

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. 45437
of 8 November 2021)*
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 23—2021]

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

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

1. Section 5 of the Estate Duty Act, 1955, is hereby amended—

- (a) by the substitution in subsection (1)(c) for the words that precede item (i) of the following words: 10
 “in the case of any right to any annuity referred to in paragraph (a) of subsection (2) of section three, an amount equal to the value of the annuity capitalized at twelve per cent[.]—”.
- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 15
 “in the case of any right to any annuity referred to in paragraph (b) of subsection (2) of section *three*, an amount equal to the value of the annuity capitalized at twelve per cent[.] over the expectation of life of the lesser period than the life of such person, over such lesser period;” 20
- (c) by the substitution in subsection (1)(f) for paragraphs (i), (ii) and (iii) of the following paragraphs: 20
 “(i) in the case of a usufructuary interest, by capitalizing at twelve per cent [.] the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life 25
 of the person entitled to such interest, or if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;
 (ii) in the case of an annuity charged upon the property, by capitalizing at twelve per cent[.] the amount of the annuity over 30
 the expectation of life of the person entitled to such annuity, or if it is to be held for a lesser period than the life of such person, over such lesser period; or
 (iii) in the case of any other interest, by capitalizing at twelve per cent[.] such amount as the Commissioner may consider reasonable 35
 as representing the annual yield of such interest, over the expectation of life of the person entitled to such interest, or if such interest is to be held for a lesser period than the life of such person, over such lesser period;”;
- (d) by the substitution for subsection (1)(f)ter of the following subsection: 40
 “(f)ter in the case of any property referred to in paragraph (d) of subsection (3) of section *three* which consists only of profits, an amount determined by capitalizing at twelve per cent[.] such amount as the Commissioner may consider reasonable as representing the annual value of such profits over the expectation 45
 of life of the deceased immediately prior to the date of his or her death, and in the case of any other property referred to in the said paragraph the amount remaining after deducting from the fair market value of that property as at the date of death of the deceased the expenses and liabilities which the deceased would 50
 have had to bear or assume if he or she had at that date exercised his or her power of disposition;”;
- (e) by the substitution in subsection (2) for the first proviso of the following proviso: 55
 “Provided that where the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to [12] twelve per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may be reasonable, and the sum so fixed shall be deemed to be 60
 the annual value of the right of enjoyment of such property:”.

Amendment of section 18A of Act 58 of 1962, as substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011, section 7 of Act 21 of 2012, section 52 of Act 31 of 2013, section 29 of Act 43 of 2014, section 3 of Act 44 of 2014, section 34 of Act 15 of 2015, section 31 of Act 17 of 2017 and section 35 of Act 23 of 2018 5

2. Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution at the end of subsection (2)(a)(vi) of the word “or” for “and” and the addition of the following item: 10

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

Amendment of section 49F of Act 58 of 1962, as amended by section 12 of Act 21 of 2012 and section 62 of Act 43 of 2014 15

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

“(1) If, in terms of section 49C, a foreign person is liable for any amount of withholding tax on royalties in respect of any amount of royalties that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax and submit a return by the last day of the month following the month during which the royalty is paid, unless the tax has been paid by any other person.”. 20

Amendment of section 64LA of Act 58 of 1962, as inserted by Act 44 of 2014 and amended by Act 13 of 2017 25

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

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

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

5. Paragraph 13 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (5) of the following subparagraphs: 35

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

(7) Where a deduction in terms of subparagraph (1)(a) or (b) may be claimed in respect of a year of assessment, the period prescribed under section 29(3) of the Tax Administration Act after which records, books of account or documents need not be retained shall be extended to six years or eleven years respectively for such year of assessment. 40

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

Amendment of paragraph 6 of Fourth Schedule to Act 58 of 1962, as amended by section 83 of Act 45 of 2003, section 18 of Act 34 of 2004, section 14 of Act 61 of 2008 and section 271 read with paragraph 80 and paragraph 193 of Schedule 1 of Act 28 of 2011

6. Paragraph 6 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph: 5

“(1) If an employer fails to pay any amount of employees’ tax for which [he or her] the employer is liable within the period allowable for payment thereof in terms of paragraph 2 SARS must, in accordance with Chapter 15 of the Tax Administration Act, impose a penalty equal to ten per cent of such amount.”. 10

