the maximum penalty imposed in terms of the TAA is also far greater.

### **3.2.5 VOLUNTARY DISCLOSURE PROGRAMME**

#### **3.2.5.1 OECD GUIDELINES**

Voluntary disclosure programmes are a low cost strategy employed by revenue authorities to encourage voluntary compliance (OECD, 2013a:332). The FTA has identified voluntary disclosure programmes as compliance tools that are reactive to the behaviour of taxpayers and are aimed to stimulate compliance and to combat non-compliance (OECD, 2013b:42).

The OECD's FTA lists compliance risk management as an integral part in a revenue body's overall strategy to achieve compliance and to effectively allocate resources. The report emphasises the importance of separating areas of high risk from areas of lower risk and that compliance risk management should contribute to taxpayers' willingness to comply. For example, taxpayers who are honest and transparent must be able to expect support and a lower administrative burden. (OECD, 2013b:41).

Compliance management should not only be focused on taxpayers but also on the performance of the revenue authorities themselves and this will require revenue

authorities to move from a controlling and commanding approach to a so called “cooperative compliance strategy” (OECD, 2013b:42).

One important aspect of a cooperative compliance strategy is greater transparency in financial reporting with regards to uncertain tax positions. Uncertain tax positions refer to a tax position where the taxpayer is uncertain of the tax treatment that the tax authority will apply (De Gouw, 2014). Countries such as Australia and the USA have incorporated a requirement as part of filing a return to report any uncertain tax positions which has contributed to compliance, corporate governance and ethics (OECD, 2013b:43).

Australia’s Reportable Tax Position (RTP) schedule was provided as an illustrative example in an information note published by the FTA to provide revenue authorities with inspiration to develop their own strategies for optimal gain without increasing the administrative costs and burden for taxpayers (OECD, 2012:1). The information note also emphasises the concept of a cooperative approach where dialogue between revenue authorities and taxpayers, with a specific focus on identifying and managing high tax risks, are encouraged.

Since transparency between taxpayers and revenue authorities is considered to be good practice in order to enhance cooperative compliance, it was decided to also examine the practice employed by the ATO in respect of reporting uncertain tax positions in addition to the practices of Canada and the UK below.

### **3.2.5.2 CANADA**

The CRA’s VDP makes provision for taxpayers to approach the CRA to correct inaccurate or incomplete information or to come forward with new information not previously reported. The CRA will remit or sustain from prosecution when “valid disclosure” is made. A disclosure is considered to be valid if it meets the following four criteria (OECD, 2013a:333):

- voluntary;
- complete;
- is or will be subject to a penalty; and

- the information disclosed must have been overdue for more than one year.

### **3.2.5.3 UNITED KINGDOM**

The UK follows a more targeted VDP approach and focuses on specific areas of non-compliance, for example, offshore accounts. As of July 2012, the HRMC has the following three active voluntary disclosure campaigns that target (OECD, 2013a:334):

- Outstanding self-assessment tax returns.
- Taxpayers that trade on the internet.
- Electricians and electrical engineers.

In addition to the VDP, the HRMC has similar legislation to Australia requiring taxpayers to report uncertain tax positions (De Gouw, 2014). Refer below to par. 3.2.5.4 where the RTP schedule of the ATO is examined.

### **3.2.5.4 AUSTRALIA**

The ATO introduced the RTP schedule with the company tax returns of 2012 and requires large companies to disclose challenging and material tax positions (OECD, 2012:31).

A reportable tax position includes (De Gouw, 2014):

- Material tax positions that are more likely than not to be correct.
- A tax position that is uncertain and disclosed in the taxpayer's or a connected person's financial statements.
- Reportable transactions that are significant, i.e.:
  - transactions that result in income in the financial statements during the current year of more than AUD 200 million but 50% or less is taxable in the current year; and
  - transactions in relation to change of ownership or control of a company.

The ATO has made available clear and easy to understandable guidance on its website to assist Australian taxpayers to understand: what a RTP is when; to disclose a RTP and how to complete the RTP schedule (ATO, 2014a).

The ATO also lists how it utilises the disclosures made by taxpayers in the RTP schedule and includes:

- To gain a better understanding of the tax risks for taxpayers.
- To better prioritise work by refining their 'risk framework differentiation categories'.
- To promote dialogue between larger companies regarding their risk rating and corporate governance.
- To increase focus on compliance.
- To identify areas of uncertainty in current tax legislation that may need clarification, guidance, advice or amendment.
- To work with taxpayers and advise them on how the ATO will respond to each disclosure (ATO, 2014b).

The global trend where revenue authorities require taxpayers to report uncertain tax positions shows a development in the relationship between revenue authorities and taxpayers (De Gouw, 2014).

The purpose of the RTP is to provide real-time information to the revenue body on material tax positions that impose a compliance risk and to better direct compliance risk activities. On the other hand the RTP will provide assurance to companies on the tax risks involved (OECD, 2012:31).

Cooperative compliance requires an open relationship where revenue authorities seek greater involvement from taxpayers and obtain more information in order to assist taxpayers to be compliant. The objective of the RTP schedule of the ATO is to promote proactive rather than reactive compliance (De Gouw, 2014).

### **3.2.5.5 SOUTH AFRICA**

Transparency through disclosure under the tax system is achieved in South Africa via the following mechanisms in terms of the TAA:

- Voluntary Disclosure Programme.
- Reportable arrangements.

### **3.2.5.5.1 DISCLOSURE THROUGH VOLUNTARY DISCLOSURE**

The VDP in terms of the TAA is not a targeted disclosure campaign, as is the case in the UK.

In contrast with the VDP of Canada, the VDP in terms of the TAA does not afford SARS the power to remit prosecution where valid disclosure is made. SARS may only remit interest and penalties in limited circumstances.

The OECD's survey on Tax Administration 2013 revealed that 40% of revenue authorities surveyed offered lower penalties as an incentive for taxpayers to take part in a VDP (OECD, 2013a:330). This shows that the current VDP programme of the TAA is in line with the majority of other revenue authorities.

### **3.2.5.5.2 DISCLOSURE THROUGH REPORTING TAX POSITIONS**

In South Africa, one of the strategies to require taxpayers to report certain tax positions, is reflected in the provisions in terms of Sections 34 to 39 of the TAA where taxpayers are required to report any arrangement that is regarded as a reportable arrangement in terms of the provisions of the TAA.

Section 35(1) of the TAA lists the types of arrangements that are considered to be reportable and includes, for example, an arrangement that results in the recognition of revenue for financial reporting standards but not gross income in terms of the ITA. Any arrangement that is reportable in terms of Section 35 of the TAA must be reported within 45 business days after any amount is first received or accrued by any participant to the arrangement (Section 37 of the TAA).

Failure to report will result in the following penalties in terms of Section 212 of the TAA: the penalty is charged at R50 000 in the case of a participant and R100 000 in the case of a promoter. The penalty is charged for every month that the arrangement remains unreported for a maximum of 12 months and is doubled and tripled if the tax benefit from the arrangement is more than R5 000 000 and R10 000 000 respectively. The maximum penalty is therefore R3 600 000 for a promoter and R1 800 000 for a participant.

In terms of Section 217 of the TAA, SARS is allowed to remit the penalty where it was a first incidence or in terms of Section 218 of the TAA in exceptional circumstances.

The provisions of the TAA in respect of reportable arrangements are in line with the global trends to ensure transparency between SARS and taxpayers. However, according to Steenkamp (2013:176), there is a lack of clear and helpful guidance available in respect of reportable arrangements in South Africa, and in practice, it is difficult to determine whether an arrangement is reportable or not.

It is therefore recommended that SARS publishes clear and helpful guidelines in order to assist taxpayers and tax practitioners to be compliant with the provisions of Sections 34 to 39 of the TAA. Furthermore, similar to the ATO, SARS should communicate to taxpayers how these disclosures will be utilised by them, including, how it will positively contribute to the tax system of South Africa. This will assist proactive tax compliance, rather than to “catch out” taxpayers.

### **3.2.6 TAX PRACTITIONERS**

#### **3.2.6.1 OECD GUIDELINES**

According to the OECD, revenue authorities are missing opportunities to improve compliance by not leveraging off of a relationship with tax practitioners who play a substantial role in the smooth functioning of the operations of a tax system (OECD, 2013a:254).

Many taxpayers make use of tax practitioners and therefore tax practitioners play a significant role in achieving compliance by assisting revenue authorities in their goal to collect taxes and in particular in the following ways (OECD, 2013a:254):

- Taxpayers place a high degree of reliance on the knowledge and competence of tax practitioners (OECD, 2013a:254-255). Due to the complexity and frequent changes to tax laws, taxpayers do not have the required knowledge to completely understand their responsibilities in terms of the tax acts and therefore rely on tax practitioners to advise and assist them with tax related matters.
- Tax practitioners directly impact taxpayers' compliance in the following ways (OECD, 2013a:255):

- Tax practitioners provide advice to taxpayers in respect of the records to be maintained in order to support computation of tax liabilities.
- Tax practitioners assist taxpayers to timely file returns and make payments.
- Tax practitioners help taxpayers to understand the requirements of certain areas of the law.
- Tax practitioners warn taxpayers of common non-compliance issues experienced by revenue authorities and as a result help to avoid inadvertent or deliberate non-compliance.
- Tax practitioners represent taxpayers in their dealings with revenue authorities.

In the light of the positive contribution that tax practitioners play within tax compliance, the OECD recommends revenue authorities to aim for an enhanced relationship. In order to achieve an enhanced relationship, their interactions with tax practitioners should display a sense of commercial awareness, fairness, objectivity, proportionality, approachability and responsiveness (OECD, 2013a:255). In Canada and the UK, tax professionals are also regularly surveyed on their service experience of the relevant tax authority (OECD, 2013a:261).

On the other hand, the regulation of tax practitioners is also required in order to effectively manage their role in the tax system. In some OECD countries, tax practitioners are strictly regulated under the professional codes of professional bodies (OECD, 2013a:256). This is also the case in South Africa in terms of the new provisions of Sections 240 and 240A of the TAA.

In other OECD countries the revenue authorities are more actively involved in regulating tax professionals (OECD, 2013a:256). Tax practitioners are required to register with the revenue body and meet a minimum standard of behaviour and qualification and these standards are in turn monitored by the revenue body (OECD, 2013a:257). The “Return Preparer Initiative” of the USA is mentioned as an example and is therefore examined in addition to the practices followed by Canada and the UK. Refer to par. 3.2.6.4 on p. 90.

