

REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 41987
of 19 October 2018)*
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 39—2018]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To—

- amend the Income Tax Act, 1962, so as to remove a requirement to submit a return; to clarify a provision; to update certain references and to amend the Fourth Schedule to amend a definition;
 - amend the Customs and Excise Act, 1964, so as to insert a provision enabling the Commissioner to implement anti-forestalling measures in respect of anticipated increases in excise duties; to insert a provision providing for the writing off or compromise of any duty, interest, penalty or forfeiture incurred, and owed to the Commissioner for the benefit of the National Revenue Fund;
 - amend the Value-Added Tax Act, 1991, so as to amend a provision relating to tax invoices; to amend a provision relating to the sale of an enterprise as a going concern; to update certain references; to remove a requirement to submit a return; to update certain references; to clarify a provision relating to refunds; to simplify set-off and recovery provisions;
 - amend the Securities Transfer Tax Act, 2007, so as to broaden the scope of a provision;
 - amend the Tax Administration Act, 2011, so as to ensure that taxpayers are informed at the commencement of an audit; to effect a consequential amendment; to effect a technical correction; to clarify a provision relating to refunds; to allow for the deregistration of non-compliant tax practitioners;
 - amend the Customs Control Act, 2014, so as to effect changes to certain definitions; to amend a provision to ensure that reporting requirements in respect of the departure of trucks due to leave the Republic are adhered to irrespective of whether a truck has cargo on board; to insert a provision providing for the writing off or compromise of debt owed to the Commissioner for credit of the National Revenue Fund;
- and to provide for matters connected therewith.

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

Amendment of section 64K of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008 and amended by section 53 of Act 17 of 2009, section 84 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 55 of Schedule 1 to that Act,

section 14 of Act 21 of 2012, section 5 of Act 39 of 2013, section 5 of Act 44 of 2014, section 4 of Act 23 of 2015, section 3 of Act 16 of 2016 and section 4 of Act 13 of 2017

1. Section 64K of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1A) of the following subsection:

- “(1A) If, in terms of this Part a person has[— 5
- (a) paid a dividend[; or
 - (b) received a dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D that is exempt or partially exempt from dividends tax in terms of section 64F or 64FA],
- that person must submit a return in respect of that dividend to the Commissioner by the last day of the month following the month during which the dividend is paid [or received, unless the dividend received— 10
- (i) is derived from a tax free investment contemplated in section 12T; or
 - (ii) is received by a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or a beneficiary 15
- fund defined in section 1 of the Pension Funds Act, of which the receipts and accruals are exempt from normal tax in terms of section 10(1)(d)(i)].”.

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 20 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001, section 26 of Act 30 of 2002, section 38 of Act 74 of 2002, section 61 of Act 45 of 2003, section 18 of Act 16 of 2004, section 7 of Act 34 of 2004, section 9 of Act 32 of 2005, section 8 of Act 4 of 2008, 25 section 4 of Act 61 of 2008 and section 271 of Act 28 of 2011

2. Section 66 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (13) for paragraph (a) of the following paragraph:

- “(a) in the case of a person (other than a company), for the whole period of twelve months ending upon the last day of [the year of assessment under charge] 30 February: Provided that where—
- [(a)] (i) a person dies, a return shall be made for the period commencing on the first day of that [year of assessment] period and ending on the date of death;
 - [(b)] (ii) the estate of a person is sequestered, separate returns must be made 35 for the periods—
 - [(i)](aa) commencing on the first day of that [year of assessment] period and ending on the date preceding the date of sequestration; and
 - [(ii)](bb) commencing on the date of sequestration and ending on 40 the last day of that [year of assessment] period; or
 - [(c)](iii) a person ceases to be a resident, a return shall be made for the period commencing on the first day of that [year of assessment] period and ending on the day preceding the date that the person ceases to be a resident; or”.

