

**DRAFT**  
**REPUBLIC OF SOUTH AFRICA**

**TAX ADMINISTRATION LAWS AMENDMENT BILL, 2022**

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

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**(MINISTER OF FINANCE)**

**29 July 2022**

**[B - 2022]**

**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.

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**BILL**

To—

- **amend the Transfer Duty Act, 1949, so as to make a consequential amendment;**
- **amend the Estate Duty Act, 1955, so as to make a textual correction;**
- **amend the Income Tax Act, 1962, so as to make a consequential amendment; to allow a regulated intermediary to recover refundable dividends tax from the Commissioner in certain instances; to make a textual correction and to make a technical correction;**
- **amend the Customs and Excise Act, 1964, so as to insert a definition and effect consequential changes related thereto; to make technical corrections; to provide for the publication of advance rulings in certain circumstances; to enable the Commissioner to make rules for the time for submission of entries in respect of any types of cargo; to clarify a provision relating to particulars on invoices and to effect changes to other provisions consequential to this clarification to ensure consistency of wording relating to invoice particulars; to repeal an outdated provision; to insert a chapter providing for advance**

rulings in respect of the tariff classification, the application of a specific valuation criterion and the origin of goods of a specific class or kind and for related matters; to provide for consequential amendments relating to advance rulings; and to enhance the general enabling rule provision;

- amend the Value-Added Tax Act, 1991, so as to make consequential amendments and insert a specific exception from registration for non-resident suppliers under certain circumstances;
  - amend the Tax Administration Act, 2011, so as to amend a definition; delete a recognised controlling body; to provide that the tax compliance status of a taxpayer must also include an indication that a taxpayer is a newly registered taxpayer as stipulated and to clarify that SARS has the right to revoke third party access to a taxpayer's tax compliance status under certain circumstances;
  - amend the Employment Tax Incentive Act, 2013, so as to classify an employment tax incentive reimbursements as a refunds for purposes of the Tax Administration Act, 2011, and specifically as refunds of tax for purposes of the understatement penalty provisions in terms of that Act,
- and to provide for matters connected therewith.

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

**Amendment of section 1 of Act 40 of 1949 as amended by section 11 of Act 80 of 1959, section 1 of Act 77 of 1964, section 5 of Act 103 of 1969, section 4 of Act 106 of 1980, section 1 of Act 86 of 1987, section 2 of Act 87 of 1988, Proclamation R.11 of 1994, section 8 of Act 37 of 1996, section 34 of Act 34 of 1997, section 1**

**of Act 5 of 2001, section 2 of Act 74 of 2002, section 1 of Act 45 of 2003, section 1 of Act 17 of 2009, section 1 of Act 7 of 2010, section 271 read with paragraph 1 of Schedule 1 of Act 28 of 2011, section 1 of Act 24 of 2011 and section 1 of Act 31 of 2013**

1. Section 1 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for paragraph (e) of the definition of “property” of the following paragraph:

“(e) a share (other than a share contemplated in paragraph (g)) or member’s interest in a company which is a holding company as defined in the **[Companies Act, 1973 (Act No. 61 of 1973), or as defined in the]** Close Corporations Act, 1984 (Act No. 69 of 1984), or the Companies Act, 2008 (Act No. 71 of 2008) as the case may be), if that company and all of its subsidiary companies (as defined in the **[Companies Act, 1973, or]** Close Corporations Act, 1984, or Companies Act, 2008), would be a residential property company if all such companies were regarded as a single entity;”.

**Amendment of section 5 of Act 45 of 1955 as amended by section 3 of Act 59 of 1957, section 4 of Act 65 of 1960, section 10 of Act 71 of 1961, section 10 of Act 77 of 1964, section 4 of Act 81 of 1965, section 2 of Act 56 of 1966, section 7 of Act 114 of 1977, section 7 of Act 81 of 1985, section 12 of Act 87 of 1988, section 2 of Act 136 of 1991, section 9 of Act 97 of 1993, section 1 of Act 19 of 2001, section 12 of Act 60 of 2001, section 2 of Act 20 of 2021, section 1 of Act 21 of 2021**

2. Section 5 of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) in the case of any right to any annuity referred to in paragraph (b) of subsection (2) of section three, an amount equal to the value of the annuity capitalized at twelve per cent, over the expectation of life of the person to whom the right to such annuity accrues on the death of the deceased, or if it is to be held for a lesser period than the life of such person, over such lessor period;”.

**Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of**

1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014, section 3 of Act 25 of 2015, section 5 of Act 15 of 2016, section 2 of Act 17 of 2017, section 1 of Act 23 of 2018, section 34 of Act 34 of 2019, section 2 of Act 23 of 2020 and section 4 of Act 20 of 2021

3. Section 1 of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “neighbouring country” of the following definition:

“**neighbouring country**” means Botswana, eSwatini, Lesotho[,] and Namibia [**and Swaziland**];”.

**Amendment of section 64M of Act 58 of 1962, as inserted by section 53 of Act 17 of 2009 and amended by section 271 read with paragraph 57 of Schedule 1 of Act 28 of 2011, section 16 of Act 21 of 2012 and section 7 of Act 13 of 2017**

4. Section 64M of the Income Tax Act, 1962, is hereby amended—  
 (a) by the substitution for subsection (2) of the following subsection:

“(2) Any amount that is refundable in terms of subsection (1) or (1A) must be refunded by the regulated intermediary that withheld the amount contemplated in subsection (1)(a) or (1A)(a) to the person to whom the dividend was paid—

(a) from any amount of dividends tax withheld by the regulated intermediary within a period of one year after the submission of the declaration as contemplated in subsection (1)(c) or the claim of a rebate contemplated in subsection (1A); or

(b) to the extent that the amount that is refundable exceeds the amount of dividends tax withheld as contemplated in paragraph (a), from an amount recovered by the regulated intermediary from the Commissioner in terms of subsection (3).”; and

(b) by the addition after subsection (2) of the following subsections:

“(3) Subject to subsection (4), if any amount is refundable to any person by a regulated intermediary in terms of subsection (1) or (1A) and that amount exceeds the amount of dividends tax withheld as contemplated in subsection (2)(a), the regulated intermediary contemplated in subsection (2) may recover the excess from the Commissioner.

