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. 51421 of 23 October 2024)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 17—2024]

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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 correct an incorrect cross-reference; to amend the definition of "provisional taxpayer" in order to effect a consequential amendment; to effect a consequential amendment and remove an obsolete cross-reference; and to correct an incorrect cross-reference;**
- **amend the Customs and Excise Act, 1964, so as to provide for the disclosure by the Commissioner of information to a person to whom access to such information has been granted in accordance with the Promotion of Access to Information Act, 2000; to provide for the Commissioner to allow, in a manner determined by rule, a reasonable timeframe for the submission of certain export bills of entry; to provide for changes to simplify the process of substitution of bills of entry in certain circumstances; and to make technical corrections;**
- **amend the Value-Added Tax Act, 1991, so as to extend the time period within which value-added tax should be accounted for, and is payable by the recipient of imported services; to provide for a refund where the amount of tax chargeable is reduced as a result of a subsequent event in respect of the importation of goods by persons who are not registered as vendors or in respect of imported services where there is no assessment; to provide for the waiving of the requirement that representative vendors appointed by electronic services suppliers must reside in South Africa and to extend this concession to non-resident vendors with no, or a limited presence in South Africa in specified circumstances; and to provide for consequential amendments;**
- **amend the Tax Administration Act, 2011, so as to provide for senior SARS officials to also appear in certain courts; to provide for a consequential amendment; to provide for certain persons to appear on behalf of the taxpayer in the tax court; to provide for recovery of fees and costs where a senior SARS official appears on behalf of SARS or the Commissioner in certain courts; to provide for the manner of determination of costs awarded by certain courts; to provide for consequential amendments; to expand the provision relating to the production of relevant material in person; to provide for the disclosure by the Commissioner of information to a person to whom access to such information has been granted in accordance with the Promotion of Access to Information Act, 2000; to clarify the provisions concerning an original assessment made by SARS; to align the wording of certain provisions; to limit the extension period for lodging an objection; to allow for resolution of a dispute under objection through alternative dispute resolution; to provide that the tax court may extend the period for lodging of an appeal under certain circumstances; to amend the requirements for the hearing of an appeal by the tax board; to**

provide for a consequential amendment; to provide for the addition of registered tax practitioners to the panel from which a chairperson of the tax board must be nominated; to remove a ground for temporary write-off of a tax debt; to correct an incorrect cross-reference; to provide for the removal of the time-period for appointment of a public officer by a company and certain consequential amendments relating thereto; and

- **amend the Tax Administration Laws Amendment Act, 2022, to make a textual correction; and to provide for matters connected therewith.**

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

Amendment of section 30A of Act 58 of 1962, as inserted by section 25 of Act 20 of 2006, amended by section 26 of Act 8 of 2007, section 42 of Act 60 of 2008, section 42 of Act 17 of 2009, section 54 of Act 7 of 2010, section 9 of Act 21 of 2012, section 80 of Act 31 of 2013, section 36 of Act 34 of 2019 and section 7 of Act 18 of 2023

1. Section 30A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11) of the following subsection:

''(11) A person who fails to comply with the provisions of subsection **[(9A)]** (10) shall be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.''.

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, 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, read with paragraph 77 of Schedule 1 to Act 28 of 2011, section 7 of Act 44 of 2014, section 6 of Act 23 of 2015, section 5 of Act 16 of 2016, section 8 of Act 13 of 2017, section 4 of Act 22 of 2018, section 6 of Act 24 of 2020 and section 36 of Act 20 of 2021

2. Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in the definition of ''provisional taxpayer'' of the word ''and'' at the end of subparagraph *(b)*; and

(b) by the insertion in the definition of ''provisional taxpayer'' after subparagraph *(b)* of the following subparagraph:

''*(b*A*)* any labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5)*(a)*; and''.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 28 of Act 113 of 1977, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007, section 65 of Act 35 of 2007, section 20 of Act 4 of 2008, section 67 of Act 60 of 2008, section 18 of Act 18 of 2009, section 94 of Act 24 of 2011, sections 19 and 92 of Act 21 of 2012, section 8 of Act 39 of 2013, section 13 of Act 26 of 2013, section 6 of Act 16 of 2016, section 9 of Act 13 of 2017, section 66 of Act 17 of 2017,

section 67 of Act 23 of 2018, section 51 of Act 34 of 2019, section 79 of Act 23 of 2020, section 37 of Act 20 of 2021 and section 13 of Act 18 of 2023

3. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (4) for the colon at the end of item *(f)* of a semi-colon;

(b) by the addition in subparagraph (4) after item *(f)* of the following item:

"*(g)* any amount referred to in section 11*(n*A*)* as is actually refunded to the employer granting the deduction under this item: Provided that if the amount so deducted exceeds the remuneration for the month during which the amount is deducted, the excess amount may be deducted in the next succeeding month, if such next succeeding month falls within the same year of assessment as the year in which such amount was actually refunded:"; and

(c) by the substitution in subparagraph (5)*(a)* for subitem (i) of the following subitem:

"(i) such person carries on an independent trade **[and is registered as a provisional taxpayer under the provisions of paragraph 17]**.".

(2) Subsection (1)*(b)* comes into effect on 1 March 2025.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005, section 46 of Act 3 of 2008, section 18 of Act 61 of 2008, section 23 of Act 18 of 2009, section 271, read with item 90 of Schedule 1 to Act 28 of 2011, section 22 of Act 21 of 2012, section 13 of Act 39 of 2013, section 9 of Act 44 of 2014, section 16 of Act 23 of 2015, section 12 of Act 16 of 2016 and section 10 of Act 33 of 2019

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

"*(c)* The amount of any estimate so submitted by a provisional taxpayer (other than a company) during the period referred to in paragraph 21(1)*(a)*, or by a company (as a provisional taxpayer) during the period referred to in paragraph 23(1)*(a)*, shall not be less than the basic amount applicable to the estimate in question, as contemplated in item *(d)*, unless the circumstances of the case justify the submission of an estimate of a lower amount.".