Another important factor in achieving an enhanced relationship, are revenue authorities’ commitment to provide service and support to tax practitioners. Many revenue

authorities of OECD countries have taken steps to develop an overall strategy for providing support to tax practitioners (OECD, 2013a:262).

Table 3-6 below summarises the strategies employed by Canada, the UK and South Africa.

**Table 3-6: Summary of strategies for providing service and support to tax practitioners (OECD, 2013a: 261,269)**

Strategy	South Africa	Canada	United Kingdom
Existence of a formal consultative forum	✓	✓	✓
Dedicated phone lines at the offices of the tax authority	✓	x	✓
Access to a technical specialist at the tax authority	✓	✓	✓
Relationship managers at tax authority	✓	x	x
Section on website of tax authority dedicated to tax practitioners	✓	✓	✓
Tax authority keeps tax practitioners up to date with a news bulletin	x	✓	✓
Tax practitioners have online access to client's tax records	✓	✓	✓
The revenue body has a dedicated division to administer tax practitioners	✓	x	✓
Approach to compliance is influenced by tax practitioner representation	x	x	x
Tax professionals are regularly surveyed on their service experience of the relevant tax authority	x	✓	✓

**Legend:**

- ✓ - Yes
- x - No

As can be seen from the above comparison in Table 3-6, the strategies employed by South Africa are in line with those of Canada and the UK.

The OECD specifically highlights the following in respect of Canada and the UK:

- Canada: The CRA has processes in place to provide tax practitioners with up to date technical information (OECD, 2013a:271). This is examined below in par. 3.2.6.2.
- The UK: The HRMC introduced new initiatives to support tax practitioners (OECD, 2013a:263). This is examined below in par. 3.2.6.3.

### 3.2.6.2 CANADA

In order to assist tax practitioners to stay up to date with tax technical issues, the CRA has licensing agreements with four major tax publishers to publish a separate version of all tax rulings and interpretations. The CRA also provides free access to publications on technical information on the CRA website. In addition to the above, the CRA also has a separate webpage for tax professionals on their website that serves as a public portal to areas of interest for tax professionals (OECD, 2013a:271).

### 3.2.6.3 UNITED KINGDOM

In the UK, the HMRC has introduced initiatives to improve the experience of tax professionals. In Table 3-7 these initiatives are summarised (OECD, 2013a:263).

**Table 3-7: HMRC initiative for supporting tax practitioners (OECD, 2013a:263)**

<b>Initiative</b>	<b>Objective of initiative</b>
Dedicated telephone line for tax practitioners	Telephone lines that are dedicated to handle calls from tax practitioners in respect of Income Tax Self assessments and PAYE.
Relationship managers	Managers are allocated to specific tax practitioners accounts to: <ul style="list-style-type: none"><li>• Communicate important messages to tax practitioners.</li><li>• Assist tax practitioners to resolve queries that they were unable to resolve through other channels.</li></ul>
Toolkits for tax practitioners	Tools to assist tax practitioners in ensuring the completeness and accuracy of tax returns.
Joint initiative for continued learning	Seminars and events are held for departmental staff of the HMRC and tax practitioners and are focused on compliance checks following new amendments to legislation.
Consultation forums	The forums are focused tax practitioners' (and their clients) view on changes to the HMRC's compliance activities.
Working together forum	The forum is with the tax practitioner bodies and is aimed to improve the departmental operations of the HMRC.

### 3.2.6.4 UNITED STATES

The USA introduced an RPI in January 2011 whereby the IRS launched a programme where tax return preparers (tax practitioners) are reviewed rather than the individual taxpayers. The program aims to improve the compliance and standards of tax practitioners and the regime will focus on registration of tax practitioners, performing background checks and setting requirements for continued education (OECD, 2012:33).

In terms of the RPI, preparers of tax returns were required to (Loving, 2014):

- register with the IRS and obtain a “Preparer Tax Identification Number”;
- pass a competency test; and
- adhere to certain requirements in respect of continued education (15 hours per year).

The competency test and continued education requirements were not applicable to persons already registered with a recognised controlling body, for example Certified Public Accountants (Loving, 2014).

### **3.2.6.5 SOUTH AFRICA**

As mentioned in par. 2.4.3, the TAA introduced significant changes in respect of the registration of tax practitioners and regulations surrounding controlling bodies. The new provisions in terms of Section 240 of the TAA shifts the responsibility of ensuring the competence and accountability of tax practitioners from SARS to the controlling bodies.

Due to the complexity and frequent changes to tax laws, taxpayers place a high degree of reliance on the knowledge and competence of tax practitioners (OECD, 2013a:254). It is therefore important for revenue authorities to ensure that tax practitioners are competent and keep abreast with the latest amendments to tax laws (OECD, 2013a:254). In light of this, the provisions of the TAA to apply stricter rules on tax practitioners are recognised as valid and necessary.

Based on the analysis performed on the practices employed by Canada and the UK, the following recommendations are made to improve the relationship between SARS and tax practitioners:

- Tax practitioners and professionals must be regularly surveyed on SARS’ service quality in order for SARS to identify areas for improvement (refer to Table 3-6 above).
- Introduce initiatives to support tax practitioners, including:
  - Making available toolkits to assist tax practitioners in checking the completeness and accuracy of tax returns.

- Roll out joint learning initiatives for both departmental staff of SARS and tax practitioners. The training events should be focused on compliance checks following new amendments to legislation.
- Hold forums where tax practitioners can give their view on any changes made to the compliance activities of SARS (refer to Table 3-7 above).
- SARS should retain the responsibility of ensuring the competence of tax practitioners by launching an RPI similar to that of the IRS whereby only tax practitioners who are currently not registered with a controlling body are required to pass a competency test and adhere to obtaining a specified number of continued education hours per year.

### **3.3 CONCLUSION**

This Chapter of the mini-dissertation examined best practices with reference to the OECD countries and the guidelines set by the OECD for effective tax administration. The provisions in respect of the areas of focus identified in Chapter 2 were compared to the international practices of OECD countries. In this regard, it was found that, in general, the TAA is in line with international best practices except for the areas that were identified for improvement and are summarised in Table 3-8 below.

After critically analysing and evaluating the identified OECD countries' as well as Canada's and the UK's provisions, the provisions that would enhance the TAA were identified and consequently presented as recommendations for weaknesses identified in the TAA. Preference was given to original sources, i.e. the various acts, OECD guidelines and government publications, instead of only relying on other literature studies performed.

**Table 3-8: Summary of areas for improvement and recommendations**

Area for improvement	Proposed recommendation for improvement
There is an imbalance between powers of SARS and rights of taxpayers	<ul style="list-style-type: none"> <li>• Sufficient fairness provisions in the TAA or compiling a Taxpayers Bill of Rights. Currently taxpayers' rights are protected in terms of the Bill of Rights contained in the Constitution as well as the PAJA.</li> </ul>
SARS should emphasise the positive objectives of reportable arrangements (i.e. to promote compliance) rather than to use it as a "catch up" mechanism.	<ul style="list-style-type: none"> <li>• In order to promote compliance through reportable arrangements, SARS should communicate to taxpayers the positive objectives thereof, namely to ensure proactive compliance and to assist taxpayers in order to be compliant.</li> </ul>
Insufficient powers are afforded to the Tax Ombud.	<ul style="list-style-type: none"> <li>• Power to direct SARS to reimburse costs to taxpayer.</li> <li>• Afford the power to the Tax Ombud to issue "taxpayer assistance orders".</li> </ul>
Taxpayers' rights and service expectations are not formally codified.	<ul style="list-style-type: none"> <li>• Codify SARS Service Charter in statute, e.g. Taxpayers Bill of Rights</li> <li>• Lodge complaints without "fear of reprisal".</li> </ul>
Extensive powers are afforded to SARS with regards to information gathering with limited remedies available to taxpayers.	<ul style="list-style-type: none"> <li>• An authorisation letter must be required for an inspection.</li> <li>• Inspections must be restricted to business hours or reasonable times.</li> <li>• Incorporate provisions to redress SARS officials who overstep boundaries.</li> <li>• Limit warrantless searches to criminal investigations.</li> <li>• In respect of audits, adopt a system similar to the NRP of the IRS.</li> </ul>
The provisions under the understatement penalty regime are more stringent in comparison to Canada and the UK.	<ul style="list-style-type: none"> <li>• Clearly define <i>bona fide inadvertent errors</i>.</li> <li>• Reduce the administrative burden and costs of compliant taxpayers by reducing the penalties imposed in line with Canada and the UK.</li> <li>• Increase the circumstances in which the Commissioner or SARS may remit a penalty.</li> </ul>
The VDP provides limited relief to taxpayers.	<ul style="list-style-type: none"> <li>• Relief from penalties where valid disclosure is made.</li> <li>• Targeted voluntary disclosure campaigns.</li> </ul>
All tax practitioners (whether competent or not) are required to be a member of a registered board.  Lack of an enhanced relationship between SARS and tax practitioners.	<ul style="list-style-type: none"> <li>• Reduce the burden of tax practitioners to comply with the stringent rules of a professional body, by implementing a RPI similar to IRS, where competencies of tax practitioners are tested by the tax authority.</li> <li>• Enhance the relationship with tax practitioners by providing support to tax practitioners through toolkits, learning initiatives and forums.</li> </ul>

The above analysis performed in Chapter 3 has enabled the formulation of recommendations and improvements to the TAA to align the TAA with the international best practices. These recommendations and improvements are summarised in Chapter 4.

## **CHAPTER 4: SUMMARY, RECOMMENDATIONS AND CONCLUSION**

### **4.1 SUMMARY**

Chapter 3 of the mini-dissertation examined best practices with reference to OECD countries and the guidelines set by the OECD for effective tax administration. The provisions in respect of the areas of focus as identified in Chapter 2 and 3, being the Tax Ombud, the information gathering powers of SARS and the understatement penalty regime, were compared to international practices, with a specific focus on Canada and the UK. Areas for improvement were identified.

In this Chapter, a summary of the conclusions reached in Chapter 2 and 3 of the mini-dissertation is provided which addresses the research objective as identified in par. 1.6 (iii) on p. 7 by recommending possible alternatives or improvements to the TAA, where its provisions were found not meet its objectives.

