

REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 42800 of 28 October 2019)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 19—2019]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To—

- amend the Income Tax Act, 1962, so as to subject a certain decision under the Act to objection and appeal; to make technical corrections; to provide a time period for the validity of a declaration and a written undertaking in respect of the withholding of withholding tax on interest, withholding tax on royalties, and dividends tax; to remove a requirement to submit a declaration to a regulated intermediary in respect of tax free investments; to clarify that a penalty may be imposed if an employer submits an incomplete return; and to insert a provision that an executor need not submit a provisional tax return for the provisional period ending on the date of death;
- amend the Customs and Excise Act, 1964, so as to make technical corrections; to insert definitions; to extend a provision providing for information sharing and exclude certain information from the application of the prohibition on disclosure of information; to clarify that an invoice may be amended by the issuing of an amended invoice or by the issuing of a credit or debit note in circumstances where the amount reflected on the invoice is amended; to clarify that tariff determinations, amendments to tariff determinations or new tariff determinations apply to all identical goods entered by the same person, whether the goods were entered before or after the date on which the determination is issued; to exclude bulk removals between excise manufacturing warehouses of alcoholic beverages classified under any subheading of heading 22.04 or 22.05 of Part 1 of Schedule 1 from compulsory tariff determinations; to clarify that value determinations, amendments to value determinations or new value determinations apply to goods mentioned therein entered by the same person before or after the date on which the determination is issued; to limit the circumstances in relation to which applications for general refunds will be considered; and to extend the general rule-enabling provision to include matters relating to the making of advance payments in relation to the importation of goods;
- amend the Value-Added Tax Act, 1991, so as to make technical corrections; to remove a requirement that the Minister of Finance must prescribe by regulation the particulars to be contained on a tax invoice issued by a foreign supplier of electronic services; and to clarify that rulings under the Act are not subject to the prescribed fee under the Tax Administration Act, 2011;

- amend the Skills Development Levies Act, 1999, so as to make technical corrections; to provide for a procedure if an employer has incorrectly indicated the jurisdiction of a SETA; and to align the time periods for a refund under the Act with the Tax Administration Act, 2011;
 - amend the Unemployment Insurance Contributions Act, 2002, so as to align the time periods for a refund under the Act with the Tax Administration Act, 2011;
 - amend the Tax Administration Act, 2011, so as to make technical corrections; to extend the notice period prior to the institution of legal proceedings; to effect consequential amendments pursuant to the Legal Practice Act, 2014; to clarify that an assessment or decision is final if an appeal is withdrawn; to clarify that an amount may be set-off against a customs and excise debt even if there is no outstanding debt under the Act; to clarify when SARS may make an assessment based on an estimate if no return is submitted or required; to provide for an administrative penalty for failure to report a Common Reporting Standard avoidance scheme or opaque offshore scheme under the Common Reporting Standard regulations issued under the Act; to subject erroneous, incomplete or false third party returns to criminal sanction under the Act; and to align the provisions regulating the tax compliance status of a taxpayer with the automation thereof;
- and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of 2008, section 2 of Act 61 of 2008, section 14 of Act 8 of 2010, section 271 of Act 28 of 2011, read with paragraph 25 of Schedule 1 to that Act, section 2 of Act 39 of 2013, section 2 of Act 43 of 2014, section 2 of Act 44 of 2014, section 1 of Act 23 of 2015, section 1 of Act 16 of 2016 and section 2 of Act 22 of 2018

1. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) section 8(5)(b) and (bA), section 10(1)(cA), (e)(i)(cc), (j) and (nB), section 10A(8), section 11(e), (f), (g), (gA), (j) and (l), section 12B(6), section 12C, section 12E, section 12J(6), (6A) and (7), section 13, section 15, section 18A[(5C)](1)(a)(cc), (b) and (c), section 22(1) and (3), section 23H(2), section 23K, section 24(2), section 24A(6), section 24C, section 24D, section 24I(1) and (7), section 24J(9), section 24P, section 25A, section 27, section 28(9), section 30, section 30A, section 30B, section 30C, section 31, section 37A, section 38(2)(a) and (b) and (4), section 44(13)(a), section 47(6)(c)(i), section 62(1)(c)(iii) and (d) and (2)(a) and (4), section 80B and section 103(2);”.

Amendment of section 18A of Act 58 of 1962, as substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011, section 7 of Act 21 of 2012, section 52 of Act 31 of 2013, section 29 of Act 43 of 2014, section 3 of Act 44 of 2014, section 34 of Act 15 of 2015, section 31 of Act 17 of 2017 and section 35 of Act 23 of 2018

2. Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2C) of the following subsection:

“(2C) The [Accounting Authority] accounting officer or accounting authority contemplated in the Public Finance Management Act or an accounting officer

contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for the department which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).” 5

Amendment of section 49E of Act 58 of 1962, as inserted by section 12 of Act 21 of 2012 and amended by section 61 of Act 43 of 2014 and section 69 of Act 25 of 2015

3. (1) Section 49E of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 10
- “(b) if the foreign person to or for the benefit of which that payment is to be made has,—
- (i) **by a date determined by the person making the payment; or** 15
- (ii) **if the person making the payment did not determine a date as contemplated in subparagraph (i), by the date of the payment,**]
- before the royalty is paid, submitted to the person making the payment— 20
- (i) a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 49D(a) or (b), exempt from the withholding tax on royalties in respect of that payment; and
- (ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the exemption referred to in subparagraph (i) change or should the payment of the royalty no longer be for the benefit of that foreign person.”; 25
- (b) by the substitution for subsection (3) of the following subsection: 30
- “(3) The rate referred to in section 49B(1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has,—
- (a) **by a date determined by the person making the payment; or** 35
- (b) **if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,**]
- before the royalty is paid, submitted to the person making the payment—
- (a) a declaration in such form as may be prescribed by the Commissioner that the royalty is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and 40
- (b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the application of the agreement referred to in paragraph (a) change or should the payment of the royalty no longer be for the benefit of that foreign person.”; and 45
- (c) by the addition of the following subsection after subsection (3): 50
- “(4) A declaration and written undertaking submitted in terms of subsection (2)(b) or (3) are no longer valid after a period of five years from the date of the declaration.”.
- (2) Subsection (1)(c) comes into operation on 1 July 2020.

Amendment of section 50E of Act 58 of 1962, as inserted by section 98 of Act 31 of 2013 and amended by section 65 of Act 43 of 2014 and section 57 of Act 15 of 2016 55

4. (1) Section 50E of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) if the foreign person to or for the benefit of which that payment is to be made has, [—

- (i) **by a date determined by the person making the payment; or**
- (ii) **if the person making the payment did not determine a date as contemplated in subparagraph (i), by the date of the payment,]**

before the interest is paid, submitted to the person making the payment—

(i) a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 50D(3) or an agreement for the **[prevention]** avoidance of double taxation, exempt from the withholding tax on interest in respect of that payment; and

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the exemption referred to in subparagraph (i) change or should the payment of the interest no longer be for the benefit of that foreign person.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) The rate referred to in subsection (1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has, [—

- (a) **by a date determined by the person making the payment; or**
- (b) **if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,]**

before the interest is paid, submitted to the person making the payment—

[(i)](a) a declaration in such form as may be prescribed by the Commissioner that the interest is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and

[(ii)](b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the application of the agreement referred to in **[subparagraph (i)] paragraph (a)** change or should the payment of the interest no longer be for the benefit of that foreign person.”;

(c) by the addition of the following subsection after subsection (3):

“(4) A declaration and written undertaking submitted in terms of subsection (2)(b) or (3) are no longer valid after a period of five years from the date of the declaration, unless the person making the payment is subject to the provisions of—

- (a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
- (b) the Agreement Between the Government of the Republic of South Africa and the Government of the United States of America to improve International Tax Compliance and to Implement the US Foreign Account Tax Compliance Act; or
- (c) the regulations for purposes of paragraph (a) of the definition of “international tax standard” in section 1 of the Tax Administration Act,

with regard to the foreign person to or for the benefit of which the payment is to be made and takes account of these provisions in monitoring the continued validity of the declaration.”.

(2) Subsection (1)(c) comes into operation on 1 July 2020.