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, section 10 of Act 24 of 2020 and section 8 of Act 16 of 2022

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

(a) by the insertion in subsection (3) after paragraph (iii) of the first proviso of the following paragraph:

"(iiiA) disclosing information to a person to whom access to such information has been granted in accordance with section 46 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);"; and

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

"(3A) No person, including—

(a) the Statistician-General;

(b) the Director-General of the Department of Trade, **[and]** Industry and **[Economic Development]** Competition;
(c) the Governor of the South African Reserve Bank;
(d) the National Commissioner of the South African Police Service;
(e) the National Director of Public Prosecutions;
(f) the Director-General of the National Treasury;
(g) the Director-General of the Department of Mineral Resources and Energy;
(h) the Director-General of the Department of **[Environment]**, Forestry, **[and]** Fisheries and the Environment;
*(h*A*)* the Director-General of the Department of International Relations and Co-operation;
(i) the public officer of an authorised dealer in foreign exchange;
(j) the Chief Commissioner of the International Trade Administration Commission;
(k) the Director of the Financial Intelligence Centre;
(l) the head of any organ of state; **[or]**
*(l*A*)* a person contemplated in paragraph (iiiA) of the first proviso to subsection (3); or
(m) any person acting under the direction and control of the persons referred to in paragraphs *(a)* to *(l*A*)*,

shall disclose any information supplied under **[the]** any proviso to subsection (3) to any person or permit any person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties under any Act from which such powers or duties are derived, or in circumstances where the information has been obtained in accordance with section 46 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).''.

Amendment of section 38 of Act 91 of 1964, as amended by section 3 of Act 44 of 1969, 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, section 25 of Act 32 of 2014 and section 9 of Act 16 of 2022

6. (1) Section 38 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

''*(a)* Every exporter of any goods shall, before such goods are exported from the Republic, deliver, during the hours of any day prescribed by rule, to the Controller a bill of entry in the prescribed form, but the Commissioner may—

(i) if no export duty is payable on, and there is no outstanding obligation or condition **[is]** to be fulfilled or complied with under any law in respect of, such goods; or
(ii) in the case of goods to be exported overland by way of a vehicle (excluding an aircraft and a train) which are loaded for export at a place other than a place appointed under section 6 where goods may be entered for customs and excise purposes,

allow, in a manner determined by rule, such a bill of entry to be delivered at such time as he deems reasonable.''.

(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, section 12 of Act 24 of 2020 and section 11 of Act 16 of 2022

7. (1) Section 40 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3)*(a)* for subparagraph (ii) of the following subparagraph:

''(ii) if—

(aa) a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise

warehouse under section 20 or for purposes of use under rebate of duty under section 75 or

(bb) an importer, exporter or manufacturer on good cause shown, requests substitution thereof by another bill of entry in circumstances other than those contemplated in item *(aa)*,

the Commissioner may allow the importer, exporter or manufacturer concerned to **[adjust]** replace that bill of entry by substitution of a fresh bill of entry **[and cancellation of the original bill of entry, provided]**: Provided that such goods, where a rebate of duty is being claimed, qualified at the time the duty was paid in all respects for that rebate.''.

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

Amendment of section 69 of Act 91 of 1964, as amended by section 22 of Act 105 of 1969, section 6 of 1985, section 7 of Act 69 of 1988, section 12 of Act 68 of 1989, sections 1 and 3 of Act 105 of 1992, section 6 of Act 98 of 1993, section 6 of Act 44 of 1996, section 61 of Act 53 of 1999, section 49 of Act 19 of 2001, section 129 of Act 60 of 2001, section 145 of Act 45 of 2003, section 71 of Act 32 of 2004, section 94 of Act 35 of 2007 and section 61 of Act 32 of 2014

8. Section 69 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the deletion in paragraph *(a)* of subsection (1) of the expression ''126.01'';

(b) by the substitution in paragraph *(d)* of subsection (1) for the words preceding subparagraph (i) of the following words:

''*(d)* For the purposes of assessing the excise duty on any goods manufactured in the Republic and specified in any items of Section B of Part 2 of Schedule No. 1 other than those specified in paragraph *(a)* **[and contemplated in paragraph *(d*A**)]**, the value thereof shall be the ''invoice price'' which shall mean—''; and

(c) by the deletion in subsection (1) of paragraph *(d*A*)*.

Amendment of section 14 of Act 89 of 1991, as amended by section 171 of Act 45 of 2003, section 101 of Act 32 of 2004, section 28 of Act 8 of 2010, section 136 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 113 of Schedule 1, and section 19 of Act 24 of 2020

9. Section 14 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the words that precede paragraph *(a)* of the following words:

''Where tax is payable in terms of section 7(1)*(c)* in respect of the supply of imported services the recipient shall within **[30]** 60 days of the date referred to in subsection (2)—''.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 67 of Act 16 of 2004, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 111 of Act 60 of 2008, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 115 of Schedule 1, section 148 of Act 22 of 2012, section 173 of Act 31 of 2013, sections 25 and 26 of Act 44 of 2014, section 98 of Act 43 of 2014, section 25 of Act 23 of 2015, section 26 of Act 16 of 2016, section 83 of Act 17 of 2017, section 53 of Act 20 of 2021 and section 29 of Act 20 of 2022

10. Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

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

''*(f)* the vendor, in the case where an amount is deducted from the sum of the amounts of output tax which are attributable to that period in terms of subsection (3)*(c)*, *(d)*, (*d*A), *(e)*, *(f)*, *(g)*, *(h)*, *(i)*, *(j)*, *(k)*, *(l)*,

(m), *(n)*, **[or]** *(o)* or *(p)*, is in possession of documentary proof, as is prescribed by the Commissioner, substantiating the vendor's entitlement to the deduction at the time a return in respect of the deduction is furnished; or'';

(b) by the substitution in subsection (3) for the words that precede paragraph *(a)* of the following words:

''Subject to the provisions of subsection (2) of this section and the provisions of sections 14, 15 and 17, the amount of tax payable in respect of a tax period shall be calculated by deducting from the sum of the amounts of output tax of the vendor which are attributable to that period, as determined under subsection (4), and the amounts (if any) received by the vendor during that period by way of refunds of tax charged under section 7(1)*(b)* and *(c)* and 7(3)*(a)*, the following amounts, namely—'';

(c) by the substitution in subsection (3) for the colon at the end of paragraph *(o)* of a semi-colon; and

(d) by the addition in subsection (3) after paragraph *(o)* of the following paragraph:

''*(p)* any amount of tax paid by a vendor in terms of this Act to the Commissioner in excess of the amount of tax that should properly have been levied under section 7(1)*(c)*:''.