Refer to Table 3-8 above for a summary of the areas identified in this study for improvement and recommendations. The most significant of the recommendations as identified in Chapter 4 are further explored and suggested areas for future research are also proposed.

### **4.2 RECOMMENDATIONS**

#### **4.2.1 POWERS AFFORDED TO THE TAX OMBUD**

Special independent bodies dealing with taxpayer complaints and other systematic issues in respect of tax administration as well as a codified approach to taxpayers' rights play a very important role in cooperative compliance as it contributes to the taxpayers' experience of the tax system as being fair (OECD, 2013a:277). The investigation performed in par. 3.2.3 of Chapter 3, has shown that the abuse of power by revenue authorities could negatively impact tax compliance.

The practices employed in the TAA with regards to the Tax Ombud's office are in line with the practices of Canada and the UK, but lacks sufficient power for the Tax Ombud to direct SARS to take corrective action.

Although the TAA has made great strides in terms of the Tax Ombud's office to protect taxpayers' rights, the TAA unfortunately does not make sufficient provisions of redress in situations where SARS and its officials disregard their obligations in terms of the TAA (refer to par. 2.2.4 on p.19).

Due to the lack of fairness provisions contained in the TAA, taxpayers have to read the TAA together with the PAJA which may place uninformed taxpayers or taxpayers who cannot afford a tax specialist in a vulnerable position.

Currently, the only effective remedy available to taxpayers is to appeal to a High Court to obtain a court order against SARS to reimburse legal costs on the basis that SARS did not comply with the administrative fairness provision of PAJA or a taxpayer's rights in terms of Section 33 of the Constitution which, unfortunately, is a time consuming process and comes at a high cost and is time consuming. As a result, taxpayers may decide to not pursue the matter due to the legal cost exceeding the tax benefit in question (Croome, 2013j).

The research performed in Chapter 3 revealed noteworthy practices followed by the UK and the USA and it is recommended that the following consideration should be incorporated into the TAA as they may positively contribute towards protecting the rights of taxpayers and allow the objective of equity as set out in the OM to be achieved:

- The Tax Ombud should have the power to make recommendations to the SARS to reimburse the taxpayer for costs incurred due to mistakes or delays by the revenue body (e.g. postage, telephone calls, professional advice) or make a small payment for any distress caused as a result thereof. This will be in line with the powers granted to the UK's Tax Adjudicator.
- The Tax Ombud should have the similar power as the Taxpayer Advocate of the USA to issue TAO's in order to instruct SARS to release a levy or to refrain from taking a certain action against a taxpayer in collection of taxes, .

#### **4.2.2 TAXPAYERS' RIGHTS AND SERVICE EXPECTATIONS**

South Africa does not have a law or any other statute that specifically defines taxpayers' rights. The rights of taxpayers are currently contained in an administrative document

namely the SARS Service Charter, which at the date of writing of the mini-dissertation, could not be located (refer to par. 3.2.2.4 on p. 70). The average South African taxpayer, who is not literate in tax law, is not aware that their rights are protected in terms of the Bill of Rights as contained in the Constitution and the PAJA (Britz, 2014:45). It is also unfortunate that SARS officials are not always attentive to taxpayers' rights (Croome, 2014a).

On 10 June 2014, the IRS announced that, similar to Canada, they will be adopting a Taxpayer Bill of Rights to provide taxpayers with a document that consolidates and groups all the rights currently included in the Internal Revenue Code. The USA Taxpayer Bill of Rights does not grant new rights to USA taxpayers, but rather highlights their current rights. This allows taxpayers to more easily familiarise themselves with their rights. The Taxpayer Bill of Rights will also serve as a reminder to both taxpayers and IRS employees, that the rights of taxpayers are a top priority of the IRS. (Erb, 2014).

It is therefore recommended that SARS and the National Treasury follow suit with Canada and the USA and improve the codification of taxpayers' rights in the TAA or consider compiling a Taxpayers Bill of Rights. This will serve as a reminder to both taxpayers and SARS officials of taxpayers' rights and could counter the comments of critics that the TAA does not provide sufficient fairness provisions and does not achieve the desired balance between taxpayers' rights and the power of SARS (TAAG, 2013:10; PricewaterhouseCoopers Inc., 2014:11; par. 2.5).

Furthermore, it will also be to the benefit of SARS to take action to get to know taxpayers better in order to improve service to taxpayers. Table 4-1 below provides examples of approaches that could be followed.

**Table 4-1: Approaches to better understand taxpayers (OECD, 2013c:24)**

<b>Approach</b>	<b>Description</b>
Client feedback	Feedback must be given at every interaction point with the revenue body e.g. websites, feedback cards at the offices of revenue authorities, email and contact centres.
Online communities	Revenue authorities can participate in online communities to try and understand what drives their clients.
Social media	Revenue authorities can mine external platforms for feedback such as forums and blogs.
Structured capturing of client feedback	Online forms or surveys are a good way to capture data in a structured form.
Respond to feedback	Acknowledging input from clients is just as important as the collection.
Intelligence from revenue body processes	Information captured by revenue authorities through other administrative processes may provide useful information on its services and compliance strategies and this contributes to compliance behaviour.
Research	Taxpayers must be used as part of planning, designing and implementing services. This can include the following techniques: <ul style="list-style-type: none"> <li>• Discussion groups;</li> <li>• Interviews; and</li> <li>• Testing of the usability of services.</li> </ul>

### **4.2.3 INFORMATION GATHERING POWERS OF SARS**

#### **4.2.3.1 SEARCH AND SEIZURES**

Bovijn (2011:98) explored other statutes in respect of warrantless searches and recommended that the TAA should include provisions similar to the Competition Act (89 of 1998) to balance the rights of taxpayers with the extensive powers of SARS. The following counterbalances were recommended:

- a) Identification of the SARS official before entering the premises to be searched.
- b) Providing an explanation to the affected person as to the grounds for the search.
- c) Limiting search and seizures to business hours unless absolutely necessary.

The above issues have been addressed in Section 63 of the TAA with the exception of the limitation to business hours.

With reference to the search and seizure practices followed in Canada and the UK, the following is recommended to protect taxpayers against potential abuse by SARS and its officials:

- No warrantless search and seizures should be allowed, or warrantless search and seizures should be restricted to criminal investigations. At the stage of a criminal investigation, sufficient information should be available to support reasonable grounds for the issue of a warrant.
- Require SARS to provide copies of all documentation seized to the taxpayer within a reasonable time after the conclusion of the search.
- Require the presentation of an authorisation letter or a warrant for inspections.

#### **4.2.3.2 AUDITS**

The TAA grants SARS wide-ranging powers in selecting a person for inspection, verification or audit. In terms of Section 40 of the TAA the selection basis can be anything that is relevant to SARS' duty to administer a tax act and include a random or risk assessment basis. The risk based audit approach followed by SARS in terms of the TAA is in line with the OECD guidelines (OECD, 2004).

To ensure that the TAA meets its objective of actively pursuing tax evaders and that resources are allocated to high risk taxpayers, a program such as the NRP of the IRS is recommended due to the following attractive attributes:

- The purpose of the NRP is to lower the administrative burden of taxpayers and to improve workload identification (IRS, 2012).
- It is a system that is aimed at obtaining data to update formulas used for the selection basis of audits and to provide up-to-date information on specific areas of non-compliance (OECD, 2004:42).

This will also positively contribute to taxpayers' trust in the tax system as the program will provide some comfort that the broad powers extended to SARS officials in terms of audits will largely be directed at taxpayers that pose a risk of non-compliance.

#### **4.2.4 VOLUNTARY DISCLOSURE TO PROMOTE COMPLIANCE**

Compliance risk management plays an integral part in a revenue body's overall strategy to achieve compliance and to effectively allocate resources (OECD, 2013b:41). Cooperative compliance requires taxpayers' willingness to be transparent (OECD, 2013b:43).

The global trend where revenue authorities require taxpayers to report uncertain tax positions shows a new development in the relationship between revenue authorities and taxpayers. Cooperative compliance requires an open relationship where revenue authorities seek a greater involvement from taxpayers and obtain more information in order to assist taxpayers to be compliant (De Gouw, 2014).

In South Africa, transparency and disclosure are promoted in terms of the TAA with the introduction of a permanent VDP as well as defining the provisions with regards to reportable arrangements.

The objective of the ATO's RTP schedule is to promote proactive rather than reactive compliance (De Gouw, 2014).

In practice, tax practitioners in South Africa find the provisions with regards to reportable arrangements in terms of the TAA problematic and have identified the need for proper guidance to assist taxpayers and tax practitioners to identify reportable arrangements. It is therefore recommended that SARS issues accurate and detailed guidance in order to assist taxpayers in making the correct decisions when evaluating their arrangements. This will promote voluntary proactive compliance, rather than to play catch up with taxpayers.

#### **4.2.5 TAX PRACTITIONERS**

In terms of Sections 240 and 240A of the TAA, tax practitioners are required to register with a controlling body. Tax practitioners that are currently not registered at a controlling body are at a disadvantage as they will have to adhere to the strict requirements of the approved controlling bodies which are not necessary for certain tax practitioners who prepare less complex individual income tax returns.

A programme similar to the RPI of the IRS may be more appropriate in such circumstances. SARS could provide assistance to the tax return preparation industry through continued education and also minimise the fees paid by taxpayers for assistance in preparing their income tax returns and contribute to taxpayer compliance.

The recommended RPI must require preparers of tax returns who are not currently registered at a controlling body to pass a competency test and adhere to certain requirements in respect of continued education (specified number of hours per year). Par. 3.2.6.4 on p. 90 can be referred to for guidance on RPI's.

In addition to the above, it is recommended that SARS introduce new initiatives to enhance their relationship with tax practitioners and to provide the necessary support to these professionals who play a significant role in tax compliance. Refer to par. 3.2.6.5 on p. 91 for recommended initiatives.

#### **4.3 SUGGESTIONS FOR FURTHER RESEARCH**

Based on the research performed in Chapter 2, the TAA extends broad powers to SARS with limited remedies available to taxpayers. According to the OM (2011:178) the TAA aims to give effect to the protection of the right to administrative fairness through more effective remedies but does not aim to re-codify the constitutional rights of taxpayers provided for in the Constitution.

