

**DRAFT**

**REPUBLIC OF SOUTH AFRICA**

**TAX ADMINISTRATION LAWS AMENDMENT BILL, 2021**

---

*(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)*

---

**(MINISTER OF FINANCE)**

**28 July 2021**

**[B - 2021]**

**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 Estate Duty Act, 1955, so as to make textual corrections;
- amend the Income Tax Act, 1962, so as to enable the Commissioner to request certain information by public notice; to align the provision with regards to submission of a return by a foreign person in respect of withholding tax on royalties with that of withholding tax on interest; to align the refund limitation rules for dividends paid in specie with that of dividends paid in cash; to provide that the prescription periods will not apply with regards to certain deductions claimed by farmers and to provide for extended record-keeping periods; to provide for a penalty to be raised on an estimate of employees' tax; and to provide for the deletion of a penalty;
- amend the Customs and Excise Act, 1964, so as to make technical corrections; to expand the purposes for which air cargo may be removed to degrouping depots to include consolidation and removal to transit sheds for export; to effect amendments consequential to changes to the SARS customs accreditation system; to increase the minimum thresholds for underpayments of duties by taxpayers which the Commissioner may condone as well as the minimum thresholds for refunds of duty to taxpayers; to expand the scope of matters that SARS may investigate to confirm the

**validity of a diesel refund claim; and to make the unlawful possession or use of a customs uniform an offence;**

- 
- **amend the Tax Administration Act, 2011, so as to provide for an extension in submission of a return or relevant material with regard to assessments based on an estimate; and to provide for an exception to prescription, and to provide for matters connected therewith.**

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

**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 and section 12 of Act 60 of 2001**

1. Section 5 of the Estate Duty Act, 1955, is hereby amended—
  - (a) by the substitution in subsection (1)(c) for the words that precede item (i) of the following words:
 

“in case of any right to any annuity referred to in paragraph (a) of subsection (2) of section three, an amount equal to the value of the annuity capitalized at twelve per cent[.]—”.
  - (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“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 lesser period than the life of such person, over such lesser period;”;

(c) by the substitution in subsection (1)(d)*bis* for the words that precede the proviso of the following words:

“(1)(d)*bis* in the case of any annuity to which the provisions of section 3(3)(a) or (a)*bis* apply, an amount equal to the value of the annuity capitalized at twelve per cent[.] over the expectation of life of the annuitant, or if the annuity is payable for a lesser period than the life of the annuitant, over such lesser period;”;

(d) by the substitution in subsection (1)(f) for paragraphs (i), (ii) and (iii) of the following paragraphs:

- “(i) in the case of a usufructuary interest, by capitalizing at twelve per cent [.] the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life of the person entitled to such interest, or if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;
- (ii) in the case of an annuity charged upon the property, by capitalizing at twelve per cent[.] the amount of the annuity over the expectation of life of the person entitled to such annuity, or if it is to be held for a lesser period than the life of such person, over such lesser period; or
- (iii) in the case of any other interest, by capitalizing at twelve per cent[.] such amount as the Commissioner may consider reasonable as representing the annual yield of such interest, over the expectation of

life of the person entitled to such interest, or if such interest is to be held for a lesser period than the life of such person, over such lesser period;”

(e) by the substitution for subsection (1)(f)ter of the following subsection:

“(f)ter in the case of any property referred to in paragraph (d) of subsection (3) of section *three* which consists only of profits, an amount determined by capitalizing at twelve per cent[.] such amount as the Commissioner may consider reasonable as representing the annual value of such profits over the expectation of life of the deceased immediately prior to the date of his or her death, and in the case of any other property referred to in the said paragraph the amount remaining after deducting from the fair market value of that property as at the date of death of the deceased the expenses and liabilities which the deceased would have had to bear or assume if he or she had at that date exercised his or her power of disposition;” and

(f) by the substitution in subsection (2) for the first proviso of the following proviso:

“Provided that where the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to [12]twelve per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may be reasonable, and the sum so fixed shall be deemed to be the annual value of the right of enjoyment of such property:”.

**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 at the end of subsection (2)(a)(vi) of the word “or” for “and” and the addition of the following item:

“(vii) such further information as the Commissioner may prescribe by public notice; or”.

**Amendment of section 49F of Act 58 of 1962 as amended by section 12 of Act 21 of 2012 and section 62 of Act 43 of 2014**

3. Section 49F of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If, in terms of section 49C, a foreign person is liable for any amount of withholding tax on royalties in respect of any amount of royalties that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax and submit a return by the last day of the month following the month during which the royalty is paid, unless the tax has been paid by any other person.”.

**Amendment of section 64LA of Act 58 of 1962 as inserted by Act 44 of 2014  
and amended by Act 13 of 2017**

4. Section 64LA of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) both the declaration and the written undertaking are submitted to the company within three years after the date of payment of the **[tax]dividend** in respect of which they are made,”.

