

## EXPLANATORY NOTE

### Income Tax Act: Insertion of Part IA in Chapter III

The Tax Administration Laws Amendment Act, 2023, inserted Part IA in Chapter III of the Income Tax Act, 1962, which introduced the framework for the advance pricing agreement programme. At the time the Memorandum of Objects of the Amendment Act, explained the introduction of the programme as follows:

*“The implementation of an advance pricing agreement (“APA”) programme is in keeping with international trends, e.g. Action 14 of the OECD/G20’s Base Erosion and Profit Shifting Action Plan, and the recommendations of the Davis Tax Committee. An APA programme will provide taxpayers with a greater level of certainty when embarking on large-scale international transactions that have transfer pricing implications. This is in line with SARS’ first strategic objective of providing clarity and certainty to taxpayers to promote voluntary compliance and complements SARS’ advance tax rulings system, which provides rulings on the tax implications of proposed domestic transactions.*

*SARS released a discussion paper on an APA programme for public comment in November 2020, followed by the release of a high-level model and draft legislation in December 2021. The proposed legislation seeks to introduce the enabling framework for the APA programme. The framework is inserted in the Income Tax Act, in the light of its close relationship with section 31 and other provisions of the Act. It deals with persons eligible to apply for APAs, fees, pre-application consultation, content of applications, amendment and withdrawal of applications, criteria for rejecting applications, processing of applications, finalisation of APAs, annual compliance reports, extension of APAs, termination of APAs, record keeping and the Commissioner’s power to prescribe procedures and guidelines for the implementation of the programme. It also provides for consultation with affected treaty partners at key points of the process.*

*As the APA programme will require scarce resources, it is envisaged that the programme will commence with a pilot shortly after the legislative framework has been put in place. It is currently envisaged that the pilot will initially only accept bilateral APA applications, which will allow for learning from other jurisdictions and the managed expansion of capacity before SARS extends the programme. The proposed framework provides a degree of flexibility in eligibility criteria and implementation in that most of the detail will be dealt with in subordinate legislation. This also enables the expansion of the programme to other types of APAs over time.”*

The initial resources for the APA programme have now been put in place so the following pieces of subordinate legislation in respect of the pilot phase of the APA programme have been prepared and are released for public comment:

- Draft notice in terms of section 76C of the Act, prescribing the persons eligible to apply to the Commissioner for a double taxation agreement (DTA), i.e. a bilateral, APA;
- Draft notice in terms of section 76D of the Act, prescribing the fees payable by an applicant in an application for a DTA APA;

- Draft notice in terms of section 76I(b) of the Act, prescribing the additional requirements that may lead to the rejection of an application for a DTA APA;
- Draft notice in terms of section 76J(1) of the Act, specifying the requirements for processing an application for a DTA APA;
- Draft notice in terms of section 76J(3) of the Act, prescribing the information to be contained in a preliminary DTA APA; and
- Draft notice in terms of section 76P of the Act, specifying the procedures and guidelines for the implementation and operation of the DTA APA system.

SARS hereby invites comments in writing on the draft notices. Please forward comments to [acollins@sars.gov.za](mailto:acollins@sars.gov.za) by close of business on 29 May 2026.