Amendment of section 60 of Act 58 of 1962, as amended by section 39 of Act 85 of 1974, section 28 of Act 90 of 1988 and section 271, read with paragraph 50 of Schedule 1 of Act 28 of 2011

5. Section 60 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection: 5

“(5) The Commissioner may, in accordance with Chapter 8 of the Tax Administration Act, at any time assess either the donor or the donee or both the donor and the donee for the amount of donations tax payable or, where the Commissioner is satisfied that the tax payable under this Part has not been paid in full, for the difference between the amount of the tax payable and the amount paid, but the payment by either of [the said] those parties of the amount payable under such assessment shall discharge the joint obligation.”. 10

Amendment of section 64FA of Act 58 of 1962, as inserted by section 79 of Act 24 of 2011 and amended by section 87 of Act 22 of 2012

6. (1) Section 64FA of the Income Tax Act, 1962, is hereby amended— 15

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the person to whom the payment is made has, [by] before the [date of payment of the] dividend is paid, submitted to the company—

(i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the portion of the dividend that constitutes a distribution of an asset *in specie* would, if that portion has not constituted a distribution of an asset *in specie*, have been exempt from the dividends tax in terms of section 64F; and 20 25

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the exemption applicable to the beneficial owner referred to in subparagraph (i) change or the beneficial owner cease to be a beneficial owner;”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) A company that declares and pays a dividend that consists of a distribution of an asset *in specie* is liable for the dividends tax at a reduced rate in respect of the portion of the dividend that constitutes the distribution of an asset *in specie* if the person to whom the payment is made has, [by] before the [date of payment of the] dividend is paid, submitted to the company— 35

(a) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the portion of the dividend that constitutes a distribution of an asset *in specie* would, if that portion had not constituted a distribution of an asset *in specie*, have been subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and 40

(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in paragraph (a) change or the beneficial owner cease to be the beneficial owner.”; and 45

(c) by the addition of the following subsection after subsection (2): 50

“(3) A declaration and written undertaking submitted in terms of subsection (1)(a) or (2) are no longer valid after a period of five years from the date of the declaration, unless the regulated intermediary is subject to the provisions of—

(a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); 55

(b) the Agreement Between the Government of the Republic of South Africa and the Government of the United States of America to improve International Tax Compliance and to Implement the US Foreign Account Tax Compliance Act; or

(c) the regulations for purposes of paragraph (a) of the definition of “international tax standard” in section 1 of the Tax Administration Act, with regard to the person to whom the payment is made and takes account of these provisions in monitoring the continued validity of the declaration.” 5

(2) Subsection (1)(c) comes into operation on 1 July 2020.

Amendment of section 64G of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008, substituted by section 53 of Act 17 of 2009, and amended by section 53 of Act 17 of 2009, section 73 of Act 7 of 2010, section 80 of Act 24 of 2011, section 88 of Act 22 of 2012 and section 106 of Act 31 of 2013 10

7. Section 64G of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) the person to whom the payment is made has,— 15
 (i) **by a date determined by the company; or**
 (ii) **if the company did not determine a date as contemplated in subparagraph (i), by the date of payment of the dividend,]**

before the dividend is paid, submitted to the company— 20

[(aa)](i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is exempt from the dividends tax in terms of section 64F; and

[(bb)](ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing, should the circumstances affecting the exemption applicable to the beneficial owner referred to in **[item (aa)] subparagraph (i)** change or the beneficial owner cease to be the beneficial owner;” 25 30

(b) by the substitution for subsection (3) of the following subsection:

“(3) A company must withhold dividends tax from the payment of a dividend contemplated in subsection (1) at a reduced rate if the person to whom the payment is made has,—

(a) **by a date determined by the company; or** 35

(b) **if the company did not determine a date as contemplated in paragraph (a), by the date of] before the [payment of the] dividend is paid,** submitted to the company—

[(i)](a) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and 40

[(ii)](b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing, should the circumstances affecting the reduced rate in **[subparagraph (i)] paragraph (a)** change or should the beneficial owner cease to be the beneficial owner.”; and 45

(c) by the addition of the following subsection after subsection (3): 50

“(4) A declaration and written undertaking submitted in terms of subsection (2)(a) or (3) are no longer valid after a period of five years from the date of the declaration, unless the regulated intermediary is subject to the provisions of—

(a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); 55

(b) the Agreement Between the Government of the Republic of South Africa and the Government of the United States of America to improve International Tax Compliance and to Implement the US Foreign Account Tax Compliance Act; or

(c) the regulations for purposes of paragraph (a) of the definition of “international tax standard” in section 1 of the Tax Administration Act, with regard to the person to whom the payment is made and takes account of these provisions in monitoring the continued validity of the declaration.” 5

(2) Subsection (1)(c) comes into operation on 1 July 2020.

Amendment of section 64H of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008, and amended by section 53 of Act 17 of 2009, section 74 of Act 7 of 2010, section 81 of Act 24 of 2011, section 89 of Act 22 of 2012 and section 107 of Act 31 of 2013 10

8. Section 64H of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(2) A regulated intermediary must not withhold any dividends tax from the payment of a dividend contemplated in subsection (1) if—

(a) the person to whom the payment is made has,—

(i) **by a date determined by the regulated intermediary; or**

(ii) **if the regulated intermediary did not determine a date as contemplated in subparagraph (i), by] before the [date of payment of the] dividend is paid, submitted to the regulated intermediary—** 20

[(aa)](i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is exempt from the dividends tax in terms of section 64F or that the payment is made to a vesting trust of which the sole beneficiary is another regulated intermediary; and 25

[(bb)](ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing, should the circumstances affecting the exemption applicable to the beneficial owner [in item (aa)] referred to in subparagraph (i) change or should the beneficial owner cease to be the beneficial owner; or”; 30 35

(b) by the deletion in subsection (2) of the word “or” after paragraph (a) and the insertion of the expression “; or” after paragraph (b);

(c) by the insertion in subsection (2) after paragraph (b) of the following paragraph: 40

“(c) the dividend is exempt from dividends tax in terms of section 64F(1)(o).”; and

(d) by the substitution for subsection (3) of the following subsection:

“(3) A regulated intermediary must withhold dividends tax from the payment of a dividend contemplated in subsection (1) at a reduced rate if the person to whom the payment is made has,— 45

(a) **by a date determined by the regulated intermediary; or**

(b) **if the regulated intermediary did not determine a date as contemplated in paragraph (a), by] before the [date of payment of the] dividend is paid, submitted to the regulated intermediary—** 50

[(i)](a) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is subject to that reduced rate as a result of the application of an agreement for the avoidance of double taxation; and 55

[(ii)](b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in [subparagraph (i)] paragraph (a) change or should the beneficial owner cease to be the beneficial owner.”; 60

(e) by the addition of the following subsection after subsection (3):

“(4) A declaration and written undertaking submitted in terms of subsection (2)(a) or (3) are no longer valid after a period of five years from the date of the declaration, unless the regulated intermediary is subject to the provisions of—

- (a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);
- (b) the Agreement Between the Government of the Republic of South Africa and the Government of the United States of America to improve International Tax Compliance and to Implement the US Foreign Account Tax Compliance Act; or
- (c) the regulations for purposes of paragraph (a) of the definition of “international tax standard” in section 1 of the Tax Administration Act,

with regard to the person to whom the payment is made and takes account of these provisions in monitoring the continued validity of the declaration.”

(2) Subsection (1)(e) comes into operation on 1 July 2020.

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 16 of Act 61 of 2008, section 21 of Act 18 of 2009, section 22 of Act 8 of 2010, section 271, read with paragraph 85 of Schedule 1 to Act 28 of 2011, section 20 of Act 21 of 2012 and section 13 of Act 23 of 2015

9. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (6) of the following subparagraph:

“(6) If an employer fails to render to the Commissioner a complete return referred to in subparagraph (3) within the period prescribed in that subparagraph, the Commissioner may impose on that employer a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, for each month that the employer fails to submit a complete return which, in total, may not exceed 10 per cent of the total amount of employees’ tax deducted or withheld, or which should have been deducted or withheld by the employer from the remuneration of employees for the period described in that subparagraph.”

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005, section 46 of Act 3 of 2008, section 18 of Act 61 of 2008, section 23 of Act 18 of 2009, section 271, read with item 90 of Schedule 1 to Act 28 of 2011, section 22 of Act 21 of 2012, section 13 of Act 39 of 2013, section 9 of Act 44 of 2014, section 16 of Act 23 of 2015 and section 12 of Act 16 of 2016

10. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the proviso in item (a) of the following proviso:

“Provided that—

- (i) such estimate will not include any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or any severance benefit received by or accrued to or to be received by or accrue to the taxpayer during the relevant year of assessment; and
- (ii) in respect of the year of assessment in which a person dies, no estimate is required to be made in respect of the period ending on the date of death of that person.”