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 22 of Act 4 of 2008, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 16 of Act 61 of 2008, section 21 of Act 18 of 2009, section 22 of Act 8 of 2010, section 271 read with paragraph 85 and 194 of Schedule 1 of Act 28 of 2011, section 20 of Act 21 of 2012, section 13 of Act 23 of 2015 and section 9 of Act 33 of 2019 15

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

“(7) If the total amount of employees’ tax deducted or withheld, or which should have been deducted or withheld for the period described in subparagraph (3), is unknown, the Commissioner may estimate the total amount based on information readily available and impose the penalty under subparagraph (6) on the amount so estimated. 20

(8) Where, upon determining the actual employees’ tax of the person in respect of whom the penalty was imposed under subparagraph (7), it appears that the total amount of employees’ tax was incorrectly estimated under subparagraph (7), the penalty must be adjusted in accordance with the correct amount of employees’ tax with effect from the date of the imposition of the penalty under subparagraph (6) read with subparagraph (7).” 25

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

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

“(1A) Subparagraph (1)(a) does not apply where the duration of the year of assessment in question does not exceed a period of six months.”. 35

Amendment of paragraph 23 of Fourth Schedule to Act 58 of 1962, as amended by section 30 of Act 88 of 1965, section 53 of Act 85 of 1974, section 51 of Act 94 of 1983, section 41 of Act 121 of 1984, section 27 of Act 65 of 1986, section 53 of Act 101 of 1990 and section 11 of Act 9 of 2005 40

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

(a) by the renumbering of the current paragraph as subparagraph (1); and

(b) by the addition after subparagraph (1) of the following subparagraph:

“(2) Subparagraph (1)(a) does not apply where the duration of the year of assessment in question does not exceed a period of six months.”. 45

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

10. Paragraph 17 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of subparagraph (4). 50

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 32 of Act 60 of 1989, section 51 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 34 of Act 34 of 1997, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 66 of Act 32 of 2004, section 85 of Act 31 of 2005, section 7 of Act 21 of 2006, section 10 of Act 9 of 2007, section 4 of Act 36 of 2007, section 22 of Act 61 of 2008, section 1 of Act 32 of 2014, section 20 of Act 23 of 2015, section 11 of Act 33 of 2019 and section 9 of Act 24 of 2020

11. Section 1 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following subsection after subsection (5):

- “(5A) A reference in—
- (a) section 4 to the expression “Department of Trade and Industry or the Economic Development Department” or “Department of Trade and Industry and Economic Development” must be read as a reference to “Department of Trade, Industry and Competition”;
 - (b) sections 21A, 43, 48, 49, 53, 55, 56, 56A, 57, 75 and 114 to the expression “Trade and Industry” must be read as a reference to “Trade, Industry and Competition”; and
 - (c) section 48 to the expression “Minister of Trade and Industry and for Economic Coordination” must be read as a reference to “Minister of Trade, Industry and Competition.”.

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

12. Section 6 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended by the substitution in subsection (1) for paragraph (hC) of the following paragraph:

- “(hC) places where degrouping depots may be established to which air cargo may be removed ~~[from a transit shed]~~ before due entry thereof, for purposes of—
- [(a)](i) the storage, detention, unpacking or examination of consolidated packing or its contents
 - [(b)](ii) the removal to another such degrouping depot or the delivery to importers of such contents after due entry thereof;
 - [(c)](iii) the packing or consolidation and removal thereof to a transit shed for export; and
 - [(c)](iv) such other activities as may be specified by rule;”.

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

13. Section 38A of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended by the deletion in subsection (2)(a) of subparagraph (i).

Amendment of section 60 of Act 91 of 1964, as amended by section 4 of Act 85 of 1968, substituted by section 20 of Act 105 of 1969, and amended by section 11 of Act 86 of 1982, section 25 of Act 59 of 1990, section 9 of Act 19 of 1994, section 44 of Act 45 of 1995, section 57 of Act 53 of 1999, section 46 of Act 19 of 2001, section 48 of Act 30 of 2002 and section 50 of Act 32 of 2014

14. Section 60 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the heading of the following heading:

“60. Licensing **[fees according to Schedule No. 8]**”.