Amendment of section 89quat of Act 58 of 1962, as repealed by section 271 of Act 28 of 2011 read with paragraph 66 of Schedule 1 to that Act

3. Section 89quat of the Income Tax Act, 1962, pending its repeal, is hereby amended by the substitution in subsection (1) for the definition of “normal tax” of the following definition: 50

“ ‘normal tax’ includes any additional amounts payable in terms of section 76 and [paragraphs] paragraph 20 [and 20A] of the Fourth Schedule.”.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, 55 section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995,

section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008, section 66 of Act 60 of 2008, section 17 of Act 18 of 2009, section 18 of Act 8 of 2010, section 93 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 77 of Schedule 1 to that Act, section 7 of Act 44 of 2014, section 6 of Act 23 of 2015, section 5 of Act 16 of 2016 and section 8 of Act 13 of 2017

4. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in the definition of “employee” of paragraph (g).

(2) Subsection (1) comes into operation on 1 March 2019 and applies to years of assessment commencing on or after that date.

Insertion of section 58A in Act 91 of 1964

5. (1) The following section is hereby inserted into the Customs and Excise Act, 1964, after section 58:

“Anti-forestalling measures in respect of anticipated increases in excise duties

58A. (1) For purposes of this section—

“**controlled period**” means a period leading up to an anticipated increase in the rate of duty on excisable goods, as may be determined by the Commissioner in terms of subsection (5)(a)(ii) for the purpose of applying this section; and

“**duty forestalling**” means the practice of entering excisable goods for home consumption in quantities exceeding the quantities determined, as contemplated in subsection (2), during a period leading up to an anticipated increase in the rate of excise duty, thereby avoiding the payment of the increased rate of duty when that increase becomes effective.

(2) In order to combat duty forestalling in respect of an anticipated increase in the rate of duty on excisable goods, the Commissioner may limit the quantities of excisable goods that may be entered for home consumption during a controlled period to such quantities as may be determined in accordance with a formula prescribed by rule in terms of subsection (5)(b)(i).

(3) No person may during a controlled period enter excisable goods for home consumption in excess of the quantities contemplated in subsection (2), unless the Commissioner approves the entry of such excess quantity in exceptional circumstances.

(4) A person who contravenes subsection (3) is guilty of an offence and is liable on conviction to a fine not exceeding R20 000 or treble the value of the goods cleared in excess of the quantities contemplated in subsection (2), whichever is the greater, and the goods cleared in excess of the relevant quantity shall be liable to forfeiture.

(5) The Commissioner may make rules for the effective implementation of this section, including rules to—

(a) determine—

(i) the kind or description of the excisable goods to which this section applies, taking into account the prevalence of duty forestalling in the particular industry; and

(ii) the controlled period during which this section is applied, which period may not exceed three months; and

(b) prescribe—

(i) the formula to be used for calculating the quantity of excisable goods that may be entered for home consumption during the controlled period, taking into account the average amount of entries for home consumption per product per registered importer or licenced manufacturing warehouse, calculated

over a period sufficiently long to reflect seasonal fluctuations;
and

- (ii) the penalties that may be imposed for an offence referred to in subsection (4).”.

(2) Subsection (1) takes effect on a date to be determined by the Minister by Notice in the Government *Gazette*. 5

Insertion of section 114A in Act 91 of 1964

6. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 114, whilst the existing section 114A becomes section 114AA:

“Application of Tax Administration Act for write off or compromise of debt

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114A. Chapter 14 of the Tax Administration Act, including any criminal and other sanctions contained in that Act for the enforcement of that Chapter, applies, with any necessary changes as the context may require, to the writing off or compromise of any duty, interest, penalty or forfeiture incurred under this Act and owed to the Commissioner for the benefit of the National Revenue Fund.”. 15

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

7. Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (1A) of the following subsection: 25

- “(1B) Where a tax invoice contains an error in the particulars listed in subsection (4) or (5) and the circumstances contemplated in section 21(1)(a) to (e) of this Act are not applicable, the supplier must— 30
- (i) correct that tax invoice with the correct particulars, within 21 days from the date of the request to correct it: Provided that the time of supply contemplated in section 9 of this Act remains unaltered; and
- (ii) obtain and retain information sufficient to identify the transaction to which that tax invoice and the corrected tax invoice refers.”. 30

