

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

1. PURPOSE OF BILL

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

2. OBJECTS OF BILL

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

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

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

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

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

The proposed amendment deletes the reference to a repealed provision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.16 *Tax Administration Act, 2011: Amendment of section 42*

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

2.17 *Tax Administration Act, 2011: Amendment of section 44*

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

2.18 *Tax Administration Act, 2011: Amendment of section 70*

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

2.19 Tax Administration Act, 2011: Amendment of section 129

The proposed amendment is a technical correction.

2.20 Tax Administration Act, 2011: Amendment of section 170

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

2.21 Tax Administration Act, 2011: Amendment of section 190

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

2.22 Tax Administration Act, 2011: Amendment of section 221

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

2.23 Tax Administration Act, 2011: Amendment of section 222

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

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

2.24 Tax Administration Act, 2011: Amendment of section 240

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

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

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

2.25 Customs Control Act, 2014: Amendment of section 1

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

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

2.26 Customs Control Act, 2014: Amendment of section 71

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

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

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

2.28 Short title and commencement

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

3. CONSULTATION

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

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2018 Budget Review, tabled in Parliament on 21 February 2018.

5. PARLIAMENTARY PROCEDURE

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

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

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