
CONTENTS

No.		Page No.	Gazette No.
	GOVERNMENT NOTICE		
	South African Revenue Service		
	<i>Government Notice</i>		
316	Income Tax Act (58/1962): Regulations issued under section 91A prescribing the circumstances under which the Commissioner may write-off or compromise any amount of tax, duty, levy, charge, interest, penalty or other amount	3	29788

INHOUD

No.		Bladsy No.	Koerant No.
	GOEWERMENTSKENNISGEWING		
	Suid-Afrikaanse Inkomstediens		
	<i>Goewermentskennisgewing</i>		
316	Inkomstebelastingwet (58/1962): Regulasies uitgevaardig ingevolge artikel 91A wat die omstandighede voorskryf waaronder die Kommissaris enige bedrag van belasting, reg, hefting, vordering, rente, boete of ander bedrag kan afskryf of kompromitteer	17	29788

GOVERNMENT NOTICE
GOEWERMENTSKENNISGEWING

SOUTH AFRICAN REVENUE SERVICE

No. 316

13 April 2007

REGULATIONS ISSUED UNDER SECTION 91A OF THE INCOME TAX ACT, 1962 (ACT NO. 58 OF 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

By virtue of section 91A of the Income Tax Act, 1962, I, Trevor Andrew Manuel, Minister of Finance, hereby publish the regulations set out in the Schedule hereto, prescribing the circumstances under which the Commissioner for the South African Revenue Service may write off or compromise, in whole or in part, any amount of tax, duty, levy, charge, interest, penalty or other amount payable by a person in terms of any Act administered by the Commissioner where that write-off or compromise would be to the best advantage of the State.

T. A. MANUEL
MINISTER OF FINANCE

SCHEDULE

INDEX

PART 1

General provisions

1. Definitions
2. Purpose
3. Application of regulations

PART 2

Temporary write off of tax debt

4. Temporary write off of tax debt
5. Tax debts uneconomical to pursue

PART 3

Permanent write off of tax debt

6. Permanent write off of tax debt

Irrecoverable at law

7. Tax debts irrecoverable at law

PART 4

Procedures for write-off

8. Procedure for writing off tax debt on a temporary or permanent basis

PART 5

Compromise of tax debt

9. Compromise of tax debt

- 10. Request by debtor for compromise
- 11. Consideration of request to compromise tax debt
- 12. Circumstances where not appropriate to compromise tax debt
- 13. Procedure for compromise of tax debt
- 14. Commissioner not bound by compromise

PART 6

Records and reporting

- 15. Records of tax debts written off or compromised
- 16. Reporting by Commissioner of tax debts written off or compromised

PART 7

Exercise of power to write off or compromise

- 17. Exercise of power to write off or compromise tax debt
- 18. No relationship between debtor and Commissioner or delegated official

*Part 1**General provisions***Definitions**

1. For purposes of these regulations, any word or expression to which a meaning has been assigned in any Act administered by the Commissioner must, unless the context otherwise indicates, bear the meaning so assigned, and-

"asset" includes-

- (a) property of whatever nature, whether movable or immovable, corporeal or incorporeal; and
- (b) a right or interest of whatever nature to or in such property;

"Companies Act" means the Companies Act No. 61 of 1973;

"compromise" means an agreement entered into between the Commissioner and a debtor in terms of which-

- (a) the debtor undertakes to pay an amount (whether as a single payment or in instalments) which is less than the full amount of the tax debt due by that debtor in full satisfaction of that tax debt; and
- (b) the Commissioner undertakes not to pursue the recovery of the remaining portion of that tax debt on the condition that the debtor complies with the undertaking contemplated in paragraph (a) and any further conditions as may be imposed by the Commissioner;

"tax debt" means any tax, duty, levy, charge, additional tax, interest, penalty or other amount due by a debtor in terms of any Act administered by the Commissioner; and

"write off" means to reverse a tax debt either in whole or in part.

Purpose

2. (1) The basic principle in law is that it is the duty of the Commissioner to assess and collect all tax debts according to the laws administered by or assigned to the Commissioner and not to forgo any such tax debts.

(2) Circumstances may, however, require that the strictness and rigidity of the basic principle be tempered where it would be to the best advantage of the State.

(3) The purpose of these regulations is to prescribe the circumstances under which the basic rule may be tempered and where the Commissioner may take a decision to write off a tax debt on a temporary or permanent basis.

Application of regulations

3. These regulations apply only in respect of a tax debt owed by a debtor where the liability to pay that tax debt is not disputed by the debtor.

Part 2

Temporary write-off of tax debt

Temporary write-off of tax debt

4. (1) The Commissioner may temporarily write off an amount of tax debt if the Commissioner is satisfied that the tax debt is uneconomical to pursue as contemplated in paragraph 5 at that time.

(2) A decision by the Commissioner to temporarily write off an amount of tax debt does not absolve the debtor from the liability of that tax debt.

(3) If the Commissioner at any stage pursues the collection of any amount of tax debt which was temporarily written off under this paragraph, the Commissioner must determine interest for the period from the date that the

tax debt was so written off to the date of payment at the interest rate applicable during the period that the tax debt was outstanding.

Tax debts uneconomical to pursue

5. (1) A tax debt is uneconomical to pursue if the Commissioner is satisfied that the total cost of recovery of that tax debt will in all likelihood exceed the anticipated amount to be recovered in respect of the outstanding tax debt.

(2) In determining whether the cost of recovery is likely to exceed the anticipated amount to be recovered as contemplated in subparagraph (1), the Commissioner must have regard to--

- (a) the amount of the tax debt;
- (b) the length of time that the tax debt has been outstanding;
- (c) the steps taken to date to recover the tax debt and the costs involved in those steps, including steps taken to locate or trace a debtor;
- (d) the likely costs of continuing action to recover the tax debt and the anticipated return from that action, including any likely recovery of costs that may be awarded to the Commissioner;
- (e) the financial position of the debtor, including that debtor's assets and liabilities, cash flow and possible future income streams of that debtor; and
- (f) any other information available with regard to the recoverability of the tax debt.

Part 3

Permanent write-off of tax debt

Permanent write-off of tax debt

6. (1) The Commissioner may permanently write off an amount of tax debt:-

- (a) to the extent that the Commissioner is satisfied, at that time, that the tax debt is irrecoverable at law as contemplated in paragraph 7; or

- (b) if the Commissioner compromised a tax debt in terms of Part 5.
- (2) The Commissioner must notify the debtor, in writing, of any amount of tax debt permanently written off.

Irrecoverable at law

Tax debts irrecoverable at law

7. (1) Subject to subsection (2), a tax debt is irrecoverable at law if—
- (a) it cannot be recovered by action and judgment of a court; or
 - (b) it is owed by a debtor that has been liquidated or sequestrated and it represents the balance outstanding—
 - (i) after notice was given by the liquidator or trustee that no further dividend is to be paid or a final dividend has been paid to the creditors of the estate; or
 - (ii) following the termination of a compromise or arrangement as contemplated in section 311 of the Companies Act, with the debtor's creditors, which has been sanctioned by a court.
- (2) A tax debt is not irrecoverable at law if the debtor is a company or a trust and the Commissioner has not first explored action against or recovery from the personal assets of any director, shareholder, trustee or persons acting in the management of that debtor.

Part 4

Procedures for write-off

Procedure for writing off a tax debt on a temporary or permanent basis

8. (1) Before deciding to write off any tax debt, the Commissioner must—
- (a) determine whether there are any other tax debts owing to the Commissioner by the debtor;
 - (b) reconcile all amounts owed by and to the debtor, including penalties, interest and costs;

- (e) obtain a breakdown of the tax debt and the periods to which the outstanding amounts relate; and
 - (d) document the history of the recovery process and the reasons for deciding to write-off the tax debt on a temporary or permanent basis.
- (2) In deciding whether to support an offer of compromise made to creditors in terms of section 311 of the Companies Act the Commissioner must, in addition to considering the information as contemplated in section 312 of that Act, consider the provisions of paragraph 9, 10(1) and 11 *mutatis mutandis*.

Part S

Compromise of tax debt

Compromise of tax debt

9. The Commissioner may compromise a portion of a tax debt upon written request by a debtor, which complies with the requirements of paragraph 10, if the purpose of that compromise is to secure the highest net return from the recovery of that tax debt taking into account considerations of good management of the tax system and administrative efficiency.

Request by debtor for compromise

10. (1) A request by a debtor for a tax debt to be compromised by the Commissioner must be signed by the debtor and be supported by a detailed statement setting out-

- (a) all assets and liabilities of the debtor reflecting the current market value of those assets;
- (b) all amounts received by or *accrued* to and expenditure incurred by the debtor during the 12 months immediately preceding the request;
- (e) all assets which have been disposed of in the preceding three years, or such longer period as the Commissioner deems appropriate;

- (d) the value of all assets so disposed of, the consideration received or accrued, the identity of the person who acquired the assets and the relationship between the debtor and the person who acquired the assets (if any);
 - (e) the debtor's future interests in any assets, whether certain or contingent or subject to the exercise of a discretionary power by any other person;
 - (f) all assets over which the debtor, either alone or with other persons, has any direct or indirect power of appointment or disposal, whether as trustee or otherwise;
 - (g) details of any connected persons in relation to that debtor;
 - (h) the debtor's present sources and level of income and the anticipated sources and level of income for the next three years, with an outline of the debtor's financial plans for the future; and
 - (i) the debtor's reasons for seeking a compromise.
- (2) The request must be accompanied by the evidence supporting the debtor's claims for not being able to make payment of the full amount of that tax debt.
- (3) The debtor must warrant that the information provided in the application is accurate and complete.
- (4) The Commissioner may require that the application be supplemented by such further information as may be required.

Consideration of request to compromise tax debt

11. (1) In considering a request for a compromise, the Commissioner must have regard to the extent that the compromise may result in -

- (a) savings in the costs of collection;
- (b) collection at an earlier date than would otherwise be the case without the compromise;
- (e) collection of a greater sum than would otherwise have been recovered; and

- (d) the abandonment by the debtor of some claim or right, that has a monetary value, arising under any Act administered by the Commissioner, including any right to carry forward any assessed loss or assessed capital loss.
- (2) In determining the position without the compromise, the Commissioner must have regard to—
 - (a) the value of the debtor's present assets;
 - (b) future prospects of the debtor, including any arrangements which have been implemented or are proposed which may have the effect of diverting income or assets that may otherwise accrue to or be acquired by the debtor or any connected person in relation to the debtor;
 - (e) past transactions of the debtor; and
 - (d) the position of any connected person in relation to the debtor.

Circumstances where not appropriate to compromise tax debt

12. Notwithstanding paragraph 9, the Commissioner may not compromise any amount of tax debt if—

- (a) the amount payable by the debtor in terms of the agreement to compromise will be less than the market value of the total assets of the debtor, which can be applied to reduce the tax debt, after deducting the liabilities of that debtor other than the tax debt;
- (b) the compromise will prejudice other creditors (unless the affected creditors consent to the compromise) or where other creditors will be placed in a position of advantage relative to the Commissioner;
- (e) any other creditor has communicated its intention to initiate or has initiated liquidation or sequestration proceedings;
- (d) the tax affairs of the debtor (other than the outstanding tax debt) are not up to date;
- (e) the only reason to support the request to compromise is the debtor's claim of hardship in paying the tax debt, including the need to sell a home or business;

-
- (f) the purpose of the decision to compromise is -
- (i) to assist a debtor who has become overcommitted;
 - (ii) to save a business from failure or closure, regardless of whether or not a large number of people depend on the business for employment or the activities of the business serve a national interest;
 - (iii) to alleviate harsh or unfair operation of a tax law in particular circumstances; or
 - (v) to further a charitable objective or to create a benevolent public image for the Commissioner;
- (g) there will be no benefit for the Commissioner in the compromise other than collecting an amount equal to the return that would flow from the sequestration or liquidation of the debtor;
- (h) it may adversely affect broader taxpayer compliance;
- (i) the debtor within the period of five years immediately before the request for the compromise was--
- (i) a party to an earlier agreement with the Commissioner to compromise an amount of tax debt;
 - (ii) sequestrated or liquidated; or
 - (iii) a party to a compromise or arrangement with the debtor's creditors, as contemplated in section 311 of the Companies Act, which was sanctioned by the Court;
- (j) the debtor is a company or a trust and any director, trustee or person acting in the management of the debtor-
- (i) has been involved in fraud or tax evasion; or
 - (ii) has a past history of being involved in failed companies or trusts;
- and the Commissioner has not first explored action against or recovery from the personal assets of those directors, trustees or persons.