However, certain provisions contained in the TAA can be considered unconstitutional. For example, with regards to search and seizures, in terms of Section 66(4) of the TAA, the court may authorise SARS to keep copies of the original material seized even if the warrant is set aside by the court (refer to par. 2.3.6.2 on p. 37). This provision is considered to be unconstitutional since it effectively allows the execution of an unlawful warrant (PricewaterhouseCoopers Inc., 2012:36).

Although the TAA does not aim to re-codify the constitutional rights of taxpayers, it should also not allow for provisions that are unconstitutional. Therefore the research of the constitutionality of the provisions of the TAA should also be conducted.

#### 4.4 CONCLUSION

As stated in par. 1.5. on p.6 of the mini-dissertation, the aim of this study was to provide answers to the following questions:

- Does the TAA achieve its objectives?  
This research question was addressed in Chapter 2.
- Does the TAA conform to the best practices and guidelines for tax administration as identified by the OECD?  
This research question was addressed in Chapter 3.

The primary objectives of the study were to determine whether the TAA achieves its objectives and to determine how the objectives of the tax administration system of South Africa conform to the guidelines of the OECD (refer to par 1.6 on p. 6).

The primary objectives and findings of each Chapter are briefly summarised below:

- Chapter 2 identified new concepts introduced by the TAA and changes made to the several old administrative provisions included in the ITA. This Chapter analysed the provisions of the TAA against the old provisions in terms of the ITA and identified various changes that are briefly summarised in the tables to Appendix A. This Chapter specifically identified the following areas that introduced the most significant changes from previous administration provisions: the Tax Ombud; information gathering; and the understatement penalty regime. The Chapter further examined these areas of focus in detail. Overall summary of findings of Chapter 2 is listed in par. 2.5 on p. 52.
- In addition to the above, the objective of Chapter 2 was to obtain an understanding of the objectives behind the drafting of the TAA as set out in the OM and to determine how the new provisions of the TAA in respect of the Tax Ombud, information gathering and the understatement penalty regime achieve or lack in achieving the following two objectives: balance between the powers of SARS and the rights of taxpayers; and an efficient tax system that minimises the administrative costs and burden of taxpayers. It was found that the TAA has introduced various new concepts in order to balance out the powers of SARS and the rights of

taxpayers. These include the establishment of the Tax Ombud, the obligation of SARS to keep taxpayers informed on the progress of an audit and the incorporation of a permanent VDP. However, in general, it was found that the TAA unfortunately does not contain specific remedies for taxpayers where SARS and its officials do not adhere to their obligations in terms of the TAA. Furthermore, the TAA has significantly increased the information gathering powers of SARS and as a result the administrative cost and burden of taxpayers has not decreased.

- In Chapter 3, an understanding was obtained of the best practices and guidelines identified by the OECD as well as the practices followed by the revenue authorities of Canada and the UK in respect of tax administration. The Chapter focused on the areas identified in Chapter 2, but also examined guidelines and practices that are relevant and play an important role in achieving the two objectives as identified in Chapter 3. From the research performed it was found that, in comparison with international practices, the TAA can improve on protecting the rights of taxpayers which will contribute to cooperative compliance. Refer to Table 3-8 on p. 93 for a summary of areas of improvement and proposed recommendations.
- The objective of Chapter 4 was to recommend possible alternatives or improvements to the TAA in order to align the TAA with the practices followed by Canada and the UK as well as the OECD guidelines in respect of effective tax administration. The research performed in Chapter 2 enabled the conceptualisation of the recommendations and improvements to the TAA and is summarised in par. 4.2.

The establishment of the TAA was a big step in the right direction to address tax administration in South Africa. In general it was found that the changes to the administrative provisions of the old legislation in terms of the ITA are more invasive with specific reference to the expanded information gathering powers afforded to SARS.

This study aimed to ascertain whether or not the TAA achieves its objectives as set out in the OM and it was found that, limited to the areas of focus identified for this study in Chapter 2, the TAA does not achieve the objectives of balancing the powers of SARS

and the rights of taxpayers and lowering the administrative cost and burden of taxpayers.

With regards to the areas of focus, it was generally found that the TAA is in line with international best practices, except for the areas identified for improvement (refer to Table 3-8 on p. 93). Therefore, should National Treasury give attention to the areas of improvement as identified in Chapter 4 and the proposed subsequent recommendations in par. 4.2, the TAA would conform to its objectives as well as international best practices.

Overall, it could therefore be concluded that the study achieved its objectives as set out in par. 1.6 and provided answers to the research questions listed in par. 1.5.

## BIBLIOGRAPHY

ADJUDICATOR'S OFFICE **see** UNITED KINGDOM. Adjudicator's Office.

ACTS **see** SOUTH AFRICA

Australian Taxation Office (ATO). 2014a. Guide to Reportable Tax Positions 2014. <https://www.ato.gov.au/forms/guide-to-reportable-tax-positions-2014/>. Date of access: 9 March 2015.

Australian Taxation Office (ATO). 2014b. Reportable Tax Position Schedule. <https://www.ato.gov.au/Business/Large-business/In-detail/Reportable-tax-positions/Reportable-tax-position-schedule/>. Date of access: 9 March 2015.

Baker, L. 2013. HRMC penalty regime: income and capital gains tax. [https://www.crowehorwath.net/uploadedFiles/UK/industries/Professional\\_Practices/0068%20PPG%20Penalty%20regimes.pdf](https://www.crowehorwath.net/uploadedFiles/UK/industries/Professional_Practices/0068%20PPG%20Penalty%20regimes.pdf). Date of access: 14 April 2014.

Badham, D. 2013. The Amended Tax Administration Act – Implications for the Tax Industry. 3 p. [http://reference.sabinet.co.za/webx/access/electronic\\_journals/taxpro/taxpro\\_2013\\_n3\\_a3.pdf](http://reference.sabinet.co.za/webx/access/electronic_journals/taxpro/taxpro_2013_n3_a3.pdf). Date of access: 26 June 2014.

Botha, Y. 2014. The Taxpayers' Companion. TaxTalk, 44:21-23. <http://www.taxtalk.co.za/wp-content/uploads/2014/04/TaxTalkIssue44.pdf>. Date of access: 13 April 2015.

Bovijn, S. 2011. Warranted and Warrantless Search and Seizures in South African Income Tax Law: The Development, Operation, Constitutionality and Remedies of a Taxpayer. Stellenbosch University: SUN. (Mini-dissertation – M.Com) 153 p.

Britz, J. 2014. Does the Tax Administration Act Sufficiently Protect the Taxpayers' Right to Privacy or Provide the Taxpayer with the Right to be Informed? University of Cape Town: UCT. (Mini-dissertation – M.Com) 60 p.

Bullock, J. 2011. HRMC raids and criminal investigations.  
<http://www.taxjournal.com/tj/articles/hmrc-raids-and-criminal-investigations>. Date of access: 15 April 2014.

CA **see** CANADA

CANADA. Office of the Tax Ombudsman. 2014.  
<http://www.oto-boc.gc.ca/whwr/mbdsmn-eng.html>. Date of access: 7 April 2014.

CANADA. Income Tax Act, R.S.C. 1985, c 1 (5<sup>th</sup> Supp.).  
<http://www.canlii.org/en/ca/laws/stat/rsc-1985-c-1-5th-supp/latest/rsc-1985-c-1-5th-supp.html>. Date of access: 15 April 2014.

Canada Revenue Agency (CRA). 2014. Interest and penalties. <http://www.cra-arc.gc.ca/tx/indvdis/tpcs/ncm-tx/ntrst/menu-eng.html>. Date of access: 15 April 2014.

Coetzee, Van der Zwan & Schutte. 2014. Taxation Research. Potchefstroom: NWU. Potchefstroom Campus. (Study Guide TAXM 873).

Council of Australian Law Deans. 2012. Statement on the Nature of Legal Research.  
<http://cald.asn.au/docs/cald%20statement%20on%20the%20nature%20of%20legal%20research%20-%202005.pdf>. Date of access: 19 May 2014. 7 p.

Croome, BJ. 2010. Taxpayer's Rights in South Africa: Juta & Co, Ltd. p. 287 -288.

Croome, BJ. 2011. Warrantless searches and the new Tax Ombud.  
<http://www.bericcroome.com/search/label/search%20warrants>. Date of access: 28 January 2014.

Croome, BJ. 2012. The Tax Administration Act takes effect.  
[http://www.bericcroome.com/2012\\_10\\_01\\_archive.html](http://www.bericcroome.com/2012_10_01_archive.html). Date of access: 7 March 2014.

Croome, BJ. 2013a. One-Way Traffic with SARS  
<http://www.bericcroome.com/2013/04/one-way-traffic-with-sars.html?m=1>. Date of access: 18 November 2013.

Croome, BJ. 2013b. The Tax Administration Act and Taxpayers' Rights.  
<http://www.bericcroome.com/2013/02/the-tax-administration-act-and.html>. Date of access 18 November 2013.

Croome, BJ. 2013c. Inexorable Powers of the Tax Debt Collector.  
[http://www.bericcroome.com/2013\\_03\\_01\\_archive.html?m=1](http://www.bericcroome.com/2013_03_01_archive.html?m=1). Date of access: 18 November 2013.

Croome, BJ. 2013d. Tax Ombud to Keep SARS customers Happy.  
<http://www.bericcroom.com/2013/11/tax-ombud-to-keep-sars-customers-happy.html?m=1>. Date of access 23 January 2014.

Croome, BJ. 2013e. Receiver Throws Information Net Wider.  
<http://www.thesait.org.za/news/128378/-Receiver-Throws-Information-Net-Wider.htm>. Date of access 28 January 2014.

Croome, BJ. 2013f. Analysis: Taxpayer Remedies.  
<http://www.bericcroome.com/2013/10/analysis-taxpayer-remedies.html?m=1>. Date of access: 28 January 2014.

Croome, BJ. 2013g. New Chance to get on the Right Side of SARS.  
<http://www.bericcroome.com/search/label/voluntary%20disclosure%20programme>. Date of access: 10 February 2014.

Croome, BJ. 2013i. Penalties Given Hinge On Taxpayers' Conduct.  
<http://www.bericcroome.com/2013/02/penalties-given-hinge-on-taxpayers.html?m=1>. Date of access: 12 February 2014.