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110

of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 32 of Act 60 of 1989, section 51 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 34 of Act 34 of 1997, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 66 of Act 32 of 2004, section 85 of Act 31 of 2005, section 7 of Act 21 of 2006, section 10 of Act 9 of 2007, section 4 of Act 36 of 2007, section 22 of Act 61 of 2008, section 1 of Act 32 of 2014 and section 20 of Act 23 of 2015

11. Section 1 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the insertion in subsection (1) after the definition of “excise value” of the following definition:
 “**‘export duty’** means any duty leviable under Part 6 of Schedule No. 1 on goods exported from the Republic;”;
- (b) by the substitution in subsection (1) for the definition of “SACU” of the following definition:
 “**‘SACU’** means the Southern African Customs Union between the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of [Swaziland] eSwatini;”;
- (c) by the insertion in subsection (1) after the definition of “surcharge goods” of the following definition:
 “**‘Tax Administration Act’** means the Tax Administration Act, 2011 (Act No. 28 of 2011);”.

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006, section 9 of Act 21 of 2006, section 5 of Act 36 of 2007, section 25 of Act 61 of 2008, section 24 of Act 8 of 2010, section 3 of Act 25 of 2011 and section 16 of Act 39 of 2013, repealed by section 4 of Act 32 of 2014, and amended by section 22 of Act 23 of 2015 and section 11 of Act 13 of 2017

12. Section 4 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended—

- (a) by the insertion in subsection (3), after paragraph (iv) of the proviso, of the following paragraphs:
 “(ivA) disclosing to the Director-General of the Department of Mineral Resources and Energy such information as may be required for the administration of the regulations in respect of carbon offsets in terms of the Carbon Tax Act, 2019 (Act No. 15 of 2019);
 (ivB) disclosing to the Director-General of the Department of Environment, Forestry and Fisheries such information as may be required for the administration of the regulations in respect of greenhouse gas emissions reporting in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004);
 (ivC) disclosing to a public officer, as contemplated in section 246 of the Tax Administration Act, of an authorised dealer in foreign exchange appointed by the Minister of Finance for purposes of the Exchange Control Regulations published under Government Notice No. R1111 of 1 December 1961, as amended, such information as may be required by the authorised dealer for purposes of verification of applications for advance foreign exchange payments in respect of goods that are to be imported;”;
- (b) by the deletion in subsection (3), of the word “and” at the end of paragraph (vi) of the proviso;
- (c) by the substitution for subsection (3A) of the following subsection:
 “(3A) No person, including—
 (a) the Statistician-General;
 (b) the Director-General of the Department of Trade and Industry and Economic Development;

- (c) the Governor of the South African Reserve Bank;
- (d) the National Commissioner of the South African Police Service;
- (e) the National Director of Public Prosecutions;
- (f) the Director-General of the National Treasury;
- (g) the Director-General of the Department of Mineral Resources and Energy;
- (h) the Director-General of the Department of Environment, Forestry and Fisheries;
- (i) the public officer of an authorised dealer in foreign exchange;
- (j) the Chief Commissioner of the International Trade Administration Commission;
- (k) the Director of the Financial Intelligence Centre;
- (l) the head of any organ of state; or
- (m) any person acting under the direction and control of the persons referred to in paragraphs (a) to (l),
- shall disclose any information supplied under the proviso to subsection (3) to any person or permit any person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties under any Act from which such powers or duties are derived.”; and
- (d) by the substitution for subsection (3D) of the following subsection:
- “(3D) The **[provisions of this section]** prohibition on the disclosure of information by the Commissioner or any officer, referred to in subsection (3), shall not apply in respect of—
- (a) information about a person licensed or registered in terms of this Act in an anonymised form; and
- (b) any information relating to any person, where that person has consented that such information may be published or made known to any other person.”.

Amendment of section 41 of Act 91 of 1964, as amended by section 15 of Act 105 of 1969, section 6 of Act 112 of 1977, section 3 of Act 93 of 1978, section 5 of Act 86 of 1982, section 2 of Act 85 of 1986, section 12 of Act 84 of 1987, section 20 of Act 59 of 1990, sections 31 and 41 of Act 45 of 1995, section 17 of Act 32 of 2005, section 22 of Act 21 of 2006 and section 30 of Act 32 of 2014

13. Section 41 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

- “(b) (i) Any particulars referred to in paragraph (a) and declared in any prescribed invoice or certificate in respect of any imported goods shall be subject to any **[credit or debit note passed]** amount credited or debited on the transaction by the exporter or to any refund on the transaction made or becoming due by the exporter or any amount paid or becoming due to the exporter (directly or indirectly, in money or in kind or in any other manner) or to any change of any nature whatever in such particulars in respect of such goods after the date of issue of such invoice or certificate. **[and]**
- (ii) Whenever an event referred to in subparagraph (i) occurs—
- (aa) the exporter shall **[whenever any such note is passed, or refund is made or becomes due or amount is paid or becomes due or change takes place forthwith issue an amended invoice or certificate to]** effect an amendment to the invoice or certificate by issuing—
- (A) an amended invoice or certificate replacing the previous one; or
- (B) a credit or debit note, if an amount reflected on the invoice is amended;
- and
- (bb) the importer **[who]** shall produce such amended invoice or certificate or credit or debit note to the Controller within one month of receipt thereof and report the circumstances to him.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, section 9 of Act 98 of 1980, section 8 of Act 86 of 1982, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002,

section 138 of Act 45 of 2003, section 68 of Act 32 of 2004, section 3 of Act 10 of 2005, section 90 of Act 31 of 2005, section 11 of Act 36 of 2007, section 94 of Act 60 of 2008, section 36 of Act 32 of 2014 and section 15 of Act 44 of 2014

14. Section 47 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the deletion in paragraph (a) of subsection (9) of subparagraph (iii); 5
 - (b) by the insertion in subsection (9)(a)(iv) after item (gg) of the following item:
 - “(ggA) Notwithstanding anything to the contrary contained in this subparagraph or the rules in relation thereto, application for a tariff determination shall not be made in respect of bulk removals between excise manufacturing warehouses of alcoholic beverages classified under any subheading of heading 22.04 or 22.05 of Part 1 of Schedule 1.”; and 10
 - (c) by the insertion after subsection (11) of the following subsection:
 - “(11A) Any determination made under subsection (9) shall operate— 15
 - (a) in respect of the person in whose name it is issued, the goods mentioned therein and in respect of identical goods entered by that person, whether before or after the date when the determination is issued; and
 - (b) subject to the provisions of sections 44(11)(c) and 76B and subsections (10) and (11).” 20

Amendment of section 53 of Act 91 of 1964, as amended by section 19 of Act 105 of 1969, section 12 of Act 112 of 1977, section 37 of Act 97 of 1986, section 20 of Act 84 of 1987, section 6 of Act 61 of 1992, section 5 of Act 19 of 1994 and section 42 of Act 45 of 1995, and repealed by section 40 of Act 32 of 2014

15. (1) Section 53 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended by the substitution in subsection (2) for the expression “Part 7” of the expression “Part 13”. 25
- (2) Subsection (1) is deemed to have come into operation on 1 April 2018.