**Amendment of paragraph 13 of First Schedule to Act 58 of 1962 as amended by section 21 of Act 90 of 1972, section 17 of Act 101 of 1978, section 43 of Act 94 1983, section 79 of Act 25 of 2015, section 271 read with paragraph 74 of Act 28 of 2011 and section 79 of Act 25 of 2015**

5. Paragraph 13 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (5) of the following subparagraphs:

“(6) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an assessment for any year of assessment with respect to which a deduction in terms of subparagraph (1) is allowed.

“(7) Where a deduction in terms of subparagraph (1)(a) or (b) may be claimed in respect of a year of assessment, the period prescribed under section 29(3) of the Tax Administration Act after which records, books of

account or documents need not be retained shall be extended to six years or eleven years respectively for such year of assessment.

(8) Where a deduction in terms of subparagraph (1)(b) may be claimed in a year of assessment, the period prescribed under section 97(4) of the Tax Administration Act after which a record of assessment may be destroyed shall be extended to eleven years for such year of assessment.”.

**Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962 as amended by section 40 of Act 88 of 1971, section 22 of Act 4 of 2008, 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 and 194 of Schedule 1 of Act 28 of 2011, section 20 of Act 21 of 2012, section 13 of Act 23 of 2015 and section 9 of Act 33 of 2019**

6. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (6) of the following subparagraphs:

“(7) If the total amount of employees’ tax deducted or withheld, or which should have been deducted or withheld for the period described in subparagraph (3) is unknown, the Commissioner may estimate the total amount based on information readily available and impose the penalty under subparagraph (6) on the amount so estimated.

(8) Where, upon determining the actual employees’ tax of the person in respect of whom the penalty was imposed under subparagraph (6A), it appears that the total amount of employees’ tax was incorrectly estimated

under subparagraph (6A), the penalty must be adjusted in accordance with the correct amount of employees' tax with effect from the date of the imposition of the penalty under subparagraph (6) read with subparagraph (6A)."

**Amendment of paragraph 21 of Fourth Schedule to Act 58 of 1962, as amended by section 30 of Act 88 of 1965, section 46 of Act 88 of 1971, section 59 of Act 74 of 2002, section 89 of Act 45 of 2003**

7. Paragraph 21 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (1) of the following subparagraph:

"(1A) Subparagraph (1)(a) must not apply where the duration of the year of assessment in question does not exceed a period of six months."

**Amendment of paragraph 23 of Fourth Schedule to Act 58 of 1962 as amended by section 30 of Act 88 of 1965, section 53 of Act 85 of 1974, section 51 of Act 94 of 1983, section 41 of Act 121 of 1984, section 27 of Act 65 of 1986, section 53 of Act 101 of 1990 and section 11 of Act 9 of 2005**

8. Paragraph 23 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the renumbering of the current paragraph as subparagraph (1); and
- (b) by the addition after subparagraph (1) of the following subparagraph:

“(2) Subparagraph (1)(a) must not apply where the duration of the year of assessment in question does not exceed six months.”

**Amendment of paragraph 17 of Seventh Schedule to Act 58 of 1962 as amended by section 271 read with paragraph 104 of Schedule 1 of Act 28 of 2011**

9. Paragraph 17 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of subparagraph (4).

**Interpretation of expression “Trade and Industry” where it occurs in certain provisions of Act 91 of 1964**

10. A reference in—

- (a) section 4 of the Customs and Excise Act, 1964, to the expression “Department of Trade and Industry or the Economic Development Department” or “Department of Trade and Industry and Economic Development” must be read as a reference to “Department of Trade, Industry and Competition”;
- (b) sections 21A, 43, 48, 53, 55, 56, 56A, 75 and 114 of the Customs and Excise Act, 1964, to the expression “Trade and Industry” must be read as a reference to “Trade, Industry and Competition”; and
- (c) section 48 of the Customs and Excise Act, 1964, to the expression “Minister of Trade and Industry and for Economic Coordination” must be read as a reference to “Minister of Trade, Industry and Competition”.

**Amendment of section 6 of Act 91 of 1964, as amended by section 2 of Act 71 of 1975, section 1 of Act 52 of 1986, section 6 of Act 59 of 1990, section 3 of Act 45 of 1995, section 116 of Act 60 of 2001, section 74 of Act 30 of 2002, section 134 of Act 45 of 2003 and section 10 of Act 21 of 2006, and repealed by section 4 of Act 32 of 2014**

11. Section 6 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 (1) for paragraph (hC) of the following paragraph:

“(hC) places where degrouping depots may be established to which air cargo may be removed **[from a transit shed]** before due entry thereof, for purposes of—

**[(a)](i)** the storage, detention, unpacking or examination of consolidated packing or its contents;

**[(b)](ii)** the removal to another such degrouping depot or the delivery to importers of such contents after due entry thereof;

**(iii)** the packing or consolidation and removal thereof to a transit shed for export; and

**[(c)](iv)** such other activities as may be specified by rule;”.

**Amendment of section 38A of Act 91 of 1964, as inserted by section 28 of Act 18 of 2009 and repealed by section 26 of Act 32 of 2014**

12. Section 38A 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 deletion in subsection (2)(a) of subparagraph (i).

**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 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 6 of Act 68 of 1989, 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, section 16 of Act 14 of 2017 and section 14 of Act 33 of 2019**

13. Section 47 of the Customs and Excise Act is hereby amended by the substitution in subsection (1) for paragraph (a), (b) and (c) of the following paragraphs:

“(a) goods imported by post is less than **[fifty cents]**one hundred rand;

- (b) goods imported in any other manner, or goods specified in Part 6 of Schedule No.1 exported in any other manner, is less than **[five]**one hundred rand; or
- (c) excisable goods is less than **[two]** one hundred rand.”.

