MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2025

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2025 (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); and
- the Tax Administration Act, 2011 (Act No. 28 of 2011).

2. OBJECTS OF BILL

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

The provision in section 95(1)*(bis)* of the Income Tax Act, 1962, regarding the responsibility of the trustee or administrator as regards an insolvent person prior to sequestration was considered obsolete and repealed as a consequential amendment by Schedule 1 to the Tax Administration Act, 2011. As it was determined that this provision is still required for purposes of current practice, it is proposed that an amendment be made to the definition of a "representative taxpayer" in section 1 of the Income Tax Act, 1962, in order to reinstate this provision to clarify that the trustee or administrator of an insolvent estate, in his or her representative capacity, is also responsible for the income that was received by or accrued to the insolvent person prior to sequestration.

2.2 Clause 2: Amendment of section 11D of Income Tax Act, 1962

The amendments made to section 11D of the Income Tax Act, 1962, contained in the Tax Administration Laws Amendment Act, 2023, were overridden by the amendments made by the Taxation Laws Amendment Act, 2023, to the same section, which had a later effective date. The proposed amendment aims to consequently reinstate the amendments contained in the Tax Administration Laws Amendment Act.

2.3 Clause 3: Amendment of section 18A of Income Tax Act, 1962

Ad paragraph (a) to (c): Sections 18A(2B) and (2C) of the Income Tax Act, 1962, require an audit certificate be obtained and retained by section 18A-approved organisations conducting mixed public benefit activities, that do not qualify for tax-deductible status (Part I activities) and that do (Part II activities). The purpose of the audit certificate is to confirm that all donations received or accrued in the year for which section 18A receipts were issued in terms of section 18A(2) of the Act were used solely to carry on Part II activities. Some uncertainty exists about how the term “audit certificate” must be interpreted and whether it should bear reference to terminology contained in the Audit Profession Act, 2005. It is proposed that the expression “audit certificate” be deleted and replaced with “certificate of examination” to address this uncertainty. It will also be clarified that the person issuing the certificate of examination should be an independent person.

The requirement for a certificate was introduced as a control measure to ensure that section 18A receipts issued in terms of section 18A(2) of the Act were issued only for

bona fide donations received or accrued during the year that were ultimately used for Part II activities in South Africa. Control over such donations is required since the tax deduction the donor may claim is a real cost to the fiscus given that the donee is normally not subject to tax on the donation received.

Currently no detailed requirements are prescribed with regards to the information that must be contained on the certificate and therefore uncertainty exists on how to comply with this requirement. It is proposed that the Commissioner be empowered to prescribe the minimum information that must appear on a certificate by public notice, similar to the information prescribed by the Commissioner for purposes of a valid section 18A receipt in terms of section 18A(2)*(a)* of the Act.

The words “that year” referred to in section 18A(2B) of the Act is directly linked to the section 18A receipts issued under section 18A(2) of the Act by any PBO, or conduit PBO, or institution, board or body. The proposed amendment therefore clarifies that the words “that year” refers to the “year of assessment” in which section 18A receipts were issued under section 18A(2) of the Act by such PBOs, or conduit PBOs, or institutions, boards or bodies, and confirms that such donations for which section 18A receipts were issued will be used in the manner contemplated in section 18A(2A) of the Act.

It is further proposed to clarify the meaning of “year” in section 18A(2C) of the Act as referring to the department’s financial year as defined in the Public Finance Management Act, 1999, or Local Government: Municipal Finance Management Act,

2003. The financial year of a department falling within the national or provincial sphere will usually end on 31 March, while in the local sphere it ends on 30 June.

Ad paragraph (d): Section 18A(5) of the Act is applicable only to PBOs and institutions, boards or bodies. Section 18A(2C) of the Act deals with the confirmation of the usage of section 18A receipts by a department. Section 18A(5)(*e*) of the Act is therefore misplaced and should be deleted.

Ad paragraph (e): The proposed amendment contains a textual correction to align the wording with that used in section 18A(2A) of the Act. Furthermore, section 18A(2C) of the Act requires that the accounting officer or authority contemplated in the Public Finance Management Act, 1999, or an accounting officer contemplated in the Local Government: Municipal Finance Management Act, 2003, as the case may be, for a department that issued a section 18A receipt in terms of section 18A(2) of the Act, must submit a certificate of examination annually to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts where issued, were utilised in the manner contemplated in section 18A(2A) of the Act. The proposed amendment aims to include a department in section 18A(5B) of the Act, so as to enable the Commissioner to take the necessary recourse against a non-compliant department.

