SUBMISSION: DEFINITION OF ‘BUSINESS DAY’ CONTAINED IN SECTION 1 OF THE TAX ADMINISTRATION ACT, NO 28 OF 2011

Introduction
Currently, a ‘business day’ is defined as:

‘means a day which is not a Saturday, Sunday or public holiday, and for purposes of determining the days or period allowed for complying with the provisions of chapter 9, excludes the days between 16 December of each year and 15 January of the following year, both days inclusive;’

Problems encountered in practice
The practical difficulties encountered with the abovementioned definition are best set out by way of an example.
Late on the afternoon of Friday 13\textsuperscript{th} December 2013 a member received a request for information from SARS with the requirement that the information be submitted within 10 days. The difficulty that arose was the fact that Monday 16\textsuperscript{th} December 2013 was a public holiday and from that date most of South Africa and indeed Johannesburg shuts down and the member was unable to contact the taxpayer, the taxpayer’s accountant and counsel who had been briefed on the matter. They were unable to rely on the definition of ‘business days’ as it excludes the period from 16 December of each year to 15 January of each year, only where the matter is regulated under chapter 9 of the Tax Administration Act, which regulates dispute resolution.

Having discussed the matter with the various tax practitioners, it is apparent that SARS regularly requests information from taxpayers during the latter part of December once everybody has departed on leave and it becomes impossible to meet the tight deadlines imposed by SARS in such circumstances.

**Proposed amendment to rectify the problem**

Taking account of the practical difficulties and frustrations encountered with the definition of ‘business day’, whilst understanding the rationale that the definition is restrictive and excludes the dead period from 16 December of each year to 15 January of the following year in the case of objections and appeals and should not affect the collection of tax. It is recommended that the definition of ‘business day’ be amended to apply to requests for information and audits conducted by SARS under section 46 of the TAA. Either the definition of ‘business day’ should be amended to specifically exclude from its ambit chapter 5 of the TAA or alternatively section 46 of the TAA should be amended to
exclude the period from 16 December of each year until 15 January of the following year.

**Conclusion**
The abovementioned proposed amendment would clarify the position and alleviate the frustrations and difficulties tax practitioners and taxpayers face in their dealings with SARS insofar as requests for information submitted to taxpayers during late December and early January.

Please do not hesitate to contact us, should you have any questions regarding the above.

Yours faithfully

Piet Nel CA(SA)

**PROJECT DIRECTOR: TAX**

*The South African Institute of Chartered Accountants*