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

15. Section 64E of the Customs and Excise Act, 1964, is hereby amended by the repeal of subsection (4). 5

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 24 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 8 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, section 109 of Act 74 of 2002, section 146 of Act 45 of 2003, section 27 of Act 34 of 2004, section 92 of Act 31 of 2005, section 70 of Act 20 of 2006, section 95 of Act 35 of 2007, section 99 of Act 60 of 2008, section 63 of Act 32 of 2014 and section 16 of Act 13 of 2017 10 15

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

(a) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 20

“(d) in respect of any excisable goods or fuel levy goods manufactured in the Republic described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 or of the fuel levy and of the Road Accident Fund levy specified respectively in Part 5A and Part 5B of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, or a refund of the excise duty, fuel levy or Road Accident Fund levy actually paid at the [item] time of entry for home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6.”; and 25 30 35

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

“(a) Notwithstanding the provision of subsection (1A), the Commissioner may investigate any application for a refund of such levies on distillate fuel to establish whether the fuel has been— 40

- (i) duly entered or is deemed to have been duly entered in terms of this Act;
- (ii) purchased in the quantities stated in such return;
- (iii) **[delivered to the premises of the user and is being stored and used or has been used in accordance with the purpose declared on the application for registration and the said item of Schedule No. 6.]** collected by the user or delivered for the user; 45
- (iv) dispensed directly for use, or stored in storage facilities controlled by the user and dispensed from such storage facilities for use; and 50
- (v) used in accordance with the purpose declared on the application for registration and the said item of Schedule No. 6.”.

(2) Subsection (1)(b) comes into operation on a date determined by the Minister by notice in the *Gazette*. 55

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

17. Section 79 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph (e) of the following paragraph: 5

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

Amendment of section 93 of Act 28 of 2011, as amended by section 45 of Act 39 of 2013, section 49 of Act 23 of 2015 and section 28 of Act 24 of 2020

18. Section 93 of the Tax Administration Act, 2011, is hereby amended by the deletion 10 of the word “or” after paragraph (d) and the substitution for the word “and” at the end of paragraph (e) with the word “or”.

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

19. Section 95 of the Tax Administration Act, 2011, is hereby amended— 15

(a) by the substitution for subsection (5) of the following subsection:

“(5) An assessment under subsection (1)(a) or (c) is **[not]** only subject to objection **[or]** and appeal, **unless the taxpayer—**

(a) **submits the return referred to in subsection (1)(a); or**

(b) **submits the response to the request referred to in subsection 20 (1)(c),**

and] if SARS [does] decides not [issue] to make a reduced or additional assessment after the taxpayer submits the return or relevant material under subsection (6).”;

(b) by the substitution for subsection (6) of the following subsection: 25

“(6) The taxpayer in relation to whom the assessment under subsection (1)(a) or (c) has been issued may, within 40 business days from the date of assessment, request SARS to **[issue]** make a reduced **[assessment]** or additional assessment by submitting a true and full return or the relevant material.”; 30

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

“(7) **[A]** If reasonable grounds for an extension are submitted by the taxpayer, a senior SARS official may extend the period referred to in subsection (6) within which the return or relevant material must be submitted, for a period not exceeding the relevant period referred to in 35 section 99(1) or forty business days, whichever is the longest.”; and

(d) by the addition after subsection (7) of the following subsection:

“(8) If SARS decides not to make a reduced or additional assessment under subsection (6), the date of the assessment made under subsection (1)(a) or (c), for purposes of Chapter 9, is regarded as the date 40 of the notice of the decision.”.

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

20. Section 99 of the Tax Administration Act, 2011, is hereby amended by the 45 insertion in subsection (2)(d) after item (iii) of the following item:

“(iv) a reduced or additional assessment under section 95(6); or”.

Amendment of section 149 of the Act 28 of 2011

21. Section 149 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph: 50

“(a) be in a format which, subject to section 70[(5)](6), does not disclose the identity of the person concerned; and”.

Amendment of section 233 of Act 28 of 2011

22. Section 233 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) subject to section 70[(5)](6), not disclose the identity of the applicant, and must be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister, as the case may be; and”.

