

TAX ADMINISTRATION LAWS AMENDMENT BILL [B40 – 2013]

Select Committee on Finance

Presenters: National Treasury & SARS | 5 November 2013



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Acts amended by Bill

- a) Transfer Duty Act (consequential amendment)
- b) Income Tax Act (technical corrections)
- c) Customs & Excise Act (substantive & technical amendments)
- d) Skills Development Levies Act (consequential amendment)
- e) Value-Added Tax Act (technical corrections)
- f) Unemployment Insurance Contributions Act (consequential amendment)
- g) Mineral and Petroleum Resources Royalty Act (consequential amendment)
- h) Mineral and Petroleum Resources Royalty (Administration Act) (technical amendment)
- i) Tax Administration Act (substantive & technical amendments)

Income Tax Act: Returns by recipients of exempt dividends (Clause 5)

Background

- The withholding tax on dividends scheme under the Income Tax Act currently only requires returns from persons who paid dividends and also does not specify the date of submission of the returns

Reasons for change

- In order to verify an exemption from an otherwise final withholding tax, it is essential that SARS has full sight of the exempt dividend flow so as to ensure that where one entity declares a dividend as being exempt, it is in fact received by an exempt beneficial owner of the dividends
- A return by the recipient will enable SARS to complete the audit trail and reconcile the dividend withholding tax flows

Proposal

- The proposed amendment clarifies the date of submission of returns for purposes of dividends tax and further provides for returns to be submitted by persons that receive exempt dividends

Customs and Excise: Duties and powers of officers (Clause 16)

Background

- The search and seizure provisions date from 1964, thus pre-Constitution, and afford officers wide powers to search any premises whatsoever at any time, without the requirement of a warrant

Reasons for change

- SARS accepted that these provisions should be reviewed in light of the Constitution. This is evident from the provisions relating to search and seizure in the new Customs Control Bill and the Tax Administration Act
- Furthermore, in a recent judgment of the Western Cape High Court some of the subsections of section 4 were declared unconstitutional

Proposal

- The proposed amendment aims to rectify the position this in the following way:

Customs and Excise: Duties and powers of officers (continued)

(Clause 16)

- The main rule will be that an officer may only enter premises on authority of a warrant
- Provision is, however, made for exceptions to this general rule when an officer may enter certain premises without a warrant: premises licensed or registered in terms of the Act; business premises of licensed or registered persons; premises managed or operated by the State or an organ of state as part of a port; airport, railway station or land border post; and premises entered with the consent of the owner or person in physical control of the premises
- Warrantless entry to premises is also allowed in circumstances where an officer believes that a warrant would have been issued if applied for, but that the delay in obtaining the warrant is likely to defeat the purpose for which entry is sought
- Requirements are provided for the conduct of officers when they enter and search premises in these circumstances

Customs and Excise: Powers of officers relating to criminal prosecutions (Clause 17)

Background

- Currently the Customs and Excise Act, 1964, (the Act) does not explicitly state that officers have the power to investigate criminal offences

Reasons for change

- To clarify that officers have the power to investigate statutory offence

Proposal

- The proposed provision affords officers the power to investigate for purposes of criminal prosecution whether an offence in terms of the Act has been committed, to lay criminal charges for the prosecution of such offence and to provide assistance to the prosecution authority as may be required for the prosecution of such offence

Customs controlled areas in a special economic zone (SEZ) (Clause 18)

Background

- Section 21A currently provides for customs controlled areas (CCA) in an IDZ in giving effect to the provisions of the Manufacturing Development Act, 1993, and the regulations thereto
- IDZ operators and enterprises in a CCA may import goods under rebate of duty and on which VAT is exempt

Reasons for change

- The Special Economic Zones Bill, 2013 (SEZ Bill), is currently in the Parliamentary process

Proposal

- In order to provide for CCAs in SEZs it is proposed to insert a new subsection in section 21A to administer CCAs in a SEZ when the said Bill is implemented
- The subsection will come into operation on the date the SEZ Act comes into operation

Customs and Excise: Accredited clients (Clause 19)

Background

- Section 64E currently provides for the conferral of accredited client status on customs clients and requires that applicants meet certain criteria

Reasons for change

- The proposed amendment promotes SARS' strategic intent of modernising excise to a risk management and segmentation approach.
- This will enable SARS to concentrate their resources on higher risk areas while still having control over low risk clients.