Procedure for compromise of tax debt

13. (1) If the Commissioner compromises a tax debt, the Commissioner and debtor must sign an agreement setting out-

- (a) the amount payable by the debtor in full satisfaction of the debt;
- (b) the undertaking by the Commissioner not to pursue recovery of the balance of the tax debt; and
- (c) all other conditions subject to which the tax debt is compromised by the Commissioner, which may include a requirement that the debtor must comply with subsequent obligations imposed in terms of any Act administered by the Commissioner.

Commissioner not bound by compromise

14. The Commissioner will not be bound by the compromise **if**-

- (a) the debtor failed to make full disclosure of all material facts to which the compromise relates;
- b) the debtor supplied any materially incorrect information to which the compromise relates;
- (c) the debtor fails to comply with any provision or condition contained in the agreement contemplated in paragraph 13; or
- (d) the debtor is liquidated or his or her estate is sequestrated before that debtor has fully complied with all conditions contained in the agreement as contemplated in paragraph 13.

Part 6

Records and reporting

Records of tax debts written off or compromised

15. (1) The Commissioner must maintain a register of all tax debts written off or compromised in terms of these regulations.

(2) The register contemplated in subparagraph (1) must contain-

- (a) the details of the debtor, including name, address and tax reference numbers;
- (b) the amount of the tax debt written off or compromised and the periods to which the tax debts relate; and
- (c) the reason for writing off or compromising the tax debt.

Reporting by Commissioner of tax debts written-off or compromised

16. (1) The amount of tax debts written off or compromised during any financial year must be disclosed in the annual financial statements of the South African Revenue Service relating to administered revenue for that year.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all tax debts which were written off or compromised in whole or in part during the period covered by that summary, which must-

- (a) be in such format which, subject to section 4(1)(b) of the Income Tax Act, 1962, does not disclose the identity of the debtor concerned;
- (b) be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and
- (c) contain details of the number of tax debts written off or compromised, the amount of revenue forgone and the estimated amount of savings in costs of recovery, which must be reflected in respect of main classes of taxpayers or sections of the public.

Exercise of power to write off or compromise

Exercise of power to write off or compromise tax debt

17. The power to write off or compromise any amount of tax debt in terms of these regulations may be exercised by the Commissioner personally or by any official delegated by the Commissioner for that purpose.

No relationship between debtor and Commissioner or delegated official

18. The Commissioner or relevant delegated official may not exercise any power to write off or compromise any tax debt, if he or she has, or at any stage had a personal, family, social, business, professional, employment or financial relationship with the debtor concerned.

SUID-AFRIKAANSE INKOMSTEDIENS

No. 316

13 April 2007**REGULASIES UITGEVAARDIG INGEVOLGE ARTIKEL 91A VAN DIE INKOMSTEBELASTINGWET, 1962 (WET NO. 58 VAN 1962), WAT DIE OMSTANDIGHED E VOORSKRYF WAARONDER THE KOMMISSARIS ENIGE BEDRAG VAN BELASTING, REG, HEFFING, VORDERING, RENTE, BOETE OF ANDER BEDRAG KAN AFSKRYF OF KOMPROMITTEER**

Kragtens die bevoegdhede aan my verleen ingevolge artikel 91A van die Inkomstebelastingwet, 1962, publiseer, ek, Trevor Andrew Manuel, Minister van Finansies, hiermee die regulasies uiteengesit in die Bylae hiermee, wat die omstandighede beskryf waaronder die Kommissaris van die Suid-Afrikaanse Inkomstediens enige bedrag van belasting, reg, heffing, vordering, rente, boete of ander bedrag deur 'n persoon betaalbaar ingevolge enige Wet deur die Kommissaris geadministreer, kan afskryf of kompromitteer waar daardie afskrywing or kompromie in die beste belang van die Staat sal wees.

T. A. MANUEL**MINISTER VAN FINANSIES**

BYLAE

INDEKS

DEEL 1

Algemene bepalinge

1. Woordomskrywings
2. Doel
3. Toepassing van die regulasies

DEEL 2

Tydlike afskrywing van belastingskuld

4. Tydelike afskrywing van belastingskuld
5. Belastingskuld onekonomies om in te vorder

DEEL 3

Permanente afskrywing van belastingskuld

6. Permanente afskrywing van belastingskuld

Regtens oninvorderbaar

7. Belastingskuld regtens oninvorderbaar

DEEL 4

Prosedure vir afskrywing

8. Prosedure vir afskrywing van belastingskuld op 'n tydelike of permanente basis

DEEL 5

Kompromitteer van belastingskuld

9. Kompromitteer van belastingskuld
10. Versoek deur skuldenaar om te kompromitteer
- t t. Oorweeging van versoek om belastingskuld te kompromitteer
12. Omstandighede waar dit nie gepas is om 'n belastingskuld te kompromitteer nie
13. Prosedure vir kompromittering van belastingskuld
14. Kommissaris nie gebonde aan kompromie

DEEL 6

Register en verslagdoening

15. Register van belastingskulde afgeskryf of gekompromitteer
16. Verslagdoening deur Kommissaris oor belastingskulde afgeskryf of gekompromitteer

DEEL 7

Uitoefening van bevoegdheid om af te skryf of te kompromitteer

17. Uitoefening van bevoegdheid om af te skryf of te kompromitteer
18. Geen verhouding tussen skuldenaar en Kommissaris of gedelegeerde amptenaar nie

*Deel 1**Aigemene bepalings***Woordomskrywings**

1. In hierdie regulasies, tensy uit die samehang anders blyk, het enige woord of uitdrukking waaraan daar in enige Wet deur die Kommissaris geadministreer 'n betekenis toegeskryf is, sodanige betekenis, **en-**

"afskryf" beteken am 'n belastingskuld geheel of gedeeltelik terug te skryf;
"bate" sluit **in-**

(a) eiendom van welke aard oak al, hetsy roerend of onroerend, liggaamlik of onliggaamlik; en

(b) 'n reg of belang van welke aard oak al tot of in sodanige eiendom;

"belastingskuld" beteken enige bedrag van belasting, reg, hefting, vordering, addisionele belasting, rente, boete of ander bedrag deur 'n skuldenaar betaalbaar ingevolge enige Wet deur die Kommissaris geadministreer;

"kompromie" beteken 'n ooreenkoms aangegaan tussen die Kommissaris en 'n skuldenaar ingevolge waarvan-

(a) die skuldenaar onderneem am 'n bedrag te betaal (as 'n eenmalige betaling of in paaielemente) wat minder is as die volle bedrag van die belastingskuld verskuldig deur daardie skuldenaar in volle vereftening van die belastingskuld; en

(b) die Kommissaris onderneem am nie voort te gaan met die invordering van die balans van daardie belastingskuld nie op voorwaarde dat die skuldenaar die onderneming in paragraaf (a) en enige verdere voorwaardes wat die Kommissaris mag opte, nakom; en

"Maatskappyewet" beteken die Wet of Maatskappye Nr. 61 van 1973;

Doel

2. (1) Die basiese beginsel in die reg is dat dit die plig van die Kommissaris is am aile belastingskulde aan te slaan en te vorder kragtens die wette wat deur

die Kommissaris geadministreer word of aan hom opgedra is en om nie daardie belastingskulde op te sê nie.

(2) Omstandighede mag egter vereis dat die strengheid en onbuigsaamheid van die basiese beginsel getemper word waar dit tot die beste voordeel van die Staat sal wees.

(3) Die doel van hierdie regulasies is om die omstandighede voor te skryf waaronder die basiese beginsel getemper mag word en waar die Kommissaris 'n besluit kan neem om 'n belastingskuld op 'n tydelike of permanent basis af te skryf.

Toepassing van die regulasies

3. Hierdie regulasies is slegs van toepassing op 'n belastingskuld verskuldig deur 'n skuldenaar waar die aanspreeklikheid om die belastingskuld te betaal nie deur die skuldenaar betwis word nie.

Dee/2

Tydelike afskrywing van belastingskuld

Tydelike afskrywing van belastingskuld

4. (1) Die Kommissaris kan 'n bedrag belastingskuld tydelik afskryf indien die Kommissaris tevrede is dat die belastingskuld, op daardie tydstip, onekonomies is om in te vorder soos bedoel in paragraaf 5.

(2) 'n Besluit deur die Kommissaris om 'n bedrag belastingskuld tydelik af te skryf skeld nie die skuldenaar kwyd van die aanspreeklikheid vir daardie belastingskuld nie.

(3) Indien die Kommissaris, op enige stadium, die invordering van enige bedrag belastingskuld wat tydelik ingevolge hierdie paragraaf afgeskryf is sou voortsit, moet die Kommissaris die rente vir die periode bereken vanaf die datum wat die belastingskuld aldus afgeskryf is tot die datum van betaling,

teen die rentekoers van toepassing gedurende die periode wat die belastingskuld aldus uitstaande was.

Belastingenskuld onekonomies om in te vorder

5. (1) 'n Belastingenskuld is onekonomies om in te vorder indien die Kommissaris tevrede is dat die totale koste van vordering van daardie belastingenskuld, die beoogde bedrag wat gevorder sal word ten opsigte van die uitstaande belastingenskuld, in aile waarskynlikheid sal oorskry.

(2) Om te bepaal of die koste van vordering waarskynlik die beoogde bedrag vorderbaar, soos bedoel in subparaqaaf (1), sal oorskry, moet die Kommissaris die volgende in ag neem---

- (a) die bedrag van die belastingenskuld;
- (b) die tydperk wat die belastingenskuld uitstaande was;
- (c) die stappe geneem tot op datum om die belastingenskuld in vorder en die koste verbonde aan sodanige stappe, ingesluit die stappe geneem om die skuldenaar te vind of op te spoor;
- (d) die waarskynlike koste van voorgesette aksie om die belastingenskuld te vorder en die beoogde opbrengs uit daardie aksie, ingesluit die moontlike verhaling van koste wat aan die Kommissaris toegeken mag word;
- (e) die finansiele posisie van die skuldenaar, ingesluit daardie skuldenaar se bates en laste, kontantvloei en moontlike toekomstige inkomstestrome van daardie skuldenaar; en
- (f) enige ander beskikbare inligting met betrekking tot die invorderbaarheid van die belastingenskuld.

*Dee/3**Permanente afskrywing van belastingsskuld***Permanente afskrywing van belastingsskuld**

6. (1) Die Kommissaris kan 'n bedrag belastingsskuld permanent **afskryf**—
- (a) tot die mate wat die Kommissaris op daardie stadium tevrede is dat die belastingsskuld regtens oninvorderbaar is soos bedoel in paragraaf 7; of
 - (b) indien die Kommissaris 'n belastingsskuld ingevolge Deel 5 gekompromitteer het.
- (2) Die Kommissaris moet die skuldenaar skriftelik in kennis stel van enige bedrag belastingsskuld wat permanent afgeskryf is.