Amendment of section 1 of Act 14 of 2020

23. (1) Section 1 of the Disaster Management Tax Relief Administration Act, 2020, is hereby amended by the substitution for paragraph (b) in the definition of “qualifying taxpayer” of the following paragraph:

“(b) that conducts a trade during the year of assessment ending on or after 1 April [2020] 2021 but before 1 April [2021] 2022 and has a gross income of R100 million or less during that year of assessment;”.

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

Amendment of section 2 of Act 14 of 2020

24. (1) Section 2 of the Disaster Management Tax Relief Administration Act, 2020, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) A qualifying taxpayer, that is a resident employer or representative employer as referred to in paragraph 2 of the Fourth Schedule to the Income Tax Act, that is registered as such an employer by [25 March 2020] 25 June 2021, may pay only 65 per cent of the employees’ tax payable in terms of paragraph 2(1) of the Fourth Schedule, with respect to amounts deducted or withheld during the period commencing on [1 April 2020] 1 August 2021 and ending on [31 August 2020] 31 October 2021.

(2) The remaining amount of 35 per cent of the employees’ tax payable in terms of paragraph 2(1) of the Fourth Schedule to the Income Tax Act, with respect to amounts deducted or withheld during the period in subsection (1), must be included in the gross employees’ tax due and payable by the employer in [six] four equal monthly instalments, commencing on [7 October 2020] 7 December 2021 and ending on [5 March 2021] 7 March 2022.”.

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

Short title and commencement

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

(2) Save in so far as is otherwise provided for in this Act, or the context otherwise indicates, the amendments effected by this Act come into operation on the date of promulgation of this Act.

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

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2021 (the “Bill”), proposes to amend the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Tax Administration Act, 2011, and the Disaster Management Tax Relief Administration Act, 2020.

2. OBJECTS OF BILL

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

The proposed amendments are textual corrections.

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

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

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

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

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

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

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

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

2.6 ***Income Tax Act, 1962: Amendment of paragraph 6 of Fourth Schedule***

The proposed amendment is a textual correction.

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

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

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

Provisional taxpayers are required to make provisional tax payments within six months after the commencement of a year of assessment and then again by the end of the year of assessment. Currently, no provision is made for instances where a taxpayer has a short year of assessment, whether by reason of death, ceasing to be a tax resident, a company being incorporated during a year or a change of a company's financial year. It is proposed that a first provisional tax payment and return not be required when the duration of a year of assessment does not exceed six months.

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

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

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

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

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

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

2.11 ***Customs and Excise Act, 1964: Amendment of section 1***

The proposed amendment inserts an interpretation provision in relation to the different references in the Customs and Excise Act to the Department currently known as the Department of Trade, Industry and Competition.

2.12 *Customs and Excise Act, 1964: Amendment of section 6*

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

2.13 *Customs and Excise Act, 1964: Amendment of section 38A*

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

2.14 *Customs and Excise Act, 1964: Amendment of section 60*

The proposed amendment is a technical correction. The section has developed over time and the heading no longer reflects the content of the section.

2.15 *Customs and Excise Act, 1964: Amendment of section 64E*

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

2.16 *Customs and Excise Act, 1964: Amendment of section 75*

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

Paragraph (b): Section 75(1C)(a) provides the scope for what SARS may investigate to confirm the validity of a diesel refund claim. Currently subparagraph (iii) only caters for the diesel delivery and storage practices of users and their "dry" contractors (where the diesel is provided to the contractor by the user), but not "wet" contractors (where the contractor obtains the diesel itself). The proposed amendment is required as the policy intention is to accommodate "wet" contractors in the diesel refund scheme in the future. Furthermore, it will ensure that smaller users are not excluded as they often collect and dispense their diesel purchases directly for use without it being stored at the user's premises.

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

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

2.18 *Tax Administration Act, 2011: Amendment of section 93*

The proposed amendment is a textual correction.

2.19 *Tax Administration Act, 2011: Amendment of section 95*

2.19.1 SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer does not submit a return (section 95(1)(a)), submits a return or relevant material that is incorrect or inadequate (section 95(1)(b)), or does not submit a response to a request for relevant material after delivery of more than one request for such material (section 95(1)(c)). In the event that SARS raises an assessment based on an estimate in terms of section 95(1)(b), that assessment will be subject to objection and appeal in terms of section 104(1) of the Tax Administration Act.