Amendment of section 21 of Act 89 of 1991, as amended by section 26 of Act 136 of 1992, section 34 of Act 97 of 1993, section 176 of Act 45 of 2003, section 48 of Act 16 of 2004, section 36 of Act 18 of 2009, section 150 of Act 22 of 2012, section 27 of Act 23 of 2015 and section 136 of Act 25 of 2015 35

8. Section 21 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph: 40

- “(d) the goods or services or part of the goods or services supplied have been returned to the supplier, including the return to— 40
- (i) a vendor of a returnable container, the vendor in such case being deemed for the purposes of this Act to have made the supply of the container in respect of which the deposit was charged, whether the supply was made by him or any other person; or 45
- (ii) a vendor, where a supply of an enterprise as a going concern, contemplated in section 11(1)(e) of this Act, was made to that vendor, the vendor in such case being deemed for purposes of this Act to have made the supply of the goods or services to the recipient, whether the supply was made by him or the other vendor that made the supply of that enterprise as a going concern; or”. 50

Amendment of section 25 of Act 89 of 1991, as amended by section 96 of Act 30 of 1998, section 94 of Act 53 of 1999, section 40 of Act 34 of 2004, section 10 of Act 10 of 2005 and section 271 of Act 28 of 2011

9. Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of section 25(dA). 5

Amendment of section 29 of Act 89 of 1991, as amended by section 49 of Act 16 of 2004 and section 271 of Act 28 of 2011

10. Section 29 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for the heading of the following heading: 10
 “[**Special returns**] **Special records and payments**”;
- (b) by the substitution for paragraph (a) of the following paragraph:
 “(a) **[furnish the Commissioner with a return reflecting—]** obtain and retain the following information in the manner prescribed by the Commissioner:
 (i) the name and address of the seller and, if registered as a vendor, his or her VAT registration number; 15
 (ii) the name and address of the person whose goods are sold (hereinafter referred to as the owner) and, if the owner is registered under this Act, the VAT registration number of the owner; 20
 (iii) the date of the sale;
 (iv) the description and quantity of the goods sold; and
 (v) the selling price of the goods and the amount of tax charged in respect of the supply of goods under the sale, being the tax leviable in respect of such supply under section 7(1)(a); **[and** 25
(vi) such other particulars as may be required;]”;
- (c) by the substitution for paragraph (c) of the following paragraph:
 “(c) send or deliver to the owner a copy of the **[return]** document reflecting the information referred to in paragraph (a).”; and
- (d) by the substitution for the words after paragraph (c) of the following words: 30
 “and the seller and the owner shall exclude from any return which the seller or owner is required to furnish under section 28 the tax charged on the supply of goods under the sale **[in respect of which the return is furnished under]** contemplated in this section.”.

Amendment of section 41 of Act 89 of 1991, as amended by Government Notice 2695 of 8 November 1991, section 32 of Act 136 of 1992, section 36 of Act 97 of 1993, section 41 of Act 27 of 1997, section 167 of Act 60 of 2001, section 40 of Act 32 of 2005, section 39 of Act 21 of 2006, section 16 of Act 9 of 2007 and section 28 of Act 23 of 2015 35

11. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 40

“Notwithstanding anything to the contrary in this Act (other than the provisions of section **[41A or]** 41B)—”.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001, section 88 of Act 20 of 2006, section 271 of Act 28 of 2011, section 180 of Act 31 of 2013 and section 31 of Act 44 of 2014 45

12. Section 44 of the Value-Added Tax Act, 1991, is hereby amended by the addition after subsection (10) of the following subsection: 50

“(11) (a) A refund of the amount erroneously paid, as contemplated in section 190(1)(b) of the Tax Administration Act, may only be made by the Commissioner where the claim for the refund of such erroneous payment is received by the Commissioner within five years after the date on which the erroneous payment was made; 55

(b) A claim for a refund under paragraph (a) shall be deemed not to have been received where the vendor has not furnished the Commissioner in writing with the particulars of the enterprise's banking account or an account with a similar institution, as contemplated in subsection (3)(d), within 90 days from the submission of the claim."