Amendment of section 65 of Act 91 of 1964, as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969, section 20 of Act 112 of 1977, section 5 of Act 93 of Act 1978, section 7 of Act 110 of 1979, substituted by section 13 of Act 86 of 1982, and amended by section 8 of Act 101 of 1985, section 8 of Act 52 of 1986, section 9 of section 68 of 1989, section 48 of Act 45 of 1995, section 5 of Act 44 of 1996, section 59 of Act 53 of 1999, section 128 of Act 60 of 2001, section 144 of Act 45 of 2003, section 70 of Act 32 of 2004, section 93 of Act 35 of 2007, section 96 of Act 60 of 2008 and section 59 of Act 32 of 2014 30

16. Section 65 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph: 40
- “(ii) Any determination made under [this subsection] paragraph (a) or subsection (5) shall operate—
- (aa) [only] in respect of [the goods mentioned therein and] the person in whose name it is issued and the goods mentioned therein, entered by that person before or after the date when the determination is issued; and
 - (bb) subject to the provisions of sections 44(11)(c) and 76B and subsections (7) and (7A)[, from the date of the determination is issued].” 45

Amendment of section 76 of Act 91 of 1964, as amended by section 9 of Act 85 of 1968, substituted by section 5 of Act 98 of 1970, amended by section 10 of Act 71 of 1975, section 11 of Act 110 of 1979, section 20 of Act 86 of 1982, section 5 of Act 89 of 1983, section 24 of Act 84 of 1987 and section 14 of Act 68 of 1989, substituted by section 30 of Act 59 of 1990, and amended by section 5 of Act 105 of 1992, section 54 of Act 45 of 1995, section 62 of Act 30 of 2000, section 28 of Act 34 of 2004 and section 65 of Act 32 of 2014 50

17. Section 76 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph: 55
- “(d) the goods concerned having been damaged, destroyed or irrecoverably lost by circumstances beyond his control prior to the release thereof for home

consumption: Provided that, for purposes of this section, such circumstances exclude damage, destruction or loss of goods due to robbery or theft;”.

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990, section 11 of Act 19 of 1994, section 73 of Act 45 of 1995, section 74 of Act 30 of 1998, section 35 of Act 21 of 2006, section 24 of Act 36 of 2007, section 40 of Act 61 of 2008 and section 86 of Act 32 of 2014

18. Section 120 of the Customs and Excise Act, 1964, is hereby amended by the insertion after paragraph (mB) of the following paragraph:

“(mC) as to matters relating to the making of certain advance foreign exchange payments in relation to goods that are to be imported, through authorised dealers in foreign exchange appointed by the Minister of Finance for purposes of the Exchange Control Regulations, published under Government Notice No. R1111 of 1 December 1961, as amended, including rules prescribing—

- (i) the type of advance foreign exchange payments to which the rules apply;
- (ii) requirements and procedures for notifying the Commissioner of the intention to submit an application to an authorised dealer in foreign exchange to effect an advance foreign exchange payment in respect of goods to be imported into the Republic; and
- (iii) reporting requirements for authorised dealers in foreign exchange in relation to advance foreign exchange payments by persons intending to import goods into the Republic;”.

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009, section 30 of Act 8 of 2010, section 29 of Act 21 of 2012, section 176 of Act 31 of 2013, section 26 of Act 23 of 2015 and section 7 of Act 22 of 2018

19. Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (5B) of the following subsection:

“(5B) Notwithstanding any other provision of this Act, if the supply by a vendor relates to any enterprise contemplated in paragraphs (b)(vi) and (b)(vii) of the definition of “enterprise” in section 1, the vendor shall be required to provide a tax invoice containing such particulars as must be prescribed by the [Minister by regulation] Commissioner by notice in the *Gazette*.”.

Amendment of section 41B of Act 89 of 1991, as inserted by section 40 of Act 21 of 2006, and amended by section 28 of Act 9 of 2007, section 17 of Act 9 of 2007, amended by section 42 of Act 61 of 2008, section 40 of Act 18 of 2009 and section 271, read with paragraph 131 of Schedule 1 to Act 28 of 2011

20. Section 41B of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the proviso of the following proviso:

“Provided that—

- [(i)](a) the provisions of sections 79(4)(f), [and] (k), [and] (6) and 81(1)(b) of the Tax Administration Act shall not apply to any VAT class ruling or VAT ruling;
- [(ii)](b) an application for a VAT class ruling or a VAT ruling in terms of this section shall not be accepted by the Commissioner if the application—
 - [(aa)](i) is for an advance tax ruling that qualifies for acceptance in terms of Chapter 7 of the Tax Administration Act; and
 - [(bb)](ii) falls within a category of rulings prescribed by the Minister by regulation for which applications for rulings in terms of this section may not be accepted.”.

Amendment of section 5 of Act 9 of 1999, as amended by section 92 of Act 30 of 2000

21. Section 5 of the Skills Development Levies Act, 1999, is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) If the Director-General is satisfied that an employer has incorrectly indicated the jurisdiction of a SETA under subsection (1), the Director-General may direct that the employer be classified under the jurisdiction of the correct SETA.”; and

(b) by the substitution of subsection (3) of the following subsection:

“(3) A selection by an employer in terms of subsection (2) is binding on the employer, unless the [Commissioner] Director-General, having regard to the factors contemplated in subsection (2)(a), (b) and (c), otherwise directs.”.

Amendment of section 7 of Act 9 of 1999

22. Section 7 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If the amount of a levy, interest or penalty paid by an employer to the SETA or approved body was not leviable or payable, or was in excess of the amount leviable or payable, in terms of this Act, that amount must be refunded to the employer by the SETA or approved body from the funds of the SETA—

(a) within five years from the date on which the payment was made in terms of the Act; or

(b) if that amount is claimed by the employer within the period referred to in paragraph (a), but not paid by the SETA or approved body within that period.”.

Amendment of section 11 of Act 9 of 1999, as amended by section 123 of Act 74 of 2002 and section 45 of Act 18 of 2009

23. Section 11 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6[(2)](1), (1A) or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of “prescribed rate” in section 1 of the Income Tax Act, calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be.”.

Amendment of section 12 of Act 9 of 1999 as amended by section 113 of Act 53 of 1999, section 197 of Act 45 of 2003, section 46 of Act 18 of 2009 and section 271, read with paragraph 153 of Schedule 1 to Act 28 of 2011

24. Section 12 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2), if any levy remains unpaid after the last day for payment thereof as contemplated in section 6[(2)](1), (1A) or 7(4), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty of 10 per cent of that unpaid amount.”.

Amendment of section 9 of Act 4 of 2002

25. Section 9 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If the amount of any contribution, interest or penalty paid by an employer to the Unemployment Insurance Commissioner was not due or payable, or was in excess of the amount due or payable in terms of this Act, that amount or such excess amount must be refunded to that employer by the Unemployment Insurance Commissioner from the Unemployment Insurance Fund—

(a) within five years from the date on which the payment was made in terms of the Act; or

- (b) if that amount is claimed by the employer within the period referred to in paragraph (a), but not paid by the Unemployment Insurance Commissioner within that period.”

Amendment of Arrangement of Sections of Act 28 of 2011, as amended by section 87 of Act 39 of 2013

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26. The Arrangement of Sections of the Tax Administration Act, 2011, is hereby amended by the substitution for item 212 of the following item:

“212. Reportable arrangement and mandatory disclosure penalty”.

Amendment of section 11 of Act 28 of 2011, as amended by section 40 of Act 21 of 2012, section 33 of Act 39 of 2013, section 36 of Act 23 of 2015 and section 48 of Act 16 of 2016

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27. Section 11 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Unless the court otherwise directs, no legal proceedings may be instituted in the High Court against the Commissioner, unless the applicant has given the Commissioner written notice of at least **[one week]** 10 business days of the applicant’s intention to institute the legal proceedings.”

Amendment of section 12 of Act 28 of 2011

28. Section 12 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

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“(2) A senior SARS official may appear in the tax court or a High Court only if the person is a legal practitioner duly admitted and enrolled under the Legal Practice Act, 2014 (Act No. 28 of 2014)—

(a) is an advocate duly admitted under—

(i) **the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or**

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(ii) **a law providing for the admission of advocates in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996; or**

(b) is an attorney duly admitted and enrolled under—

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(i) **the Attorneys Act, 1979 (Act No. 53 of 1979); or**

(ii) **a law providing for the admission of attorneys in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996.**”

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Amendment of section 42A of Act 28 of 2011, as inserted by section 41 of Act 23 of 2015

29. Section 42A of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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“(1) For purposes of Parts B, C and D, if a person alleges the existence of legal professional privilege in respect of relevant material required by SARS, during an inquiry or during the conduct of a search and seizure by SARS, the person must provide the following information to SARS and, if applicable, the presiding officer designated under section 51 or the **[attorney]** legal practitioner referred to in section 64:”

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Amendment of section 46 of Act 28 of 2011, as amended by section 50 of Act 21 of 2012, section 38 of Act 39 of 2013, section 46 of Act 44 of 2014 and section 42 of Act 23 of 2015

30. Section 46 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

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“(3) A request by SARS for relevant material from a person other than the taxpayer is limited to material maintained or kept or that should reasonably be maintained or kept by the person in **[respect of] relation to** the taxpayer.”.