2.19.2 Section 95(6) provides that a taxpayer in relation to whom an assessment based on an estimate was made in terms of section 95(1)(a) or (c), may within 40 business days from the date of the assessment, request SARS to make a reduced or additional assessment by submitting a true and full return or the relevant material.

Based on the proposed revised wording of section 95(5) and 95(6), once a taxpayer submits a return or the relevant material as required in terms of section 95(6), SARS has one of the following three options and the taxpayer may respond accordingly:

- *Option 1:* After review SARS accepts the return or relevant material and makes a reduced or additional assessment as requested by the taxpayer
- *Option 2:* After review SARS does not accept all the information contained in the return or some of the relevant material and makes a reduced or additional assessment accordingly. In this instance, the reduced or additional assessment will be subject to objection and appeal in the ordinary course, since it replaces the assessment contemplated in section 95(1)(a) or (c)
- *Option 3:* After review SARS does not accept the return or any of the relevant material, does not make a reduced or additional assessment and relies on the assessment based on an estimate. In this regard the proposed new section 95(8) clarifies that, should SARS decide not to make a reduced or additional assessment, the taxpayer may object and appeal within the normal timeframes from the date of the decision.

2.19.3 In the event that the taxpayer does not submit a request in terms of section 95(6) (which request would include submission of a true and full return or the relevant material) once an assessment based on an estimate has been issued in terms of section 95(1)(a) or (c), the taxpayer cannot object against the assessment (section 95(5)) and the assessment becomes final (section 100(1)(a)). However, SARS is not prevented from making an additional assessment, provided prescription does not apply, or alternatively, where the estimated assessment has prescribed, the circumstances referred to in section 99(2)(a) and (b) apply.

2.19.4 It may happen that SARS issues an additional assessment based on an estimate close to the end of the relevant prescription period. The 40-business day period, which is calculated from the date of the additional assessment based on an estimate, may thus end very close to or after the prescription date. This may not afford the taxpayer enough time to submit a true and full return or complete relevant material as requested by SARS, which means that the taxpayer is unable to request a reduced or additional assessment under section 95(6).

2.19.5 Furthermore, section 95(7) currently provides that a senior SARS official may extend the 40-business day period referred to in section 95(6) for a period not exceeding the relevant prescription periods under section 99 of the Act. The extension of 40 business days is calculated from the date of expiry of the initial 40-business day period. Hence, where SARS has issued an assessment based on an estimate close to prescription, both the initial period of 40 business days under section 95(6), as well as the extension period of 40 business days under section 95(7) may fall post prescription. This can be illustrated by the following example:

2.19.6 SARS makes an original income tax assessment on 31 December 2018. Subsequently, SARS sends more than one request to the taxpayer to submit relevant material under section 46, to which requests the taxpayer does not respond. SARS proceeds to make an additional assessment based on an estimate in terms of section 95(1)(c) on 30 November 2021. In terms of section 95(6) the taxpayer may request SARS, within 40 business days from the date of the additional assessment based on an estimate, to make a reduced assessment by submitting the relevant material. The taxpayer responds on day 39 of the 40 business days, i.e. 25 January 2022, with a request to extend the period for another 40 business days in terms of section 95(7). By this time, the period under section 99(1)(a) for the issue of further assessments, i.e. three years after the date of the original assessment, would have prescribed.

2.19.7 To address this scenario, the wording of section 95(7) has been amended to provide that SARS may extend the initial 40-business day period for a period not exceeding the relevant prescription period referred to in section 99(1), or 40 business days, whichever is the longest. In the example above, this means that the taxpayer may be granted an extension of an additional 40 business days from expiry of the initial period that expires on 26 January 2022, irrespective of the fact that this extension would fall outside the relevant prescription period. The maximum extension to be granted in terms of the proposed wording would then be 24 March 2022.

2.19.8 To cater for instances where the 40-business day period in terms of section 95(6) or extended period in terms of section 95(7) fall outside the relevant prescription periods under section 99(1), the proposed section 99(2)(d)(iv) provides that the prescription periods contained in section 99(1) will not apply to the extent it is necessary to give effect to the reduced or additional assessment requested.

2.20 *Tax Administration Act, 2011: Amendment of section 99*

The proposed amendment is consequential to the amendments to section 95 of the Tax Administration Act, and provides that the prescription periods under section 99(1) will not apply to the extent that it is necessary to give effect to the reduced or additional assessment request under section 95(6).