Croome, BJ. 2013j. Analysis: Taxpayer remedies.  
<http://www.bericcroome.com/2013/10/analysis-taxpayer-remedies.html?m=1>. Date of access: 7 April 2014.

Croome, BJ. 2014a. Should the South African Revenue Service adopt a Taxpayer Bill of Rights? <http://www.bericcroome.com/2013/10/analysis-taxpayer-remedies.html?m=1>. Date of access: 11 August 2014.

Croome, BJ. 2014b. Amendments to the Tax Administration Act 2013.  
<http://www.thesiat.org.za/news/153854/Amendments-to-the-Tax-Administration-Act-2013.htm>. Date of access: 11 August 2014.

Croome, BJ. & Brink, J. 2013. SARS audits and taxpayers' rights.  
[http://www.ens.co.za/news/news\\_article.aspx?iID=1066&iType=4](http://www.ens.co.za/news/news_article.aspx?iID=1066&iType=4). Date of access: 12 February 2014.

Department of National Treasury **see** SA

De Gouw, B. 2014. Deloitte. Australian Reportable Tax Position Schedule for Uncertain Tax Positions.  
[https://www.deloitte.com/print/en\\_NZ/nz/5ace4cbac4271310VgnVCM3000001c56f00aR-CRD.htm](https://www.deloitte.com/print/en_NZ/nz/5ace4cbac4271310VgnVCM3000001c56f00aR-CRD.htm). Date of access: 15 April 2014.

Edward, N. 2005. SARS finally releases the SARS Service Charter.  
[https://www.saica.co.za/integritax/2005/1360\\_SARS\\_finally\\_releases\\_the\\_SARS\\_Service\\_Charter.htm](https://www.saica.co.za/integritax/2005/1360_SARS_finally_releases_the_SARS_Service_Charter.htm). Date of access: 10 April 2014.

Edward, N. 2008. Time to supply information to SARS.  
[https://www.saica.co.za/integritax/2008/1593\\_Time\\_to\\_supply\\_informaton\\_to\\_SARS.htm](https://www.saica.co.za/integritax/2008/1593_Time_to_supply_informaton_to_SARS.htm). Date of access: 26 June 2014.

Erb, KP. 2014. IRS Releases Much Anticipated 'Taxpayer Bill of Rights'.  
<http://www.forbes.com/sites/kellyphillipserb/2014/06/10/irs-releases-much-anticipated-taxpayer-bill-of-rights/>. Date of access: 13 April 2015.

Ernest & Young Global Limited. 2014. Tax Insight: Tax Legislation Plays Catch Up.  
<http://taxinsights.ey.com/archive-articles/tax-legislation-plays-catch-up.aspx>. Date of access: 26 June 2014.

Gad, R. 2013. SARS audits under the new Tax Administration Act.  
<http://www.golegal.co.za/citizen-rights/sars-audits-under-new-tax-administration-act>.  
Date of access: Date of Access: 11 February 2014.

Gad, R. & Bovjin, S. 2011. New Tax Administration Bill introduces new search and seizure. <https://www.ensafrica.com/news/new-tax-administration-bill-introduces-new-search-and-seizure-provisions?Id=237&STitle=tax%20ENSight> . Date of access: 26 February 2015.

Gad, R. & Devnarain, J. 2013. Contemporary Issues faced in the Tax Litigation Environment in South Africa. <https://www.ensafrica.com/news/Contemporary-Issues-faced-in-the-Tax-Litigation-Environment-in-South-Africa?Id=1032&STitle=tax%20ENSight>. Date of access: 27 February 2015.

Geldenhuys, C. 2013. A New Era for Tax Controversy Risk Management. <http://www.taxtalkblog.com/?p=9669>. Date of access: 19 May 2014.

Gilfer. 5 June 2013. Tax Law Updates: A plea to SARS after the negative results from the tax audit survey. Newsgroup: <http://www.taxriskmanagement.com/subscribe-to-our-tax-law-updates/> Date of access: 5 Jun. 2013.

Goldswain, GK. 2012. The Winds of Change – An Analysis and Appraisal of Selected Constitutional Issues Affecting the Rights of Taxpayers. University of South Africa: UNISA. (Doctoral thesis). 275 p.

Her Majesty's Revenue and Customs (HMRC). 2012a. Compliance check series: penalties for inaccuracies in returns and documents. <http://www.hmrc.gov.uk/compliance/cc-fs7.pdf>. 6 p. Date of access: 15 April 2014.

Her Majesty's Revenue and Customs (HMRC). 2012b. Compliance check series: penalties for failure to notify. <http://www.hmrc.gov.uk/compliance/cc-fs11.pdf>. 6 p. Date of access: 15 April 2014.

Her Majesty's Revenue and Customs (HMRC). 2014. Your Charter. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/91888/charter.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/91888/charter.pdf). 4 p. Date of access: 11 August 2011.

Internal Revenue Service (IRS). 2012. National Research Programme (NRP). [http://www.irs.gov/uac/National-Research-Program-\(NRP\)](http://www.irs.gov/uac/National-Research-Program-(NRP)). Date of access: 16 April 2014.

Internal Revenue Service (IRS). 2014. TAS Taxpayer Assistance Orders (TAO) Process. [http://www.irs.gov/irm/part13/irm\\_13-001-020.html](http://www.irs.gov/irm/part13/irm_13-001-020.html). Date of access: 16 April 2014.

Isherwood, L. 2013. The Rocky Road of Income Tax Compliance. TaxTalk, 42:24-25. <http://www.taxtalk.co.za/wp-content/uploads/2014/04/TaxTalkIssue42.pdf>. Date of access: 4 March 2015.

Katzke, R. 2013. SARS has increased powers under the Tax Administration Act. <http://www.moneywebtax.co.za/moneywebtax/view/moneywebtax/en/page258?oid=78279&sn=Detail&pid=258>. Date of access: 18 November 2013.

Kriel, A. 2012. Tax administration Act - mistakes to cost taxpayers dearly. <http://www.moneywebtax.co.za/moneywebtax/view/moneywebtax/en/page258?oid=74258&sn=Detail&pid=258>. Date of access: 11 February 2014.

Loving, S. 2014. Appellate Court Upholds Injunction Barring Enforcement of IRS Return Preparer Initiative. <http://www.cchgroup.com/wordpress/index.php/tax-headlines/federal-tax-headlines/appellate-court-upholds-injunction-barring-enforcement-of-irs-return-preparer-initiative-loving-ca-d-c/>. Date of access: 16 April 2014.

Leyland, P. & Anthony, G. 2013. Textbook on Administrative Law. United Kingdom: Oxford University Press. p.125 - 133.

Stiglingh, M., Koekemoer, A.D., Van Schalkwyk, L., Wilcocks, J.S., De Swardt, R.D. 2013. SILKE: South African Income Tax. South Africa: Lexis Nexis. p. 1107 -1147.

Mckerchar, M. 2008. Philosophical Paradigms, Inquiry Strategies and Knowledge Claims: Applying the Principles of Research Design and Conduct to Taxation. *eJournal of Tax Research*, 6(1): 5-22. <http://www.austlii.edu.au/au/journals/eJTR/2008/1/html>.

Date of access: 19 May 2014.

Mouton, J. 2001. How to Succeed in your Master's and Doctoral Studies: A South African Guide. Pretoria: Van Schaik. p. 118.

Mthimunye, S. 2013. Analysis of the South African Tax Ombud. University of Pretoria: UP. (Mini-dissertation – M.Com) 81 p.

OFFICE of the Tax Ombud **see** SOUTH AFRICA. Department of National Treasury.

OFFICE of the Tax Ombudsman **see** CANADA. Office of the Tax Ombudsman.

Organisation for Economic Co-Operation and Development (OECD). 2004. Forum on Tax Administration. Information note: Compliance Risk Management: Use of Random Audit Programs, OECD Publishing. 51 p.

<http://www.oecd.org/tax/administration/33818547.pdf>. Date of access: 9 April 2014.

Organisation for Economic Co-Operation and Development (OECD). 2012. Forum on Tax Administration. Information note: Working smarter in structuring the administration, in compliance, and through legislation. 57 p.

<http://www.oecd.org/site/ctpfta/49428209.pdf>. Date of access: 10 April 2014.

Organisation for Economic Co-Operation and Development (OECD). 2013a. Tax administration 2013: Comparative information on OECD and other Advanced Emerging Economies, OECD Publishing. <http://dx.doi.org/10.1787/9789264200814-en>. 379 p.

Organisation for Economic Co-Operation and Development (OECD). 2013b. Cooperative Compliance: A Framework: From Enhanced Relationship to Cooperative Compliance, OECD Publishing. <http://dx.doi.org/10.1787/9789264200852-en>. 110 p.

Organisation for Economic Co-Operation and Development (OECD). 2013c. Managing Service Demand: A Practical Guide to Help Revenue authorities Better Meet Taxpayers' Service Expectation, OECD Publishing. <http://dx.doi.org/10.1787/9789264200821-en>. 63 p.

PCF Attorneys. 22 July. 2014. Tax Ombud. <http://www.pcflaw.co.za/article/tax-ombud>. Date of access: 4 March 2015.

PricewaterhouseCoopers Incorporated. 2012. Tax Law Review: Tax Administration Act 28 of 2011. 87 p. [www.pwc.co.za/asset/pdf/tax-law-review-nov-2012.pdf](http://www.pwc.co.za/asset/pdf/tax-law-review-nov-2012.pdf). Date of access: 4 June 2013.

PricewaterhouseCoopers Incorporated, 2014. Paying Taxes 2014: The Global Picture. A comparison of tax systems in 189 economies worldwide. 182 p. <http://www.pwc.com/payingtaxes>. Date of access: 11 April 2014.

Rawoot, I. 2009. SARS may act as 'judge and jury'. <http://mg.co.za/article/2009-11-06-sars-may-act-as-judge-and-jury>. Date of access: 8 April 2014.

SA **see** SOUTH AFRICA.

Seaber, A. 2012. Interest on unpaid taxes under the Tax Administration Act. <http://www.thesait.org.za/news/104246/Interest-on-unpaid-taxes-under-the-Tax-Administration-Act.htm>. Date of access: 21 January 2014.