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 178 of Act 45 of 2003, section 92 of Act 53 of 1999, 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, section 11 of Act 21 of 2018, section 24 of Act 16 of 2022 and section 32 of Act 20 of 2022

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

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

''(2) Every person who is not a resident of the Republic, and who in terms of subsection (1), (1A) or section 50A, becomes liable to be registered in accordance with Chapter 3 of the Tax Administration Act, shall be deemed not to have applied for registration, in addition to section 22(4) of the Tax Administration Act, until such person has—

(a) appointed a representative vendor as contemplated in section 46 **[in the Republic]** and furnished the Commissioner with the particulars of such representative vendor;

(b) opened a banking account with any bank, mutual bank or other similar institution, registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), for the purposes of his or her enterprise carried on in the Republic and furnished the Commissioner with the particulars of such banking account:

Provided that, if the person is resident in a country that the Republic has an agreement in force with under section 108(2) of the Income Tax Act or section 75(2), paragraph *(b)* shall not apply—

(i) in the case of a company that—

(aa) is an ''external company'' as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008); and

(bb) does not have a fixed or permanent place in the Republic relating to such enterprise contemplated in subsection (1), (1A) or section 50A;

(ii) in the case of a natural person that is physically present in the Republic less than an accumulated period of six months in any period of 12 months; or

(iii) in the case of any person that is an enterprise solely as a result of paragraph *(b)*(vi) of the definition of ''enterprise'' in section 1.''; and

(b) by the insertion after subsection (2A) of the following subsection:

''(2B) Every person who is not a resident of the Republic and who no longer complies with the requirements of the proviso to subsection (2), is required to comply with the requirements under subsection (2)*(b)* and section 46(1).''.

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 36 of Act 36 of 2007, section 43 of Act 61 of 2008, section 271 of Act 28 of 2011, read with paragraphs 133 and 180 of Schedule 1 to Act, section 180 of Act 31 of 2013, section 31 of Act 44 of 2014, section 28 of Act 16 of 2016 and section 12 of Act 22 of 2018

12. Section 44 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (3)*(d)* for the words that precede subparagraph (i) of the following words:

''the vendor has furnished the Commissioner in writing with particulars of the enterprise's banking account or account with a similar institution in the Republic to enable the Commissioner to transfer a refund or other amount due to the vendor to such account: Provided that where the vendor which is—''; and

(b) by the addition after subsection (11) of the following subsection:

''(12) Subject to the provisions of subsection (3), where any person who is not a vendor, paid an amount of tax in terms of this Act to the Commissioner that was in excess of the amount of tax that should properly have been levied under section 7(1)*(b)* or *(c)*, the Commissioner shall, on application by the person concerned, refund the amount in excess of the amount of tax that should properly have been charged under section 7(1)*(b)* or *(c)*: Provided that a refund of the amount paid in excess, may only be made by the Commissioner where the claim for the refund of such excess payment is received by the Commissioner within five years after the date on which the excess payment was made.''.

Amendment of section 46 of Act 89 of 1991, as amended by section 185 and 186 of Act 45 of 2003, section 41 of Act 32 of 2005, section 15 of Act 10 of 2006, section 271 read with paragraph 136 of Schedule 1 to Act 28 of 2011 and section 33 of Act 44 of 2014

13. Section 46 of the Value Added Tax Act, 1991, is hereby amended—

(a) by the renumbering of the current section as subsection (1); and

(b) by the addition of the following subsection:

''(2) Notwithstanding section 46(1), the natural person, who is responsible for the duties imposed under this Act on the person contemplated in the proviso to section 23(2), shall be any person responsible for accounting for the receipt and payment of monies or funds in respect of any enterprise of such person in the Republic.''.

Amendment of section 1 of Act 28 of 2011, as amended by section 36 of Act 21 of 2012, section 30 of Act 39 of 2013, section 37 of Act 44 of 2014, section 33 of Act 23 of 2015 and section 47 of Act 16 of 2016

14. Section 1 of the Tax Administration Act, 2011, is hereby amended by the insertion after the definition of ''judge'' of the following definition:

'' **'legal practitioner'** means a legal practitioner as defined in section 1 of the Legal Practice Act, 2014 (Act No. 28 of 2014);''.

Amendment of section 12 of Act 28 of 2011, as amended by section 28 of Act 33 of 2019 and section 24 of Act 24 of 2020

15. (1) Section 12 of the Tax Administration Act, 2011, is hereby amended

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

''(1) Despite any law to the contrary, a senior SARS official may, on behalf of SARS or the Commissioner in proceedings referred to in a tax Act, appear *ex parte* in a judge's chambers, in the tax court, or **[in]** a High Court or any other court recognised in terms of section 166 of the Constitution of the Republic of South Africa, 1996.'';

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

''(2) A senior SARS official may only appear in the tax court, **[or]** a High Court **[only]** or any other court recognised in terms of section 166 of the Constitution of the Republic of South Africa, 1996, if the person is a legal practitioner **[duly admitted and enrolled under the Legal Practice Act, 2014 (Act No. 28 of 2014)]**.''; and

(c) by the addition of the following subsections:

''(3) Where a senior SARS official appeared on behalf of SARS or the Commissioner in any proceedings in a court as provided under subsection (2), fees and costs may be taxed and recovered in the same manner as if such functions had been performed by a legal practitioner in private practice.