*Regtens oninvorderbaar***Belastingsskuld regtens oninvorderbaar**

7. (1) Onderhewig aan subparagraaf (2), is 'n belastingsskuld regtens oninvorderbaar indien—
- (a) dit nie verhaal kan word deur 'n regsaksie of bevel van 'n hof nie; of
 - (b) dit verskuldig is deur 'n skuldenaar wat gelikwideer of gesekwestreer is en dit verteenswoordig die balans uitstaande--
 - (i) nadat kennis deur die likwidateur of trustee gegee is dat geen verdere dividend betaal sal word nie of dat In finale dividend reeds aan die krediteure van die boedel betaal is; of
 - (ii) na die beeindiging van 'n skikking of reeling met die krediteure van die skuldenaar, soos in artikel 311 van die Maatskappyyewet bedoel, wat deur 'n hof bekragtig is.
- (2) 'n Belastingsskuld is nie regtens oninvorderbaar as die skuldenaar 'n maatskappy of 'n trust is en die Kommissaris nie eers aksie teen of verhaling van die persoonlik bates van enige direkteur, aandeelhouer, trustee of persone wat in die bestuur van daardie skuldenaar optree, oorweeg het nie.

Deel4

Prosedure vir afskrywing

Prosedure vir afskrywing van belastingskuld op 'n tydelike of permanente basis

8. (1) Alvorens besluit word om enige belastingskuld af te afskryf, moet die Kommissaris-

- (a) bepaal of daar enige andere belastingskulde deur die skuldenaar aan die Kommissaris verskuldig is;
- (b) alle bedrae verskuldig deur of aan die skuldenaar, ingesluit boetes, rente en koste rekonsilieer;
- (c) 'n uiteensetting van die belastingskuld sowel as die tydperke waarop die uitstaande bedrag betrekking het; en
- (d) die geskiedenis van die invorderingsproses en die redes vir die besluit om die belastingskuld af skryf, op 'n tydelike of permanente basis, dokumenteer.

(2) In sy besluit om 'n aanbod tot skikking, gemaak aan krediteure ingevolge artikel 311 van die Maatskappywet te ondersteun, moet die Kommissaris, buiten die inligting wat in ag geneem moet word soos bedoel in artikel 312 van daardie Wet, die bepalings van paragraaf 9, 10(1) en 11 *mutatis mutandis* in ag neem.

Deel5

Kompromitteer van belastingskuld

Kompromitteer van belastingskuld

9. Die Kommissaris kan 'n gedeelte van 'n belastingskuld kompromitteer nadat 'n skriftelike versoek van die skuldenaar ontvang is wat voldoen aan die vereistes van paragraaf 10, indien die doel van die kompromie is om die hoogste netto opbrengs ten opsigte van die invordering van daardie

belastingeskuld te verseker, met inagneming van goeie bestuur van die belastingstelsel en administratiewe doeltreffendheid.

Versoek deur skuldenaar am te kompromiteer

10. (1) 'n Versoek deur 'n skuldenaar aan die Kommissaris om 'n belastingeskuld te kompromiteer moet onderteken word deur die skuldenaar en vergesel wees van 'n gedetailleerde staat wat die volgende uiteensit-

- (a) aile bates en laste van die skuldenaar wat die huidige markwaarde van daardie bates weergee;
- (b) aile bedrae ontvang deur of toegeval aan en uitgawes aangegaan deur die skuldenaar gedurende die 12 maande wat die versoek onmiddellik voorafgaan;
- (e) aile bates wat vervreem is gedurende die onmiddellik voorafgaande drie jaar, of sodanige langer periode as wat die Kommissaris nodig ag;
- (d) the waarde van aile bates sodanig vervreem, die vergoeding ontvang of toegeval, die identiteit van die persoon wat die bates verkry het en die verwantskap tussen die skuldenaar en die persoon wat die bates verkry het (indien enige);
- (e) die skuldenaar se toekomstige belange in enige bates, hetsy gevestig of voorwaardelik of onderhewig aan die uitoefening van 'n dlakreslonere bevoegdheid deur enige ander persoon;
- (f) aile bates waaroor die skuldenaar, 6f aileen 6f saam met ander persone, enige direkte of indirekte bevoegdheid van aanstelling of verveemding het, hetsy as trustee of andersins;
- (g) besonderhede van enige verbonde persone met betrekking tot die skuldenaar;
- (h) die skuldenaar se huidige bronne en stand van inkomste asook die beoogde bronne en stand van inkomste vir die volgende drie jaar, tesame met 'n uiteensetting van die skuldenaar se finansiële beplanning vir die toekoms; en
- (t) die skuldenaar se redes vir die versoek om 'n kompromie.

- (2) Die versoek moet vergesel word van bewyse wat die skuldenaar se bewering dat hy of sy nie instaat is om die volle bedrag van daardie belastingskuld te vereffen nie, ondersteun.
- (3) Die skuldenaar moet waarborg dat die inligting voorsien in die aansoek akkuraat en volledig is.
- (4) Die Kommissaris mag versoek dat die aansoek aangevul moet word met sodanige verdere inligting soos wat verlang mag word.

Oorweging van versoek om belastingskuld te kompromitteer

11. (1) Die Kommissaris moet, in die oorweging van 'n versoek vir 'n kompromie, in ag neem die mate wat die kompromie-

- (a) 'n besparing in die koste van invordering;
- (b) invordering op 'n vroeë stadium as wat andersins die geval sou wees sonder die kompromie;
- (e) invordering van 'n groter bedrag as wat andersins ingevorder sou word; en
- (d) die afstanddoening deur die skuldenaar van enige eis of reg, met 'n minnere waarde, wat ontstaan kragtens enige ander Wet geadministreer deur die Kommissaris, ingesluit enige reg om 'n vasgestelde verlies of vasgestelde kapitaalverlies oor te dra,

tot gevolg sal hê.

(2) Ten einde die posisie sonder die kompromie in ag te neem, moet die Kommissaris-

- (a) die waarde van die skuldenaar se huidige bates;
- (b) toekomstige vooruitsigte van die skuldenaar, ingesluit enige reëlings wat geïmplimenteer is of voorgestel is wat die effek mag hê om inkomste of bates, wat andersins die skuldenaar sou toeval of deur die skuldenaar of enige verbonde persoon met betrekking tot daardie skuldenaar verkry kan word, af te lei,
- (e) vorige transaksies van die skuldenaar, en

- (d) die posisie *van* enige verbonde persoon met betrekking tot die skuldenaar,
in aanmerking neem.

Omstandighede waar dit nie gepas is om 'n belastingskuld te kompromitteer nie

12. Nieteenstaande paragraaf 9, kan die Kommissaris nie 'n bedrag belastingskuld kompromitteer nie indien-

- (a) die bedrag betaalbaar deur die skuldenaar ingevolge die ooreenkoms om te kompromitteer minder is as die markwaarde *van* die totale bates *van* daardie skuldenaar, wat aangewend kan word om die belastingskuld te verminder, na aftrekking *van* die laste *van* daardie skuldenaar behalwe die belastingskuld;
- (b) die kompromie ander krediteure (tensy die geaffekteerde krediteure toestem tot die reeling) nadelig sou affekteer of waar die ander krediteure in 'n voordelige posisie met betrekking tot die Kommissaris geplaas sou word;
- (e) enige ander krediteur sy *voorneme* gekommunikeer het om likwidasie of sekwestrasie stappe in te stel of alreeds sodanige stappe ingestel het;
- (d) die belastingsake *van* die skuldenaar (behalwe die uitstaande belastingskuld) nie op datum is nie;
- (e) die enigste rede om die *versoek* om te kompromitteer te ondersteun is die skuldenaar se aanspraak op ontbering in die betaling *van* die belastingskuld, ingesluit die noodsaaklikheid om 'n huis of besigheid te *verkoop*;
- (f) die doel *van* die besluit om te kompromitteer is -
 - (i) om 'n skuldenaar wat oorverbind geraak het by te staan;
 - (ii) om 'n besigheid van ondergang of sluiting te red, ongeag of 'n groot getal mense afhanklik is *van* die besigheid vir werk of die aktiwiteite *van* die besigheid 'n nasionale belang dien;

- (iii) om die harde of onregverdige werking van 'n belastingwet in bepaalde omstandighede te verlig; of
- (v) om 'n liefdadigheidsoogmerk te bevorder of 'n welwillende publieke beeld vir die Kommissaris te skep;
- (g) daar geen ander voordeel vir die Kommissaris in die kompromie is nie behalwe die invordering van 'n bedrag gelykstaande aan die opbrengs wat sou voortvloei uit die sekwestrasie of likwidasië van die skuldenaar nie;
- (h) dit 'n nadelige effek sou hê op die breek nakomingsplig van belastingpligtiges;
- (i) die skuldenaar, binne 'n tydperk van vyf jaar, onmiddellik voor die versoek om te kompromitteer-
 - (i) 'n party was tot 'n vorige ooreenkoms met die Kommissaris om 'n bedrag belastingskuld te kompromitteer;
 - (ii) gesekwestreer of gelikwideer was; of
 - (iii) 'n party tot 'n skikking of reëlings was, met die skuldenaar se krediteure, soos bedoel in artikel 311 van die Maatskappyyewet, wat deur die Hof bekragtig was.
- 0) die skuldenaar is 'n maatskappy of a trust en enige direkteur, trustee of persoon wat optree in die bestuur van die skuldenaar-
 - (i) betrokke ~~was~~ by bedrog of belastingontduiking; of
 - (ii) 'n geskiedenis het van betrokkenheid by mislukte maatskappye of trustsen die Kommissaris nie eers aksie teen of verhaling van die persoonlike bates van sodanige direkteur, trustee of persone oorweeg het nie.

Prosedure vir kompromittering van 'n belastingskuld

13. (1) Indien die Kommissaris 'n belastingskuld kompromitteer, moet die Kommissaris en die skuldenaar 'n ooreenkoms onderteken wat uiteensit-

- (a) die bedrag betaalbaar deur die skuldenaar ter volle vereffening van die skuld;

- (b) die onderneming deur die Kommissaris om nie die invordering van die balans van die belastingskuld voort te sit nie; en
- (e) aile ander voorwaardes waaronder die kompromie van die belastingskuld onderhewig gestel is deur die Kommissaris, wat 'n vereiste mag insluit dat die skuldenaar enige daaropvolgende verpligtinge opgele in terme van enige Wet deur die Kommissaris gadministreer, moet nakom.

Kommissaris nie gebonde aan kompromie

14. Die Kommissaris sal nie gebonde wees aan die kompromie nie indien-

- (a) die skuldenaar nagelaat het om 'n volle openbaarmaking te maak van aile ter sake dienende feite wat op die kompromie betrekking het;
- b) die skuldenaar enige wesenlik inkorrekte inligting verstrek het wat op die kompromie betrekking het;
- (e) die skuldenaar versuim om enige bepaling of voorwaarde vervat in die ooreenkoms soos bedoel in paragraaf 13, na te kom; of
- (d) die skuldenaar gelikwideer of sy of haar boedel gesekwestreer is alvorens die skuldenaar aile verpligtinge ingevolge die ooreenkoms soos bedoel in paragraaf 13 nagekom het.

Deel 6

Register en verslagdoening

Register van belastingskulde afgeskryf of gekompromitteer

15. (1) Die Kommissaris moet 'n register van aile belastingskulde afgeskryf of gekompromitteer ingevolge hierdie regulasies hou.