Slabbart, A. 2014. New focus on high net worth individuals – SARS. <http://www.moneyweb.co.za/moneyweb-tax/new-focus-on-highnet-worth-individuals--sars>. Date of access: 8 April 2014.

SOUTH AFRICA. Department of National Treasury. Office of the Tax Ombud. 2014a. <http://www.taxombud.gov.za/>. Date of access: 8 April 2014.

SOUTH AFRICA. Department of National Treasury. Draft response document from National Treasury and SARS, as presented to SCOF. 2014b.

<http://www.treasury.gov.za/legislation/bills/2014/TLAB-TALAB/2014%20October%2016%20-%20Response%20document%20TLAB%20and%20TALAB.pdf>. Date of access: 3 March 2015.

SOUTH AFRICA. 2007. Regulations issued under Section 91A of the Income Tax Act, 1962, prescribing the circumstances under which the Commissioner may write off or compromise any amount of tax, duty, levy, charge, interest, penalty or other amount. *Government Gazette*, 316(29788), 13 April. 14 p.

<http://www.gov.za/documents/download.php?f=72954>. Date of access: 13 February 2014

SOUTH AFRICA. 2008. Regulations issued under Section 75B of the Income Tax Act, 1962, prescribing administrative penalties in respect of non-compliance. (Notice No. 1160.) *Government Gazette*, 1404(31764), 31 December. 14 p.

<http://www.gov.za/documents/downloads.php?f=94319>. Date of access: 13 February 2014.

SOUTH AFRICA. 2012a. Tax Administration Act 28 of 2011. *Government Gazette*, 591(35491):2-384, 4 July. <http://www.gov.za/documents/download.php?f=169974>. Date of access: 4 June 2013.

SOUTH AFRICA. 2012b. Tax Administration Laws Amendment Act 21 of 2012. *Government Gazette*, 36036, 20 December. 64 p.

<http://www.sars.gov.za/AllDocs/LegalDoclib/AmendActs/LAPD-LPrim-AA-2012-02%20-%20Tax%20Administration%20Laws%20Amendment%20Act%202012.pdf>. Date of access: 13 February 2014.

SOUTH AFRICA. 2012c. Form and manner of a report to a taxpayer on the stage of completion of an audit in terms of Section 42(1) of the Tax Administration Act, 2011 (Act No. 28 of 2011). (Notice No. 788.) *Government Gazette*, 588(35733):17-18, 1 October. <http://www.sars.gov.za/AllDocs/LegalDoclib/SecLegis/LAPD-LSec-TAdm-PN-2012-03%20-%20Notice%20788%20GG%2035733%201%20October%202012.pdf>. Date of access: 19 May 2014.

SOUTH AFRICA. 2012d. Distance above which a person may decline to attend an interview in terms of Section 47(4) of the Tax Administration Act, 2011 (Act No. 28 of 2011). (Notice No. 789.) *Government Gazette*, 588(35733):21, 1 October. <http://www.sars.gov.za/AllDocs/LegalDoclib/SecLegis/LAPD-LSec-TAdm-PN-2012-03%20-%20Notice%20789%20GG%2035733%201%20October%202012.pdf>. Date of access: 19 May 2014.

SOUTH AFRICA. 2014. Tax Administration Laws Amendment Act 39 of 2013. *Government Gazette*, 583(37236), 16 January. 56 p. <http://www.sars.gov.za/AllDocs/LegalDoclib/AmendActs/LAPD-LPrim-AA-2012-02%20-%20Tax%20Administration%20Laws%20Amendment%20Act%202012.pdf>. Date of access: 13 February 2014.

South African Revenue Service (SARS). 2011a. Guide to the Tax Exchange Control: Voluntary Disclosure Programme 2010. 32 p. <http://www.nolands.co.za/pdf/voluntary-disclosure-programme-guide.pdf>. Date of access: 28 February 2015.

South African Revenue Service (SARS). 2011b. Memorandum on the Objects of the Tax Administration Bill, 2011. 24 p. <http://www.sars.gov.za/AllDocs/LegalDoclib/ExplMemo/LAPD-LPrep-EM-2011-03%20-%20Memorandum%20Objects%20Tax%20Administration%20Bill%202011.pdf>. Date of access: 11 June 2013.

South African Revenue Service (SARS). 2011c. Briefing note: Tax Ombud on Tax Administration Bill – Standing Committee of Finance. 4 p.

<http://www.sars.gov.za/AllDocs/LegalDoclib/RespDocs/LAPD-LPrep-Resp-2011-03%20-%20Response%20Document%20Briefing%20to%20SCoF%20Tax%20Ombud%20Clauses%2014%20to%2021.pdf>. Date of access: 4 March 2015.

South African Revenue Service (SARS). 2013. Short Guide to the Tax Administration Act, 2011(Act No. 28 of 2011). 93 p.

<http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-TAdm-G01%20Short%20Guide%20to%20the%20Tax%20Administration20Act%202011%20-%20External%20Guide.pdf>. Date of access: 24 October 2013.

South African Revenue Service (SARS). 2014a. Voluntary Disclosure Programme (VDP). <http://www.sars.gov.za/Legal/VDP/Pages/default.aspx>. Date of access: 13 February 2014.

South African Revenue Service (SARS). 2014b. Raise a service issue.

<http://www.sars.gov.za/Contact/How-Do-I/Pages/Raise-a-service-issue.aspx>. Date of access: 10 April 2014.

South African Revenue Service (SARS). 2014c. Controlling bodies for tax practitioners.

<http://www.sars.gov.za/ClientSegments/Tax-Practitioners/Pages/Controlling-Bodies-for-Tax-Practitioners.aspx>. Date of access: 13 February 2014.

South African Institute of Tax Professionals (SAIT). 2013. Permanent Voluntary Disclosure: The Cake Without the Icing. News and Press: TaxTalk.

<http://www.thesait.org.za/news/116647/Permanent-Voluntary-Disclosure-Programme-The-Cake-Without-The-Icing-.htm>. Date of access: 4 March 2015.

South African Institute of Tax Professionals (SAIT). 2014. FAQ 28 August 2014: Frequency of Audits. News and Press: Institute News.

<http://www.thesait.org.za/news/189645/FAQ---28-August-2014.htm>. Date of access: 27 February 2015.

South African Revenue Service (SARS). 2015. Taxpayer audit process.

<http://www.sars.gov.za/ClientSegments/Businesses/LBC/Pages/Audit-Process.aspx>.

Date of access: 3 March 2015.

Steenkamp, L. 2013. Reportable Arrangements: Tax Partner Perceptions of Some Problematic Terminology. *Journal of Economic and Financial Sciences*, 7(1): 145 – 186.

[http://reference.sabinet.co.za/webx/access/electronic\\_journals/jefs/jefs\\_v7\\_n1\\_a9.pdf](http://reference.sabinet.co.za/webx/access/electronic_journals/jefs/jefs_v7_n1_a9.pdf).

Date of access: 9 March 2015.

Stiglingh, M., Koekemoer, A.D., Van Schalkwyk, L., Wilcocks, J.S., De Swardt, R.D.

2013. SILKE: South African Income Tax. South Africa: Lexis Nexis. p. 1107 -1147.

Stiglingh, M. & Smulders, S. 2008. Research Findings: The progress of South African Revenue Service on its Service Quality Journey. *Journal of Public Administration*, 43(4): 607 – 628.

[http://repository.up.ac.za/bitstream/handle/2263/14494/Smulders\\_Research%282008%29.pdf?sequence=3&isAllowed=y](http://repository.up.ac.za/bitstream/handle/2263/14494/Smulders_Research%282008%29.pdf?sequence=3&isAllowed=y). Date of access: 4 March 2015.

TREASURY Inspector General for Tax Administration **see** UNITED STATES OF AMERICA. Treasury Inspector General for Tax Administration

UNITED KINGDOM. Adjudicator's Office. 2014. <http://www.adjudicatorsoffice.gov.uk/>.

Date of access: 10 April 2014.

UNITED STATES OF AMERICA. Treasury Inspector General for Tax Administration.

United States. <http://www.treasury.gov/tigta/>. Date of access: 8 April 2014.

Van der Walt, J. 2013. Criminal investigation in relation to a serious tax offence: What does the TAA require? Cliff Dekker Hofmeyr Tax Alert:

<http://www.cliffedekkerhofmeyr.com/export/sites/cdh/en/news/publications/2013/tax/downloads/Tax-Alert---1-November-2013.pdf>. Date of access: 27 February 2015.

Van der Walt, J. & Botha, D. 2014. Complaints to the Tax Ombud and Fear of Reprisal. Canada Gives its Taxpayer Comfort.

<http://www.thesait.org.za/news/140020/Complaints-to-the-Tax-Ombud-and-the-Fear-of-Reprisal.-Canada-Gives-its-Taxpayer-Comfort.htm>. Date of access: 10 April 2014.

Van der Zwan. 2013. A taxpayer's right to manage its exposure.

<http://www.thesait.org.za/news/115961/A-taxpayers-right-to-manage-its-exposure.htm>.

Date of access: 9 March 2015.

Van Zyl, L. 2014. The New Understatement Penalty Regime: A Sharp 'Sword'? Journal of Economic and Financial Science, 7(3): 907 - 924.

[http://reference.sabinet.co.za/webx/access/electronic\\_journals/jefs/jefs\\_v7\\_n3\\_a13.pdf](http://reference.sabinet.co.za/webx/access/electronic_journals/jefs/jefs_v7_n3_a13.pdf).

Date of access: 9 March 2015.

Zerbst, F. 2013. Taxpayer's rights, The Tax Administration Act (TAA) and the Constitution. <http://www.fanews.co.za/article/front-page-features/25/featured-story/1147/taxpayers-rights-the-tax-administration-act-taa-and-the-constitution/13561>.

Date of access: 23 January 2014.

## APPENDIX A: TABLES

The scope of the comparisons performed between the previous provisions of the ITA and the new provisions of the TAA in the tables below are limited to those provisions with noteworthy changes. As a result, no comparison is provided for:

Chapter 6 of the TAA: The general confidentiality provisions of Chapter 6 of the TAA are similar to the previous Sections 4 and 75A of the ITA.

Chapter 7 of the TAA: The provisions in respect of advanced rulings were previously regulated in terms of Sections 76B to 76S of the ITA. Advanced rulings are now regulated in terms of Sections 75 to 90 of the TAA and are in many respects a duplication of the previous provisions.