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Amendment of section 50 of Act 89 of 1991, as amended by section 38 of Act 136 of 1991 and section 271 of Act 28 of 2011

13. Section 50 of the Value-Added Tax Act, 1991, is hereby amended by the addition after subsection (6) of the following subsection:

"(7) Notwithstanding the provisions of this section, any amount that is refundable under section 190 of the Tax Administration Act (including interest thereon) to the vendor referred to in subsection (1) or any separate enterprise, branch or division, which is registered separately in terms of subsection (2), may be set off against the outstanding tax debt of the vendor referred to in subsection (1) or any separate enterprise, branch or division, which is registered separately in terms of subsection (2), as the case may be."

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Amendment of section 51 of Act 89 of 1991

14. Section 51 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Subject to the provisions of section 46, every member of a partnership or joint venture shall be liable jointly and severally with other members of the partnership or joint venture for performing the duties of the partnership or joint venture in terms of this Act and paying the tax imposed by this Act on the partnership or joint venture in respect of supplies made by the partnership or joint venture while such member was a member of the partnership or joint venture: Provided that this subsection shall not apply to any such member of a partnership who, in relation to that partnership, is a partner *en commandite* or a special partner, as defined in the Special Partnerships' Limited Liability Act, 1861 (Act No. 24 of 1861), of the Cape of Good Hope or in Law No. 1 of 1865 of Natal, who has not held himself out as an ordinary or general partner of the partnership concerned."

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Amendment of section 8 of Act 25 of 2007, as amended by section 73 of Act 3 of 2008, section 127 of Act 60 of 2008, section 97 of Act 17 of 2009, section 127 of Act 7 of 2010, section 148 of Act 24 of 2011, section 155 of Act 22 of 2012, section 183 of Act 31 of 2013 and section 138 of Act 25 of 2015

15. Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) The Commissioner may for the purposes of this section prescribe any declaration to be submitted by any person to the participant or member in respect of any security referred to in subsection (1).

(3) No exemption referred to in subsection (1) applies in respect of any transfer of the security referred to in that subsection, unless there is lodged with a participant or member a declaration referred to in subsection (2) in respect of that security."

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Amendment of section 42 of Act 28 of 2011, as amended by section 48 of Act 21 of 2012

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16. Section 42 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A SARS official involved in or responsible for an audit under this Chapter must, in the form and in the manner as may be prescribed by the Commissioner by public notice, provide the taxpayer with a notice of commencement of an audit and, thereafter, a report indicating the stage of completion of the audit."

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Amendment of section 44 of Act 28 of 2011

17. Section 44 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Relevant **[information]** material obtained during a criminal investigation may be used for purposes of audit as well as in subsequent civil and criminal proceedings.”. 5

Amendment of section 70 of Act 28 of 2011, as amended by section 13 of Act 26 of 2013, section 42 of Act 39 of 2013 and section 48 of Act 23 of 2015

18. (1) Section 70 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph: 10

“(b) the Financial **[Services Board]** Sector Conduct Authority, the information as may be required for the purpose of carrying out the **[Board’s]** Financial Sector Conduct Authority’s duties and functions under the Financial **[Services Board Act, 1990 (Act No. 97 of 1990)] Sector Regulation Act, 2017 (Act No. 9 of 2017);**” 15

(2) Subsection (1) is deemed to have come into operation on 1 April 2018.

Amendment of section 129 of Act 28 of 2011, as amended by section 52 of Act 39 of 2013

19. Section 129 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the deletion in subsection (2) of the word “or” at the end of paragraph (b); 20
- (b) by the deletion in subsection (2) of the full stop and the addition of the phrase “; or” at the end of paragraph (c); and
- (c) by the addition in subsection (2) of the following paragraph:
 - “(d) make an appropriate order in a procedural matter.”.

Amendment of section 170 of Act 28 of 2011 25

20. Section 170 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) except in the case of proceedings on appeal instituted under Chapter 9 against the assessment, that all the particulars of the assessment are correct.”.