(4) No amount may be recovered in terms of subsection (3) if the regulated intermediary submits the claim for recovery to the Commissioner after the expiry of a period of four years reckoned from the date of the payment contemplated in subsection (1)(a) or (1A)(a).”.

**Amendment of paragraph 5 of Fourth Schedule to Act 58 of 1962 as amended by section 19 of Act 18 of 2009, section 271 read with paragraph 79 of Schedule 1 of Act 28 of 2011 and section 7 of Act 23 of 2015**

5. Paragraph 5 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following paragraph:

“(1) Subject to the provisions of subparagraph (6), if an employer is personally liable for the payment of employees’ tax under Chapter 10 of the Tax Administration Act, the employer shall pay that amount to the Commissioner not later than the date on which payment should have been made if the employees’ tax had in fact been deducted or withheld in terms of paragraph 2.”.

**Amendment of paragraph 24 of Fourth Schedule to Act 58 of 1962 as amended by section 27 of Act 72 of 1963, section 30 of Act 88 of 1965, section 54 of Act 85 of 1974, section 52 of Act 94 of 1983 and section 12 of Act 44 of 2014**

6. The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 24 of the following paragraph:

“24. The Commissioner may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of paragraph 21(1)(a) or paragraph 23(1)(a), if the Commissioner is satisfied that the taxable income which may be derived by such taxpayer for the year of assessment in question, cannot be estimated on the facts available at the time when payment of the amount in question has to be made.”.



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, section 20 of Act 23 of 2015, section 11 of Act 33 of 2019, section 9 of Act 24 of 2020 and section 11 of Act 21 of 2021

7. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following definition after the definition for “International Trade Administration Commission”:

“**invoice**” means a true, correct and sufficient invoice reflecting such particulars necessary to make a valid entry or, if additional particulars in respect of an invoice are prescribed in particular circumstances, containing also such particulars.”.

(2) Subsection (1) comes into effect on a date to be determined by the Minister by Notice in the *Government Gazette*.

**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, section 3 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, section 34 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 21 of Act 23 of 2015, section 11 of Act 13 of 2017, section 12 of Act 33 of 2019 and section 10 of Act 24 of 2020**

8. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the deletion in subsection (3D) of the word “and” at the end of paragraph (b) and the insertion of the expression “; and” after paragraph (c); and
- (b) by the addition in subsection (3D) of the following paragraph after paragraph (c):
- “(d) advance rulings contemplated in Chapter IXA: Provided that the publication of such information shall take place in accordance with rules prescribed in terms of section 120(1)(mD);”.

(2) Subsection (1) comes into effect on the date determined by the Minister in terms of section 17(2) of this Act when Chapter IXA becomes effective.

**Amendment of section 38 of Act 91 of 1964, as amended by section 3 of Act 44 of 1996, section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 9 of Act 84 of 1987, section**

**18 of Act 59 of 1990, section 28 of Act 45 of 1995, section 123 of Act 60 of 2001, sections 32 and 91 of Act 61 of 2008 and section 25 of Act 32 of 2014**

9. Section 38 of the Customs and Excise Act, 1964, is hereby amended by the substitution in paragraph (a) of subsection (1) for the words preceding subparagraph (i) of the following words:

“(a) Every importer of goods shall within seven days of the date on which such goods are, in terms of section ten deemed to have been imported except in respect of goods in a container depot as provided for in section 43(1)(a) or within such time as the Commissioner may prescribe by rule in respect of any type of cargo, means of carriage or any person having control thereof after landing, make due entry of those goods as contemplated in section 39: Provided that, subject to the permission of the Controller—”.

**Amendment of section 39 of Act 91 of 1964, as amended by section 1 of Act 85 of 1968, section 14 of Act 105 of 1969, section 1 of Act 93 of 1978, section 4 of Act 110 of 1979, sections 8 and 15 of Act 98 of 1980, section 10 of Act 84 of 1987, section 3 of Act 69 of 1988, section 19 of Act 59 of 1990, section 29 of Act 45 of 1995 and section 27 of Act 32 of 2014**

10. (1) Section 39 of the Customs and Excise Act, 1964, is hereby amended by the substitution in paragraph (c) of subsection (1) for the words “invoices as prescribed” of the word “invoices”.

(2) Subsection (1) comes into effect on a date to be determined by the Minister by Notice in the *Government Gazette*.

**Amendment of section 40 of Act 91 of 1964, as amended by section 9 of Act 95 of 1965, section 6 of Act 71 of 1975, section 5 of Act 105 of 1976, section 2 of Act 93 of 1978, section 4 of Act 86 of 1982, section 3 of Act 89 of 1983, section 11 of Act 84 of 1987, section 30 of Act 45 of 1995, section 35 of Act 61 of 2008, section 29 of Act 32 of 2014 and section 12 of Act 24 of 2020**

11. (1) Section 40 of the Customs and Excise Act, 1964, is hereby amended—

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

“(a) in the case of imported or exported goods, the description and particulars of the goods and the marks and particulars of the packages declared in that entry correspond with the description and particulars of the goods and the marks and particulars of the packages as reported in terms of sections seven, eight or twelve or in any certificate, permit or other document, by which the importation or exportation of those goods is authorized;” and

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

“(d) in the case of goods purchased by or sold, consigned or disposed of to any person in or outside the Republic, an [correct and sufficient] invoice thereof[, **as prescribed,**] has been produced to the Controller;”.