Proposal

- The proposed amendment extends the current criteria applicable to customs laws and procedures to cover excise laws and procedures

Amendments to Tax Administration Act: Prior notice and service of legal proceedings (Clause 33)

Background

- SARS is huge organisation and, particularly with respect to urgent applications, the size of the organisation may be deliberately exploited by litigators
- Legal proceedings against SARS are often instituted with as little as two hours notice and served on remote SARS branch or State Attorney offices

Reasons for change

- Lack of proper notice and incorrect service of legal proceedings result in unnecessary and costly litigation and prejudice to the *fiscus* if adverse judgment given
- Prior notice of an intended court application will ensure that matter is brought to the attention of appropriate senior SARS official who may resolve it outside court

Proposed amendments

- Taxpayers required to give one week notice of intended legal proceedings unless court waives this requirement in case of extremely urgent matters
- Service must be at prescribed address to avoid applications being served haphazardly on SARS branch offices or offices of State Attorney

Amendments to Tax Administration Act: Withdrawal of assessments after expiry of prescription periods (Clause 46)

Background

- In practice, erroneous assessments often only discovered after all prescription periods and remedies have expired for example period to issue reduced assessments expired
- Examples are assessments that result from fraud by a person not authorised by the taxpayer to complete or submit a return, an undisputed error by the taxpayer in a return or a processing error by SARS in making the assessment

Reasons for change

- If it appears that it would be unreasonable & inequitable to recover the tax due under such erroneous assessments, taxpayers should not be left without remedy

Proposed amendments

- The withdrawal of such assessments would be allowed in specified narrow circumstances
- Further, a senior SARS official may agree with taxpayer as to the amount of tax properly chargeable and issue a revised assessment
- “Agreed” assessment would not be subject to objection and appeal

Amendments to Tax Administration Act: Understatement Penalty (USP) (Clauses 74 to 77 and 86)

Background

- USP system replaced additional tax to limit open-ended discretion to impose up to 200% additional tax - under USP system taxpayer behaviour determines amount of penalty thus consistent treatment of taxpayers in comparable circumstances
- The general transitional approach of TAA is that the new Act would apply act, omission or proceeding taken, occurring on or instituted before the commencement date of the Act – same approach applies to USP

Reasons for change

- Some “understatements” results from *bona fide* inadvertent errors e.g. calculation errors; legal interpretation errors
- Taxpayers requested lower percentages given harsh effect of penalties
- Taxpayers expressed concerns regarding impact of retrospective imposition of USP and interpretive issues arose from the transitional provisions effecting such retrospective imposition of USP

Amendments to Tax Administration Act: Understatement Penalty (USP) - continued (Clauses 74 to 77 and 86)

Proposed amendments

- To provide clarity that no USP will be imposed if ‘understatement’ results from *bona fide* inadvertent error
- To reduce percentages of penalties for less serious non-compliance
- To amend transitional provision to clarify that if no USP is imposable, additional tax must be imposed as if additional tax provisions had not been not repealed
- To insert new transitional provisions to address any unintended consequences arising from retrospective imposition of USP if return submitted before TAA commencement date i.e.:
 - Legal opinion requirement for purposes of remittance of ‘substantial understatement penalty’ – opinion obtained after return allowed
 - Taxpayers who made voluntary disclosures before TAA commencement may qualify for relief on USP if audit concluded after commencement date
 - SARS must reduce USP if satisfied that extenuating circumstances existed & SARS must reduce USP for VAT understatement if there was no intent

Amendments to Tax Administration Act

Regulation of tax practitioners

(Clause 81)

Background

- Under current wording a person who is under the direct supervision of a registered tax practitioner need not register as tax practitioner

Reason for change

- According to industry, the result is that “intermediate managers” between trainees or articled clerks, and a partner or director must also register

Proposed amendment

- “Direct supervision” replaced with “acceptance of accountability”
- Effect – intermediate managers, trainees or article clerks not required to register, but partner or director (registered tax practitioner) must accept accountability for their actions
- Partner or director (registered tax practitioner) will be held accountable for purposes of complaints by taxpayers or SARS to relevant recognised controlling body

Amendments to Tax Administration Act

Other proposed amendments

- Public officer – extended to non-officer of company
- Commissioner may require returns not specifically required under tax Act
- Mandatory withdrawal of judgments if tax debt paid and tax affairs are in order
- Manner of submitting information in criminal matters
- Recovery limited to “outstanding tax debt” – clarification
- Legal costs recovered by State Attorney – paid to SARS
- Taxpayer may request third party information that was used as basis of assessment directly from SARS and not only through PAIA
- Protection of certain third parties against recovery actions by taxpayers