(2) Die register in subparagraaf 1 bedoel moet-

- (a) die inligting van die skuldenaar, ingesluit naam, adres en belastingverwysingsnommers;
- (b) die bedrag van die belastingskuld afgeskryf of gekompromitteer en die tydperke waarop die belastingskuld betrekking het; en
- (e) die rede vir die afskrywing of kompromittering van die belastingskuld, bevat.

Verslagdoening deur Komrntssarls oor belastingskulde afgeskryf of gekompromitteer

16. (1) Die bedrag van belastingskulde afgeskryf of gekompromitteer gedurende enige finansiële jaar moet in die jaarlikse finansiële state van die Suid-Afrikaanse Inkomstediens geopenbaar word, met betrekking tot geadministreerde inkomste vir daardie jaar;

(2) Die Kommissaris moet, op 'n jaarlikse grondslag 'n opsomming aan die Ouditeur-generaal en die Minister van Finansies voorsien van alle belastingskulde afgeskryf of gekompromitteer in geheel of gedeeltelik gedurende die tydperk wat deur daardie opsomming gedek word, wat-

- (a) in so 'n formaat is wat, behoudens artikel 4(1)(b) van die Inkomstebelastingwet, 1962, nie die identiteit van die betrokke skuldenaar openbaarmaak nie;
- (b) gelewer moet word op 'n tyd wat die Kommissaris en die Ouditeur-generaal of Minister van Finansies, na gelang van die geval, kan ooreenkom; en
- (e) besonderhede bevat van die aantal belastingskulde afgeskryf of gekompromitteer, die bedrag van inkomste verbeur en die beraamde bedrag van besparing in koste van invordering wat aangedui moet word ten opsigte van hoofklasse van belastingpligtiges of gedeeltes van die publiek.

*Deel 7**Uitoefening van bevoegdheid om af te skryf of te kompromitteer***Uitoefening van bevoegdheid om af te skryf of te kompromitteer**

17. Die bevoegdheid om enige bedrag belastingskuld af te skryf of te kompromitteer ingevolge hierdie regulasies kan deur die Kommissaris persoonlik of deur enige persoon vir hierdie doel deur die Kommissaris aangewys, uitgeoefen word.

Geen verhouding tussen skuldenaar en Kommissaris of gedelegeerde amptenaar

18. Die Kommissaris of relevante gedelegeerde amptenaar mag nie enige bevoegdheid om enige belastingskuld af te skryf of te kompromitteer uitoefen, indien hy of sy, op enige stadium, 'n persoonlike, familie, sosiale, besigheids, professionele, diens of finansiete verhouding met die tersaaklike skuldenaar het of gehad het nie.

TSHUMELO YA MBUELO DZA AFRIKA TSHIPEMBE

No. 316

13 Lambamai 2007

MVETOMVETO DZA NDAULO DZO BVISWA FHASI HA KHETHEKANYO 91 YA MULAYO WA MUTHELO WA MBUELO (MULAYO WA NOMBORO 58 WA 1962), U RANDELA NYIMELE DZINE NGADZO KHOMISHINARI A NGA PHUMULA KANA U ITA THENDELANO SIANI LA GEMO LINWE NA LINWE LA MUTHELO, MUINGATENGO, KOSEKOSE, MBADELO, MUINGAPFUMA, NDATISO KANA LINWE GEMO VHO

Nga nthani ha khethekanyo 91A ya Mulayo wa Muthelo wa Mbuelo, wa 1962, **Nge** Trevor Andrew Manuel, **Minisita** wa zwa Gwama, ndi andadza ndaulo dzo sumbedzwaho kha Sheduju siani !a haya mafhungo, u randela nyimele ine ngayo Khomishinari wa Tshumelo ya Mbuelo dza Afrika Tshipembe a nga phumula kana a ita thendelano, kha tshikolodo tshothe kana tshipida tshatsho, gemo [Inwe na [inwe [a rnuthelo, muingatengo, kosekose, mbadelo, muingapfuma, ndatiso kana [tnwe gemo vho line la badelwa nga muthu hu tshi tevhedzwa Mulayo ufhio na ufhio une wa shumiswa nga Khomishinari hune u phumulwa ha tshikolodo kana thendelano zwa nga vhuedza Muvhuso.

T. A. MANUEL**MINISITA WA ZWA GWAMA**

SHEDULU**MUTEVHE**TSHIPIDA 1

U etshedzwa ho angaredzwaho

1. Thalutshedzo
2. Ndivho
3. U shumiswa ha ndaulo

TSHIPIDA 2

U phumulwa lwa tshifhinga nyana ha tshikolodo tsha muthelo

4. U phumulwa lwa tshifhinga nyana ha tshikolodo tsha muthelo
5. Zwikolodo zwa muthelo zwine u zwi vhila ha si vhuyedze

TSHIPIDA 3

U phumulwa lwa tsiotne ha tshikolodo tsha muthelo

6. U phumulwa lwa tshothe ha tshikolodo tsha muthelo

U sa tsha kona u wanala murahu u ya nga mulayo

7. Zwikolodo zwa muthelo zwi sa vhileiho nga mulayo

TSHIPIDA 4

Maitele a u phumula

8. Maitele a u phumula tshikolodo tsha muthelo lwa tshifhinga nyana kana lwa tshothe

TSHIPIDA 5

Thendelano kha tshikolodo tsha muthelo

9. Thendelano kha tshikolodo tsha muthelo
10. Khumbelo ya thendelano nga mukolodi

11. U dzhiela nzhele khumbelo thendelano kha tshikolodo tsha muthelo
12. Nyimele dzine dza vha dzi songo tea thendelano ya tshikolodo tsha muthelo
13. Maitele a thendelano kha tshikolodo tsha muthelo
14. Khomishinari ha vhofhiwi nga thendelano

TSHIPIDA 6

Rekhodo na u vhiga

15. Rekhodo dza zwikolodo zwa muthelo zwo phumulwaho kana zwo tendelaniwaho khazwo
16. U vhiga nga Khomishinari wa zwikolodo zwa muthelo zwo phumulwaho kana u tendelaniwaho khazwo

TSHIPIDA 7

U shumisa maanda kha u phumula kana kha thendelano ya tshikolodo tsha muthelo

17. U shumisa rnaanda kha u phumula kana kha thendelano ya tshikolodo tsha muthelo
18. A hu na vhushaka vhukati ha mukolodi na Khomishinari kana muofisiri o tiwaho

Tshipida1

U ̣etshedzwa ho angaredzwaho

Thalutshedzo

1. Zwi tshi livhanywa na ndaulo idzi, ndi pfanelo uri ipfi [inwe na **lịnwe** kana kubulele kunwe na kunwe kune kwa talutshedza Mulayo rnunwe na **mụnwe** u shumiswaho nga Khomishinari, nga nndanl ha musi zwi re ngomu [inwalwanl zwi tshi dlbula nga inwe ndlla, ipfi kana kuambeke zwi tea u hwala thalutshedzo yeneyo ye ya **̣newa**, nahone- "Mulayo wa khamphani" zwi amba Mulayo wa Khamphani wa Nomboro. 61 wa 1973;

"ndaka" i katela-

(a) Ndaka ya mufuda **mụnwe** na munwe, i nga vha i tshi sudzulusea kana i sa sudzulusei, i tshi vhandea kana i sa vhandei: khathihi na

(b) pfanelo kana dzangalelo zwa tshivhumbeo **tshịnwe** na tshinwe malugana kana kha ndaka yeneyo,

"thendelano" zwi amba thendelano ye ya dzhenwa khayoyhukati ha Khomishinari na mukolodi u ya nga hune-

(a) mukolodi a tenda u badela gemo (lịi nga vha !a mbadelo nthihi kana !a badelwa nga zwituku) line la vha fhasi ha gemo 10 fhelelaho [a tshikolodo tsha muthelo tshine tsha khou fanela u badelwa nga mukolodi u itela u fusha **ṭhox̣ea** dzothe dza tshikolodo tsha muthelo; na uri

(b) Khomishinari u tenda u sa isa phanda na u wana murahu tshipida tsho salaho tsha tshikolodo tsha muthelo ho vha na nyandano ya uri mukolodi u **̣o** tevhedza thendelano yo sumbedzwaho kha khaphara (a) na nyimele dziriwe na dzinwe dzine dza nga phanda dzine dza nga kombetshedzwa nga Khomishinari;

"tshikolodo tsha rnuthelo" zwi amba muthelo rnunwe na rnunwe. muingatengo, kosekose, mbadeliso, nyingamuthelo, muingapfuma,

ndatiso kana **munwe** mutengo une wa tea u badelwa nga mukolodi u ya nga mulayo ufho na ufho une wa lanqulwanqa Khomishinari; na "u phumula" zwi amba u humisela murahu tshikolodo tsha muthelo hu nga vha tshothe kana tshlida.

Ndivho

2. (1) Tshipikwa tshilwane tsha mulayo tshi ri mushumo wa Khomishinari ndi u asesa na u kuvhanganya zwikolodo zwothe zwa muthelo u ya nga milayo ine ya langulwa kana i re zwandani zwa Khomishinari hu si na u suvhisa zwenezwi zwikolodo zwa muthelo.

(2) Naho zworalo, nyimele, i nga **toda** uri u tevhedza ndivho ya mulayo khathihi na u u kondisa zwi shandulwe arali zwi tshi do vhuedza Muvhuso.

(3) Ndivho ya hedzi ndaulo ndi u bula nyimele dzine ngadzo tshipikwa tshihulwane tsha mulayo tsha nga shandulwa na uri ndi ngafhi hune Khomishinari a nga dzhia tsheo ya u phumula tshikolodo tsha muthelo lwa tshifhinganyana kana lwa tshothe.

U shumiswa ha ndaulo

3. Ndaulo idzi dzi shuma fhedzi kha tshikolodo tsha muthelo tshine tsha khou kolodwa nga mukolodi hune vhudlhfIndulell ha u badela tshikolodo tsha muthelo wonoyo ha vha hu sa hanedzwi nga mukolodi.

Tshipida 2

U phumula lwa tshifhinga nyana ha tshikolodo tsha muthelo

U phumula lwa tshifhinga nyana ha tshikolodo tsha muthelo

4. (1) Khomishinari a nga phumula gemo la tshikolodo tsha muthelo lwa tshifhinga nyana arali Khomishinari a tshi fushea uri tshikolodo

tsha muthelo a tshi vhuedzi lwa ekonomi musi hu tshi bvelwa phanda na u tshi vhila sa zwo sumbedzwaho kha phara 5 nga tshenethso tshifhinga.

(2) Tsheo nga Khomishinari ya u phumula gemo la tshikolodo tsha muthelo lwa tshifhinga nyana a zwi ambi uri mukolodi u bvulwa vhudlhfInduleli ha u lifha tshenetsho tshikolodo tsha muthelo.

(3) Arali huriwe-vho Khomishinari a kombetshedza u kuvhanganywa ha gemo la tshikolodo tsha muthelo tshe tsha vha tsho phumulwa lwa tshifhinganyana nga fhasi ha phara iyi, Khomishinari u tea u ta muingapfuma dza tshifhinga tsha u bva u phumulwani ha tshikolodo u swika ~~duvha~~ line mbadelo dza nyingapfuma yo teaho tshifhinga tshenetsho tshe tshikolodo tsha muthelo tsha vha tshi tshi kha ~~di~~ kolodwa.

Zwikolodo zwa muthelo zwine u isa phanda na u zwi vhila ha sa vhuyedze siani [a ikonomi

5. (1) U isa phanda na u vhila tshikolodo tsha muthelo a zwi vhuyedzi siani la ikonomi arali Khomishinari a tshi fushea uri gemo jothe line [a ~~do~~ waniwa murahu kha tshikolodo tshenetsho tsha muthelo li nga fhira qemo jo lavhelelwaho u waniwa murahu zwi tshi vhambedzwa na tshikolodo tsha muthelo tshi sa athu u badelwa.