2.4 Clause 4: Amendment of paragraph 1 of First Schedule to Income Tax Act, 1962

In terms of section 66(13C) of the Income Tax Act, 1962, the Commissioner can accept accounts for a company different to its financial year. The reference to section 66(13C) seems to be omitted from paragraph 1*(a)* of the First Schedule to the Act. The proposed amendment aims to correct this oversight.

2.5 Clause 5: Amendment of section 1 of Customs and Excise Act, 1964

The proposed amendment is a correction aimed at adding references to the definition of “illicit goods” to additional goods on which levies were imposed over time. The consequential amendments to the definition were inadvertently not effected at the time when the new levies were imposed.

2.6 Clause 6: Amendment of section 3 of Customs and Excise Act, 1964

The proposed amendment aims to enable the Commissioner to delegate functions of officers or other persons in terms of the Customs and Excise Act, 1964, to persons in the service of other organs of state or institutions, or to designate persons in the service of such organs of state or institutions to act as customs officers for specific purposes. The Commissioner must however obtain the concurrence of such other organ of state or institution by means of an agreement contemplated in section 2(1A). This proposed amendment is *inter alia* related to the implementation of the new SARS electronic traveller management system (SATMS).

2.7 Clause 7: Amendment of section 38 of Customs and Excise Act, 1964

Pursuant to the announcement in Budget 2024 that SARS will review the approach to packages imported through eCommerce, the proposed amendment aims to provide for a simplified regime for the entry of goods imported or exported for purposes of express delivery on a door-to-door basis.

moder This entry will in the case of qualifying express delivery parcels be done on a simplified bill of entry to be provided for by rule.

The proposed provision further enables the Commissioner to determine the simplified procedures that will be applicable by rule, including the activities for which persons participating in the international transportation of goods on an express door-to-door delivery basis must licence or register in terms of this Act in order to enter such goods in accordance with simplified procedures, the requirements and conditions for making use of such procedures, the documents to be used for purposes of entry, the information to be provided, the manner of submission, the timeframes for submission and supporting documents to be provided.

Only express goods below an upper limit determined by the Minister in consultation with the Minister of Trade and Industry by Notice in the *Gazette*, may be entered in accordance with such simplified procedures.

2.8 Clause 8: Amendment of section 40 of Customs and Excise Act, 1964

This amendment aims to amend section 40 in relation to the timing of the adjustment

of a bill of entry by creating flexibility in respect of adjustments made in a manner prescribed by the Commissioner. Whilst it is possible to submit adjustments in the form of a voucher of correction without delay, the same cannot be said for instances where the Commissioner determines another manner of adjustment of a bill of entry, for example in the case of transfer pricing adjustments or where invoices in relation to bulk export shipments are amended. The proposed amendment enables the Commissioner to not only prescribe the manner in which the adjustment of the bill of entry must be done, but also the timeframe in accordance with which it should be done.

2.9 Clause 9: Amendment of section 75 of Customs and Excise Act, 1964

The proposed amendment aims to authorise the use of waste or scrap remaining after the manufacturing from any goods entered for processing under the provisions of any rebate item specified in Schedule No. 3 or 4 for certain purposes. Currently such waste and scrap may not be transferred under rebate of customs duty for subsequent manufacture of goods by another Schedule No. 3 rebate registrant. This amendment paves the way for a rebate item to enable the use of such waste or scrap under rebate of customs duty subject to compliance with such item.

2.10 Clause 10: Insertion of Chapter XB of Customs and Excise Act, 1964

Proposed Chapter XB provides for a voluntary disclosure programme for purposes of the Customs and Excise Act to enable persons benefiting from an “underpayment” of duty, to voluntarily disclose such underpayment in exchange for an undertaking by the Commissioner not to institute criminal proceedings and to grant further relief as set out

in the Chapter.

For purposes of this Chapter an “underpayment” is a non-payment or underpayment of duty due to the submission of inaccurate or incomplete information, or the non-submission of information to the Commissioner, and it also includes the claiming of any rebate, drawback, refund or payment or the setting off of any amount to which the claimant was knowingly not entitled.

The customs and excise voluntary disclosure programme also includes “underpayments” of value-added tax levied on the importation of goods into the Republic as well as such tax on goods manufactured in the Republic subject to excise duty, environmental levy or health promotion levy.