Amendment of section 64 of Act 28 of 2011

31. Section 64 of the Tax Administration Act, 2011, is hereby amended by the substitution of subsections (1) to (6) of the following subsections: 5

“(1) If SARS foresees the need to search and seize relevant material that may be alleged to be subject to legal professional privilege, SARS must arrange for **[an attorney] a legal practitioner** from the panel appointed under section 111 to be present during the execution of the warrant. 10

(2) **[An attorney] A legal practitioner** with whom SARS has made an arrangement in terms of subsection (1) may appoint a substitute **[attorney] legal practitioner** to be present on the appointing **[attorney’s] legal practitioner’s** behalf during the execution of a warrant.

(3) If, during the carrying out of a search and seizure by SARS, a person alleges the existence of legal professional privilege in respect of relevant material and **[an attorney] a legal practitioner** is not present under subsection (1) or (2), SARS must seal the material, make arrangements with **[an attorney] a legal practitioner** from the panel appointed under section 111 to take receipt of the material and, as soon as is reasonably possible, hand over the material to the **[attorney] legal practitioner.** 15 20

(4) **[An attorney] A legal practitioner** referred to in subsections (1), (2) and (3)—

(a) is not regarded as acting on behalf of either party; and

(b) must personally take responsibility—

(i) in the case of a warrant issued under section 60, for the removal from the premises of relevant material in respect of which legal privilege is alleged; 25

(ii) in the case of a search and seizure carried out under section 63, for the receipt of the sealed information; and

(iii) if a substitute **[attorney] legal practitioner** in terms of subsection (2), for the delivery of the information to the appointing **[attorney] legal practitioner** for purposes of making the determination referred to in subsection (5). 30

(5) The **[attorney] legal practitioner** referred to in subsection (1) or (3) must, within 21 business days, make a determination of whether the privilege applies and may do so in the manner the **[attorney] legal practitioner** deems fit, including considering representations made by the parties. 35

(6) If a determination of whether the privilege applies is not made under subsection (5) or a party is not satisfied with the determination, the **[attorney] legal practitioner** must retain the relevant material pending final resolution of the dispute by the parties or an order of court.”. 40

Amendment of section 91 of Act 28 of 2011, as amended by section 58 of Act 21 of 2012

32. Section 91 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection: 45

“(4) If a taxpayer—

(a) does not submit a return; or

(b) is not required to submit a return, and fails to pay the tax required under a tax Act,

SARS may make an assessment based on an estimate under section 95 **[if that taxpayer fails to pay the tax required under a tax Act].**” 50

Amendment of section 100 of Act 28 of 2011, as amended by section 56 of Act 16 of 2016

33. Section 100 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph: 55

“(c) after the decision of an objection, no notice of appeal has been filed or a notice has been filed and is withdrawn;”.

Amendment of section 110 of Act 28 of 2011, as amended by section 49 of Act 39 of 2013 and section 24 of Act 13 of 2017

34. Section 110 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the chairperson, who must be **[an advocate or attorney]** a legal practitioner from the panel appointed under section 111; and”.

Amendment of section 111 of Act 28 of 2011, as amended by section 53 of Act 23 of 2015

35. Section 111 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister must, in consultation with the Judge-President of the Division of the High Court with jurisdiction in the area where the tax board is to sit, by public notice appoint **[advocates and attorneys]** legal practitioners to a panel from which a chairperson of the tax board must be nominated from time to time.”.

Amendment of section 134 of Act 28 of 2011

36. Section 134 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A party who intends to lodge an appeal against a decision of the tax court (hereinafter in this Part referred to as the appellant) must, within 21 business days after the date of the notice by the ‘registrar’ notifying the parties of the tax court’s decision under section 131, or within a further period as the president of the tax court may on good cause shown allow, lodge with the ‘registrar’ and serve upon the opposite party or the opposite party’s **[attorney]** legal practitioner or agent, a notice of intention to appeal against the decision.”.

Amendment of section 139 of Act 28 of 2011

37. Section 139 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A cross-appeal against a decision of the tax court in a case in which an appeal has been lodged under section 138, must be noted by lodging a written notice of cross-appeal with the ‘registrar’, serving it upon the opposite party or the opposite party’s **[attorney]** legal practitioner and lodging it with the registrar of the court to which the cross-appeal is noted.”.

Amendment of section 141 of Act 28 of 2011

38. Section 141 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A party may, by notice in writing, lodged with the ‘registrar’ and the opposite party or the opposite party’s **[attorney]** legal practitioner or agent, abandon the whole or a part of a judgment in the party’s favour.”.

Amendment of section 191 of Act 28 of 2011, as amended by section 72 of Act 39 of 2013 and section 61 of Act 23 of 2015

39. Section 191 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) **[If a taxpayer has an outstanding tax debt, an]** An amount [that is] refundable under section 190, including interest thereon under section 188(3)(a), must be treated as a payment by the taxpayer that is recorded in the taxpayer’s account under section 165, [to the extent of the amount outstanding] of an outstanding tax debt, if any, and any remaining amount must be set off against any outstanding debt under customs and excise legislation.”.

Amendment of section 210 of Act 28 of 2011, as amended by section 70 of Act 21 of 2012

40. Section 210 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) the failure to disclose information subject to a reportable arrangement or mandatory disclosure penalty under section 212.”. 5

Amendment of section 212 of Act 28 of 2011, as amended by section 62 of Act 23 of 2015

41. The Tax Administration Act, 2011, is hereby amended by the substitution for section 212 of the following subsection: 10

“Reportable arrangement and mandatory disclosure penalty

212. (1) A person referred to in—

(a) paragraph (a) or (b) of the definition of [‘]participant[’] in section 34, who fails to disclose the information in respect of a [‘]reportable arrangement[’], as required by section 37; or 15

(b) the definition of intermediary in the regulations, issued in respect of paragraph (a) of the definition of “international tax standard”, who fails to disclose the information required to be disclosed under the regulations,

is liable to a ‘penalty’, for each month that the failure continues (up to 12 months), in the amount of— 20

[(a)](i) R50 000, in the case of a [‘]participant[’] or intermediary, as the case may be, other than the [‘]promoter[’]; or

[(b)](ii) R100 000, in the case of the [‘]promoter[’].

(2) The amount of ‘penalty’ determined under subsection (1) is doubled if the amount of anticipated [‘]tax benefit[’], as defined in section 34, for the [‘]participant[’] by reason of the arrangement (within the meaning of section 35) exceeds R5 000 000, and is tripled if the benefit exceeds R10 000 000. 25

(3) A person referred to in paragraph (c) of the definition of [‘]participant[’] in section 34, who fails to disclose the information in respect of a [‘]reportable arrangement[’] as required by section 37 is liable to a ‘penalty’ in the amount of R50 000.”. 30

Amendment of section 223 of Act 28 of 2011, as amended by section 73 of Act 21 of 2012, section 76 of Act 39 of 2013 and section 62 of Act 16 of 2016 35

42. Section 223 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(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” 40

Amendment of section 234 of Act 28 of 2011, as amended by section 77 of Act 21 of 2012

43. Section 234 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (g) of the following paragraph:

“(g) issues an erroneous, incomplete or false document required to be issued under a tax Act to SARS or to another person;” 45

Amendment of section 240A of Act 28 of 2011, as amended by section 83 of Act 21 of 2012, section 82 of Act 39 of 2013 and section 61 of Act 44 of 2014

44. Section 240A of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 50

“(b) [a Law Society established in terms of Chapter 3 of the Attorneys Act, 1979 (Act No. 53 of 1979)] the Legal Practice

Council established under the Legal Practice Act, 2014 (Act No. 28 of 2014); and

(b) by the deletion in subsection (1) of paragraph (c).

Amendment of section 246 of Act 28 of 2011, as amended by section 86 of Act 21 of 2012 and section 84 of Act 39 of 2013

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45. Section 246 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) appointed by the company or by an agent or **[attorney]** legal practitioner who has authority to appoint such a representative for the purposes of a tax Act;”.

Amendment of section 256 of Act 28 of 2011, as amended by section 89 of Act 21 of 2012, section 85 of Act 39 of 2013, section 64 of Act 44 of 2014 and section 72 of Act 23 of 2015

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46. The Tax Administration Act, 2011, is hereby amended by the substitution for section 256 of the following section:

“Tax compliance status

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256. (1) A taxpayer may apply, in the prescribed form and manner, to SARS for **[a confirmation of]** third party access to the taxpayer’s tax compliance status.