(4) Any costs awarded by a court under this section must be determined in accordance with the fees prescribed by the rules of the relevant court.''.

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

Amendment of section 42A of Act 28 of 2011, as inserted by section 41 of Act 23 of 2015, and amended by section section 29 of Act 33 of 2019

16. Section 42A of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

''*(a)* SARS must make arrangements with a legal practitioner from the panel appointed under section 111 to take receipt of the material;''; and

(b) by the substitution in subsection (4) for the words that precede paragraph *(a)* of the following words:

''The **[appointed]** practitioner—''.

Amendment of section 47 of Act 28 of 2011, as amended by section 43 of Act 23 of 2015

17. Section 47 of the Tax Administration Act, 2011, is hereby amended—

(a) by the deletion in subsection (1) after paragraph *(a)*(i) of the word ''or'';

(b) by the substitution in subsection (1) after paragraph *(a)*(ii) for the word ''and'' of the word ''or''; and

(c) by the addition in subsection (1)*(a)* after subparagraph (ii) of the following subparagraph:

''(iii) to expedite an application for an instalment payment agreement, write-off or compromise of a tax debt; and''.

Amendment of section 51 of Act 28 of 2011, as amended by section 45 of Act 23 of 2015

18. Section 51 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

''(3) A presiding officer must be a **[person]** legal practitioner appointed to the panel described in section 111.''.

Amendment of section 67 of Act 28 of 2011

19. Section 67 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

''(4) A person who receives information under section 68, 69, 70 or 71, must preserve the secrecy of the information and may only disclose the information to another person if the disclosure is necessary to perform the functions specified in

those sections, unless the information has been received in terms of section 46 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).''.

Amendment of section 69 of Act 28 of 2011, as amended by section 41 of Act 39 of 2013, section 48 of Act 44 of 2014, section 47 of Act 23 of 2015, section 53 of Act 16 of 2016 and section 26 of Act 18 of 2023

20. Section 69 of the Tax Administration Act, 2011, is hereby amended by the insertion in subsection (2) after paragraph *(b)* of the following paragraph:

''*(b*A*)* where access has been granted for the disclosure of the information in terms of section 46 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);''.

Amendment of section 91 of Act 28 of 2011, as amended by section 58 of Act 21 of 2012, section 32 of Act 33 of 2019 and section 27 of Act 24 of 2020

21. Section 91 of the Tax Administration Act, 2011, is hereby amended—

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

''(1) If a tax Act or the Commissioner requires a taxpayer to submit a return or the taxpayer voluntarily submits a return, which does not incorporate a determination of the amount of a tax liability, SARS must make an original assessment based on the return submitted by the taxpayer or other information available or obtained in respect of the taxpayer.'';

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

''(2) If a tax Act or the Commissioner requires a taxpayer to submit a return or the taxpayer voluntarily submits a return, which incorporates a determination of the amount of a tax liability, the submission of the return is an original self-assessment of the tax liability.''; and

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

''(4) If a taxpayer is not required to or does not submit a return, SARS may make an original assessment based on an estimate under section 95 of the Act.''.

Amendment of section 104 of Act 28 of 2011, as amended by section 57 of Act 16 of 2016

22. (1) Section 104 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for subsections (4) and (5) of the following subsections:

''(4) A senior SARS official may extend the period prescribed in the 'rules' within which objections must be made for—

(a) 30 business days, if satisfied that reasonable grounds exist for the delay in lodging the objection; or

(b) a period exceeding 30 business days, if satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection.

(5) The period for objection must not be **[so]** extended under subsection (4)—

[*(a)* for a period exceeding 30 business days, unless a senior SARS official is satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection;]

[*(b)*]*(a)* **[if]** for more than three years **[have lapsed]** from the date of assessment or the 'decision'; or

[*(c)*]*(b)* if the grounds for objection are based wholly or mainly on a change in a practice generally prevailing which applied on the date of assessment or the 'decision'.''; and

(b) by the addition of the following subsections:

''(6) By mutual agreement, SARS and the taxpayer making the objection may attempt to resolve the dispute through alternative dispute resolution under the procedures specified in the 'rules'.

(7) Proceedings on the objection are suspended while the alternative dispute resolution procedure is ongoing.''.

(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 107 of Act 58 of 2011, as amended by section 60 of Act 21 of 2012

23. (1) Section 107 of the Tax Administration Act, 2011, is hereby amended by the insertion after subsection (2) of the following subsection:

''(2A) After the expiry of the period within which an appeal must be lodged or the extended period pursuant to an application in terms of subsection (2), the tax court may extend the period within which an appeal may be lodged for up to 120 business days, if the extension is in the interests of justice.''.

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

Amendment of section 109 of Act 58 of 2011

24. Section 109 of the Tax Administration Act, 2011, is hereby amended—

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

''(1) An appeal against an assessment or 'decision' must in the first instance be heard by a tax board, if**[—**

***(a)*]** the tax in dispute does not exceed the amount the Minister determines by public notice, **[; and**

***(b)*]** unless a senior SARS official and the 'appellant' **[so]** agree that the matter be heard by the tax court.''; and

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

''(4) In making a decision under subsection (1)**[*(b)*]**, a senior SARS official must consider whether the grounds of the dispute or legal principles related to the appeal should rather be heard by the tax court.''.

Amendment of section 110 of Act 28 of 2011, as amended by section 49 of Act 39 of 2013, section 24 of Act 13 of 2017 and section 34 of Act 33 of 2019

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

''(1) A tax board consists of—

(a) the chairperson, who must be **[a legal practitioner]** selected from the panel appointed under section 111; and

(b) if the chairperson, after considering any legal representations by a senior SARS official or the taxpayer, considers it necessary—

(i) an accountant who is a member of the panel referred to in section 120;

(ii) a representative of the commercial community who is a member of the panel referred to in section 120; or

(iii) a legal practitioner who is a member of the panel referred to in section 111.''.