(2) Subsection (1)(b) comes into effect on a date to be determined by the Minister by Notice in the *Government Gazette*.

**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, section 30 of Act 32 of 2014 and section 13 of Act 33 of 2019**

12. (1) Section 41 of the Customs and Excise Act, 1964, is hereby amended—

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

“(1) **[The exporter of any]**Any goods imported into or exported from the Republic or **[the owner of]** any excisable goods or fuel levy goods manufactured in any customs and excise warehouse shall **[render]**be supported by an [a true, correct and sufficient] invoice, a true, correct and sufficient certificate of value and certificate of origin of such goods in such form and **[declaring]** reflecting such particulars of such goods as may be prescribed in the rules and as may be necessary to make a valid entry of such goods and shall furnish such additional information in connection with such invoice, certificate, particulars or goods as the Commissioner may, for the purposes of this Act, require at any time: Provided that different requirements may be prescribed in the rules in respect of invoices and

certificates relating to goods of different classes or kinds or goods to which different circumstances specified in the rules apply.”;

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

“(2) **[Every exporter or manufacturer shall allocate to any]**Any goods of a class or kind specified in the rules for the purposes of this subsection and exported to or from or manufactured in the Republic must have a distinctive and permanent identification number, code, description, character or other mark allocated in such manner and in accordance with such method as may be prescribed in the rules and such number, code, description, character or other mark shall be quoted or reproduced in all **[prescribed]** invoices relating to such goods and in all such other documents relating to such goods as may be specified in the rules.”;

(c) by the deletion in subsection (3) of the word “prescribed” before the word “invoice”;

(d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) **[All]**An invoice in respect of imported goods shall contain all particulars necessary to make a valid entry and all particulars as may be prescribed by rule **[in respect of the transaction value or of any commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever which relates to and has a bearing on such value shall be declared by the exporter in any prescribed invoice in respect of any imported goods]** and such particulars shall, except where the Commissioner otherwise determines, relate to the final amount of **[such]**the transaction value **[or commission, discount,**

**cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate or remission and to the final particulars or information regarding such goods].”;**

(e) by the substitution in subparagraph (i) of paragraph (b) of subsection (4) for the words “declared in any prescribed invoice” of the words “reflected in any invoice”; and

(f) by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) If any particulars referred to in paragraph (a) of any imported goods are not declared in the **[prescribed]**document purported to be an invoice or a certificate in respect thereof or if any change in the particulars declared in any **[prescribed]** invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Controller by the importer of such goods or if the Commissioner has reason to believe that an offence referred to in section 86 (f) or (g) has been committed in respect of any imported goods the Commissioner may determine a transaction value, origin, date of purchase, quantity, description or the characteristics of such goods according to the best information available to him, which shall, subject to the provisions of this Act, be deemed to be the transaction value, origin, date of purchase, quantity, description or the characteristics of such goods.”.

(2) Subsection (1) comes into effect on a date to be determined by the Minister by Notice in the *Government Gazette*.

**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, section 15 of Act 44 of 2014 and section 14 of Act 33 of 2019**

**13.** (1) Section 47 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subparagraph (i) of paragraph (a) of subsection (9) for the words preceding item (aa) of the following words:

“(i) The Commissioner may in writing, subject to section 74H(2)(b), determine—”; and

(b) by the substitution in subparagraph (i) of paragraph (d) of subsection (9) for the words preceding item (aa) of the following words:

“(i) The Commissioner shall, subject to section 74H(2)(b)—”.

(2) Subsection (1) comes into effect on the date determined by the Minister in terms of section 17(2) of this Act when Chapter IXA becomes effective.

**Amendment of section 49 of Act 91 of 1964, as substituted by section 3 of Act 7 of 1974, section 12 of Act 27 of 1997, section 65 of Act 30 of 1998, section 55 of Act 53 of 1999, amended by section 24 of Act 34 of 2004, section 60 of Act 30 of**



**2000, section 127 of Act 60 of 2001, section 46 of Act 30 of 2002, section 24 of Act 34 of 2004, section 12 of Act 36 of 2007, and repealed by section 38 of Act 32 of 2014**

14. (1) Section 49 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 substitution in paragraph (a) of subsection (6) for subparagraph (vi) of the following subparagraph:

“(vi) **[a binding origin determination]**an advance origin ruling and any procedure in connection therewith;”;

(b) by the substitution in paragraph (b) of subsection (7) for subparagraph (ii) of the following subparagraph:

“(ii) subject to **[the provisions of subsection (8)]** any applicable advance origin ruling contemplated in Chapter IXA, any decision or determination may be amended or withdrawn and a new decision or determination made from the date the decision or determination was given, but such a decision or determination shall *mutatis mutandis* be subject to the provisions of section 76B if any refund of duty is involved;” and

(c) by the repeal of subsection (8).

(2) Any binding origin determination issued under section 49(8) in force when this section comes into effect in terms of subsection (3), is regarded—

(a) as an advance ruling in terms of Chapter IXA of the Customs and Excise Act; and

(b) to remain valid for a period of three years from the date of issue as contemplated in repealed section 49(8)(f).

(3) Subsections (1) and (2) come into effect on the date determined by the Minister in terms of section 17(2) of this Act when Chapter IXA becomes effective.

**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 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 Act 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, section 59 of Act 32 of 2014 and section 16 of Act 33 of 2019**

15. (1) Section 65 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (4) for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) The Commissioner may in writing, and subject to section 74H(2)(b), determine the transaction value of any imported goods, which is required to be ascertained or may be determined as provided in section 66.”; and

(b) by the substitution in paragraph (a) of subsection (5) for the words preceding subparagraph (i) of the following words:

“(a) The Commissioner shall, subject to section 74H(2)(b)—”.

(2) Subsection (1) comes into effect on the date determined by the Minister in terms of section 17(2) of this Act when Chapter IXA becomes effective.