(2) Musi hu tshi anganywa uri mbadelo dza u vhuyisa tshelede i no khou kolodwa dzi fhira gemo le la lavhelelwa u waniwa murahu sa zwe zwa sumbedzwa kha pharathukhu ya (1), Khomishinari u fanela u dzhiela nzhele-

- (a) gemo la tshikolodo tsha muthelo;
- (b) tshifhinga tsho no fhiraho tshi tshi rangela u badelwa ha tshikolodo tsha muthelo;
- (e) maga e a dzhiwa u swika zwino u itela u wana murahu tshikolodo tsha muthelo na tshinyalelo ine ya katelwa kha maga aya. hu tshi katelwa na maga e a dzhiwa hu tshi londwa kana u ~~to~~da mukolodi;

- (d) tshinyalelo ine ya **do** vha hone kha u isa phanda na nyito ya u wana murahu tshikolodo tsha muthelo na zwine zwa khou lavhelelwa u waniwa nge ha itwa nyito iyi, hu tshi katelwa na khonadzeo ya u wana ndifhelo ya biko la Khomishinari;
- (e) tshiimo tsha mukolodi siani [a masheleni, hu tshi katelwa na ndaka ya mukolodi na zwikolodo, kheshe ine a vha nayo na khonadzeo ya tshifhinga tshidaho ya vhubvo ha mbuelo ha mukolodi onoyo: na
- (f) mafhungomatsivhudzi mariwe na rnanwe ane a nga waniwa siani [a khonadzeo ya u wana murahu tshikolodo tsha muthelo.

Tshipiḁa 3

U phumulwa lwa tshotne ha tshikolodo tsha muthelo

U phumulwa lwa tshothe ha tshikolodo tsha muthelo

6. (1) Khomishinari a nga phumula lwa tshothe mutengo wa tshikolodo tsha muthelo:-

- (a) u swikela Khomishinari a tshi fushea, nga tshenetsho tshifhinga, hune tshikolodo tsha muthelo tsha si tsha kona u waniwa murahu u ya nga mulayo sa zwo sumbedzwaho kha phara 7; kana

- (b) arali Khomishinari ^o tendelana na tshikolodo tsha muthelo u ya nga Tshipiḁa 5.

(2) Khomishinari u fanela u **divhadza** mukolodi, nga u tou nwala, mutengo **muḁwe** na **muḁwe** wa tshikolodo tsha muthelo tsho phumulwaho lwa tshothe.

Usa tsha kana u wanala murahu u ya nga mulayo

Zwikelodo zwa muthelo zwi sa tsha kona u wanala murahu u ya nga mulayo

7. (1) U ya nga khethekanyo **thukhu** (2). tshikolodo tsha muthelo a tshi tsha kona u wanala murahu u ya nga mulayo arali-

(a) tshi sa tsha kona u wanala murahu nga nyito na khathulo ya khothe; kana

(b) tshi khou kolodwa nga mukolodi we bindu [awe !a wa kana 10 dzhiwaho tshi tshi khou sumbedza ndinganyiso ine a khou i koloda-

(i) nga murahu ha musu ndivhadzo yo no **divhadzwa** nga muthu we bindu [awe !a wa kana **thirasithii** uri a hu tshena khovho ine ya **do** badelwa kana khovho ya u fhedzisela ye ya badelwa kha ndaka ya vhathu vhane vha khou kolodiwa; kana

(ii) u tevhela u fheliswa ha thendelano sa zwo sumbedzwaho kha khethekanyo 311 ya Mulayo wa Dzikhamphani, na vhathu vhane mukolodi a vha koloda, zwo themendeliwaho nga khothe.

(2) Tshikolodo tsha muthelo a tshi wanali murahu uya nga mulayo arali mukolodi e khamphani kana **thtraslthll** na musu Khomishinari a sa athu u dzhia nyito lwa u thoma hu tshi itelwa kana u wana murahu u bva kha ndaka ya vhune ya mulanguli **munwe** na munwe, mufaramukovhe, thirasithii kana vhathu vhane vha shuma kha ndangulo ya mukolodi.

*Tshipiḁa 4**Maitele a u phumula***Maitele a u phumula tshikolodo tsha muthelo lwa tshifhinga nyana kana lwa tshothe**

8. (1) Musi a sa athu u dzhia tsheo ya u phumula tshikolodo tsha muthelo tshiriwe na tshiriwe, Khomishinari u fanela **u-**

- (a) ta arali hu na zwinwe zwikolodo zwa muthelo zwine Khomishinari a khou kolodwa nga mukolodi;
- (b) tanqanylsa magemo yothe ane ya khou kolodwa nga mukolodi na ane mukolodi a kolodwa, hu tshi katelwa ndatiso. muingapfuma na tshinyalelo;
- (e) u sumbedzwa phadukanyo ya tshikolodo tsha muthelo khathihi na phadukanyo ya zwifhinga zwe gemo ilo la vha li tshi khou kolodwa khazwo ; na
- (d) u dodombedza **ḁivhazwakale** ya maga e a shumiswa kha u wana tshelede murahu na zwiitisi zwa u dzhia tsheo ya u phumula tshikolodo tsha muthelo lwa tshifhinganyana kana lwa tshothe.

(2) Musi hu tshi dzhiwa tsheo ya u tikedza zwe zwa netshedzwa vhahadzimisi musu wa thendelano sa u **ḁigana** ha mukolodi hu tshi tevhedzwa khethekanyo 311 ya Mulayo wa Dzikhamphani, zwi tshi langwa nga zwi no bulwa kha kha khethekanyo 312 ya Mulayo wonoyo, Khomishinari u fanela u thanngela ndaela dza phara 9, 10(1) and 11 *mutatis mutandis* (musi hu na tshanduko dze dza itwa).

*Tshipida 5**Thendelano kha tshikolodo tsha muthelo***Thendelano kha tshikolodo tsha muthelo**

9. Khomishinari a nga tendelana kha tshipida tsha tshikolodo tsha muthelo zwi tshi bva kha luriwalo lwa khumbelo yo itwaho nga mukolodi, lune lwa tevhedza thodea dza phara la, arali ndivho ya thendelano hu u tsireledza nete ya nthā ya mbuelo u bva kha u wana murahu tshikolodo tsha muthelo tshenetsho hu tshi dzhielwa **nthā** ndangulo **yavhuḁi** ya sisiterne ya muthelo na ndangulo yo teaho.

Khumbelo ya thendelano i itwaho nga mukolodi

10. (1) Khumbelo ya thendelano i itwaho nga mukolodi uri hu vhe na thendelano na Khomishinari siani la tshikolodo tsha muthelo i fanela u sainiwa nga mukolodi ya dovha ya tikedzwa nga tshitatamennde tsho **ḁalahō** tshi sumbedzisaho-

- (e) ndaka yothe na zwikolodo zwothe zwa mukolodi zwi tshi sumbedza ndeme ya makete ya zwino ya ndaka yeneyo;
- (b) magemo othe a masheleni o tangedzwaho kana o kuvhanganyiwaho kana masheleni e a shumiswa mukolodi miriwedzini ya 12 ya u rangela u itwa ha khumbelo;
- (e) ndaka yothe ye ya vhulungwa miriwahani miraru yo fhiraho, kana tshifhingani tshilapfu tshigede tshine Khomishinari a vhona tsho tea;
- (d) ndeme ya ndaka yothe ye ya vhulungwa, malamba (u badelwa) e a wanwa kana mbadelo (u badela) dze dza itwa, dzina [a muthu o **ḁewaho** ndaka na vhushaka vhukati ha mukolodi na muthu we a **ḁewa** ndaka (arali e hone);
- (e) Nyingapfuma dza tshifhingani tshidaho dza ndaka **iḁwe** na **iḁwe** ya mukolodi, dzi nga vha zwi na vhutanzi ho fhelelaho kana zwi

zwa u tou anganya kana dzi tshi langwa nga muthu rnunwe na munwe we a newa maanda:

- (f) Njaka yothe ine mukolodi, e ethe kana e na vhanwe vhathu, a vha e na maanda o mu livhanaho kana rnaanda a songo mu livhanaho a uta kana u kovha thundu a tshi shuma sa thirasithii kana vhunwe vhuimo-vho:
- (9) zwidodombedzwa zwa muthu rnunwe na rnunwe ane a kwamea a re na vhushaka na onoyo mukolodi;
- (h) zwiko zwa mukolodi zwazwino na [eve]e ya mbuelo na zwiko zwine zwa khou lavhelelwa na [eve]e ya mbuelo **minwahani** miraru ine ya khou **da**, na u sumbedzwa ha pulane ya masheleni ya tshifhinga tshidaho ya mukolodi; na
- (i) zwiitisi zwa uri mukolodi a **tode** thendelano.
- (2) Khumbelo i fanela u tikedzwa nga vhutanzi ha u tikedza mbuno dze mukolodi a nea malugana na u kundelwa hawe u badela gemo [o fhelelaho [a tshikolodo tsha muthelo.
- (3) Mukolodi u fanela u tenda uri mafhungo e a a **netshedza** kha khumbelo ndi ngoho na uri o fhelela.
- (4) Khomishinari a nga **toda** uri khumbelo i **dadziswe** nga manwe a u khwathisedza arali zwi tshi nga todea,

U dzhiela nzhele khumbelo ya thendelano ya tshikolodo tsha muthelo

11. (1) Kha u dzhiela nzhele khumbelo ya u tendelana, Khomishinari u fanela u dzhiela nzhele uri thendelano i **do disa**—

- (a) u vhulunga masheleni a u vhila tshelede murahu;
- (b) tshikolodo tshi **do tavhanya** u badelwa u fhira arali hu so ngo vha na thendelano;
- (c) tshelede ine ya **do** waniwa murahu i **do** vha nthu kha ye ya vha i tshi nga vha yo waniwa nga dzinwe ndila-vho: na uri
- (d) mukolodi u **do** swika hune a si tsha vha na zwine a vhila kana a vhona zwi pfanelo yawe zwine zwa vha na ndeme ya tshelede

ngomu, zwi tshi langwa nga Mulayo ufho na ufho une wa shumiswa nga Khomishinari, hu tshi katelwa maanda mariwe na mariwe ane Khomishinari a vha nao a u rathisela phanda ndozwo yo aseswaho kana ndozwo ya tshelede yo aseswaho.

(2) Musi a tshi tshea [a u sa nea thendelo, Khomishinari u fanela u dzhiela nzhele-

- (a) tshileme tsha ndaka ya mukolodi i re hone zwino;
- (b) mbuelo dza tshifhinga tshidaho dza mukolodi, hu tshi katelwa nzudzanyo dziriwe na dziriwe dzo no shumiswaho kana dzo dzinginywaho dzine dza nga vha na mvelelo dza u shandukisa mbuelo kana ndaka ine ya nga waniwa kana ya waniwa nga mukolodi kana muriwe muthu a re na vhutumanl kana a re na vhushaka na mukolodi;
- (e) thengiselano dza kale dza mukolodi; na
- (d) tshiimo tsha muthu muriwe na muriwe are na vhutumani are na vhushaka na mukolodi.