The provisions of Chapter XB deal with the circumstances in which persons subject to audit, investigation or enforcement actions qualify to apply for voluntary disclosure relief, the requirements for valid voluntary disclosure, voluntary disclosure agreements concluded between a successful applicant and the Commissioner, the withdrawal of voluntary disclosure relief granted and the consequences thereof, reporting to the Auditor-General and the Minister on voluntary disclosure agreements concluded, requests for non-binding private opinions on the eligibility for voluntary disclosure of persons who wish to remain anonymous, and a rule making enabler.

2.11 Clause 11: Amendment of section 1 of Value-Added Tax Act, 1991

In Chapter 4 of the 2023 Budget Review the Minister made the following

announcement at page 54: *"Over the period ahead, SARS intends to review the VAT administrative framework to simplify and modernise the current system, in consultation with all affected parties."*.

The Value-Added Tax (VAT) Modernisation Project aims to enhance South Africa's VAT administrative framework by introducing and implementing the building blocks of an e-Invoicing, Interoperability Framework (IF) and an e-Reporting system. Registration SARS design principles are centred on the key concepts of ***"The best service is no service***", and **"*The Voluntary compliance intent*".** The strategic intent is to work with and through stakeholders to improve the tax ecosystem with the aim of addressing the current challenges faced by traders and businesses, and SARS. In the VAT context, these challenges comprise reliance on manual, paper-based invoicing systems; inefficiencies in compliance; the risk of errors; and tax evasion. The benefits of the proposed system will include improved and less effort in compliance; enhanced visibility/transparency; reduced error and fraud; and increased efficiency in tax administration, which may extend beyond VAT in time. The building blocks introduced as proposed definitions will entail the implementation of a decentralised clearance model with continuous transaction controls and exchange.

As a first phase, the proposed amendments insert the relevant definitions that will form the pillars of the VAT Modernisation Project, and, in addition, allow for the expansion of the Minister's regulatory powers to make regulations prescribing the model and requirements for participation by a vendor in a voluntary e-Reporting system. Further, the purpose of the amendments is to enable and engage collaboratively with stakeholders to implement a world-class VAT administration system.

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

As a result of the changes made to the Electronic Services Regulations, many foreign suppliers will need to deregister, and some of these may have refunds due to them. Even if they qualify not to have a SA bank account, under section 23 of the Act, the Act does not make provision for a payment to be made into a foreign bank account. The proposed amendment enables SARS to make a refund into the banking account of the foreign supplier on cancellation of the foreign supplier's registration as a vendor.

2.13 Clause 13: Amendment of section 45 of Value-Added Tax Act, 1991

Ad paragraph (a): The proposed amendment aims to correct incorrect cross-references and effect a consequential amendment flowing from amendments made to sections 23 and 46 of the Value-Added Tax Act, 1991 (by the Tax Administration Laws Amendment Act, 2024).

Furthermore, section 45 provides that the Commissioner will be liable to pay interest on a delayed refund, unless one of the specific conditions listed in the proviso to section 45 applies. The proposed amendment expands these conditions and provides that no interest will be paid on a delayed refund, where a vendor has not complied with the provisions of section 44(3)*(d)* or *(e)* of the Act.

Ad paragraph (b): The proposed amendment aims to correct an incorrect cross-reference.

2.14 Clause 14: Amendment of section 74 of Value-Added Tax Act, 1991

See the note on the amendments to section 1(1) of the Value-Added Tax Act, 1991.

2.15 Clause 15: Amendment of section 11 of Tax Administration Act, 2011

The proposed amendment aligns the wording with that used elsewhere in the Tax Administration Act, 2011, where a taxpayer is required to submit a return, document or information in a prescribed form and manner.

2.16 Clause 16: Amendment of section 45 of Tax Administration Act, 2011

In order to curb value-added tax (VAT) fraud and abuse, SARS implements risk-mitigating measures throughout the VAT product life cycle, including VAT registration. When voluntary VAT registration applications are submitted, SARS may require a site inspection to verify that the enterprise business address given on the application exists and the premises are suitable for conducting the activities reflected on the application. Similar risks may exist with respect to registration for the employment tax incentive and applications for approval for tax privileged status, such as the ability to issue section 18A receipts in respect of tax-deductible donations.