Chapter 17 of the TAA: Section 234 of Chapter 17 of the TAA, contains the list of tax offences for non-compliance of a tax act and is similar to Section 75 of the ITA. Section 234 of the TAA, however, adds the following important offences that taxpayers should take note of:

- The issue of a document required to be issued to another person that is false or inaccurate or incomplete (Section 234(g) of the TAA). This provision is very burdensome for honest taxpayers who made accidental mistakes (PricewaterhouseCoopers Inc., 2012:79).
- Refusal to provide assistance to SARS during a field audit or criminal investigation (Section 234(l) of the TAA). The decision whether reasonable assistance was provided will ultimately be at the discretion of the SARS official. SARS is afforded protection against taxpayers who do not co-operate, however the same protection is not afforded to taxpayers against abusive and aggressive SARS officials.

The comparisons in respect of Chapter 5, Chapter 16 and Chapter 18 of the TAA is included Chapter 2 of the mini-dissertation. Refer to paragraphs 2.1 and 2.4 respectively.

**Table A-1: Chapter 2 of the TAA: General administrative provisions**

Description / Part	Section in TAA	Section in ITA	Changes / New provisions
Part A: General	2 - 5	2, 74	<ul style="list-style-type: none"> <li>SARS is responsible for the administration of tax acts.</li> <li>Application of the TAA.</li> <li>Only practice generally prevailing is binding.</li> </ul>
Part B: Powers and duties of SARS and SARS officials	6 – 9	3	<ul style="list-style-type: none"> <li>Extended powers and duties granted to SARS and SARS officials.</li> <li>Conflict clause.</li> <li>Identity cards.</li> <li>Decision and notices by SARS.</li> </ul>
Part C: Delegations	10	3	Delegation of powers and duties of the Commissioner at his discretion.
Part D: Authority to act in legal proceedings	11 – 12	83(12) 83A(8)	Authorised SARS official may act on behalf of the Commissioner.
Part E: Powers and duties of Minister	13 – 14	4A	Authority of the Minister to appoint a Tax Ombud
Part F: Powers and duties of the Tax Ombud	15 - 21	n/a	Establishment of a Tax Ombud's office

**Table A-2: Chapter 3 of the TAA: Tax registration provisions**

Subject	Section in TAA	Section in ITA	Changes / New provisions
Registration	22	67(1)	<ul style="list-style-type: none"> <li>Registration period is 21 business days.</li> <li>Biometric information required to counter identity fraud.</li> <li>Submission of insufficient documents equals non-registration.</li> </ul>
Change of particulars	23	67(1A)	<ul style="list-style-type: none"> <li>Notification of changes is 21 business days.</li> </ul>
Taxpayer Reference Number	24	n/a	<ul style="list-style-type: none"> <li>Single registration process.</li> <li>Registration by SARS.</li> <li>No tax reference number equals an invalid return.</li> </ul>

**Table A-3: Chapter 4 of the TAA: Returns and records**

Subject	Section in TAA	Section in ITA	Changes / New provisions
Submission of returns	25	65, 66, 69 - 71	<ul style="list-style-type: none"><li>• Taxpayer or authorised representative required to sign return.</li></ul>
Third party returns	26	69	<ul style="list-style-type: none"><li>• Broader circumstances where a third party may be requested to submit a return.</li></ul>
Other returns	27	66(10)	<ul style="list-style-type: none"><li>• SARS may request the submission of other returns.</li></ul>
Statement concerning accounts	28	73	<ul style="list-style-type: none"><li>• Submission of a false certificate or statement is a criminal offence and subject to penalties.</li></ul>
Record keeping	29 to 33	73A, 73C, 74B	<ul style="list-style-type: none"><li>• All persons required to register as taxpayers, irrelevant of an exemption or threshold, must retain records.</li><li>• Requirements in respect of the form in which records must be kept, namely orderly and in a safe place.</li><li>• SARS may perform inspections in order to ensure that the above are adhered to.</li></ul>
Translation	33	74(2), 74(3)	<ul style="list-style-type: none"><li>• No changes.</li></ul>
Reportable arrangements	34 to 39	80M to 80T	<ul style="list-style-type: none"><li>• Amended definition for reportable arrangements.</li><li>• Period to report is 45 business days.</li><li>• Commissioner may add or delete from the list of reportable arrangements.</li><li>• Additional consequences upon failure to report (e.g. administrative non-compliance penalty).</li></ul>

**Table A-4: Chapter 8 of the TAA: Assessments**

Subject	Section in TAA	Section in ITA	Changes / New provisions
Original assessments	91	n/a	<ul style="list-style-type: none"> <li>• New term: Original assessment.</li> <li>• New term: Self-assessment.</li> <li>• SARS is required to issue an original assessment on returns submitted with no tax computation.</li> </ul>
Additional assessments	92	79	<ul style="list-style-type: none"> <li>• New term: Additional assessment.</li> <li>• No major changes.</li> </ul>
Reduced assessments	93	79A	<ul style="list-style-type: none"> <li>• Definition amended.</li> <li>• Additional circumstances where reduction of an assessment is allowed.</li> </ul>
Jeopardy assessments	94	n/a	<ul style="list-style-type: none"> <li>• New term: Jeopardy assessment.</li> <li>• SARS may make an assessment in advance where tax collectability is at risk.</li> </ul>
Estimation of assessments	95	78	<ul style="list-style-type: none"> <li>• Estimated assessments no longer a separate concept.</li> <li>• Estimations allowed to be made in respect of any type of assessment.</li> <li>• Basis for any estimation must accompany assessments.</li> </ul>
Notice of assessment	96	77(3)	<ul style="list-style-type: none"> <li>• List of information required to be included in an assessment.</li> </ul>
Recording of assessments	97	77, 80	<ul style="list-style-type: none"> <li>• Record of an assessment may be destroyed within 5 years.</li> </ul>
Withdrawal of assessments	98	79B	<ul style="list-style-type: none"> <li>• No major changes.</li> </ul>
Limitation of period for issuance	99	n/a	<ul style="list-style-type: none"> <li>• Period of limitation for self-assessments is 5 years.</li> </ul>
Finality of assessments or decision	100	n/a	<ul style="list-style-type: none"> <li>• Specific requirements before an assessment or decision can be regarded as final.</li> </ul>

**Table A-5: Chapter 9 of the TAA: Dispute resolution**

Description / Part	Section in TAA	Section in ITA	Changes / New provisions
Part A: General	101 – 103	82, 107A	<ul style="list-style-type: none"> <li>• Extends the burden of proof for taxpayers.</li> <li>• Burden of proof on SARS.</li> </ul>
Part B: Objections and appeals	104 – 107	81, 83(1) – 83(1C)	<ul style="list-style-type: none"> <li>• Specifically lists decisions that may be objected or appealed.</li> <li>• Test cases.</li> <li>• SSO may extend the period for lodging an objection for maximum of 21 business days or 45 business days in exceptional cases.</li> </ul>
Part C: Tax Board	108 – 115	83A	<ul style="list-style-type: none"> <li>• Conflict of interest provisions.</li> <li>• Preparer of tax return may represent taxpayer.</li> <li>• Deadline set for reaching decisions.</li> </ul>
Part D: Tax Court	116 – 132	83(2) – 83(23), 84, 85	<ul style="list-style-type: none"> <li>• Conflict of interest provisions.</li> <li>• Requirements to be met before a person can be appointed or terminated as a member of the panel of tax court.</li> <li>• Prescribe the manner in which duties must be performed by members of the panel of tax court.</li> <li>• Observers allowed upon request and authorisation of the President.</li> <li>• Burden of proof on SARS in respect of understatement penalties.</li> <li>• Persons allowed to appear at a hearing.</li> <li>• New term: Thing.</li> <li>• Penalties for unreasonable grounds of appeal.</li> <li>• Deadline for notification of decision set at 21 business days.</li> <li>• Publication of all judgements and no sanitation required if the sitting was public.</li> </ul>
Part E: Appeal Against Tax Court Decision	133 – 141	86A	<ul style="list-style-type: none"> <li>• The right to appeal to the Chief Justice of the Supreme Court of Appeal (SCA).</li> </ul>
Part F: Settlement of Dispute	142 – 150	88A – 88H	<ul style="list-style-type: none"> <li>• SARS or the taxpayer may initiate settlement discussions.</li> <li>• Signature of SSO is required.</li> <li>• Consequences of failure to pay according to the settlement agreement.</li> </ul>

**Table A-6: Chapter 10 of the TAA: Tax payments**

Description / Part	Section in TAA	Section in ITA	Changes / New provisions
Part A: Taxpayer	151 - 161	1, 89 <i>bis</i> (1), 90,95 – 97	<ul style="list-style-type: none"> <li>• New categories of persons liable for tax:               <ul style="list-style-type: none"> <li>- Persons chargeable with tax</li> <li>- Representative taxpayers</li> <li>- Withholding agents</li> <li>- Responsible third parties</li> </ul> </li> <li>• Security from taxpayer.</li> <li>• Personal liability of persons other than the original taxpayer for payment of tax.</li> </ul>
Part B: Payment of Tax	162 – 164	88, 89	<ul style="list-style-type: none"> <li>• Request to pay full amount immediately or security from taxpayer.</li> <li>• Preservation order.</li> <li>• Suspension of payment of tax subject to an objection or appeal.</li> </ul>
Part C: Taxpayer Account and Allocation of Payments	165 – 166	89 <i>ter</i>	<ul style="list-style-type: none"> <li>• One tax account.</li> <li>• First-in-first-out allocation of payments.</li> </ul>
Part D: Deferral of Payment	167 – 168	89	Formal instalment payment agreement.

**Table A-7: Chapter 11 of the TAA: Recovery of tax**

Description / Part	Section in TAA	Section in ITA	Changes / New provisions
Part A: General	169 – 171	91(1)(a), 91(4), 91(4A), 91(5)	Period for limitation of tax collection is set at 15 years.
Part B: Judgement procedure	172 – 176	91(b), 91(bA), 92	10 business day notice period required.
Part C: Sequestration, liquidation and winding-up procedures	177 – 179	91(c)	No changes.
Part D: Collection of tax debt from third parties	180 – 184	99, 100	<ul style="list-style-type: none"> <li>Widening the provisions in respect of persons personally liable.</li> <li>Concept of “agent” replaced with “third party”.</li> </ul>
Part E: Assisting foreign governments	185	93	Preservation order.
Part F: Remedies in respect of foreign assets	186	n/a	Repatriation of foreign assets.