**Amendment of section 71 of Act 91 of 1964, as amended by section 10 of Act 105 of 1976, section 5 of Act 89 of 1984 and section 4 of Act 105 of 1992, and repealed by section 62 of Act 32 of 2014**

16. Section 71 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 repeal of subsection (1).

#### **Insertion of Chapter 11 of Act 91 of 1964**

17. (1) The following Chapter is hereby inserted in the Customs and Excise Act, 1964, after Chapter IX:

#### **“CHAPTER IXA: ADVANCE RULINGS”**

##### **Definitions**

**74B.** (1) For the purposes of this Chapter—

**“advance origin ruling”** means a ruling issued by the Commissioner on the origin of goods of a specific class or kind in order to settle in advance the origin of goods of that class or kind when entered by or on behalf of the recipient for home consumption or another purpose for which the goods are entered during the validity period of the ruling;

**“advance ruling”** means—

(a) an advance tariff ruling;

(b) an advance valuation ruling; or

(c) an advance origin ruling;

**“advance tariff ruling”** means a ruling issued by the Commissioner on the tariff classification of goods of a specific class or kind in order to settle in advance the tariff classification of goods of that class or kind when entered by or on behalf of the recipient for home consumption or for another purpose in terms of the provisions of this Act during the validity period of the ruling;

**“advance valuation ruling”** means a ruling issued by the Commissioner on a valuation criterion in order to settle in advance, prior to the application of that valuation criterion in the valuation of goods of that class or kind when entered by or on behalf of the recipient for home consumption or for another purpose in terms of the provisions of this Act during the validity period of the ruling; and

**“application”** means an application for an advance ruling in terms of this Chapter;

**“recipient”**, in relation to an advance ruling, means a person to whom an advance ruling has been issued; and

**“valuation criterion”** means a criterion for determining the customs value of goods of any specific class or kind in accordance with sections 65, 66 and 67 which criterion remains constant in different transactions between the same parties for the same kind of goods.

(2) An applicant’s tax matters must be considered to be in order if that applicant has no outstanding—

- (a) taxes, interest, penalties or other amounts due and payable to SARS for which he or she is liable in terms of this Act or any other tax law;  
or  
(b) tax returns or other documents that must be submitted for tax purposes to SARS in terms of this Act or any other tax law.

### **Application for advance ruling**

**74C.** (1) Any person who is a registered importer or exporter may apply to the Commissioner for—

- (a) an advance tariff ruling;  
(b) an advance valuation ruling; or  
(c) an advance origin ruling.

(2) An application for an advance ruling—

(a) must relate to only—

- (i) one class or kind of goods; and  
(ii) transactions between the same parties; and

(b) must—

- (i) be made in the form and format and in accordance with any requirements as may be prescribed by rule;  
(ii) contain the information required on the application form or prescribed by rule; and  
(iii) be signed by the applicant, which in the case of electronic submission through a computer system, must be an electronic signature; and

(iv) be supported by any relevant supporting documents and information as may be prescribed by rule, which must be submitted to the Commissioner on request and in a manner indicated in the request.

(3) The Commissioner may request the applicant to submit, within a timeframe indicated in the request, any additional information that may be required before considering an application for an advance ruling.

(4) A fee as may be prescribed by rule is payable in respect of each application.

### **Consideration of application**

**74D.** (1) The Commissioner must consider an application and may—

(a) grant the application, and issue the advance ruling subject to conditions, if required; or

(b) refuse the application.

(2) The Commissioner may grant an application only if there is sufficient certainty as to the application of the advance ruling to the goods to which the ruling will relate.

(3) The Commissioner must refuse an application if—

(a) subsection (2) is not complied with;

(b) the applicant—

(i) is not a registrant contemplated in section 74C(1);

(ii) has not in respect of the application complied with a requirement of this Act;

(iii) has made a false or misleading statement in the application or has omitted to state a fact which is material to the consideration of the application;

(iv) raises a frivolous or vexatious issue in the application; or

(v) refuses or fails to provide the Commissioner with additional information in connection with the application, if requested to do so;

(c) the tax matters of the applicant are not in order; or

(d) the application raises an issue that is the same as or substantially similar to an issue—

(i) that is pending before a court; or

(ii) that is the subject of proceedings in terms of Chapter XA of this Act.

(4) The applicant must be notified in writing of the outcome of the application and if the application is refused, reasons must be provided to the applicant.

### **Granting of application**

**74E.** (1) If the Commissioner grants an application, the Commissioner must issue to the applicant an advance ruling, stating—

(a) the title, number and date of the ruling;

(b) the name of the recipient;

(c) whether it is an advance tariff ruling, an advance valuation ruling or an advance origin ruling, and, if an advance valuation ruling, particulars of the valuation criterion to which it relates;

- (d) the class or kind of goods to which the ruling relates;
- (e) particulars of the transactions to which the ruling relates, including the names of the parties to these transactions;
- (f) particulars of the ruling made;
- (g) any assumptions made or conditions imposed by the Commissioner in connection with the application of the ruling;
- (h) the period for which the ruling will remain valid; and
- (i) any other relevant information.

(2) An advance ruling applies subject to the provisions of the ruling, and only—

- (a) to goods of the class or kind specified in the ruling when entered by or on behalf of the recipient for a purpose in terms of this Act during the validity period of the ruling; and
- (b) in the case of an advance valuation ruling, to transactions between the parties specified in the ruling.

### **Validity period of advance ruling**

74F. An advance ruling is valid for a period of two years as from the date of issue unless—

- (a) another period for the validity of the advance ruling is specified in the ruling;
- (b) the advance ruling is withdrawn by the Commissioner in terms of section 74K;
- (c) the advance ruling is set aside by a court;
- (d) section 74L becomes applicable to the advance ruling;



- (e) in the case of an advance tariff ruling, an amendment to an international instrument referred to in section 47(8) causes the advance ruling to lapse;
- (f) in the case of an advance ruling on a valuation criterion, an amendment to an international instrument referred to in section 74A causes the advance ruling to lapse; or
- (g) in the case of an advance origin ruling, an amendment to an international instrument referred to in section 49(2) relating to applicable rules of origin causes the advance ruling to lapse.