Amendment of section 111 of Act 28 of 2011, as amended by section 35 of Act 33 of 2019

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

''(1) The Minister must, in consultation with the Judge-President of the Division of the High Court with jurisdiction in the area where the tax board is to sit, or the chief executive officer of the relevant recognised controlling bodies under section 240A of the Act, by public notice appoint legal practitioners or registered tax practitioners to a panel from which a chairperson of the tax board must be nominated from time to time.''.

Amendment of section 125 of Act 28 of 2011, as amended by section 26 of Act 13 of 2017

27. (1) Section 125 of the Tax Administration Act, 2011, is hereby amended by the addition of the following subsection:

''(2) The 'appellant' or the representative of the 'appellant' may appear at the hearing of an appeal in support of the appeal: Provided that if the representative of the 'appellant' is a person who is not a legal practitioner, the president of the tax court is satisfied that the person is a fit and proper person to appear on the 'appellant's' behalf.''.

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

Amendment of section 130 of Act 28 of 2011, as amended by section 61 of Act 21 of 2012 and section 53 of Act 39 of 2013

28. (1) Section 130 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) The costs awarded by the tax court under this section must be determined in accordance with the fees prescribed by the 'rules' or the rules of the High Court, as the case may be.''.

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

Amendment of section 195 of Act 28 of 2011, as amended by section 55 of Act 44 of 2014

29. Section 195 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) A senior SARS official may decide to temporarily 'write off' an amount of tax debt**[—**

***(a)*]** if satisfied that the tax debt is uneconomical to pursue as described in section 196 at that time**[; or**

(b) **for the duration of the period that the 'debtor' is subject to business rescue proceedings under Chapter 6 of the 'Companies Act', as referred to in section 132 of that Act**].''.

Amendment of section 236 of Act 28 of 2011, as amended by section 69 of Act 23 of 2015

30. The Tax Administration Act, 2011, is hereby amended by the substitution for section 236 of the following section:

''**Criminal offences relating to secrecy provisions**

236. A person who contravenes the provisions of section 67(2), (3) or (4), 68(2), 69(1) or **[(6)]** (7) or 70(5) is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.''.

Amendment of section 246 of Act 28 of 2011, as amended by section 86 of Act 21 of 2012, section 84 of Act 39 of 2013, section 45 of Act 33 of 2019 and section 30 of Act 18 of 2023

31. Section 246 of the Tax Administration Act, 2011, is hereby amended—

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

''(2) The individual representative under subsection (1) must be—

(a) **[approved by SARS and—**

(i) **must be]** a person who is a senior official of the company**[;]** or,

[(ii)] if no senior official resides in the Republic, **[may be]** another suitable person approved by SARS;

(b) appointed by the company or by an agent or legal practitioner who has authority to appoint such a representative for the purposes of a tax Act; and

(c) called the public officer of the company**[; and**

(d) **appointed within one month after the company begins to carry on business or acquires an office in the Republic**].'';

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

"(3) If a public officer is not appointed as required under this section, the public officer is regarded to be—

(a) **[the director, company secretary or other officer of the company that SARS designates for that purpose]** the first person who is eligible to represent the company as public officer, in the following order of priority:

(i) Managing director or equivalent;

(ii) financial director or equivalent;

(iii) company secretary;

(iv) director or prescribed officer who has the largest shareholding in the company;

(v) director or prescribed officer who has held office for the longest period of time; and

(vi) a senior employee of the company in order of the company's reporting hierarchy; or

(b) any suitable person that SARS designates for that purpose."; and

(c) by the substitution for subsection (7) of the following subsection:

(7) **[If SARS is of the opinion that a person is no longer suitable to represent the company as public officer SARS may withdraw its approval under subsection (2)*(a)*]** The company is regarded as not having appointed a public officer if the person appointed as public officer is—

(a) not eligible, in terms of subsection (2) or (8), to represent the company as public officer; or

(b) notified by SARS that he or she is not considered suitable to represent the company as public officer,

and must, within 21 business days of the date on which paragraph *(a)* or *(b)* becomes applicable, notify SARS, in writing, of the newly appointed public officer.".

Amendment of section 247 of Act 28 of 2011

32. Section 247 of the Tax Administration Act, 2011, is hereby amended—

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

"(1) **[A company referred to in section 246(1) must, within the period referred to in section 246(2)(*d*), appoint a place within the Republic approved by SARS at which]** SARS may serve, deliver or send the company a notice or other document provided for under a tax Act to an address provided by the company as referred to in section 23."; and

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

"(2) Every notice, process, or proceeding which under a tax Act may be given to, served upon or taken against a company referred to in section 246(1), may be given to, served upon, or taken against its public officer**[, or if at any time there is no public officer, any officer or person acting or appearing to act in the management of the business or affairs of the company or as agent for the company]**.".

Amendment of section 30 of Act 16 of 2022

33. Section 30 of the Tax Administration Laws Amendment Act, 2022, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Subsection (1) is deemed to have come into operation on 1 September 2022, and applies to any return, for purposes of paragraph 14(2) of the Fourth Schedule to the Income Tax Act, submitted on or after that date.".

Short title and commencement

34. (1) This Act is called the Tax Administration Laws Amendment Act, 2024.

(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.

MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2024

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2024 (the ''Bill''), proposes to amend the following Acts:

- The Income Tax Act, 1962 (Act No. 58 of 1962);
- the Customs and Excise Act, 1964 (Act No. 91 of 1964);
- the Value-Added Tax Act, 1991 (Act No. 89 of 1991);
- the Tax Administration Act, 2011 (Act No. 28 of 2011); and
- the Tax Administration Laws Amendment Act, 2022 (Act No. 16 of 2022).