Section 45 of the Tax Administration Act, 2011, provides that SARS may conduct an inspection at business premises under certain circumstances. It is proposed that the provisions of this section be expanded to include inspections for this purpose. Where a taxpayer conducts business from home, only the part of the premises used for the

purposes of trade may be inspected.

2.17 Clause 17: Amendment of section 68 of Tax Administration Act, 2011

The proposed amendment is a consequential amendment.

2.18 Clause 18: Amendment of section 93 of Tax Administration Act, 2011

The proposed amendment is a technical correction.

2.19 Clause 19: Amendment of section 164 of Tax Administration Act, 2011

Section 95(1)*(a)* and *(c)* of the Tax Administration Act, 2011, allows SARS to 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 or does not submit a response to a request for relevant material under section 46 of the Act, under certain circumstances.

Section 95(6) provides that 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 the assessment, or a longer period as the Commissioner may prescribe by public notice, request SARS to make a reduced or additional assessment by submitting a true and full return or the relevant material. In terms of section 95(5), an assessment raised in this instance is only subject to objection and appeal if SARS decides not to make a reduced or additional assessment after the taxpayer submits the return or relevant material under subsection (6).

Section 164(2) of the Tax Administration Act provides that a taxpayer may request a senior SARS official to suspend the payment of tax or a portion thereof due under an assessment if the taxpayer intends to dispute or disputes the liability to pay that tax under Chapter 9 of the Act. In practice, SARS has allowed a taxpayer who has requested a reduced assessment under section 95(6) to apply for a suspension of payment in terms of section 164(2).

The proposed amendment aims to make it clear that a taxpayer who has made a request for a reduced assessment will be able to apply for a suspension of payment of the tax charged in terms of the assessment based on an estimate until SARS has made a decision as to whether SARS will issue a reduced assessment based on the return submitted by the taxpayer. Should SARS decide not to issue a reduced assessment, the taxpayer may in terms of section 95(5) lodge an objection against the assessment based on an estimate in which case the provisions of section 164(2)*(a)* will apply to the already suspended debt, unless any of the other provisions of section 164, in terms whereof SARS can deny or revoke the suspension, find application.

2.20 Clause 20: Amendment of section 187 of Tax Administration Act, 2011

The proposed amendment corrects an incorrect cross-reference.

2.21 Clause 21: Amendment of section 222 of Tax Administration Act, 2011

The concept and scope of a “*bona fide* inadvertent error" has proven to be contentious

and adverse to the framework for a clear and effective understatement penalty regime. It was introduced after the initial promulgation of the Act to address practical issues that had arisen from the application of the framework and, in particular, the “substantial understatement” test. The concept is not explicitly used in similar understatement penalty frameworks as they do not apply purely factual tests such as “substantial understatement” alongside with taxpayer behaviours in a single provision. The proposed amendment aims to clarify the scope and application of a “*bona fide* inadvertent error” by explicitly linking it with “substantial understatement”, which does not include a behavioural requirement (linked to taxpayer behaviour) but rather entails an objective calculation.

2.22 Clause 22: Amendment of section 223 of Tax Administration Act, 2011

See the note on the amendment of section 222 of the Tax Administration Act, 2011.

2.23 Clause 23: Amendment of section 227 of Tax Administration Act, 2011

The Tax Administration Act, 2011, provides for a voluntary disclosure programme but excludes customs and excise. As part of the 2025 Budget a proposal was made to amend the Customs and Excise Act, 1964, to insert a specific voluntary disclosure programme for purposes of customs and excise. The proposed amendment is a consequential amendment excluding matters that constitute an ‘underpayment’ as defined in the section 77Z of the Customs and Excise Act, which would form part of the new voluntary disclosure programme framework in the Act, from the voluntary disclosure programme under Part B of Chapter 16 of the Tax Administration Act.

2.24 Clause 24: Amendment of section 247 of Tax Administration Act, 2011

The proposed amendment is a technical correction flowing from the amendments affected to section 246 and 247 of the Tax Administration Act, 2011, by the Tax Administration Laws Amendment Act, 2024.

2.25 Clause 25: Amendment of section 249 of Tax Administration Act, 2011

The proposed amendment is a technical correction flowing from the amendments affected to section 246 and 247 of the Tax Administration Act, 2011, by the Tax Administration Laws Amendment Act, 2024.

2.26 Clause 26: 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 2025 Budget Review, tabled in Parliament on 12 March 2025, and 2025 Budget Overview, tabled in Parliament on 21 May 2025.

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.