(2) SARS must **[issue]** provide or decline to **[issue the confirmation of]** provide third party access to the taxpayer’s tax compliance status within 21 business days from the date the application is submitted or such longer period as may reasonably be required **[if a senior SARS official is satisfied that the confirmation of]** to confirm the correctness of the taxpayer’s tax compliance status **[may prejudice the efficient and effective collection of revenue]**.

(3) **[A senior SARS official may provide a taxpayer with confirmation of the]** The taxpayer’s tax compliance status may only be indicated as compliant [only] if [satisfied that] the taxpayer—

(a) is registered for tax as required in terms of a tax Act; [and does not have any—]

[(a)](b) does not have any outstanding tax debt, excluding a tax debt—

(i) contemplated in section 167 or 204; or

(ii) **[a tax debt]** that has been suspended under section 164; or

(iii) that may not be recovered for the period specified in section 164(6); or

(iv) that does not exceed the amount referred to in section 169(4) or any higher amount that the Commissioner may determine by public notice; [or] and

[(b)](c) does not have any outstanding return, unless an arrangement [acceptable to the] with SARS [official] has been made for the submission of the return.

(4) **[A confirmation]** An indication of the tax compliance status of a taxpayer must [be in the prescribed format and] include at least—

(a) the [original] date of [issue of] the tax compliance status [confirmation to] of the taxpayer;

(b) the name[,] and taxpayer reference number [and identity number or company registration number] of the taxpayer;

[(c)] the date of the confirmation of the tax compliance status of the taxpayer to an organ of state or a person referred to in subsection (5);] and

[(d)](c) [a confirmation of] the taxpayer’s tax compliance status [of the taxpayer] as at the date referred to in paragraph [(c)](a).

(5) Despite the provisions of Chapter 6, SARS may **[confirm]** indicate the taxpayer’s tax compliance status as at a current date [the date of the

request], or a previous date as prescribed by the Minister in a regulation under section 257(2A), **[by]** to—

(a) an organ of state; or

(b) a person to whom the taxpayer has **[presented]** provided third party access to the taxpayer's tax compliance status **[confirmation]**. 5

(6) SARS may revoke third party access to **[alter]** the taxpayer's tax compliance status **[to non-compliant]** if the **[confirmation]** access—

(a) was issued in error; or

(b) was **[obtained]** provided on the basis of fraud, misrepresentation or non-disclosure of material facts, 10

and SARS has given the taxpayer prior notice and an opportunity to respond to the allegations of at least **[14]** 10 business days prior to the **[alteration]** revocation.

(7) A taxpayer's tax compliance status will be indicated as non-compliant by SARS for the period commencing on the date that the taxpayer no longer complies with a requirement under subsection (3), or such later date as the Commissioner may prescribe, and ending on the date that the taxpayer remedies the non-compliance." 15

Amendment of section 262 of Act 28 of 2011

47. The Tax Administration Act, 2011, is hereby amended by the substitution for section 262 of the following section: 20

“Appointment of chairpersons of tax board

62. [An attorney or advocate] A legal practitioner appointed to the panel of persons who may serve as chairpersons of the tax board under a tax Act, who is on that panel immediately before the commencement date of this Act, is regarded as appointed under the provisions of section 111 until the earlier of— 25

(a) the expiry of the **[attorney or advocate's]** legal practitioner's appointment under the provisions previously in force; or

(b) termination of the **[attorney or advocate's]** legal practitioner's appointment under section 111(3).” 30

Short title and commencement

48. (1) This Act is called the Tax Administration Laws Amendment Act, 2019.

(2) Save in so far as is otherwise provided for in this Act, or the context otherwise indicates, the amendments effected by this Act come into operation on the date of promulgation of this Act. 35

**MEMORANDUM ON THE OBJECTS OF THE TAX
ADMINISTRATION LAWS AMENDMENT BILL, 2019**

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2019 (the “Bill”), proposes to amend the following Acts:

- The Income Tax Act, (Act No. 58 of 1962) (the “Income Tax Act, 1962”);
- the Customs and Excise Act, 1964 (Act No. 91 of 1964) (the “Customs and Excise Act, 1964”);
- the Value-Added Tax Act, 1991 (Act No. 89 of 1991) (the “Value-Added Tax Act, 1991”);
- the Skills Development Levies Act, 1999 (Act No. 9 of 1999) (the “Skills Development Levies Act, 1999”);
- the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002) (the “Unemployment Insurance Contributions Act, 2002”); and
- the Tax Administration Act, 2011 (Act No. 28 of 2011) (the “Tax Administration Act, 2011”).

2. OBJECTS OF BILL

2.1 *Income Tax Act, 1962: Amendment of section 3*

The proposed amendment corrects cross-referencing. A decision in terms of section 18A(5C) would be given effect to in an assessment. Should the taxpayer not agree with the assessment the taxpayer may exercise the normal remedies of objection and appeal in terms of section 104 of the Tax Administration Act, 2011, which makes a reference to this section in section 3(4) unnecessary. The correct cross-reference should be to sections 18A(1)(a)(cc), 18A(1)(b) and 18A(1)(c) where the Commissioner exercises his or her discretion to approve an organisation for purposes of section 18A.

2.2 *Income Tax Act, 1962: Amendment of section 18A*

2.2.1 Section 18A(2C) provides that the Accounting Authority contemplated in the Public Finance Management Act for the department which issued any receipts in terms of section 18A(2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in section 18A(2A).

2.2.2 A department contemplated in section 18A(1)(c) includes the national, provincial or local sphere of government. The Public Finance Management Act, 1999, however, applies only to the national and provincial sphere of government. The Local Government: Municipal Financial Management Act, 2003, is applicable to the local sphere of government. The Local Government: Municipal Finance Management Act requires a municipality to have an accounting officer who must be accountable under that Act.

2.2.3 The fact that section 18A(2C) does not contain a reference to an accounting officer under the Local Government: Municipal Finance Management Act, appears to be an oversight, since sections 18A(5B) and (7) both refer to an accounting authority under the Public Finance Management Act and an accounting officer under the Local Government: Municipal Finance Management Act. The proposed amendment

aims to correct this oversight and align the wording of section 18A(2C) with sections 18A(5B) and (7).

2.3 *Income Tax Act, 1962: Amendment of section 49E*

- 2.3.1 Section 49E(3) requires a foreign person to or for the benefit of whom a royalty payment is made, to submit to the local person making the payment, a declaration to permit a reduced rate of tax to be applied as a result of the application of an agreement for the avoidance of double taxation. An example would be the case of a beneficial owner of a royalty payment who is a resident in the United States of America, where the Double Taxation Agreement between the United States and South Africa provides for a lower withholding tax rate than that prescribed in the Act.
- 2.3.2 It was submitted that this requirement creates an administrative burden for local persons that enter into multiple transactions with a single foreign person during the year. This would then mean that a declaration would have to be obtained by the local person from the same foreign person with regard to each and every transaction entered into.
- 2.3.3 The same issue was raised with regard to withholding tax on interest where local persons that have foreign investors need to obtain a declaration in terms of section 50E(3) where a reduced rate of tax has been applied as a result of the application of an agreement for the avoidance of double taxation.
- 2.3.4 The proposed amendment aims to alleviate this administrative burden by requiring that where more than one payment is made to the same foreign person the written undertaking need only be submitted once, namely, before the first payment to that foreign person, provided the conditions affecting the rate at which the royalty tax or withholding tax on interest is paid do not change and the payment of the royalty or interest is still made to or for the benefit of that foreign person. However, a declaration and written undertaking under this section will no longer be valid after a period of five years from the date of the declaration.
- 2.3.5 The new requirements with regard to the written undertaking have also been extended to royalties or interest payments that are exempt from royalty tax or withholding tax on interest as well as the exemption from and reduction of tax in respect of dividends in specie, withholding of dividends tax by companies declaring and paying dividends and the withholding of dividends tax by regulated intermediaries. The new provisions imposing a time limitation on the validity of the declarations and undertakings will come into effect on 1 July 2020 in order to provide the relevant entities an adequate opportunity to refresh the declarations and undertakings that they hold, while not requiring these entities that are obtaining a declaration for each payment to continue doing so for an extended period.

