

**SECTION 223 OF THE TAA, 2011**  
**[DATE 1 DECEMBER 2022]**

**223. Understatement penalty percentage table.**

**(1) The understatement penalty percentage table is as follows:**

<b>1</b> <i>Item</i>	<b>2</b> <i>Behaviour</i>	<b>3</b> <i>Standard Case</i>	<b>4</b> <i>If obstructive or 'repeat' case</i>	<b>5</b> <i>Voluntary disclosure after notification of audit or criminal investigation</i>	<b>6</b> <i>Voluntary disclosure before notification of audit or criminal investigation</i>
(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' taken	50%	75%	25%	0%
(iv)	'Impermissible avoidance arrangement'	75%	100%	35%	0%
(v)	Gross negligence	100%	125%	50%	5%
(vi)	Intentional tax evasion	150%	200%	75%	10%

*[(1) substituted by s. 76 (1) (a) of Act No. 39 of 2013 and by s. 62 of Act No. 16 of 2016.]*

**(2) An understatement penalty for which provision is made under this Chapter is also chargeable in cases where—**

- (a)** an assessment based on an estimation under section 95 is made; or
- (b)** an assessment agreed upon with the taxpayer under section 95 (3) is issued.

**(3) SARS must remit a 'penalty' imposed for a 'substantial understatement' if SARS is satisfied that the taxpayer—**

- (a)** made full disclosure to SARS of the arrangement, as defined in section 34, that gave rise to the prejudice to SARS or the fiscus by no later than the date that the relevant return was due; and  
*[(a) substituted by s. 42 of Act No. 33 of 2019.]*
- (b)** was in possession of an opinion by an independent registered tax practitioner that—
  - (i)** was issued by no later than the date that the relevant return was due;
  - (ii)** was based upon full disclosure of the specific facts and circumstances of the arrangement and, in the case of any opinion regarding the applicability of the substance over form doctrine or the anti-avoidance provisions of a tax Act, this requirement cannot be met unless the taxpayer is able to demonstrate that all of the steps in or parts of the arrangement were fully disclosed to the tax practitioner, whether or not the taxpayer was a direct party to the steps or parts in question; and
  - (iii)** confirmed that the taxpayer's position is more likely than not to be upheld if the matter proceeds to court.

*[(b) substituted by s. 73 of Act No. 21 of 2012 and amended by s. 76 (1) (b) of Act No. 39 of 2013 with effect from the date of promulgation of that Act.]*