Amendment of section 190 of Act 28 of 2011, as amended by section 71 of Act 39 of 2013, section 53 of Act 44 of 2014 and section 60 of Act 23 of 2015 30

21. Section 190 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the deletion in subsection (4) of the word “or” after paragraph (a);
- (b) by the addition in subsection (4) of the phrase “; or” at the end of paragraph (b); and 35
- (c) by the addition in subsection (4) of the following paragraph:
 - “(c) an erroneous payment claimed by a taxpayer within the period referred to in paragraph (a) or (b), but not paid by SARS within the period.”.

Amendment of section 221 of Act 28 of 2011, as amended by section 61 of Act 16 of 2016 40

22. Section 221 of the Tax Administration Act, 2011, is hereby amended by the substitution in the definition of ‘understatement’ for paragraph (a) of the following paragraph:

“(a) **[a default in rendering]** failure to submit a return required under a tax Act or by the Commissioner;” 45

Amendment of section 222 of Act 28 of 2011, as amended by section 75 of Act 39 of 2013

23. Section 222 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 50

“(2) The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table in section 223 to each shortfall determined under subsections (3) and (4) in relation to each ‘understatement’ [in a return].”; and 5

(b) by the substitution for subsection (4) of the following subsection:

“(4) (a) If there is a difference under both paragraphs (a) and (b) of subsection (3), the shortfall must be reduced by the amount of any duplication between the paragraphs.

(b) Where the ‘understatement’ is the failure to submit a return, the ‘tax’ that resulted from the ‘understatement’, had the ‘understatement’ been accepted, for purposes of subsection (3), must be regarded as nil.”. 10

Amendment of section 240 of Act 28 of 2011, as amended by section 82 of Act 21 of 2012, section 81 of Act 39 of 2013 and section 60 of Act 44 of 2014

24. Section 240 of the Tax Administration Act, 2011, is hereby amended— 15

(a) by the deletion in subsection (3) of the word “or” at the end of paragraph (b);

(b) by the deletion in subsection (3) of the full stop and the addition of the phrase “; or” at the end of paragraph (c); and

(c) by the addition in subsection (3) of the following paragraph:

“(d) during the preceding 12 months has for an aggregate period of at least six months not been tax compliant to the extent referred to in section 256(3) and has failed to— 20

(i) demonstrate that he or she has been compliant for that period; or

(ii) remedy the non-compliance, within the period specified in a notice by SARS.”. 25

Amendment of section 1 of Act 31 of 2014, as amended by section 83 of Act 23 of 2015 and section 70 of Act 16 of 2016

25. Section 1 of the Customs Control Act, 2014, is hereby amended—

(a) by the deletion in subsection (1) from the definition of “cargo reporter” of the word “actually”; and 30

(b) by the substitution in subsection (1) for the definition of “FCL container” of the following definition:

“‘FCL container’ means a container containing goods consigned from one or more [than one] consignor to a single consignee;”. 35

Amendment of section 71 of Act 31 of 2014, as amended by section 89 of Act 23 of 2015

26. Section 71 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40

“(1) The on-board operator of a truck due to leave the Republic [with cargo on board] must, at the land border-post where the truck will leave the Republic, report to the customs authority at that land border-post, in a manner as may be prescribed by rule—”.

Insertion of section 705A in Act 31 of 2014 45

27. The following section is hereby inserted in the Customs Control Act, 2014, after section 705:

“Application of Tax Administration Act for write off or compromise of debt

705A. Chapter 14 of the Tax Administration Act, including any criminal and other sanctions contained in that Act for the enforcement of that Chapter, applies, with any necessary changes as the context may require, to 50

the writing off or compromise of a debt referred to in section 695 owed to |
the Commissioner for credit of the National Revenue Fund.”.

Short title and commencement

28. (1) This Act is called the Tax Administration Laws Amendment Act, 2018.

(2) Subject to subsections (3) and (4), and save in so far as is otherwise provided for 5
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.

(3) The amendments to the Customs Duty Act, 2014, take effect immediately after the
Customs Duty Act, 2014, has taken effect in terms of section 229 of that Act.