**Amendment of section 64E of At 91 of 1964, as amended by section 48 of Act 19 of 2001, section 50 of Act 30 of 2002, section 36 of Act 61 of 2008 and section 19 of Act 39 of 2013**

**14.** Section 64E of the Customs and Excise Act, 1964, is hereby amended by the repeal of subsection (4).

**Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 24 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 8 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, section 109 of Act 74 of 2002, section 146 of Act 45 of 2003, section 27 of Act 34 of 2004, section 92 of**

**Act 31 of 2005, section 70 of Act 20 of 2006, section 95 of Act 35 of 2007, section 99 of Act 60 of 2008, section 63 of Act 32 of 2014 and section 16 of Act 13 of 2017**

**15.** (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended—

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

“(d) in respect of any excisable goods or fuel levy goods manufactured in the Republic described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 or of the fuel levy and of the Road Accident Fund levy specified respectively in Part 5A and Part 5B of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, or a refund of the excise duty, fuel levy or Road Accident Fund levy actually paid at the **[item]**time of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6.”; and

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

“(a) Notwithstanding the provision of subsection (1A), the Commissioner may investigate any application for a refund of such levies on distillate fuel to establish whether the fuel has been—

- (i) duly entered or is deemed to have been duly entered in terms of this Act;
- (ii) purchased in the quantities stated in such return;
- (iii) **[delivered to the premises of the user and is being stored and used or has been used in accordance with the purpose declared on the application for registration and the said item of Schedule No. 6.]**collected by the user or delivered for the user;
- (iv) dispensed directly for use, or stored in storage facilities controlled by the user and dispensed from such storage facilities for use; and
- (v) used in accordance with the purpose declared on the application for registration and the said item of Schedule No. 6.”.

(2) Subsection (1)(b) comes into operation on a date determined by the Minister by notice in the *Gazette*.

**Amendment of section 76 of Act 91 of 1964, as amended by section 9 of Act 85 of 1968, section 5 of Act 98 of 1970, 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, section 14 of Act 68 of 1989, section 30 of Act 59 of 1990, section 5 of Act 105 of 1992, section 54 of Act 45 of 1995, section 28 of Act 34 of 2004, section 65 of Act 32 of 2014, section 17 of Act 33 of 2019, section 59 of Act 23 of 2020 and section 62 of Act 30 of 2020**

**16.** Section 76 of the Customs and Excise Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If, after considering any application for a refund or payment in terms of this section, the Commissioner is satisfied that the applicant is entitled to any such refund or payment, the Commissioner may pay to the applicant the amount due to him: Provided that no refund shall be made under this section if, in the case of goods imported by post, the amount thereof is less than ~~[fifty cents]~~one hundred rand or, in the case of goods imported in any other manner, or goods specified in Part 6 of Schedule No.1 exported in any other manner, less than ~~[five]~~one hundred rand or, in the case of excisable goods manufactured in the Republic, less than ~~[two]~~one hundred rand, unless the Commissioner is satisfied that exceptional circumstances exist which warrant such refund.”.

**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 and section 69 of Act 32 of 2014**

17. Section 79 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (e) of subsection (1) of the following paragraph:

“(e) falsely holds himself or herself out to be an officer, or possesses or wears a customs uniform without being entitled to possess or wear such a uniform;”.

**Amendment of section 95 of Act 28 of 2011, as amended by section 29 of Act 24 of 2020**

18. Section 95 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) A senior SARS official may extend the period referred to in subsection (6) within which the return or relevant material must be submitted, for a period not exceeding the relevant period referred to in section 99(1) or forty business days, whichever is the longest.”.

**Amendment of section 99 of Act 28 of 2011, as amended by section 59 of Act 21 of 2012, section 47 of Act 39 of 2013, section 51 of Act 23 of 2015 and section 55 of Act 16 of 2016**

19. Section 99 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the deletion of the word “or” at the end of subsection (2)(d);
- (b) by the insertion of the word “or” at the end of subsection (2)(e); and
- (c) by the addition of the following subsection after subsection (2)(e):

“(f) the period for submitting relevant material under section 95(6) extends after the relevant period referred to in subsection (1).”.

**Short title and commencement**

20. (1) This Act is called the Tax Administration Laws Amendment Act, 2021.

(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.