2.4 *Income Tax Act, 1962: Amendment of section 50E*

See the note on section 49E above. However, an exception to the five year validity limitation has been created for banks and other financial institutions involved in the payment of interest, where that bank or financial institution is subject to the Financial Intelligence Centre (FIC) legislation, Foreign Account Tax Compliance Act (FATCA) or the Common Reporting Standard (CRS) regulations with regard to the foreign person to or for the benefit of which the payment is to be made and takes account of these provisions in monitoring the continued validity of the declarations, i.e. the content of the declarations is monitored under or subject to the anti-money laundering, “know your client”,

FATCA or CRS requirements. In these instances, no time limitation will be imposed on the validity of the declarations and undertakings.

2.5 *Income Tax Act, 1962: Amendment of section 60*

The proposed amendment is a technical correction to ensure that assessments issued in terms of this section is done in accordance with Chapter 8 of the Tax Administration Act, 2011.

2.6 *Income Tax Act, 1962: Amendment of section 64FA*

See the note on section 49E above. The proposed amendment aims to align the wording of section 64FA with the proposed amendments to section 49E and 50E. The exception to the time limitation on the validity of the declarations and undertakings, as proposed in section 50E(4), will also apply to dividends tax by companies declaring and paying dividends in terms of this section.

2.7 *Income Tax Act, 1962: Amendment of section 64G*

See the note on section 49E above. The proposed amendment aims to align the wording of section 64G with the proposed amendments to section 49E, 50E and 64FA. The exception to the time limitation on the validity of the declarations and undertakings, as proposed in sections 50E(4) and 64FA(3), will also apply to dividends tax by companies declaring and paying dividends in terms of this section.

2.8 *Income Tax Act, 1962: Amendment of section 64H*

Paragraphs (a) and (d):

See the note on section 49E above. The proposed amendment aims to align the wording of section 64H with the proposed amendments to sections 49E, 50E, 64FA and 64G. The exception to the time limitation on the validity of the declarations and undertakings, as proposed in sections 50E(4), 64FA(3) and 64G(4), will also apply to dividends tax by regulated intermediaries in terms of this section.

Paragraph (b) and (c):

Currently, in order to ensure that dividends tax is not withheld from dividends declared on shares held as a tax free investment in terms of section 12T of the Income Tax Act, the regulated intermediary through which the investments are held will need to be provided with the required declaration and written undertaking as contemplated in section 64H. Failing this, dividends tax will have to be withheld and the investor would need to seek a refund of the dividends tax from the regulated intermediary once the required declaration and written undertaking has been provided. The proposed amendment aims to remove this requirement insofar as tax free investments are concerned.

2.9 *Income Tax Act, 1962: Amendment of paragraph 14 of Fourth Schedule*

The proposed amendment aims to clarify that the penalty in terms of this paragraph may also be imposed where an employer submits an incomplete return.

2.10 *Income Tax Act, 1962: Amendment of paragraph 19 of Fourth Schedule*

2.10.1 The last day of the year of assessment of a natural person, in the year of his or her death, is the date of death. At present there is no exemption from the payment of provisional tax by a natural person in respect of the period ending on the date of death, which can result in the imposition of underestimation penalties under paragraph 20 of the Fourth Schedule.

2.10.2 In this regard, paragraph 19(6) of the Fourth Schedule provides that a person that fails to submit an estimate of provisional tax within four months of the end of the second period is deemed to have submitted an estimate of nil. As a result, a deceased person may be subject to the underestimation penalty in paragraph 20 of the Fourth Schedule on assessment if no estimate was submitted by the executor within the four-month period. In order to have this penalty remitted under paragraph 20(2C) of the Fourth Schedule, the executor would have to lodge an objection.

2.10.3 The purpose of the amendment is to exempt the executor from having to submit an estimate of provisional tax on behalf of the deceased person in respect of the period up to date of death. This amendment has no impact on the deceased person's obligation to make a first period estimate where he or she is still alive on 31 August. This proposal will avoid unnecessary administration for SARS and the executor. Any tax owing will be collected on assessment of the final return of income made under section 66(13)(a) of the Act.

2.11 *Customs and Excise Act, 1964: Amendment of section 1*

Paragraph (a):

The proposed amendment is aimed at setting aside Part 6 of Schedule 1 for purposes of any future export duties.

Paragraph (b):

The proposed amendment inserts a correction to reflect the new name of the country previously known as Swaziland.

Paragraph (c):

The proposed amendment inserts a definition for Tax Administration Act, 2011, consequential to the proposed amendments to section 4(3) of the Act.

2.12 *Customs and Excise Act, 1964: Amendment of section 4*

Paragraphs (a) to (c):

The proposed amendments to subsections (3) and (3A) provide the authorisation for the sharing of information required to administer carbon offsets and greenhouse gas emissions reporting with the Department of Mineral Resources and Energy and the Department of Environment, Forestry and Fisheries. Provision is also made for the sharing of information with authorised dealers in foreign exchange to assist such dealers in the verification of applications for advance foreign exchange payments in respect of goods that are to be imported. It is anticipated that the sharing of such information will aid in the verification of legitimate financial flows.

Paragraph (d):

The proposed amendment is aimed at alignment with a similar approach followed in section 69(8)(d) of the Tax Administration Act, 2011.

2.13 *Customs and Excise Act, 1964: Amendment of section 41*

The proposed amendment aims to clarify that an invoice may, if an amount reflected on the invoice is to be changed, be amended by the issuing of a credit or debit note, without reissuing the invoice.

2.14 *Customs and Excise Act, 1964: Amendment of section 47*

Paragraph (a):

The proposed deletion of subsection (9)(a)(iii) and insertion of the content of the subparagraph in adjusted form as subsection (11A) clarifies that a tariff determination made in terms of subsection (9) applies to identical goods entered by the same person, whether the goods were entered before or after the date when the determination is issued. A tariff determination made in terms of subsection (9) can be applied retrospectively to identical goods imported by the same person before the determination was issued for purposes of refunds for overpayments of duty as well as liability for underpayments of duty, taking into account the applicable prescription period.

Paragraph (b):

The proposed amendment has the effect that removals of bulk wine between excise manufacturing warehouses are excluded from compulsory tariff determination. Such removals are aimed at further manufacture and the bulk wine removed is not the final alcoholic beverage.

Paragraph (c):

See paragraph (a) above.

2.15 *Customs and Excise Act, 1964: Amendment of section 53*

The proposed amendment is intended to retrospectively correct an inadvertent overlap between sections 53 and 54G of the Act. Part 7 of Schedule No. 1 has already been set aside for the health promotion levy in terms of section 54G.

2.16 *Customs and Excise Act, 1964: Amendment of section 65*

The proposed amendment is related to the amendment to section 47(9) and clarifies that a value determination made in terms of subsection (4)(a) or (5) applies to goods mentioned in the determination entered by the same person before or after the date when the determination is issued. A determination made in terms of subsection (4)(a) or (5) can be applied retrospectively to goods mentioned in the determination imported by the same person before the determination was issued for purposes of refunds for overpayments of duty as well as liability for underpayments of duty, taking into account the applicable prescription period.

2.17 *Customs and Excise Act, 1964: Amendment of section 76*

2.17.1 The proposed amendment is consequential to proposed amendments to items 412.09; 495.00; 497.01; 624.50; 634.03; 670.10; 680.02 and 690.01 of the Customs and Excise Tariff, which aim to exclude duty rebates in circumstances where damage, destruction or loss of goods as contemplated in those items occurs due to robbery or theft. This is in line with an international approach to not allow duty rebates in cases of robbery or theft, the rationale being that the goods have entered into home consumption and that the amount of any duty payable should be covered by an insurance policy.

2.17.2 The proposed amendment to section 76(d) intends to ensure parity in the treatment of refunds of duty already paid, and rebates in respect of duty payable, on goods damaged, destroyed or lost due to robbery or theft.

2.18 *Customs and Excise Act, 1964: Amendment of section 120*

The proposed amendment authorises the Commissioner to prescribe rules relating to the making of advance foreign currency payments in relation to the

importation of goods. The purpose of these rules is to aid in the verification of legitimate financial flows by requiring persons intending to apply to authorised dealers in foreign exchange for making advance foreign exchange payments, to first notify the Commissioner of such intention, and by requiring authorised dealers to report certain information in relation to advance foreign exchange payments to the Commissioner.

2.19 Value-Added Tax Act, 1991: Amendment of section 20

Section 20(5B) requires the Minister to prescribe the particulars to be contained on a tax invoice issued by a foreign supplier of electronic services, by regulation. This regulation has not been issued but the Commissioner has issued Binding General Ruling No. 28 in this regard. The proposed amendment removes the requirement for the Minister to prescribe these particulars by regulation and now enables the Commissioner to prescribe them by public notice in the *Gazette*.