2. OBJECTS OF BILL

2.1 Clause 1: Amendment of section 30A of Income Tax Act, 1962

The proposed amendment aims to correct an incorrect cross-reference in this section.

2.2 Clause 2: Amendment of paragraph 1 of Fourth Schedule to Income Tax Act, 1962

Paragraph 2(5)*(a)*(i) of the Fourth Schedule refers to a person being registered as a provisional taxpayer under the provisions of paragraph 17(8). Paragraph 17(8) of the Fourth Schedule was deleted by the Tax Administration Laws Amendment Act, 2015. As such, no obligation to register as a provisional taxpayer exists. A taxpayer automatically becomes a provisional taxpayer if the taxpayer meets the requirements of the definition of provisional taxpayer. It is proposed that the obsolete reference to paragraph 17(8) be deleted, and that a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5)*(a)*, be specifically included in the definition of provisional taxpayer.

2.3 Clause 3: Amendment of paragraph 2 of Fourth Schedule to Income Tax Act, 1962

Paragraphs *(a)* and *(b)*: The proposed amendment is consequential to the amendment of section 11(*n*A) by the Taxation Laws Amendment Bill, 2024.

Paragraph *(c)*: See the note on the proposed amendment to the definition of ''provisional taxpayer'' in paragraph 1 of the Fourth Schedule.

2.4 Clause 4: Amendment of paragraph 19 of Fourth Schedule to Income Tax Act, 1962

The proposed amendment aims to correct an incorrect cross-reference.

2.5 Clause 5: Amendment of section 4 of Customs and Excise Act, 1964

The proposed amendment seeks to give effect to the Order of court made by the Constitutional Court in *Arena Holdings (Pty) Limited t/a Financial Mail and Others v South African Revenue Services and others* [2023] ZACC 13, regarding measures to address the constitutional invalidity of certain provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as well as provisions relating to secrecy of taxpayers' information in the Tax Administration Act, 2011 (Act No. 28 of 2011). Although the Court's findings did not directly pertain to the Customs and Excise Act, 1964, the Act also contains secrecy provisions relating to taxpayer information which are now adjusted accordingly.

2.6 Clause 6: Amendment of section 38 of Customs and Excise Act, 1964

The proposed amendment relates to the announcement in the 2024 Budget Review concerning the timeframes for the submission of certain export bills or entry. Section 38(3) provides that the Commissioner may allow a reasonable timeframe for the submission of bills of entry in respect of certain goods. The proposed amendment to this subsection aims firstly to ensure that prohibited and restricted goods in respect of which compliance with requirements has already taken place are not excluded from the Commissioner's discretion, and secondly to enable the Commissioner to determine the process for exercising the discretion provided for in subsection (3) by rule. An application process is foreseen which will ensure proper governance as well as facilitation of the export procedure for exporters that face legitimate challenges in relation to complying with the timeframe for submission of the export bill of entry.

2.7 Clause 7: Amendment of section 40 of Customs and Excise Act, 1964

The proposed amendment relates to the announcement in the 2024 Budget Review concerning the simplification of the process for the substitution of a bill of entry in certain circumstances dealt with in section 40(3)*(a)*(ii). No separate cancellation by way of a voucher of correction will be required in the circumstances set out in the provision and the substituting bill of entry will replace the previous bill of entry.

2.8 Clause 8: Amendment of section 69 of Customs and Excise Act, 1964

The proposed amendments are technical corrections aimed at removing references in section 69 to certain items in Section B of Part 2 of Schedule No. 1 to the Act, which were deleted from Schedule No. 1 to the Act some years ago when the *ad valorem* duties on recorded media and road tractors were abolished. The consequential amendments required to be made to this section were inadvertently not effected at the time of deletion of the items from the Schedule.

2.9 Clause 9: Amendment of section 14 of Value-Added Tax Act, 1991

In terms of the Value-Added Tax Act, 1991, VAT should be accounted for and is payable by the recipient of imported services within 30 days of the earlier of receipt of the invoice issued by the supplier or the recipient or the time any payment is made by the recipient in respect of that supply. In many instances it is impractical to comply with the 30-day time period. Failure to pay VAT within this timeframe will result in the imposition of penalties and interest. To address this concern, it is proposed that the 30-day time period be extended to 60 days.

2.10 Clause 10: Amendment of section 16 of Value-Added Tax Act, 1991

Prior to the introduction of the Tax Administration Act, 2011, the Value-Added Tax Act made specific provision for a refund of tax paid in excess of what was properly chargeable under the Value-Added Tax Act, 1991. While the Value-Added Tax Act, 1991, read with the Tax Administration Act, 2011, provides for a refund of an amount under an assessment of an amount erroneously paid, it does not adequately cater for a reduction in the amount of tax chargeable as result of a subsequent event in respect of the importation of goods by persons who are not registered as vendors or in respect of imported services where there is no assessment. The proposed amendment aims to correct this.

2.11 Clause 11: Amendment of section 23 of Value-Added Tax Act, 1991

Due to the wide definition of ''enterprise'', non-resident vendors may be required to register as vendors, despite not having any physical presence in

South Africa or having a very limited presence for a short period of time. These non-residents have difficulties in appointing a representative vendor who resides in South Africa and in opening a South African bank account, which is one of the requirements to register as a vendor. As a result, non-resident suppliers of electronic services were exempted from these requirements.

To facilitate engagement and compliance, the proposed amendment provides that electronic services suppliers shall be required to appoint a representative vendor, however the requirement that such vendor must reside in South Africa be waived, while maintaining the exemption from opening a South African bank account. Furthermore, it is recommended that this concession be afforded to non-resident vendors with no, or a limited, presence in South Africa in specified circumstances.

2.12 Clause 12: Amendment of section 44 of Value-Added Tax Act, 1991

Paragraph *(a)*: See the note on the proposed amendment of section 23 above. The proposed amendment is consequential to the amendment of section 23.

Paragraph *(b)*: See the note on the proposed amendment of section 16 above. The proposed amendment is consequential to the amendment of section 16.