(4) The amendments to the Customs Control Act, 2014, take effect immediately after 10
the Customs Control Act, 2014, has taken effect in terms of section 944(1) of that Act.

**MEMORANDUM ON THE OBJECTS OF THE TAX
ADMINISTRATION LAWS AMENDMENT BILL, 2018**

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2018 (the “Bill”), proposes to amend the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Value-Added Tax Act, 1991, the Securities Transfer Tax Act, 2007, the Tax Administration Act, 2011, and the Customs Control Act, 2014.

2. OBJECTS OF BILL

2.1 *Income Tax Act, 1962: Amendment of section 64K*

In order to ease the compliance and administrative burden, the proposed amendment repeals the requirement for a person receiving a tax-exempt dividend to submit a return.

2.2 *Income Tax Act, 1962: Amendment of section 66*

The proposed amendment is a consequential amendment to the draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill, 2018.

2.3 *Income Tax Act, 1962: Amendment of section 89quat*

The proposed amendment deletes the reference to a repealed provision.

2.4 *Income Tax Act, 1962: Amendment of paragraph 1 of Fourth Schedule*

The proposed amendment removes directors of private companies who do not receive remuneration from the definition of employee for purposes of the Fourth Schedule. These directors are no longer subject to PAYE in terms of the Schedule in line with other amendments, such as the repeal of paragraph 11C of the Schedule. It is the intention that directors who receive remuneration are subject to employees’ tax in the same way as other employees.

2.5 *Customs and Excise Act, 1964: Insertion of section 58A*

An amendment to the Customs and Excise Act, 1964, was announced in the Budget Review 2018 to prevent “forestalling” in respect of excisable goods, which was explained as “a practice through which abnormal volumes of products are moved from warehouses into the market to avoid increases in excise duty rates”. The proposed amendment inserts a new provision into the Act, aimed at combatting forestalling before an anticipated increase in the rate of excise duty and allowing the Commissioner to limit the quantities of excisable goods that may be entered for home consumption during a controlled period leading up to the anticipated increase. Provision is made for the Commissioner to determine by rule the excisable goods to which the anti-forestalling measures apply, the controlled period of up to three months before the increase during which the measures will apply, the quantities of goods that may be entered for home consumption during such period, the formula for calculating such quantities and for penalties.

2.6 *Customs and Excise Act, 1964: Insertion of section 114A*

The proposed amendment inserts a new provision into the Customs and Excise Act, 1964, which provides for the writing off or compromise of debt in terms of the Customs and Excise Act, by making Chapter 14 of the Tax Administration Act, 2011, applicable to such debt.

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

- 2.7.1 A supplier is obliged to issue a tax invoice within 21 days of making a supply. The supplier will normally generate a tax invoice based on information supplied by the recipient which at that time constitutes a valid tax invoice, in the hands of the supplier. It happens in practice that after a vendor, being a supplier, issues a tax invoice, the supplier is informed by the recipient that certain information (other than the information pertaining to the VAT, value or consideration of the supply), on that document is incorrect. The recipient is unable to use that document for purposes of deducting input tax and has to request the supplier to issue a document with the correct information such that it qualifies as a tax invoice as defined. Uncertainty existed whether the issuing of a new document with the correct information would result in two tax invoices being issued for the same supply and, consequently, result in the vendor committing an offence.
- 2.7.2 Where the supplier is subsequently informed by the recipient that information on the tax invoice is incorrect, the nature of the incorrect information may result in either the tax invoice still remaining valid or the tax invoice being invalid. Where the tax invoice becomes invalid, the view is that it is invalid from the date that the supplier is informed of the error. This view is adopted on the basis that the supplier should not be regarded as non-compliant with the 21 day requirement if the information provided by the recipient was captured correctly by the supplier.
- 2.7.3 The proposed amendment aims to clarify that, where the supplier is informed by the recipient that information on the tax invoice is incorrect and requested to correct it, the supplier must correct the initial document with the correct particulars within 21 days from the date of the request, which correction will not constitute an offence. A proviso ensures that the correction does not alter the time of supply. The amendment also requires the supplier to obtain and retain information sufficient to identify the transaction to which the first document and the corrected tax invoice refers.