#### **Binding effect of advance ruling**

**74G.** (1) An advance ruling binds both the recipient and the Commissioner.

- (2) An advance ruling must, to the extent applicable, be applied in—
- (a) any description or declaration provided in terms of section 40(1)(b) or (c) by or on behalf of the recipient in respect of the tariff, value or origin of goods of the class or kind specified in the ruling entered for any purpose in terms of this Act by or on behalf of the recipient; and
- (b) any tariff determination, value determination or origin determination or amendment of such a determination made by the Commissioner in terms of section 47(9), section 65(4) or section 49(6) in relation to goods of the class or kind specified in the ruling entered in terms of this Act by or on behalf of the recipient.

**Entry of goods under advance ruling**

74H. When entering goods for any purpose in terms of this Act under an advance ruling, the recipient or other person entering the goods on behalf of the recipient must—

- (a) indicate on the bill of entry the reference number of any advance ruling that may be applicable to the goods in terms of this Chapter;
- (b) on request furnish such information concerning the goods as the Commissioner may require; and
- (c) provide proof to the Commissioner that the ruling applies to those goods on request.

**Recipient to advise Commissioner of change in circumstances**

74I. (1) A recipient must within a prescribed timeframe give notice to the Commissioner in writing of any change in circumstances which has an impact on the ruling.

(2) A notification referred to in subsection (1) must be supported by all relevant documents setting out the nature of the change in circumstances, which documents must be submitted to the Commissioner on request.

**Amendment of advance ruling**

74J. (1) The Commissioner may amend an advance ruling either on application by the recipient or on own initiative to correct an administrative error in the ruling.

(2) An advance ruling as it read immediately before an amendment effected in terms of subsection (1) remains, despite the amendment, effective in respect of goods for which the recipient is contractually bound by an existing contract concluded on the basis of the advance ruling before its amendment.

(3) The un-amended version of an advance ruling remains effective in terms of subsection (2) only if the recipient so chooses and the Commissioner so authorises, and then only—

(a) for a period of 90 calendar days from the date of the amendment or for the remainder of the validity period of the advance ruling, whichever expires first; and

(b) for determining whether any duty is payable on goods referred to in subsection (2), and if so, for assessing the amount of duty payable on those goods.

(4) The recipient who chooses to rely in relation to any specific goods on the un-amended version of an advance ruling, must—

(a) notify the Commissioner; and

(b) submit to the Commissioner any necessary supporting documents to prove the existence of a contract referred to in subsection (2).

### **Withdrawal of advance ruling**

74K. (1) The Commissioner must withdraw an advance ruling if—

(a) the advance ruling was issued as a result of fraud, misrepresentation or incorrect information or the omission of a fact which was material to the consideration of the application; or

(b) in the case of an advance origin ruling, the advance ruling is in conflict with an international trade agreement concluded by the Republic.

(2) (a) The withdrawal of an advance ruling in terms of subsection (1)(a) is effective retrospectively from the date of issue of the advance ruling.

(b) Subsequent to the withdrawal of an advance ruling in terms of this section, the Commissioner must determine in writing, with effect from the date of first entry of the goods to which that ruling relates, the tariff, value or origin of such goods for purposes of assessing the correct amount of duty payable.

(3) For purposes of this section, a fact described in subsection (1)(a) is material if it would have resulted in a different ruling had the Commissioner been aware of it when the original ruling was issued.

### **Effect of subsequent change in law**

**74L.** (1) An advance ruling ceases to be effective if—

(a) a provision of this Act affecting the advance ruling is repealed or amended and that repeal or amendment renders the advance ruling incompatible with this Act;

(b) a court in a final judgement places an interpretation on a provision of this Act which renders the advance ruling legally incorrect and interpreting that provision was necessary for deciding the case before the court.

(c) in the case of an advance tariff ruling, an amendment to an international instrument referred to in section 47(8) affects the ruling;

(d) in the case of an advance valuation ruling, an amendment to an international instrument referred to in section 74A affects the ruling; or

(e) in the case of an advance origin ruling, an amendment to an international instrument referred to in section 49(2) relating to applicable rules of origin, affects the ruling.

(2) An advance ruling ceases to be effective immediately upon the occurrence of the circumstances described in subsection (1).”

(2) Subsection (1) comes into effect on a date to be determined by the Minister by Notice in the *Government Gazette*.

**Amendment of section 79 of Act 91 of 1964, as amended by section 2 of Act 64 of 1974, section 11 of Act 52 of 1986, section 7 of Act 105 of 1992, section 56 of Act 45 of 1995, section 69 of Act 32 of 2014 and section 17 of Act 21 of 2021**

18. (1) Section 79 of the Customs and Excise Act, 1964, is hereby amended by the insertion in subsection (1) of the following paragraph after paragraph (f):

“(fA) fails to comply with a request issued by the Commissioner to that person in terms of section 74I(b);”.

(2) Subsection (1) comes into effect on the date determined by the Minister in terms of section 17(2) of this Act when Chapter IXA becomes effective.

