

DRAFT MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2021

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2021 (the “Bill”), proposes to amend the Estate Duty Act, 1955, Income Tax Act, 1962, the Customs and Excise Act, 1964, and the Tax Administration Act, 2011.

2. OBJECTS OF BILL

2.1. *Estate Duty Act, 1955: Amendment of section 5*

The proposed amendments are textual corrections.

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

The information required by law in the receipts issued for tax-deductible donations is limited and entities issuing the receipts are not required to provide third-party data on the donations to SARS on a systematic basis. SARS has detected that receipts are being issued by entities that are not approved to do so. To ensure that only valid donations are claimed and to enhance SARS’ ability to pre-populate individuals’ returns, it is proposed that the information required in the receipts be extended to allow such information as the Commissioner may prescribe by public notice from time to time. Third-party reporting will be extended in future to cover the receipts issued.

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

Section 50F of the Income Tax Act provides that a foreign person will only be required to submit a return in respect of withholdings tax on interest, if the foreign person makes the payment of the tax. If another person makes the payment, no submission of return obligation for the foreign person exists. It is proposed that a similar requirement should be included for purposes of withholding tax on royalties.

2.4. *Income Tax Act, 1962: Amendment of section 64LA*

The proposed amendment is a technical correction in order to align the refund limitation rules for dividends paid in specie with that of dividends paid in cash.

2.5. *Income Tax Act, 1962: Amendment of paragraph 13 of First Schedule*

Farmers are allowed to deduct the cost of livestock purchased, within a fixed period, to replace livestock sold in a previous year of assessment on account of drought, fire or other specified reasons, by reopening the assessment for the previous year of assessment. Having regard to the time-periods allowed in paragraph 13 for a taxpayer to exercise this option, the original assessments may have prescribed. The proposed addition enables the Commissioner to issue a reduced assessment where such deductions were claimed in terms of the time-periods set out in paragraph 13 of the First Schedule, but such time-periods fall outside the prescription periods listed in section 99 of the Tax Administration Act. The record retention periods contained in section 29 and 97 of the Tax Administration Act will also be adjusted in line with the time-periods set out in paragraph 13 of the First Schedule.

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

SARS may impose a penalty for the non-submission of the six-monthly employees' tax returns by employers. The penalty is calculated as a percentage of the employees' tax for the period covered by the return. Where the employees' tax for the period is not known to SARS, due to the non-submission of monthly or six-monthly returns, the penalty can only be imposed retrospectively. This undermines the purpose and deterrent effect of the non-compliance penalty. The proposed amendment enables SARS to raise the penalty on an alternative basis in such cases, through an estimate of the employees' tax with an adjustment once the actual employees' tax is known.

2.7. *Income Tax Act, 1962: Amendment of paragraph 21 of Fourth Schedule*

Provisional taxpayers are required to make provisional tax payments within six months after the commencement of a year of assessment and then again by the end of the year of assessment. Currently, no provision is made for instances where a taxpayer has a short year of assessment, whether by reason of death, ceasing to be a tax

resident, a company being incorporated during a year or a change of a company's financial year. It is proposed that a first provisional tax payment and return not be required when the duration of a year of assessment does not exceed six months.

2.8. *Income Tax Act, 1962: Amendment of paragraph 23 of Fourth Schedule*

See the note on the amendment of paragraph 21 of the Fourth Schedule.

2.9. *Income Tax Act, 1962: Amendment of paragraph 17 of Seventh Schedule*

Under paragraph 13 of the Fourth Schedule to the Income Tax Act, employers have an obligation to issue Employees' Tax Certificates (IRP5/IT3(a) certificates) to their employees. The Employees' Tax Certificate must reflect the total remuneration including the amount of any fringe benefit and allowance, and the sum of employees' tax (PAYE) deducted during that period. If the employer under deducts PAYE and under pays SARS as a result of understating taxable fringe benefits SARS must impose a penalty of 10% on the underpayment.

The employer has an obligation to determine the cash equivalent of the value of the taxable benefit granted to its employees. Paragraph 17 of the Seventh Schedule to the Income Tax Act provides that the nature of the taxable benefit and the cash equivalent of the value thereof must be reflected on the Employees' Tax Certificate or a separate certificate. If an employer fails to comply with this requirement, SARS may impose a penalty equal to 10% of the amount by which the cash equivalent is understated.