2.21 *Tax Administration Act, 2011: Amendment of section 149*

The proposed amendment corrects an incorrect cross-reference.

2.22 *Tax Administration Act, 2011: Amendment of section 233*

The proposed amendment corrects an incorrect cross-reference.

2.23 ***Disaster Management Tax Relief Administration Act, 2020: Amendment of section 1***

2.23.1 In 2020, Parliament passed the Disaster Management Tax Relief Act, 2020 and the Disaster Management Tax Relief Administration Act, 2020, containing exceptional tax measures which formed part of the fiscal package aimed at assisting taxpayers who experienced cash flow constraints as a result of the COVID-19 pandemic and required national lockdown.

2.23.2 One of the exceptional tax measures included in the above-mentioned Acts was the deferral by employers of the payment of employees tax liabilities (PAYE) to SARS for a limited five-month period. This PAYE deferral was structured as follows:

- Deferral of payment of 35 per cent of the PAYE liability, without SARS imposing administrative penalties and interest for the late payment thereof
- The deferred PAYE liability for the five-month period of April to August 2020 had to be paid to SARS in equal instalments over the six-months commencing on 1 September 2020, (i.e. the first payment had to be made on 7 October 2020)
- The application of the proposal to small or medium sized businesses conducted by a company, partnership, individual or trust with a gross income not exceeding R100 million for the year of assessment ending on or after 1 April 2020 but before 1 April 2021
- The inclusion of a limitation stating that gross income should not include more than 20 per cent of income derived from interest, dividends, foreign dividends, royalties, rental from letting fixed property, annuities and any remuneration received from an employer
- Rental income derived from the letting of fixed property excludes rental income derived by a person whose primary trading activity is the letting of fixed property and substantially the whole of the gross income is rental from the fixed property.
- The requirement is that the employer is tax compliant in terms of the Tax Administration Act when making a reduced payment
- To qualify for this relief measure, the employer had to have been registered with SARS as an employer by 25 March 2020.

2.23.3 Despite the relaxation of the national lockdown, various businesses and employees are still negatively impacted by the COVID-19 pandemic. These negative impacts are further exacerbated by the impacts of the recent unrest in the country that destroyed businesses and infrastructure. The Government, therefore, wishes to provide additional assistance to those who continue to be adversely affected by COVID-19 as well as assisting in the process of reconstructing businesses.

As a result, it is proposed that the PAYE deferral relief measure be reinstated for another limited three-month period as follows:

- Deferral of payment of 35 per cent of the PAYE liability, without SARS imposing administrative penalties and interest for the late payment thereof

- The deferred PAYE liability for the three-month period of August to October 2021 must be paid to SARS in equal instalments over a four-month period commencing on 1 November 2021, (i.e. the first payment must be made on 7 December 2021)
- The proposal will be available to small or medium sized businesses conducted by a company, partnership, individual or trust with a gross income not exceeding R100 million for the year of assessment ending on or after 1 April 2021 but before 1 April 2022
- The inclusion of a limitation that gross income should not include more than 20 per cent of income derived from interest, dividends, foreign dividends, royalties, rental from letting fixed property, annuities and any remuneration received from an employer
- Rental income derived from the letting of fixed property excludes rental income derived by a person whose primary trading activity is the letting of fixed property and substantially the whole of the gross income is rental from fixed property
- The requirement that the employer is tax compliant in terms of the Tax Administration Act when making a reduced payment
- To qualify for this relief measure, the employer will need to have been registered with SARS as an employer by 25 June 2021.

The proposed measures will come into operation on 1 August 2021 and end on 31 October 2021.

2.24 *Disaster Management Tax Relief Administration Act, 2020: Amendment of section 2*

See the discussion in paragraph 2.23 above.

2.25 *Short title and commencement*

The clause makes provision for the short title of the proposed Act and provides that different provisions of the Act may come into effect on different dates.

3. CONSULTATION

The amendments proposed by this Bill were published on SARS' and National Treasury's websites for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large have been consulted in preparing the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2021 Budget Review, tabled in Parliament on 24 February 2021.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, the National Treasury and South African Revenue Service are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leadership in

terms of section 39(1)(a)(i) of the National House of Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it contains no provision pertaining to customary law or customs of traditional or Khoi-San communities.

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