2.8 Value-Added Tax Act, 1991: Amendment of section 21

The proposed amendment aims to clarify that, where an enterprise is sold as a going concern, the purchaser of the enterprise is allowed to issue a credit note in respect of goods that were supplied by the seller of the enterprise but are returned to the purchaser. The proposed amendment will ease compliance for purchasing vendors and consequently VAT will not be a cost to the business.

2.9 Value-Added Tax Act, 1991: Amendment of section 25

Section 27(4B) was deleted by section 28(1)(f) of the Tax Administration Laws Amendment Act, 2014, with effect from 1 July 2015. The proposed amendment aims to delete the reference to this repealed provision.

2.10 Value-Added Tax Act, 1991: Amendment of section 29

An amendment is proposed in order to give effect to operational efficiency changes made by SARS which will not require a vendor to submit special returns, but will require the vendor to obtain and retain the specified information to evidence the payment and details in respect of that payment. The information is to be submitted to SARS only when requested. The proposed amendment will ease compliance for vendors.

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

Section 41A of the Value-Added Tax Act, 1991, was repealed by section 271 of the Tax Administration Act, 2011. The proposed amendment removes the reference to the repealed section 41A.

2.12 Value-Added Tax Act, 1991: Amendment of section 44

The policy position for VAT, being a self-assessed tax, is that the erroneous overpayment prescribes if the vendor does not claim by way of a refund the overpayment within a period of 5 years from the date it was paid to SARS. Section 190(4) of the Tax Administration Act, 2011, does not require such a claim, it merely deals with the situation if a claim is made. The proposed amendment aims to ensure that the prescription rule prior to the introduction of the Tax Administration Act will apply. Further, the refund claim for the overpayment will be considered not to have been received if the enterprise's banking details for the payment of the refund have not been provided within a period of 90 days after submission of the claim for a refund by the vendor.

2.13 Value-Added Tax Act, 1991: Amendment of section 50

The Value-Added Tax Act, 1991, allows a vendor that carries on enterprises in branches or divisions, to separately register such branches or divisions for VAT. Further, the Act regards such branches or divisions as separate vendors, albeit that the branches or divisions are carried on by one and the same legal entity. The proposed amendment aims to simplify SARS' set-off and recovery provisions and to provide legal certainty that set-off and recovery provisions will apply across such separately registered branches and divisions. The main business and the branch operate as the same legal entity and any legal action can only be taken against the legal entity.

2.14 Value-Added Tax Act, 1991: Amendment of section 51

The proposed amendment aims to provide legal certainty that all the members of an unincorporated joint venture that has registered as a vendor for VAT purposes may be jointly and severally liable for the VAT debts of the joint venture.

2.15 Securities Transfer Tax Act, 2007: Amendment of section 8

The Commissioner prescribes declarations to be submitted to participants in order to qualify for exemptions from the payment of securities transfer tax. In practice, transactions are initiated by members, as defined in section 1 of the Securities Transfer Tax Act, 2007, and, accordingly, they should receive the prescribed declarations in order to process exemptions and keep records for SARS audit purposes. The proposed amendment aims to broaden the scope of this section to require declarations to be lodged with the members.

2.16 Tax Administration Act, 2011: Amendment of section 42

The proposed amendment aims to ensure that taxpayers, in addition to the other notifications under section 42, are also notified of the start of an audit.

2.17 Tax Administration Act, 2011: Amendment of section 44

The proposed amendment is a technical correction to align the use of a term in paragraph (2) with paragraph (3).

2.18 Tax Administration Act, 2011: Amendment of section 70

The proposed amendment is consequential to the name changes effected by the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017).

2.19 Tax Administration Act, 2011: Amendment of section 129

The proposed amendment is a technical correction.

2.20 Tax Administration Act, 2011: Amendment of section 170

The proposed amendment clarifies that it is an appeal instituted in terms of Chapter 9 of the Tax Administration Act, 2011, that is being referred to and not any other appeal.