**Amendment of section 84 of Act 91 of 1964, as amended by section 11 of Act 57 of Act 1966, section 28 of Act 105 of 1969, section 29 of Act 112 of 1977, section 15 of Act 52 of 1986, section 14 of Act 61 of 1992 and section 11 of Act 105 of 1992**

19. (1) Section 84 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) For the purposes of subsection (1), any document purported to be an invoice or any other document relating to any denomination, description, class, grade or quantity of goods shall be deemed to contain a false statement if the price charged by the exporter or any value, price, commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever declared therein which has a bearing on value for the purposes of payment of any duty or on classification in terms of any Schedule to this Act or on anti-dumping duty, countervailing duty or safeguard duty or on extent of rebate, refund or drawback of duty—”; and

- (b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) represents any average or adjustment or amendment, particulars of which are not disclosed in such purported invoice or other document, or such values, prices, commissions, discounts, costs, charges, expenses, royalties, freight, duties, taxes, drawbacks, refunds, rebates, remissions or other information in respect of goods of the same or of different denominations, descriptions, classes, grades or quantities supplied by the same supplier.”.

- (2) Subsection (1) comes into effect on a date to be determined by the Minister by Notice in the Government *Gazette*.

**Amendment of section 86 of Act 91 of 1964, as substituted by section 11 of Act 85 of 1968, and amended by section 17 of Act 52 of 1986, section 13 of Act 105 of 1992 and section 58 of Act 45 of 1995**

20. (1) Section 86 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the deletion in paragraph (a) of the word “prescribed” before the word “invoice” where it occurs in that paragraph;

(b) by the substitution for paragraph (b) of the following paragraph:

“(b) fails to declare in or omits from any **[prescribed]**document purported to be an invoice any particulars (including value and origin) in respect of the goods to which such purported invoice relates and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;”;

(c) by the deletion in paragraph (d) of the word “prescribed” before the word “invoice” wherever it occurs in that paragraph.

(2) Subsection (1) comes into effect on a date to be determined by the Minister by Notice in the *Government Gazette*.

**Amendment of section 107 of Act 91 of 1964, section 20 of Act 85 of 1968, section 11 of Act 93 of 1978, section 6 of Act 89 of 1983, section 67 of Act 45 of 1995, section 33 of Act 24 of 2004, section 11 of Act 10 of 2006, section 34 of Act 21 of 2006 and section 80 of Act 32 of 2014**

21. (1) Section 107 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the words “relative prescribed invoice” of the words “document purported to be an invoice”.

(2) Subsection (1) comes into effect on a date to be determined by the Minister by Notice in the *Government Gazette*.

**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, section 86 of Act 32 of 2014 and section 18 of Act 33 of 2019**

22. (1) Section 120 of the Customs and Excise Act, 1964, is hereby amended—

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

“(f) prescribing the form of **[and]or** the particulars to be **[inserted on]reflected on** invoices or certificates in respect of any goods to which this Act applies and which are imported into or exported from the Republic, or manufactured in the Republic: Provided that different particulars may be prescribed in respect of different categories of persons or different classes or kinds of goods;”;

(b) by the insertion in subsection (1) of the following paragraph after paragraph (mC):

“(mD) as to matters relating to the issuing of advance rulings contemplated in Chapter IXA, including—



- (i) the form and format, the manner of submission of, and the particulars to be included in an application, the fee payable on application, as well as any other requirements for an application for an advance ruling;
- (ii) the documents to be used in support of an application;
- (iii) the requirements relating to the publication of advance rulings, including the circumstances in which publication of advance rulings may take place, the kind of information that may be published and the manner in which the information must be published;
- (iv) the obligations of recipients in relation to changes in circumstances impacting advance rulings, including requirements for applications for amendment of rulings;
- (v) to regulate the implementation of sections 74J and 74K;
- (vi) the requirements in relation to record-keeping, including the type of records to be kept and the period for which it must be kept; and
- (vii) the delegation, subject to section 3 (2), of any power which may be exercised by the Commissioner in terms of this Chapter, as well as the general administration of advance rulings.”.

(2) (a) Paragraph (a) of subsection (1) comes into effect on a date to be determined by the Minister by Notice in the *Government Gazette*.

(b) Paragraph (b) of subsection (1) comes into effect on the date determined by the Minister in terms of section 17(2) of this Act when Chapter IXA becomes effective.

**Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004, section 106 of Act 31 of 2005, section 110 of Act 60 of 2008, section 271 read with paragraph 112 of Schedule 1 of Act 28 of 2011, section 135 of Act 24 of 2011, section 171 of Act 31 of 2013, section 132 of Act 43 of 2014, section 24 of Act 44 of 2014, section 160 of Act 25 of 2015, section 17 of Act 13 of 2017, section 79 of Act 13 of 2017, section 82 of Act 17 of 2017**

**23.** Section 13 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(iii) goods imported from or via Botswana, eSwatini, Lesotho, **[Swaziland]** or Namibia shall be declared and tax paid on entry into the Republic as prescribed by the Commissioner in Chapter XIIA of the Rules under the Customs and Excise Act.”; and

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

“(b) where such goods have their origin in Botswana, eSwatini, Lesotho, **[Swaziland]** or Namibia and are imported from such a country, the amount

of the value as contemplated in paragraph (a), except that such value shall not be increased by the factor of 10 per cent.”.

**Amendment of section 23 of Act 89 of 1991, as amended by Section 20 of Act 20 of 1994, section 92 of Act 53 of 1999, section 37 of Act 27 of 1997, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008, section 113 of Act 60 of 2008, section 93 of Act 17 of 2009, section 37 of Act 18 of 2009, section 124 of Act 7 of 2010, section 141 of Act 24 of 2011, section 271 read with paragraph 117 of Schedule 1 of Act 28 of 2011, section 178 of Act 31 of 2013 and section 11 of Act 21 of 2018**

**24.** Section 23(1A) of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following proviso:

“: Provided that such person shall not be liable to register where the said total value of taxable supplies made by that person has exceeded R1 million in any consecutive 12-month period solely as a consequence of abnormal circumstances of a temporary nature.”

**Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice No. 2244 of 31 July 1992, section 44 of Act 97 of 1993, Government Notice No. 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice No. R.111 in**

**Government Gazette 24274 of 17 January 2003, section 189 of Act 45 of 2003, sections 52 to 55 of Act 16 of 2004, section 108 of Act 32 of 2004, sections 111 to 123 of Act 31 of 2005, sections 52 to 53 of Act 9 of 2006, section 89 of Act 20 of 2006, section 109 of Act 8 of 2007, section 85 of Act 8 of 2007, Government Notice No. R.958 in Government Gazette 30370 of 12 October 2007, section 107 of Act 35 of 2007, Government Notice No. R.766 in Government Gazette 32416 of 24 July 2009, Government Notice Nos. R.154 and R.157 in Government Gazette 34046 of 1 March 2011, section 143 of Act 24 of 2011, Government Notice No. R.187 in Government Gazette 35102 of 2 March 2012, Government Notice No. R.506 in Government Gazette 35481 of 6 July 2012, Government Notice No. 995 in Government Gazette 35932 of 7 December 2012, Government Notice No. R.1072 in Government Gazette 36002 of 14 December 2012, section 181 of Act 31 of 2013, Government Notice No. R.288 in Government Gazette 37554 of 17 April 2014, section 107 of Act 43 of 2014, Government Notice No. R.723 in Government Gazette 39100 of 14 August 2015, Government Notice No. R.558 in Government Gazette 40004 of 20 May 2016, section 87 of Act 15 of 2016, section 31 of Act 16 of 2016, section 74 of Act 34 of 2019, Government Notice No. R.226 in Government Gazette 43051 of 28 February 2020 and Government Notice No. R.1069 in Government Gazette 43781 of 9 October 2020**

- 25.** Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by—
- (a) the substitution for the words preceding paragraph 1 of the following words:
- “Goods imported, as contemplated in section 13(1), including imports from or via Botswana, eSwatini, Lesotho[,], or Namibia [**or Swaziland**], into the

Republic and in respect of which the exemption under the provisions of section 13(3) applies, are set forth below.

- (b) the substitution in paragraph 1 for the words preceding subparagraph (i) of the following words:

“Any of the following items imported into the Republic in respect of which the Controller has, in terms of the proviso to section 38(1)(a) of the Customs and Excise Act and which shall apply also to imports from or via Botswana, eSwatini, Lesotho[,] or Namibia [**or Swaziland**], granted permission that entry need not be made.”;

- (c) the substitution in paragraph 8 in item 412.00 for note 2 of the following note:

“For the purposes of item no.’s 412.26 and 412.27, such exemptions are subject to compliance with sections 39 and 40 of the Customs and Excise Act and which shall apply also to imports from or via Botswana, eSwatini, Lesotho[,] or Namibia [**or Swaziland**].”;

- (d) the substitution in paragraph 8 in item 412.00 for paragraph (i) and (ii) of the proviso to subitem 412.11/00.00/01.00 of the following paragraphs:

“(i) the importation of any goods under this item shall be subject to a certificate issued by the International Trade Administration Commission and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, eSwatini, Lesotho[,] and Namibia [**and Swaziland**]; and

(ii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, eSwatini, Lesotho[,] or Namibia [**or**

**Swaziland]** without the permission of the International Trade Administration Commission”;

- (e) by the substitution in paragraph 8 in item 412 for subitem 412.12/00.00/01.00 of the following subitem:

“412.12/00.00/01.00 Goods imported for any purpose agreed upon between the Governments of the Republic, Botswana, eSwatini, Lesotho[,] and Namibia [**and Swaziland**]: Provided that—

- (i) the provisions of this item shall not apply in respect of any consignment or quantity or class of goods unless the prior approval of the Governments of Botswana, eSwatini, Lesotho[,] and Namibia [**and Swaziland**] has been obtained for the application of such provisions in respect of every such consignment or quantity or class of goods;
- (ii) the importation of any goods under this item shall be subject to a certificate issued by the International Trade Administration Commission and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, eSwatini, Lesotho[,] and Namibia [**and Swaziland**]; and
- (iii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be

removed to the area of Botswana, eSwatini,  
Lesotho[,] or Namibia [**or Swaziland**] without  
the permission of the Commissioner”.

**Amendment of section 221 of Act 28 of 2011 as amended by section 22 of Act 22 of 2018, section 74 of Act 39 of 2013 and section 61 of Act 16 of 2016**

26. (1) Section 221 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of ‘tax’ of the following definition:

“**tax**’ means a tax as defined in section 1, excluding a penalty and interest, and will for purposes of this Part include an employment tax incentive as contemplated in section 2(1) of the Employment Tax Incentive Act, 2013 (Act No. 26 of 2013);”.

(2) Subsection (1) will come into operation on 1 September 2022.

**Amendment of section 240A of Act 28 of 2011, as inserted by section 83 of Act 21 of 2012 and amended by section 82 of Act 39 of 2013, section 61 of Act 44 of 2014 and section 44 of Act 33 of 2019**

27. Section 240A of the Tax Administration Act, 2011, is hereby amended by the deletion in subsection (1) of paragraph (a).

**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, section 72 of Act 23 of 2015 and section 46 of Act 33 of 2019**

28. Section 256 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the deletion in subsection (4) of the word “and” at the end of paragraph (b);
- (b) by the addition in subsection (4) of the word “and” at the end of paragraph (c);
- (c) by the addition in subsection (4) after paragraph (c) of the following paragraph:

“(d) an indication that the taxpayer is a newly registered taxpayer if the taxpayer, on the date referred to in paragraph (a), has not—

- (i) reached the first date on which the taxpayer is required to submit a return or make a payment under a tax Act in respect of a tax for which the taxpayer is registered; or
- (ii) submitted the return or made the payment, prior to the date referred to in subparagraph (i).;

- (d) by the substitution for subsection (6) of the following subsection

“(6) SARS may revoke **[third party]** access to the taxpayer’s tax compliance status in terms of subsection (5), if **[the access]**—

(a) **[was issued]**the access was provided—

(i) in error; or

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

(b) the correctness of the taxpayer’s current tax compliance status is questioned due to fraud, misrepresentation or non-disclosure of material facts,

and SARS has given the taxpayer prior notice and an opportunity to respond to the allegations of at least 10 business days prior to the revocation.”.