2.13 Clause 13: Amendment of section 46 of Value-Added Tax Act, 1991

See the note on the proposed amendment of section 23 above. The proposed amendment is consequential to the amendment of section 23.

2.14 Clause 14: Amendment of section 1 of Tax Administration Act, 2011

The concept of a legal practitioner is frequently used throughout the Tax Administration Act, 2011, and it is proposed that a general definition aligned with the definition of the term in the Legal Practice Act, 2014, be inserted, to prevent the unnecessary duplication of wording in the Tax Administration Act, 2011.

2.15 Clause 15: Amendment of section 12 of Tax Administration Act, 2011

Paragraph *(a)*: The proposed amendment will enable senior SARS officials who appear on behalf of SARS or the Commissioner in legal proceedings under a tax Act, to also appear in proceedings before the Supreme Court of Appeal and Constitutional Court, in addition to the High Court and tax court, as is currently the case.

Paragraph *(b)*: The proposed amendment is a consequential amendment to the amendment of section 12(1).

Paragraph *(c)*: *Addition of subsection (3)*: The proposed amendment provides that where a senior SARS official that is a duly admitted and enrolled legal practitioner appeared on behalf of SARS or the Commissioner in any proceedings in a High Court, Supreme Court of Constitutional Court, fees and costs may be taxed and recovered in the same manner as if such functions had been performed by a legal practitioner in private practice, as is the case for the State Attorney. Recovery of costs in the tax court for both SARS and the taxpayer is regulated by section 130 of the Act. In this regard also see the proposed amendment to section 130.

Addition of subsection (4): The proposed amendment provides that any costs awarded by a court under this section must be determined in accordance with the fees prescribed by the rules of the relevant court.

2.16 Clause 16: Amendment of section 42A of Tax Administration Act, 2011

The proposed amendment is consequential to the proposed amendment to section 111 of the Tax Administration Act, 2011.

2.17 Clause 17: Amendment of section 47 of Tax Administration Act, 2011

SARS may require a person to attend the offices of SARS to be interviewed by a SARS official concerning the tax affairs of a person. This would be the case where the interview is intended to clarify issues of concern to SARS that would render further verification or audit unnecessary or to expedite a current verification or audit. Hence, section 47 aims to shorten a verification or audit by providing a process to dispose of the matter through a face-to-face discussion. This avoids unnecessary correspondence and is beneficial to both taxpayers and SARS. The proposed amendment aims to expand the provision to also include instances where a taxpayer has applied for debt relief, so as to also resolve or expedite these proceedings. The legislation does not preclude the interviewee from being accompanied by a legal advisor. This is an existing common law right.

2.18 Clause 18: Amendment of section 51 of Tax Administration Act, 2011

The proposed amendment is consequential to the proposed amendment to section 111 of the Tax Administration Act, 2011.

2.19 Clause 19: Amendment of section 67 of Tax Administration Act, 2011

In *Arena Holdings (Pty) Limited t/a Financial Mail and Others v South African Revenue Service and Others* [2023] ZACC 13, the Constitutional Court made findings regarding the constitutional invalidity of certain provisions of the Promotion of Access to Information Act, 2000, as well as the Tax Administration Act, 2011. The court ordered that Parliament considers measures to address their constitutional validity and, in the meantime, the court ordered a ''read in'' to the relevant provisions of the Promotion of Access to Information Act, 2000, and those of the Tax Administration Act, 2011. The proposed amendment aims to address these measures and effect the necessary amendments to the affected legislation.

2.20 Clause 20: Amendment of section 69 of Tax Administration Act, 2011

See the notes on the proposed amendment of section 67 above.

2.21 Clause 21: Amendment of section 91 of Tax Administration Act, 2011

Concerns have been raised that the current legislative framework only covers certain types of original assessments by implication. The proposed amendments aim to further clarify the legislative framework in order to address this concern, in particular in the context of SARS' ''auto-assessments'' of tax.

2.22 Clause 22: Amendment of section 104 of Tax Administration Act, 2011

Paragraph *(a)*: Section 104(4) read with rule 7(3) and rule 52(2)*(c)* of the dispute resolution rules promulgated under section 103 of the Tax Administration Act, 2011, may create the impression that an extension can only be requested for cases that fall under section 104(4) and not those falling under section 104(5) of the Act. The proposed amendment aims to clarify this matter by aligning the wording of section 104 with that of section 107(2) of the Act. It is further proposed that the time period of the extension be aligned with the structure used in section 107 of the Act, which also makes provision for a maximum period of extension, and other limitations in the Act (see, for example, sections 9 and 99(1)).

Paragraph *(b)*: Alternative dispute resolution proceedings can currently only be accessed at the appeal stage of a dispute, where they generally result in the resolution of the majority of appeals. In order to improve the efficiency of the dispute resolution process, the proposed amendment aims to also introduce alternative dispute resolution proceedings at the objection phase of the dispute. This proposal will allow for the earlier resolution of a tax dispute through improved engagements and the exchange of documents at the

objection stage of a dispute. The effective date for these provisions will be determined by the Minister by notice in the *Government Gazette*, in order to ensure operational and system readiness from SARS' side, before these provisions come into effect.

2.23 Clause 23: Amendment of section 107 of Tax Administration Act, 2011

Where a taxpayer has not lodged an appeal within the time period provided under the rules, or an extended period as provided under this section, the taxpayer's appeal will be invalid. The proposed amendment aims to create an additional remedy for the taxpayer to approach the tax court for an extension of up to 120 business days, should such extension be in the interest of justice. Hence the taxpayer can make an application to the tax court under the dispute resolution rules for extension in these instances (i.e. where the senior SARS official refuses to grant an extension or is no longer empowered to do so), should the criteria be met.