2.21 Tax Administration Act, 2011: Amendment of section 190

The proposed amendment aims to clarify that an amount will not be regarded as a payment to the National Revenue Fund if a taxpayer claimed a refund prior to the expiry of the three year period, in the case of an assessment by SARS, or a five year period, in the case of a self-assessment, but the refund was not paid by SARS prior to the expiry of the relevant period. SARS may, if satisfied that the refund is due, pay it after expiry of the relevant period.

2.22 Tax Administration Act, 2011: Amendment of section 221

The Tax Administration Act, 2011, uses the phrase “submit a return required under a tax Act or by the Commissioner”. “Default in rendering a return” is old wording carried over from section 76 of the Income Tax Act, 1962, and may cause confusion if it is meant to refer to a return not submitted under the Tax Administration Act. The proposed amendment aims to align the wording used in the Tax Administration Act.

2.23 Tax Administration Act, 2011: Amendment of section 222

Ad paragraph (a): The proposed amendment is a technical correction. The Tax Administration Act, 2011, uses the term “submit a return required under a tax Act or by the Commissioner” — refer for example sections 25 to 27 of the Act. “Default in rendering a return” is old wording carried over from section 76 of the Income Tax Act, 1962.

Ad paragraph (b): Pursuant to recent case law, it appears to be arguable that if no return is submitted, there would not be a shortfall under section 222(3)(a) of the Tax Administration Act, 2011, as SARS would never “accept” a failure to render a return (refer ITC 13725 & VAT 1426/IT 13727 & VAT 1096 par [25] to [27]). Although this argument was not accepted in the case, the amendment is proposed to provide clarity on this issue by deeming the tax that could have resulted from the failure to submit a return (the ‘understatement’), had the latter been accepted, as nil for purposes of subsection 3(a), (b) or (c), as the case may be.

2.24 Tax Administration Act, 2011: Amendment of section 240

The purpose of the regulation of tax practitioners is taxpayer protection and it follows that a tax practitioner whose own tax affairs are not in order should not be responsible for those of others. Hence, an amendment is proposed to ensure that persons or registered tax practitioners that are tax non-compliant as a result of outstanding returns or tax debts are not registered or are deregistered as tax practitioners, respectively. A person seeking registration or a registered tax practitioner will not be registered as a tax practitioner or will be deregistered as a tax practitioner if he or she has—

- during the preceding 12 months, for an aggregate period of at least six months, not been tax compliant to the extent referred to in section 256(3); and
- failed to demonstrate that he or she has been compliant for that period or remedy the non-compliance, within the period specified in a notice delivered by SARS.

The person may be registered or a tax practitioner may be reregistered once he or she remedies the tax non-compliance and the above conditions are no longer met.

2.25 Customs Control Act, 2014: Amendment of section 1

Ad paragraph (a): The proposed amendment to the definition of “cargo reporter” aims to clarify that persons such as so-called “slot charterers” that fall within paragraph (a) of the definition of “carrier” are not excluded from the definition of “cargo reporter” just because they do not “actually” transport the goods on board.

Ad paragraph (b): The proposed amendment to the definition of “FCL container” aims to broaden the definition to also cater for a scenario where the goods contained in such a container are consigned from one consignor to a single consignee.

2.26 Customs Control Act, 2014: Amendment of section 71

The proposed amendment is aimed at ensuring that reporting of the departure of a truck due to leave the Republic is adhered to irrespective of whether the truck has cargo on board as is contemplated in section 47(1)(a) of the Customs Control Act, 2014.

2.27 Customs Control Act, 2014: Insertion of section 705A

The proposed amendment inserts a new provision into the Customs and Excise Act, 1964, which provides for the writing off or compromise of debt in terms of the Customs and Excise Act, 1964, by making Chapter 14 of the Tax Administration Act, 2011, applicable to such debt.

2.28 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 2018 Budget Review, tabled in Parliament on 21 February 2018.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the National Treasury and South African Revenue Service are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of

the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.