**Amendment of section 10 of Act 26 of 2013, as amended by section 118 of Act 43 of 2014, section 142 of Act 25 of 2015 and section 6 of Act 13 of 2020**

**29.** (1) The Employment Tax Incentive Act, 2013 is hereby amended by the substitution for section 10 of the following section:



**“10. [Reimbursement]Refund.**—(1) At the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act, **[payment]a refund** of an amount equal to the excess contemplated in section 9(1) must be claimed from the South African Revenue Service in the form and manner and at the time and place prescribed by the Commissioner for the South African Revenue Service.

(2) **[An amount equal to the excess]A refund** contemplated in **[section 9]subsection (1)** must be paid in accordance with section 190(1)(a) of the Tax Administration Act to the employer from the National Revenue Fund and be treated as a drawback from revenue charged to the National Revenue Fund.

(3) Where an employer has claimed **[payment]the refund** in terms of subsection (1), the amount of the excess in respect of the period to which the **[claim]refund** relates must be deemed to be nil in the month immediately following that period.

(4) The **[amount of the excess]refund** contemplated in subsection (1) payable to an employer may not be paid to that employer if the employer—

- (a) has failed to submit any return contemplated in section 8(a); or
- (b) has any tax debt contemplated in section 8(b).

(5) Where—

- (a) an employer has claimed **[payment]a refund** in terms of subsection (1); and
- (b) the **[amount]refund** contemplated in subsection (2) was not paid in terms of subsection (4),

that **[amount]refund** must be paid to an employer during any month in the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act subsequent to the period contemplated in subsection (1) in the first month during that period in which the employer is not subject to subsection (4).

(6) Where **[an amount]a refund** contemplated in subsection (2) is not paid by virtue of subsection (4) and (5) that **[amount]refund** must be deemed to be nil at the end of the period contemplated in subsection (5).”.

(2) Subsection (1) will come into operation on 1 September 2022.

#### **Amendment of section 20 of Act 44 of 2014**

**30.** Section 20 of the Tax Administration Laws Amendment Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) by the substitution in subsection (3) for paragraphs (a), (b) and (d) of the following paragraphs:

‘(3)(a) Where any goods manufactured in the Republic, being of a class or kind subject to excise duty or environmental levy under Part 2 or 3 of Schedule No. 1 to the **[Customs and] Excise Duty Act**, have been supplied at a price which does not include such excise duty or environmental levy and tax has become payable in respect of the supply in terms of subsection (1)(a), value-added tax shall be levied and paid at the rate **[of 14 per cent]specified in section 7(1)** for the benefit of the National Revenue Fund on an amount equal to the amount of such

excise duty or environmental levy which, subject to any rebate of such excise duty or environmental levy under the said Act, is paid.”;

(b) The tax payable in terms of paragraph (a) shall be paid by the person liable in terms of the **[Customs and] Excise Duty Act** for the payment of the said excise duty or environmental levy.

(d) **[Subject to this Act, the provisions of the Customs and Excise Act relating to the clearance of goods subject to excise duty or environmental levy and the payment of that excise duty or environmental levy shall *mutatis mutandis* have effect as if enacted in this Act]** The tax on the clearance of goods subject to excise duty or environmental levy shall be recovered or refunded in terms of the relevant provisions of the Excise Duty Act, as if the tax were an excise duty or environmental levy contemplated in that Act, whether or not the said provisions apply for the purposes of any excise duty or environmental levy levied in terms of that Act.’ ”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

#### **Amendment of section 2 of Act 13 of 2017**

**31.** (1) Section 2 of Tax Administration Laws Amendment Act, 2017, is hereby amended—

“(1) (a) by the substitution for subsection (1)[, **pending its substitution by section 271 of the Tax Administration Act, 2011 (Act No. 28 of 2011), read with paragraph 18 of Schedule 1 to that Act and section 3 of the**

**Tax Administration Laws Amendment Act, 2012 (Act No. 21 of 2012),]**

of the following subsection:”

‘(1) If any duty remains unpaid at the expiration of a period of thirty days from the date **[of payment notified in accordance with subsection (2) of section *nine*]**for payment prescribed in terms of section 9C, there shall be payable, in addition to the unpaid duty, interest at the rate of six per cent[.] per annum on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment: Provided that, where the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the rate of six per cent[.] per annum shall be payable as from a date twelve months after the date of death on the difference (if any) between the duty assessed and any deposit (if any) made on account of the duty payable within the said period of twelve months.’

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

‘(2) Whenever the Commissioner is satisfied that the delay in the payment of duty within the period of thirty days from the date **[of payment notified in accordance with subsection (2) of section *nine*]**for payment prescribed in terms of section 9C, or within the period of twelve months from the date of death, as the case may be, has not been occasioned either by the executor or by any person liable for the duty, **[he]** the Commissioner may allow an extension of time within which the duty may be paid without interest if, before the expiration of the said period of thirty days or the said period of twelve months, as the case may be or such further period as the Commissioner may allow—

- (a) a deposit on account of the duty payable is made of an amount which, in the opinion of the Commissioner, is reasonable, regard being had to the amount of the duty payable; and
- (b) application is made in writing to the Commissioner for such extension of time.'

(2) Subsection (1) is deemed to have come into operation on 18 December 2017.

### **Amendment of section 1 of Act 24 of 2020**

**32.** (1) Section 1 of the Tax Administration Laws Amendment Act, 2020, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 20 January 2021.

### **Short title and commencement**

**33.** (1) This Act is called the Tax Administration Laws Amendment Act, 2022.

(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.