Nyimele dzine dza vha dzi son90 tea thendelano ya tshikolodo tsha muthelo

12. Hu sa londiwi phara 9, Khomishinari a nga si ~~nee~~ thendelo siani [a tshikolodo tsha muthelo arali-

- (a) gemo line [a badelwa nga mukolodi u ya nga thendelano [i ~~do~~ vha fhasi ha ndeme ya makete ya ndaka yothe ya mukolodi, ine ya nga shumiswa u fhungudza tshikolodo tsha muthelo, musu ho no ~~tuswa~~ zwikolodo zwa mukolodi onoyo nga nnda ha tshikolodo tsha muthelo;
- (b) thendelano iyi i ~~do~~ khethulula vhariwe vhakolodi (nga nndanl ha musu vhahadzimisi na vhone vha tshi tendelana na thendelano) kana hune vhariwe vhahadzimisivha vhewa vhuimoni havhudi nga Khomishinari;

- (c) munwe wa vhahadzimisi o **divhadza** ndivho ya u thoma kana o no **di** thoma mafhungo a u wisa mukolodi tshitoko kana u hwala thundu;
- (d) nzulele ya muthelo wa mukolodi (nqa nndanl ha tshikolodo tsha muthelo tshi sa athu u badelwaho) ha ngo dzula nga ngona;
- (e) tshiitisi tshithihi fhedzi tsha uri mukolodi a ite khumbelo ya thendelano ndi fhungo [auri mukolodi u khou kondelwa u badela tshikolodo tsha muthelo, hu tshi katelwa na uri u khou khombetshedzea u rengisa nndu kana binndu:
- (f) ndivho ya tsheo ya thendelano **ndi**-
 - (i) u thusa mukolodi we a gikhokhovhedza nga zwikolodo;
 - (ii) u phulusa bindu kha u kundelwa halo kana u valwa, hu sa sedzwi tshivhalo tsha vhathu vhe vha **ditika** nga bindu iii kana lushaka lwa bindu iii;
 - (iii) u fhungudza u khokhovhedza ha mulayo wa muthelo kana kushumele kwawo ku si kwavhudi henefho fhethu; kana
 - (v) u sumbedza mbilu ya u pfela vhutunqu kana u sika tshifanyiso tsha uri Khomishinari ndi muthu wa vhathu;
- (g) Khomishinari ha nga vhuyelwi nga tshithu kha thendelano iyi nga nnda ha uri u **do** kona i ita uri tshelede ine ya do lifhiwa i **do** lingana na ine ya nga wanala arali bindu [a mukolodi [a wa tshitoko kana thundu ya hwaliwa;
- (h) zwi nga **tutuwedza** vhatheli vhanzhi uri vha thele mithelo;
- (i) tshifhingani tsha rnlwaha rnltau hu sa athu itwa khumbelo ya thendelano, mukolodi o —
 - (i) vha e tshlpida tsha thendelano ya uranga ye ya itwa na Khomishinari i ya u phumula gemo la tshikolodo tsha muthelo;
 - (ii) vhuya a hwalelwa thundu kana a wa tshltoko: kana
 - (iii) vha e tsnlplda tsha thendelano kana nzudzanyo dze dza itwa na vhahadzimisi vhawe, sa zwe zwa sumbedzwa kha khethekanyo 311 ya Mulayo wa Dzikhamphani, wo themendelwaho nga Khothe;

- (j) mukolodi ndi khamphani kana thirasithii na u **twa** hu mulanguli ufhio na ufhio, thirasithli, kana muthu o imelaho mukolodi siani [a u langula-
 - (i) o no **didzhenisa** kha vhufhura kana u **diimisela** usa badela muthelo; kana
 - (ii) u na Qivhazwakale ya u vha khamphanini kana thirasithiini ye ya vhuya ya wa;
- na uri Khomishinari ha a thu u vhuya a anganya u dzhia vhukando kha kana u wana murahu ndakavhune ya vhanevho vhalanquli, thirasithii kana vathu.

Maitele thendelano kha tshikolodo tsha muthelo

13. (1) Arali Khomishinari a tendelana kha tshikolodo tsha muthelo, Khomishinari na mukolodi vha fanela u saina thendelano u sumbedzisa **uri-**

- (a) gemo line [a badelwa nga mukolodi hu tshi khou fushwa **thodea** dzo fhelelaho dza tshikolodo;
- (b) thendelano na Khomishinari ya u sa bvela phanda na u wana murahu ndinganyiso ya tshikolodo tsha muthelo. na
- (c) nyimele dzothe zwi tshi bva kha tshikolodo tsha muthelo tshine tsha khou tendelaniwaho khatsho nga Khomishinari, ine ya nga katela **thodea** ya uri mukolodi u fanela u tevhedza pfanelo tshifhinga tshidaho ine ya khou kombetshedzwa u ya nga Mulayo une wa shumiswa nga Khomishinari.

Khomishinari ha vhothiwi nga thendelano

14. Khomishinari a nga si vhoxwe nga thendelano arali-

- (a) mukolodi a kundelwa u bvisela khagala tshothe ngoho ya zwithu zwothe zwine zwa yelana na thendelano;
- (b) mukolodi o **netshedza** mafhungo a zwithu zwi si zwa vhukuma zwine zwa yelana na thendelano;

- (c) mukolodi o kundelwa u tevhedza na u netshedzwa huriwe na huriwe kana nyimele ine ya vha kha thendelano yo sumbedzwaho kha phara 13; kana
- (d) bindu la mukolodi 10 wa kana ndaka yawe yo tendelaniwaho khayoy musik mukolodi a sa athu u tevhedza lwo fhelelaho nyimele dzothed dzine dza vha kha thendelano sa zwo sumbedzwaho kha phara 13.

Tshipiḽa 6

Rekhodo na u vhiga

Rekhodo dza zwikolodo zwa muthelo zwo phumulwaho kana u tendelaniwaho khazwo

15. (1) Khomishinari u fanela u vhulunga ridzhisltara ya zwikolodo zwothed zwo phumulwaho kana u tendelaniwaho khazwo u ya nga ndaulo idzi.

(2) Ridzhisttara yo sumbedzisiwaho kha phara (1) i fanela u katela—

- (a) zwidodombedzwa zwa mukolodi, hu tshi katelwa dzina, **ḽiresi** na nomboro ndaula dza muthelo;
- (b) gemo la tshikolodo tsha muthelo tsho phumulwaho kana u tendelaniwaho khawo na zwifhinga zwine zwikolodo zwa muthelo zwenezwo zwa elana nazwo; na
- (c) zwiitisi zwa u phumula kana u tendelana kha tshikolodo tsha muthelo.

U vhiga nga Khomishinari wa zwikolodo zwa muthelo zwo phumulwaho kana zwo tendelaniwaho khazwo

16. (1) Gemo [a zwikolodo zwa muthelo zwo phumulwaho kana zwo tendelaniwaho khazwo nga tshifhinga tsha riwaha wa muvhalelano muriwe na muriwe zwi fanelwa u divhadzwa kha tshitatamennde tsha

zwa masheleni tsha nwaha nga nwaha tsha Tshumelo ya Mbuelo dza Afrika Tshipembe u yelana na u langula mbuefo ya nwaha.

(2) Khomishinari u fanela uri nga nwaha a netshedze Mutolamuvhalelano Muhulwane na Minisiṭa wa zwa Gwama manweledzo a zwikolodo zwa muthelo zwothe zwo phumulwaho kana zwo tendelaniwaho khazwo zwothe kana nga tshipida nga tshifhinga tsho katelwaho kha manweledzo, zwine zwa fanela-

- (a) u vha kha fomethe ine, u ya nga khethekanyo 4(1)(b) ya Mulayo wa Muthelo wa Mbuefo, wa 1962, a u dzumbi tsumbavhune dza vhakolodi vhanevho;
- (b) u **netshedza** nga tshenetsho tshifhinga tsho tendelaniwaho nga Khomishinari na Mutolamuvhafelano **Muhulwane** kana **Minisiṭa** wa zwa Gwama arali zwa vha zwo ralo; na
- (c) u vha na zwidodombedzwa zwa tshivhalo tsha zwikolodo zwo phumuliwaho ka u tendelaniwaho khazwo, mutengo wa mbuelo u songo dzhenisiwaho na mutengo wa mbulungo kha tshinyalelo ya u wana murahu, zwine zwa fanela u sumbedzwa u ya nga kijasi khulwane dza vhatheli kana khethekanyo dza tshitshavha.

*Tshipiḁa 7**U shumisa meend« kha u phumula kana thendelano***U shumisa maenda kha u phumula kana kha thendelano ya tshikolodo tsha muthelo**

17. Maandḁa a u phumula na u tendelana gemo [inwe na [inwe [a tshikolodo u ya nga ndaulo idzi zwi nga itwa nga Khomishinari ene mune kana nga **muḁwe** muofisiri o rumelwaho nga Khomishinari ndivho i yeneyo

A hu na vhushaka vhukati ha mukolodi na Khomishinari kana muofisiri o rumelwaho

18. Khomishinari kana muofisiri ^o rumelwaho o teaho a nga si shumise rnaanda **maḁwe** na **maḁwe** kha u phumula kana kha thendelano ya tshikolodo tsha muthelo, arali o vhuya a vha na vhushaka ha vhune, ha **mutḁa**, ha zwa matshilisano. ha vhubindudzi, ha phurofesheni, ha mushumo kana ha zwa masheleni na muthu onoyo ane a khou koloda.

UPHIKO LWEZENTELA LWASENINGIZIMU AFRIKA

No. 316

13 Ephreli 2007

IMITHETHO EHLANGANISWAYO EKHISHWE NGAPHANSI KWESIGABA 91A SOMTHETHO KA-1962 WENTELA YEHOLO LONYAKA (UMTHETHO ONGUNOMBOLO 58 KA-1962), OBEKA IZIMO EZINGASETSHENZISWA WUKHOMISHANA UKWESULA NOMA UKUXAZULULA INKINGA YANOMA NGABE YILIPHIINANI LENTELA, INHLAWULO, INZALO NOMA ELI NYE INANI

Ngegunya elihlinzekwe yisigaba 91A soMthetho ka-1962 wentela yeholo lonyaka, mina, Trevor Andrew Manuel, uNgqongqoshe Wezezimali, ngalokhu ngishicilela imithetho ebekiwe kwiShejuli kuze kube manje, esho izimo uKhomishana wophiko lwakuleli lwemali engenayo (*iSouth African Revenue Service*) angazisebenzisa ukwesula isikweletu noma ukuxazulula inkinga yesikweletu sonke noma ingxenye yaso sanoma ngabe yiliphi inani lentela, inhlawulo, inzalo noma elinye inani okumele likhokhwe wumuntu ngokwanoma ngabe yimuphi uMthetho osetshenziswa wuKhomishana lapho lokho kwesula noma ukuxazululwa kwenkinga yesikweletu kungahlomulisa kakhulu uMbuso.