Two separate penalties may thus be imposed for the same understatement. The proposed amendment removes this double penalty.

2.10. *Customs and Excise Act, 1964: Interpretation of expression "Trade and Industry" where it occurs in certain provisions of the Act*

The proposed amendment aims to correct the different references in the Customs and Excise Act to the Department currently known as the Department of Trade, Industry and Competition.

2.11. Customs and Excise Act, 1964: Amendment of section 6

Section 6(1)(hC) contemplates *inter alia* the unpacking or deconsolidation of imported air cargo at degrouping depots. Current practice has however shown that there is also a need to regulate the consolidation of air cargo at degrouping depots for export and the removal thereof to transit sheds. The proposed amendment is intended to expand the purposes for which air cargo may be removed to degrouping depots to include consolidation and removal to transit sheds for export.

2.12. Customs and Excise Act, 1964: Amendment of section 38A

The effect of the proposed amendment is that not only accredited licensees or exporters will be able to supply goods to foreign going ships or aircrafts on the issuing by that such licensee or exporter of a dispatch and delivery note or such other document as the Commissioner may prescribe or approve by rule. This amendment is as a result of the announcement in Budget 2021 that SARS is changing its accreditation system to more closely reflect the requirements of the SAFE Framework of Standards issued by the World Customs Organisation.

2.13. Customs and Excise Act, 1964: Amendment of section 47

The proposed amendment aims to ease the administrative burden on taxpayers and on SARS by increasing the minimum thresholds for underpayments of duties by taxpayers, which the Commissioner may condone. A similar amendment is proposed in respect of section 76 in relation to minimum thresholds for refunds of duty to taxpayers.

2.14. Customs and Excise Act, 1964: Amendment of section 64E

The repeal of subsection (4) is proposed as a result of changes to SARS' accreditation system announced in Budget 2021. Subsection (4) is outdated.

2.15. Customs and Excise Act, 1964: Amendment of section 75

Paragraph (a): The proposed amendment is a technical correction.

Paragraph (b): Section 75(1C)(a) provides the scope for what SARS may investigate to confirm the validity of a diesel refund claim.

Currently subparagraph (iii) only caters for the diesel delivery and storage practices of users and their “dry” contractors (where the diesel is provided to the contractor by the user), but not “wet” contractors (where the contractor obtains the diesel itself). The proposed amendment is required as the policy intention is to accommodate “wet” contractors in the diesel refund scheme in the future. Furthermore, it will ensure that smaller users are not excluded as they often collect and dispense their diesel purchases directly for use without it being stored at the user’s premises.

2.16. Customs and Excise Act, 1964: Amendment of section 76

The proposed amendment increases the minimum thresholds for the payment of refunds by SARS to ease the administrative burden on SARS. The amendment to section 47(1) in relation to minimum thresholds for collection of underpayments of duty is proposed for purposes of equity.

2.17. Customs and Excise Act, 1964: Amendment of section 79

The proposed amendment aims to specifically make the unlawful possession or use of a customs uniform an offence.

2.18. Tax Administration Act, 2011: Amendment of section 95

SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer does not submit a response to a request for relevant material after delivery of more than one request for such material. The taxpayer may, within 40 business days from the assessment, request SARS to issue a reduced or additional assessment by submitting the relevant material. A senior SARS official may extend the 40 business day period for a period not exceeding the relevant prescription periods under section 99 of the Act.

It may happen that SARS issues an additional estimated assessment close to the end of the relevant prescription period. The 40 business day period may thus end after the

prescription date or very close to it, which means that the taxpayer is unable to request a reduced or additional assessment. The proposed amendment addresses this situation and provides SARS with a discretion to extend the 40 business day period for up to 40 business days beyond the prescription date in these unusual circumstances.

2.19. Tax Administration Act, 2011: Amendment of section 99

The proposed amendment is consequential upon the amendments to section 95 of the Tax administration Act.

2.20. 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 2021 Budget Review, tabled in Parliament on 24 February 2021.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers, 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.