2.20 Value-Added Tax Act, 1991: Amendment of section 41B

The proposed amendment corrects the numbering of the section and aims to clarify that rulings in terms of section 41B of the Value-Added Tax Act, are not subject to the prescribed fee (i.e. the application fee and the cost recovery fee) as set out in section 79(6) and section 81(1)(b) of the Tax Administration Act, 2011.

2.21 Skills Development Levies Act, 1999: Amendment of section 5

Paragraph (a):

The Director-General of the Department of Higher Education and Training, instead of SARS, is regarded as the person most capable of evaluating whether or not an employer has been classified under the jurisdiction of the correct SETA. The proposed amendment aims to ensure that the Director-General is able to classify the employer under the jurisdiction of the correct SETA.

Paragraph (b):

In view of the above, an amendment is also proposed to allow the Director-General to direct that a SETA selection by an employer is not binding in certain circumstances.

2.22 Skills Development Levies Act, 1999: Amendment of section 7

2.22.1 In terms of section 190(4) of the Tax Administration Act, 2011, an erroneous payment will be regarded as a payment to the National Revenue Fund unless the amount is refunded by SARS (in the case of self-assessment) within 5 years from the later of the date the return had to be submitted, or, if no return is required, payment had to be made in terms of the relevant tax Act or the erroneous payment was made, or where that refund is claimed by the taxpayer within the five year period, but not paid by SARS within that five year period.

2.22.2 The proposed amendment aims to align the refund provisions in the Skills Development Levies Act, 1999, with section 190(4) of the Tax Administration Act to provide that a refund by the Director-General in terms of the Skills Development Levies Act, must be made by the SETA within five years from the date the payment was made or where that refund was claimed by the employer, within the five year period, but not paid by the SETA within that period.

2.23 Skills Development Levies Act, 1999: Amendment of section 11

The proposed amendment is a technical correction to cross referencing.

2.24 *Skills Development Levies Act, 1999: Amendment of section 12*

The proposed amendment is a technical correction to cross referencing.

2.25 *Unemployment Insurance Contributions Act, 2002: Amendment of section 9*

2.25.1 In terms of section 190(4) of the Tax Administration Act, 2011, an erroneous payment will be regarded as a payment to the National Revenue Fund unless the amount is refunded by SARS (in the case of self-assessment) within 5 years from the later of the date the return had to be submitted, or, if no return is required, payment had to be made in terms of the relevant tax Act or the erroneous payment was made, or where that refund is claimed by the taxpayer within the five year period, but not paid by SARS within that five year period.

2.25.2 The proposed amendment aims to align the refund provisions in the Unemployment Insurance Contributions Act, 2002, with section 190(4) of the Tax Administration Act to provide that a refund by the Commissioner in terms of the Unemployment Insurance Contributions Act, must be made by the Commissioner within five years from the date the payment was made or where that refund was claimed by the employer, within the five year period, but not paid by the Commissioner within that period.

2.26 *Tax Administration Act, 2011: Amendment of Arrangement of Sections*

The proposed amendment is consequential to the amendments to section 212 of the Tax Administration Act, 2011.

2.27 *Tax Administration Act, 2011: Amendment of section 11*

2.27.1 A one-week notice period has proven to be impractical in practice to give effect to the rationale for the notice, i.e. to enable SARS an opportunity to investigate the matter further and to decide how to resolve the dispute, for example by exploring a dispute resolution process, thereby avoiding litigation at the public's expense. The proposed amendment increases the current one week period to 10 business days in order to afford SARS sufficient time to investigate the matter to see if it can be resolved without resorting to litigation, unless a competent court directs otherwise, for example in the case of urgency.

2.27.2 In comparison, for example, section 5(2) of the Institution of Legal Proceedings Against Certain Organs of State Act, 2002, provides that no process referred to in section 5(1) of the Act may be served, as contemplated in that subsection, before the expiry of a period of 60 days after the notice, where applicable, has been served on the organ of state in terms of section 3(2)(a).

2.28 *Tax Administration Act, 2011: Amendment of section 12*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.29 *Tax Administration Act, 2011: Amendment of section 42A*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.30 *Tax Administration Act, 2011: Amendment of section 46*

The proposed amendment is a textual correction in order to align the wording of section 46(3) with the wording of section 46(2)(b).

2.31 *Tax Administration Act, 2011: Amendment of section 64*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.32 *Tax Administration Act, 2011: Amendment of section 91*

The proposed amendment aims to clarify when SARS may make an assessment based on an estimate under this provision i.e. if no return is submitted or where no return is required, the taxpayer fails to pay the tax required under a tax Act.

2.33 *Tax Administration Act, 2011: Amendment of section 100*

The proposed amendment aims to clarify that an assessment or decision is final if an appeal has been filed and is withdrawn.

2.34 *Tax Administration Act, 2011: Amendment of section 110*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.35 *Tax Administration Act, 2011: Amendment of section 111*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.36 *Tax Administration Act, 2011: Amendment of section 134*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.37 *Tax Administration Act, 2011: Amendment of section 139*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.38 *Tax Administration Act, 2011: Amendment of section 141*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.39 *Tax Administration Act, 2011: Amendment of section 191*

2.39.1 The proposed amendment aims to clarify that SARS may set off refunds against the outstanding tax debt of the taxpayer as well as amounts outstanding in terms of customs and excise legislation, even if there is no outstanding tax debt. In such instances the full amount is then utilised towards customs and excise debt.

2.39.2 The set-off of refunds against amounts outstanding in terms of customs and excise legislation is not a new principle. The principle applied prior to the enactment of the Tax Administration Act, 2011, where amounts refundable in terms of the Income Tax Act, 1962 (section 102(3)) as well as the Value-added Tax Act, 1991 (section 44(6)), could be set off against customs and excise debt. Section 76C of the Customs and Excise Act, 1964, similarly permits the set-off of customs and excise refunds against any outstanding tax debt.

2.40 *Tax Administration Act, 2011: Amendment of section 210*

It has emerged internationally that offshore structures and arrangements are being designed in an attempt to circumvent financial account reporting under the OECD's Common Reporting Standard (CRS), which is the standard used for the exchange of financial account information between countries. Subject to the approval of the Minister, the OECD's model *Mandatory Disclosure Rules* are to be implemented in South Africa in proposed new CRS regulations. These regulations will be issued under section 257, read with paragraph (a) of the definition of "international tax standard" in section 1 of the Act, and will require certain persons to report such structures and arrangements. The proposed amendment aims to enforce this reporting obligation by means of similar penalties to those currently in force for non-compliance with the reportable arrangement scheme under the Act.

2.41 *Tax Administration Act, 2011: Amendment of section 212*

See note on section 210 above.

2.42 *Tax Administration Act, 2011: Amendment of section 223*

The proposed amendment is a technical correction to effect clarity.

2.43 *Tax Administration Act, 2011: Amendment of section 234*

The proposed amendment clarifies that a person, who wilfully and without just cause issues to SARS an erroneous, incomplete or false document required to be issued under a tax Act, is subject to a criminal sanction under section 235.

2.44 *Tax Administration Act, 2011: Amendment of section 240A*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.45 *Tax Administration Act, 2011: Amendment of section 246*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.46 *Tax Administration Act, 2011: Amendment of section 256*

The proposed amendments update the provisions relating to a taxpayer's tax compliance status to take account of recent system developments that speed up the process. It furthermore enables the Commissioner to, by public notice, insert a *de minimis* for the amount of outstanding tax debt that will contribute to a taxpayer's tax compliance status as being indicated as non-compliant. It also provides for the Commissioner to allow a grace period before a taxpayer's tax compliance status is indicated as non-compliant to third parties.

2.47 *Tax Administration Act, 2011: Amendment of section 262*

The proposed amendment is consequential to the coming into effect of the Legal Practice Act, 2014.

2.48 *Short title and commencement*

The clause makes provision for the short title of the proposed Act and provides that different provisions of the Act may come into effect on different dates.

3. CONSULTATION

The amendments proposed by this Bill were published on SARS' and National Treasury's websites for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large have been consulted in preparing the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2019 Budget Review, tabled in Parliament on 20 February 2019.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the National Treasury and South African Revenue Service are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.

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