T. A. MANUEL**UNGQONGQOSHE WEZEZIMALI**

ISHEJILI**INKOMBA****INGXENYE 1**

Imibandela eyingxubevange

1. Izincazelo
2. Inhloso
3. Ukusetshenziswa kwemithetho

INGXENYE2

Ukwesufwa kwesikhashana kwesikwefetu sentefa

4. Ukwesulwa kwesikhashana kwesikweletu sentela
5. Ukulandelwa okungenambuyiselo kwezikweletu zentela

INGXENYE3

Ukwesufwa unomphefa kwesikwefetu sentefa

6. Ukwesulwa unomphefa kwesikweletu sentela

Ezingenakuthofakala ngokomthetho

7. Izikweletu zentela ezingenakutholakala ngokomthetho

INGXENYE4

Izinqubo zokwesufa izikwefetu zentela

8. Inqubo yokwesulwa kwesikhashana noma unomphefa kwesikweletu sentela

INGXENYE5

Ukuxazulufwa kwenkinga yesikweletu sentela

9. Ukuxazululwa kwenkinga yesikweletu sentela
10. Isicelo sesixazululo esifakwe ngokweletayo
11. Ukucutshungulwa kwesicelo sokuxazulula inkinga yesikweletu sentela
12. Izimo ezingavumeli ukuxazululwa kwenkinga yesikweletu sentela
13. Inqubo yokuxazulula inkinga yesikweletu sentela
14. UKhomishana akaboshiwe yisixazululo sesikweletu

INGXENYE6

Amarekhodi nokubika

15. Amarekhodi ezikweletu zentela ayesulwa noma kuxazululwe inkinga yawo
16. Ukubika kukaKhomishana ngezikweletu zentela ezesuliwe noma okuxazululwe inkinga yazo

INGXENYE7

Ukusetshenziswa kwamandla ukwesula izikweletu zentela noma ukuxazulula inkinga yazo

17. Ukusetshenziswa kwamandla ukwesula izikweletu zentela noma ukuxazulula inkinga yaso
18. Makungabi nabudlelwano phakathi kokweletayo noKhomishana noma isikhulu esijutshiwe

*Ingxenye 1**Imibandela eyingxubevange***Izincazelo**

1. Ngokwezinhloso zale mithetho, igama noma izwi elinencazelo kunoma ngabe yimuphi uMthetho osetshenziswa wuKhomishana, ngaphandle kwesimo lapho lisho okunye, kufanele libe naleyo ncazelo, kanti-

"impahla" ihlanganisa-

(a) impahla yanoma ngabe yiluphi uhlobo, okungaba enyakazayo noma enganyakaziyo, ephathekayo noma engaphathekiyo; kanye

(b) nelungelo noma inzalo yanoma ngabe yiluphi uhlobo kuleyo mpahla; "isikweletu sentela" sisho noma ngabe iyiphi intela, inhlawulo, intela eyengeziwe, inzalo, noma elinye inani okufanele likhokhwe yilowo okweletayo ngokwanoma ngabe yimuphi uMthetho osetshenziswa wuKhomishana;

"ukuxazulula" kusho isivumelwano okufinyelelwe kusona phakathi kukaKhomishana nokweletayo, okwenzeke lokhu okulandelayo ngenxa yaso-

(a) okweletayo uvuma ukukhokha inani (elinokukhokhwa kanye noma ngezitolimende) okuyinani elingaphansi kwenani eliphelele lesikweletu sentela okufanele likhokhwe yilowo okweletayo ukuze kukhokhwe leso sikweletu ngokugculisekayo; futhi

(b) uKhomishana uvuma ukungabe esalulandela udaba lokuthola ingxenye esele yaleso sikweletu sentela ngenxa yombandela wokuthi lowo okweletayo uthi uzokwenza lokho athe uzokwenza njengoba kubalulwe esigabeni (a) ngenhla athobele neminye imibandela engethulwa \ wuKhomishana;

"ukwesula" kusho ukuchitha sonke isikweletu sentela noma ingxenye yaso; kanti

"uMthetho Wezezinkampani" usho uMthetho Wezezinkampani ka-1973 owunombolo 61.

Inhloso

2. (1) Umgomo osemqoka womthetho wukuthi kuwumsebenzi kaKhomishana ukulinganisa nokuqoqa zonke izikweletu zentela ngokwemithetho esetshenziswa nguye noma leva ayinikeziwe futhi akufanele azidele izikweletu zentela zalolu hlobo.

(2) Kodwa izimo zingaphazamisa ukubambelela kulo mgomo, izimo ezingasho ukuthi ukungawulandeli 10 mgomo kungahlomulisa uMbuso.

(3) Inhloso yale mithetho ukubeka izimo raphe kungaphazamiseka khona 10 mgomo osemqoka, nokuyizimo lapho uKhomishana angathatha khona isinqumo sokwesula isikweletu sentela unomphele noma okwesikhashana.

Ukusetshenziswa kwemithetho

3. Le mithetho isebenza kuphela ngokuphathelene nesikweletu sentela okufanele sikhokhwe ngokweletayo lapho umthwalo wokukhokha lesi sikweletu ungeyona into ephikiswa yilowo okweletayo.

Ingxenye 2

Ukwesulwa kwesikhashana kwesikweletu sentela

Ukwesulwa kwesikhashana kwesikweletu sentela

4. (1) UKhomishana angesula okwesikhashana inani lesikweletu sentela uma uKhomishana egculisekile ngokuthi ukulandela 1010 daba akunambuyiselo njengoba kuveziwe esigabeni 5, ngaleso sikhathi.

(2) Isinqumo sikaKhomishana sokwesula okwesikhashana inani lesikweletu sentela asisho ukuthi lowa okweletayo akusafanele asikhokhe lesi sikweletu sentela.

(3) Uma uKhomishana, noma nini, enquma ukuqoqa inani lesikweletu sentela elesulwa okwesikhashana ngaphansi kwalesi sigaba, uKhomishana kufanele

abeke inzalo yaleso sikhathi ukusukela osukwini okwesulwa ngalo lesi sikweletu sentela kuze kube wusuku esikhokhwa ngalo ngokwamanani enzalo ezirnakethe ayesebenza ngesikhathi okwakukweletwa ngaso lesi sikweletu sentela.

Ukulandelwa okungenambuyiselo kwezikweletu zentela

5. (1) Akusizi ngalutho ukulandela isikweletu sentela uma uKhomishana egculisekile ngokuthi izindleko seziphelele zokuthola lesi sikweletu sentela nakanjani zizokwedlula inani okulindeleke ukuba litholakale laleyo mali esele yesikweletu sentela.

(2) Ekutholeni ukuthi izindleko zokuthola leyo mali ekweletwayo kungenzeka zibe ngaphezu kwenali lesikweletu okulindeleke ukuba litholakale njengoba kuveziwe esigatshaneni (1) ngenhla, uKhomishana kufanele anake-

- (a) inani lesikweletu sentela;
- (b) isikhathi esiqhubekile lesi sikweletu sentela singakhokhiwe;
- (c) izinyathelo ezithathiwe kuze kube manje ukuthola lesi sikweletu sentela kanye nezindleko ezidalekile ngokuthatha lezo zinyathelo, okuhlanganisa izinyathelo ezithathiwe ukuthola lowa muntu okweletayo;
- (d) izindleko ezingadaleka ngokuqhubeka nokuthatha izinyathelo zokuthola lesi sikweletu sentela kanye nomvuzo walezo zinyathelo, okuhlanganisa nezindleko ezinokubuyiselwa kuKhomishana;
- (e) isimo sezezimali sokweletayo, okuhlanganisa impahla yakhe nezikweletu zakhe, izimali zakhe ezingenayo neziphumayo kanye nezimali okungenzeka zingeniswe nguye lowa muntu okweletayo esikhathini esizayo; kanye
- (f) neminye imininingwane ekhona maqondana nokutholakala kwaleso sikweletu sentela.

*Ingxenye3**Ukwesulwa unomphela kwesikweletu sentela***Ukwesulwa unomphela kwesikweletu sentela**

6. (1) UKhomishana angesula unomphela inani lesikweletu sentela:-

(a) uma uKhomishana egculisekile, ngaleso sikhathi, ngokuthi lesi sikweletu sentela asinakutholakala ngokomthetho njengoba kuvela esigabeni 7; noma

(b) uma uKhomishana exazulule isikweletu sentela ngokweNgxenye 5.

(2) UKhomishana kufanele azise lowa okweletayo, ngokumbhalela, ngenani lesikweletu sentela elesulwe unomphela.

*Esingenakutholakala ngokomthetho***Izikweletu zentela ezingenakutholakala ngokomthetho**

7. (1) Ngokwesigatshana (2), isikweletu sentela asinakutholakala ngokomthetho uma-

(a) singenakutholakala ngesinyathelo nokwahlulela kwenkantolo; noma

(b) sikweletwa wumuntu okhokhelwe izikweletu ngempahla yakhe noma okudliwe impahla yakhe futhi esimele imali esele ekweletwayo-

(i) emva kokuba lowa okhokhe izikweletu ngempahla yokweleta intela noma umphatheli wakhe (trustee) ekhiphe isaziso sokuthi akusezukhokhwa ezinye izabelo (dividend) noma esithi izabelo zokugcina zikhokhelwe labo abakweletwayo bamafa; noma

(ii) kulandela ukwesulwa kwesixazululo nokulungiselela njengoba kuveziwe esigabeni 311 soMthetho Wezezinkampani, nabakweletwa yilowo okweleta intela, okuvunyelwe yinkantolo.

(2) Isikweletu sentela sisengatholakala ngokomthetho uma lowa okweletayo eyinkampani noma *itrust* futhi uma uKhomishana engakahloli kuqala isinyathelo sokuthi singatholakala yini empahleni yanoma ngabe yimuphi

umqondisi, umniniyasheya, umphatheli (trustee) noma abantu ababambele abaphathi balowo okweletayo.

Ingxenye 4

Izinqubo zokwesula izikweletu sentela

Inqubo yokwesulwa kwesikhashana noma unomphela kwesikweletu sentela

8. (1) Ngaphambi kokuthatha isinqumo sokwesula isikweletu sentela, uKhomishana kufanele-

- (a) athole ukuthi azikho yini ezinye izikweletu sentela ezikweletwa yilowo muntu okweletayo;
- (b) ahlanganise wonke amanani akweletwa yilowo muntu okweleta intela nalawo akweletwa wona, okuhlanganisa izinhlawulo, inzalo nezindleko;
- (e) ahlaziye isikweletu sentela kanye nezikhathi zalowo manani akweletwayo; bese
- (d) eloba umlando wohlelo lokuzama ukubuyisa lezo zimali kanye nezizathu zokuthatha isinqumo sokwesula isikweletu sentela, unomphela noma okwesikhashana.

(2) Ekuthatheni isinqumo sokuthi singesekwa yini isixazululo esenzelwe abakweletwayo ngokwesigaba 311 soMthetho Wezezinkampani uKhomishana kufanele, ngale kokunaka imininingwane rgenqoba kuveziwe esigabeni 312 salowo Mthetho, anake imibandela yesigaba 9, 10(1) no-11, enze nezinguquko ezifanele.

*Ingxenye 5**Ukuxazululwa kwenkinga yesikweletu sentela***Ukuxazululwa kwenkinga yesikweletu sentela**

9. UKhomishana angaxazulula ingxenye yesikweletu sentela uma ecelwe ngokweletayo ngokumbhalela, okuhambisana nemigomo yesigaba 10, uma inhloso yaleso sixazululo kuwukuthola umvuso omkhulu kakhulu ngokutholakala kwaleso sikweletu sentela, kodwa kube kunakwe ukulawulwa okuhle kohlelo lwezentela kanye nokuphatha okuhle.