2.24 Clause 24: Amendment of section 109 of Tax Administration Act, 2011

Paragraph *(a)*: Some taxpayers prefer that their tax disputes be heard by the tax court, even where the tax board is competent to decide on the matter. This may result in an unnecessary overflow of matters to the tax court and overly full court rolls, bearing in mind that only a limited number of days are available for the sittings of the tax court. The proposed amendment aims to remove the requirement that SARS and the taxpayer must agree on a matter to be referred to the tax board, and that a matter will automatically in the first instance be heard by the tax board if the tax in dispute does not exceed the amount determined by the Minister of Finance by public notice. It will only be referred to the tax court if SARS and the taxpayer so agree should both parties regard it necessary, due to for example, the complexity of the matter.

Paragraph *(b)*: See paragraph *(a)*. The proposed amendment is a consequential amendment.

2.25 Clause 25: Amendment of section 110 of Tax Administration Act, 2011

The proposed amendment is consequential to the proposed amendment to section 111 of the Tax Administration Act, 2011.

2.26 Clause 26: Amendment of section 111 of Tax Administration Act, 2011

The chairperson of the tax board is nominated from a panel compiled by the Minister of Finance in terms of section 111 of the Tax Administration Act, 2011. Currently, the panel consists of legal practitioners appointed by the Minister in consultation with the Judge-President of the Division of the High Court with jurisdiction in the area where the tax board is to sit. It is proposed that registered tax practitioners who belong to a recognised controlling body under section 240A of the Tax Administration Act, 2011, may also be included in the panel due to their specific expertise in the area of tax, after consultation with the Chief Executive Officer of the recognised controlling body to which the registered tax practitioner belongs.

2.27 Clause 27: Amendment of section 125 of Tax Administration Act, 2011

The proposed amendment seeks to enable a person, other than a legal practitioner duly admitted and enrolled in terms of the Legal Practice Act, 2014, to appear on behalf of the taxpayer in the tax court, if the president of the tax court is satisfied that such person is a fit and proper person to appear on the taxpayer's behalf in tax court proceedings.

2.28 Clause 28: Amendment of section 130 of Tax Administration Act, 2011

Section 130 of the Tax Administration Act, 2011, provides for the granting of an order for costs in favour of an aggrieved party under certain circumstances. Subsection (2) provides that the costs awarded by the tax court under this section must be determined in accordance with the fees prescribed by the Rules of the High Court.

It is proposed that section 125 of the Tax Administration Act, 2011, be amended to enable a person, other than a legal practitioner duly admitted and enrolled in terms of the Legal Practice Act, 2014, to appear on behalf of a taxpayer in certain circumstances. In this regard see the note on the proposed amendment to section 125 of the Tax Administration Act, 2011. The rules of the High Court only apply to legal practitioners and hence cannot be used to determine the costs to be awarded to a taxpayer, where the person representing the taxpayer is not a legal practitioner.

It is proposed that section 130 be amended to provide that costs awards by the tax court in these instances be determined in accordance with the fees prescribed by the dispute resolution rules. Amendments will be introduced to the dispute resolution rules to make provision for specific fees in these instances.

2.29 Clause 29: Amendment of section 195 of Tax Administration Act, 2011

A tax debt can be written off temporarily if it is ‘‘uneconomical to pursue’’. ‘‘Uneconomical to pursue’’ means that the total costs of recovery of that tax debt is likely to exceed the anticipated amount to be recovered. In order to determine whether the costs of recovery is likely to exceed the anticipated amount to be recovered, a senior SARS official must have regard to factors such as the steps that have been taken to date to recover the tax debt and the costs involved in those steps, the likely cost of continuing action to recover the tax debt and the anticipated return from that action, the financial position of the debtor, including the debtor’s assets and liabilities, cash flow and possible future income streams.

Where a taxpayer is engaged in business rescue proceedings SARS’ recovery efforts are suspended *ex lege* until the business rescue proceedings are over. Consequently, a tax debt tied up in this procedure cannot easily meet the test of ‘‘uneconomical to pursue’’ as laid out above, and this section was amended by the Tax Administration Laws Amendment Act, 2014, to allow SARS to temporarily write off the tax debt during business rescue proceedings to recognise this suspension. Such a temporary write-off does not affect the collectability of the tax debt from the taxpayer.

The application of accounting impairments in the financial statements of SARS has since matured and provides a better way to deal with such matters. It is therefore no longer necessary to account for the temporary write-off a tax debt during business rescue.

2.30 Clause 30: Amendment of section 236 of Tax Administration Act, 2011

The proposed amendment aims to correct an incorrect cross-reference.

2.31 Clause 31: Amendment of section 246 of Tax Administration Act, 2011

Every company that carries on business or has an office in South Africa must be represented by a public officer. Given that companies are automatically registered for income tax on formation, it is proposed that the one month period within which the public officer must first be appointed be removed. A newly formed company will thus have both its directors and public officer in place on formation. Should a company fail to appoint a public officer at the time of formation, the proposed amendment provides for a default rule of

senior officials of the company who will be regarded as the public officer in order of priority.

The public officer must be eligible to be so appointed in that they meet the requirements that they be a senior official of the company and be resident in South Africa, amongst others, in subsection (2) and not be disqualified under subsection (8). Should the public officer not be so eligible or be regarded by SARS as not suitable to represent the company as public officer, the company will be regarded as not having appointed a public officer. The company has 21 business days within which to appoint a new public officer who complies with the requirements as laid down by this section, failing which, a default list of who will be regarded as the public officer will apply or SARS can designate a suitable person to represent the company as the public officer.

2.32 Clause 32: Amendment of section 247 of Tax Administration Act, 2011

The proposed amendments are consequential to the proposed amendment of section 246. See the notes on the proposed amendment of section 246 above.

2.33 Clause 33: Amendment of section 30 of Tax Administration Laws Amendment Act, 2022

The proposed amendment is a textual correction.

2.34 Clause 34: 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 2024 Budget Review, tabled in Parliament on 21 February 2024.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, the National Treasury and SARS 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 and Khoi-San Leaders in terms of section 39(1)*(a)* of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.

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