**Table A-8: Chapter 12 of the TAA: Interest**

Subject	Section in TAA	Section in ITA	Changes / New provisions
General rules	187(1) – 187(2) & 189(4) – 189(5)	89quin	No major changes.
Effective date	187(3) – 187(5)	89quat(1)	Effective date varies depending on specific scenarios.
Waiver of interest	187(6)	89quat(3A)	Waiver of interest: Limitation of circumstances beyond a taxpayers' control.
Period over which interest is calculated	188(1) - 188(3)	89quat(3) - 89quat(4)	Period over which interest is calculated.
Interest rate charged	189(1) – 189(3)	1	No major changes.

**Table A-9: Chapter 13 of the TAA: Tax refunds**

Subject	Section TAA	Section ITA	Changes / New provisions
Refunds of excess payments	190	120(1) – 120(3)	<ul style="list-style-type: none"> <li>Limitation on period to claim refunds is increased from 3 to 5 years for self-assessments.</li> <li>Circumstances where SARS is not required to authorise a refund.</li> <li>Refund must be paid where acceptable security is provided.</li> </ul>
Refunds subject to set-off and deferral	191	120(4)	Set off of refunds against tax debts.

**Table A-10: Chapter 14 of the TAA: Write off and compromise of tax debt provisions in terms of the TAA and previous Regulations and ITA provisions**

Description	Regulation paragraph	Section TAA	Changes / New provisions
Definitions	1	192	<ul style="list-style-type: none"> <li>In terms of the definition of a compromise, this means an agreement between SARS and the debtor (previously the Commissioner and the debtor).</li> <li>A debtor is also defined as a taxpayer with an outstanding tax liability.</li> </ul>
Purpose and application	2 & 3	193 & 194	No change.
Temporary write off	4	195	An SSO may withdraw a decision to temporarily write off debt if it is no longer uneconomical to pursue and that the decision would put the efforts to collect tax in general at risk.
Tax debt uneconomical to pursue	5	196	No change.
Permanent write off	6	197	No change.
Tax debt irrecoverable at law	7	198	An additional circumstance is added to the list, namely an amount owed by a debtor that is under business rescue as referred to in Part D of Chapter 6 of the Companies Act and to the extent that it is not enforceable under the Companies Act.
Procedure for write off of tax debt	8	199	No change.
Compromise of tax debt	9	200	No change.
Request for compromise of tax debt	10	201	No change.
Consideration of request for compromise	11	202	No change.
Compromise of tax debt inappropriate	12	203	<ul style="list-style-type: none"> <li>The list of inappropriate circumstances to compromise tax debt has been limited to the benefit of taxpayers. The following circumstances previously included in the Regulation is now excluded: <ul style="list-style-type: none"> <li>Market value of the net assets of the debtor is less than the tax debt (par. 12(a));</li> <li>Only reason for request to compromise is hardship in paying tax debt including the sale of a home (par. 12(e));</li> <li>The reason to compromise is to help a debtor who overcommitted, save a business, to lighten unfair operation of the tax law or to create a charitable image for the Commissioner (par. 12(f));</li> <li>No benefit from the compromise other than receiving an amount equal to the amount that would flow from sequestration or liquidation (par.(g));</li> <li>Debtor was sequestrated or liquidated or party to a compromise agreement with the debtor's and creditors' as determined in Section 311 of the Companies Act and sanctioned by court (par. (i)(ii) – (iii)).</li> </ul> </li> </ul>

Description	Regulation paragraph	Section TAA	Changes / New provisions
			<p>The above changes are in favour of taxpayers as it provides more circumstances when a compromise of tax debt can be agreed.</p> <ul style="list-style-type: none"> <li>• The period that a debtor may not have been part of a compromise agreement for tax debt is shortened from five years to three years.</li> <li>• Furthermore in terms of Section 203(f) of the TAA, SARS must first take recovery action against the personal assets of the persons who may be personally liable for debt under part D of Chapter 11 in the case that a debtor that is a company or trust. This extends the previous provision of par. 12(j) that was limited to directors, shareholders, trustees and management.</li> </ul>
Procedure for compromise of tax debt	13	204	<p>Two more items are added to the list of conditions to which the compromise of tax debt may be subjected to:</p> <ul style="list-style-type: none"> <li>• Payment of tax debt in the manner prescribed by SARS; or</li> <li>• Offer up certain current and future tax benefits for example assessed losses.</li> </ul>
SARS not bound by compromise	14	205	No change.
Register of write offs and compromise of tax debt	15	206	No change.
Reporting by the Commissioner	16	207	The reporting deadline date is set in Section 207(2)(b) at the end of the month following the fiscal year.
Exercise of power to write off or compromise tax debt	17	n/a	In terms of the Regulation the power must be exercised by the Commissioner or a delegate. In terms of Chapter 14, the powers are afforded to SARS and SSO's.
No relationship between debtor and the Commissioner or official	18	7	No specific conflict of interest provision is included in Chapter 14, however is provided for in Section 7 of the TAA.

**Table A-11: Chapter 15 of the TAA: Administrative penalty provisions in terms of the TAA in comparison to the previous Regulations and ITA provisions**

Description	Regulation paragraph	Section in ITA	Section in TAA	Changes / New provisions
List of non-compliances that will attract an administrative penalty	4 & 6	75B(3)(d)	210(2)	The list will be issued by the Commissioner by way of a public notice. No notice have been issued as yet, however 10 examples are listed in the TAA (2013:75) and is similar to par. 4 of the previous Regulation issued.
Fixed penalty Table	5	75B(3)(a)	211(1)	No change.
Application of the fixed penalty Table	5	75B(3)(a)	211(2) – 211(5)	Section 211(3)(d) of the TAA adds one more person is added to the list provided in p. 4(3) of the Regulation, namely a person or entity with gross receipts exceeding R30 million that is exempt from Income Tax but taxable in terms of another tax act. A notice was issued to limit the application of the Table for the time being to non-submission of tax returns by natural persons (PricewaterhouseCoopers Inc. 2012:72).
Failure to pay tax: Percentage based penalty	6	75B	213	No change. No percentages prescribed by the TAA and percentages should continue to be determined in terms the specific tax act.
Procedures for imposition of an administrative penalty	7	75B(3)(a)	214	No change.
Procedures to request remittance	8	75B(3)(c)	215	SARS may not take any collection steps to recover the penalty for 21 business days (previously 30 days).
Remittance of penalties	9 - 11	75B(4) – 75B(5)	216 – 218	Previously in terms of Section 75B(4) the Minister was allowed to take into account the nature, seriousness, period and recurrence of the non-compliance in determining the penalty imposed. Remittance of penalties are still limited to the following three instances with minor changes: 1. Failure to register: In terms of par. 9 of the Regulation, this provision also applied to instances where a penalty was imposed for not notifying SARS of change in address. This is not included in the provisions of Section 216 of the TAA. 2. Nominal or first incidence: The period of non-compliance is decreased from 7 days to 5 business days in terms of Section 217(1)(b) of the TAA. In terms of par. 10(c) of the Regulation the Commissioner may remit a percentage based penalty if the duration of the non-compliance was less than 7 days, however no such provision is contained in Section 217(3)(a) of the TAA. In the case of a first incidence of non-compliance, the TAA has also capped the amount up to which a penalty may be remitted, to R2,000 or R100,000 respectively if reasonable grounds existed or the issue was rectified. 3. Exceptional circumstances: No changes.
Penalty incorrectly assessed	12	75B	219	No changes.
Objection and appeal to a decision not to remit penalty	13	75B	220	No changes.

**Table A-12: Chapter 19: General provisions**

Subject	Section in TAA	Section in ITA	Changes / New provisions
Deadlines	244	89sex	No changes.
Power of the Minister to determine the date of submission of returns and payment of tax	245	89sept	No changes.
Public officer of a company	246	101(1) – (4), 101(9) – (13)	<ul style="list-style-type: none"> <li>It is required that the public officer resides in the Republic irrespective of whether the person is a resident as determined in terms of the ITA (TAAG, 2013:88). If no senior official resides in the Republic, any other suitable person approved by SARS may be appointed.</li> <li>The person must be approved by SARS (previously the Commissioner).</li> <li>Penalties for failure to notify SARS in terms of Section 249 of the TAA are still applicable but no fixed penalty amount is prescribed.</li> <li>SARS may withdraw its approval of a public officer if the person is no longer suitable.</li> </ul>
Company address	247	101(5)	No changes.
Public officer during liquidation or winding-up	248	101(2)	No changes.
Default in appointment of public officer or address for notices	249	101(6) – (7)	A company is required to notify SARS of changes in public officer, place of services or delivery of notice within 21 business days (previously 14 days).
Authentication of documents	250	106(10)	No changes.
Delivery of documents to natural persons	251	106(2)(a) – (cA)	An adult person is replaced with a person older than 16 years.
Delivery of documents to companies	252	106(2)(d)	An adult person is replaced with a person older than 16 years.
Documents delivered, deemed to be received	253	106(3) – (4)	No changes.
Validity of defective communication	254	n/a	The fact that there was a defect in the delivery in accordance with the provisions of the TAA (e.g. Sections 251 and 252), does not impact the validity of the communication if it was effectively received and the person was aware of the document and content.
Rules for electronic communication	255	66(7A) – (7E)	The Commissioner is granted the power to issue rules to govern electronic communication including the validity of digital signatures.
Tax clearance certificate (TCC)	256	n/a	The provisions in respect of TCC's were previously regulated under the Public Finance Management Act (1 of 1999) and are now contained in the TAA.
Regulations by the Minister	257	107	<p>The Minister is afforded the power to issue regulations in respect of any administrative matter necessary for the implementation of the provisions of the TAA as well as any other regulation required to be prescribed under the TAA.</p> <p>In addition to the above the Minister may issue the following regulations after consultation with the Tax Ombud:</p> <ul style="list-style-type: none"> <li>Proceedings of the Tax Ombud; and</li> <li>Limitations on the jurisdiction of the Tax Ombud with regards to the complexity of a complaint, the nature of the taxpayer and the maximum amount involved in the dispute.</li> </ul>