Isicelo sesixazululo esifakwe ngokweletayo

10. (1) Isicelo esifakwe ngokweletayo sokuba uKhomishana axazulule isikweletu sentela kufanele sisayinwe yilowo okweletayo futhi sesekelwe yisititimende esineminingwane esethula-

- (a) yonke impahla nezikweletu kwalowo okweletayo okuveza inani lakho ngokwamanani amanje ezimakethe aleyo mpahla;
- (b) onke amanani amukelwe ngokweletayo noma azowathola kanye nezindleko zakhe ezinyangeni eziyishumi nambili ezandulela isikhathi isicelo esifakwe ngaso;
- (c) yonke impahla elahliwe eminyakeni emithathu eyandulela isikhathi okufakwe ngaso isicelo, noma esikhathini esingaphezu kwalokho njengokubona kukaKhomishana ukuthi lesi sikhathi singesifanele;
- (d) inani layo yonke impahla elahlwe ngale ndlela, inkokhelo eyamukelwe noma ezokwamukelwa, igama lomuntu othole leyo mpahla kanye nobudlelwano phakathi kokweletayo nalowo othole leyo mpahla (uma kukhona okunjalo);
- (e) Inzalo yesikhathi esizayo yokweletayo kunoma ngabe iyiphi impahla, noma ngabe izoba khona ngempela noma encike kokuzokwenzeka noma yencike ekusetshenzisweni kwamandla yinoma ngabe yimuphi omunye umuntu;

- (f) yonke impahla okweletayo, eyedwa noma uma enabanye abantu, angaba namandla aqondile noma angaqondile phezu kwayo, .okuqoka noma okulahla, njengomphatheli noma ngenye indlela;
- (g) imininingwane yalabo okweletayo axhumene nabo;
- (h) imithombo ekhona manje lapho okweletayo ethola khona imali nobungako bayo kanye nemithombo elindelekile angathola kuyo imali kanye nobungako bayo eminyakeni emithathu elandelayo, kanye nokuchazwa kwezinhlelo zezezimali kwesikhathi esizayo kwalowo okweletayo; kanye
- (i) nezizathu zokweletayo zokucela isixazululo.
- (2) Isicelo kufanele sihambisane nobufakazi obeseka okushiwo ngokweletayo ngokwehluleka kwakhe ukukhokha inani eliphelele lesikweletu sentela.
- (3) Okweletayo kufanele asho ukuthi imininingwane ehlinzekiwe esicelweni iyanemba futhi iphelele.
- (4) UKhomishana angadinga ukuba isicelo sengezwe ngeminye imininingwane engadingeka.

Ukucutshungulwa kwesicelo sokuxazululwa kwenkinga yesikweletu sentela

11. (1) Ekucubunguleni isicelo sesixazululo, uKhomishana kufanele anake ukuthi isixazululo singaholela yini-

- (a) ekongeni izindleko zokuqoka isikweletu;
- (b) ekuqoqeni izikweletu masinyane kunosuku ebezingaqoqeka ngalo urna kungukuthi akusetshenziswanga isixazululo;
- (e) ekuqoqeni isamba esithe xaxa ukwedlula ebesingatholakala ngenye indlela; kanye
- (d) nasekuthini okweletayo udela izibizo noma amalungelo athile, okungaba yinani lemali, okudaleka ngaphansi koMthetho osetshenziswa nguKhomishana, okuhlanganisa ilungelo lokudlulisela phambili ukulahlekelwa okulinganisiwe noma ukulahlekelwa kwemali etshaliwe okulinganisiwe.

- (2) Ekutholeni isimo esingasifaki isixazululo, uKhomishana kufanele anake-
- (a) inani lamanje lempahla yokweletayo;
 - (b) okulindelwe ngokweletayo esikhathini esizayo, okuhlanganisa amalungiselelo asethuliwe noma ahlangozwayo okungenzeka abe nomthelela wokuphambukisa imali engenayo noma impahla okwakungaba ngokokweletayo noma kutholwe nguye noma omunye umuntu oxhumene nokweletayo;
 - (e) izivumelwano zesikhathi esedlule zokweletayo; kanye
 - (d) nesimo sanoma ngubani oxhumene nokweletayo.

Izimo ezingavumeli ukuxazululwa kwenkinga yesikweletu sentela

12. Ngale kokushiwo yisigaba 9, uKhomishana akanakuxazulula inani lesikweletu sentela uma-

- (a) inani okufanele likhokhwe ngokweletayo ngokwesivumelwano sesixazululo lizoba ngaphansi kwenani layo yonke impahla yokweletayo ngokwezibalo zezimakethe, elingasetshenziswa ukunciphisa isikweletu sentela, emva kokukhipha izikweletu zalowo muntu okweletayo ezingafaki isikweletu sentela;
- (b) isixazululo sizolimaza abanye abakweletwa yilowo okweleta *intela* (ngaphandle kwesimo lapho labo abakweletwayo bevuma khona ukuthi kungaqhutshekwa nesixazululo) noma lapho labo abakweletwa ngokweleta *intela* bezohlomula khona kunoKhomishana;
- (e) omunye wabakweletwa ngokweleta *intela* esezwakalise ukuthi unenhloso yokuqala noma usevele uziqalile izinhlelo zokukhokha izikweletu zokweleta *intela* ngempahla yokweletayo noma zokudla impahla yokweleta *intela*;
- (d) izindaba zentela yalowo okweleta *intela* (ezingasifaki isikweletu sentela okufanele sikhokhwe) zingabuyekeziwe;
- (e) isizathu okuyisona kuphela esesekela isicelo sesixazululo kungokushiwo ngokweletayo ngobunzima abhekene nabo ekukhokheni isikweletu sentela, okuhlanganisa isidingo sokudayisa umuzi noma ibhizinisi;

- (f) inhloso yesinqumo sesixazululo-
- (i) kungukusiza okweletayo osenezinto eziningi abhekene nazo;
 - (ii) kuwukusindisa ibhizinisi ekuhlulekeni ukuqhubeka nomsebenzi noma ekuvalweni, kungabhekiwe ukuthi abantu abaningi bancike kulona ukuqhubeka nokusebenza nokuthi imisebenzi yalelo bhizinisi isiza izwe lonke;
 - (iii) kuwukunciphisa ukusebenza komthetho wentela okhahlamezayo nongemuhle ezimweni ezithile; noma
 - (v) kuwukuqhubezela inhloso yokuphana noma ukwenza uKhomishana abukeke njengonomusa emphakathini;
- (g) uKhomishana engazuhlomula ngesixazululo ngale kokuqoqa inani elilingana nenzuzo engatholakala ngokudliwa kwempahla yokweletayo nokukhokha izikweletu zakhe ngempahla yakhe;
- (h) kungaba nomthelela omubi ngokuthobela umthetho kubakhokhi bentela;
- (i) okweletayo esikhathini esiyiminyaka emihlanu esandulela isicelo sesixazululo---
- (i) wayeyingxenye yesivumelwano sangaphambi kwalesi esifakwa manje noKhomishana. sokuxazulula inani lesikweletu sentela;
 - (ii) udlelwe impahla noma kusetshenziswe impahla yakhe ukukhokha izikweletu zakhe; noma
 - (iii) uyingxenye yesixazululo noma yohlelo nabantu abakweletayo, njengoba kuvezwa esigabeni 311 soMthetho Wezezinkampani. nokugunyazwe yiNkantolo;
- (j) okweletayo eyinkampani noma *itrust* noma umqondisi, umphatheli noma umuntu obambe abaphathi bokweletayo-
- (i) uzibandakanye ekukhwabaniseni nasekugwemeni ukukhokha intela; noma
 - (ii) enomlando wokubandakanyeka ezinkampanini noma *amatrust* angabanga yimpumelelo;
- nanokuthi uKhomishana akaqalanga ngokuhlola ukuthi singatholakala yini isikweletu ezimpahleni zalabo baqondisi, abaphatheli noma labo bantu.

Inqubo yokuxazulula inkinga yesikweletu zentela

13. (1) Uma uKhomishana exazulula isikweletu sentela, uKhomishana nokweletayo kufanele basayine isivumelwano esethula-

- (a) inani okufanele likhokhwe ngokweletayo elilingana ngokupheleleyo nesikweletu;
- (b) isethembiso sikaKhomishana sokuthi akazuqhubeka nokufuna imali esele yesikweletu sentela; kanye
- (c) nazo zonke izimo uKhomishana axazulula isikweletu sentela ngaphansi kwazo, okungahlanganisa isidingo sokuba okweletayo ahambisane nezibopho ezizolandela okunqunywa ngazo ngokwanoma ngabe yimuphi uMthetho osetshenziswa wuKhomishana.

UKhomishana akaboshiwe yisixazululo sesikweletu

14. UKhomishana akazuboshwa yisixazululo uma-

- (a) okweletayo ehiulekile ukuveza ngokugcwele wonke amaphuzu aphahekayo aphaathelene nesixazululo;
- (b) okweletayo enikeze imininingwane engelona iqiniso ephaathelene nesixazululo;
- (c) okweletayo ehluleka ukuthobela noma ngabe yimuphi umbandela noma isirniso okuqukethwe yisivumelwano esivezwa esigabeni 13; noma uma
- (d) okweletayo ekhokhelwa izikweletu zakhe ngempahla yakhe noma uma kudliwa amafa akhe ngaphambi kokuba lowa okweletayo afeze ngokupheleleyo zonke izimiso eziqukethwe yisivumelwano njengoba sivezwa esigabeni 13.

Ingxenye 6
Amarekhodi nokubika

Amarekhodi ezikweletu zentela ayesulwa noma kuxazululwe inkinga yawo

15. (1) UKhomishana kufanele agcine irejista yazo zonke izikweletu zentela ezesuliwe noma ezixazululiwe ngokwale mithetho.

(2) Irejista evezwa esigatshaneni (1) kufanele iqukathe-

- (a) imininingwane yokweletayo, okuhlanganisa igama, ikheli kanye nezinombolo zereferensi yentela;
- (b) inani lesikweletu sentela esesuliwe noma esixazululiwe kanye nezikhathi ezihambisana nezikweletu zentela; kanye
- (c) nesizathu sokwesula noma sokuxazulula inkinga yesikweletu.

Ukubika kukaKhomishana ngezikweletu zentela ezesuliwe noma okuxazululwe inkinga yazo

16. (1) Inani lezikweletu ezesuliwe noma ezixazululiwe kunoma ngabe yimuphi unyaka wezimali kufanele lidalulwe emibikweni yonyaka yezimali ye *South African Revenue Service* ngokuphathelele nemali engenayo yalowo nyaka.

(2) UKhomishana kufanele njalo nje ngonyaka ahlinzeke uMcwaningi-mabhuku omkhulu noNgqongqoshe Wezezimali ngeqoqa lazo zonke izikweletu zentela ezesuliwe noma ezixazululiwe ngokupheleleyo noma ingxenye yazo esikhathini esishiwo yiqoqa, okufanele-

- (a) kube sesimweni, uma kulandelwa isigaba 4(1)(b) soMthetho ka-1962 Wentela Yeholo Lonyaka, esingadaluli igama lalowo okweletayo;
- (b) kwethulwe nesikhathi esingavumeleka phakathi kukaKhomishana noMcwaningi-mabhuku omkhulu noma uNgqongqoshe Wezezimali, kuye ngesimo; futhi

- (e) kuqukathe imininingwane yesibalo sezikweletu zentela ezesuliwe noma ezixazululiwe, inani lemali elahlekile kanye nesilinganiso senani lezindleko ezongekile zokutholakala kwezikweletu, okufanele kuvezwe ngokuphathelene nezigaba ezinkulu zabakhokhi bentela noma izigaba zomphakathi.

Ingxenye 7

Ukusetshenziswa kwamandla ukwesula izikweletu noma ukuxazulula inkinga yazo

Ukusetshenziswa kwamandla ukwesula izikweletu noma ukuxazulula inkinga yazo

17. Amandla okwesula noma okuxazulula inkinga yanoma ngabe yiliphi inani lesikweletu sentela ngokwale mithetho angasetshenziswa nguKhomishana vena siqu sakhe noma esinye isikhulu esijutshelwe leva nhloso nguKhomishana.

MakLingabi nabudlelwano phakathi kokweletayo noKhomishana noma nesikhulu esijutshiwe

18. UKhomishana noma leso sikhulu esijutshiwe akufanele asebenzise noma ngabe yimaphi amandla ukwesula noma ukuxazulula noma ngabe yisiphi isikweletu sentela, uma, noma nini, wake waba nobudlelwano yena nalowo muntu okweletayo, noma uma bewumndeni, noma uma benobudlelwano ngokwenhlalo, ngokwebhizinisi, ngokomsebenzi noma ngokwezimali.
