MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2026

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2026 (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 paragraph 1 of Fourth Schedule to Income Tax Act, 1962

The definition of "provisional taxpayer" in the Fourth Schedule of the Income Tax Act excludes certain entities that are subject to partial taxation. The exclusion of these entities was mainly aimed at reducing their compliance burden, for example, the difficulty in determining how provisional tax should apply to amounts subject to exemption only up to a specified threshold.

In terms of paragraph *(b)* of the definition of "provisional taxpayer", any company is a provisional taxpayer. It is thus proposed that fully exempt entities and certain partially exempt entities, which are regarded as companies, should also be excluded from being classified as provisional taxpayers for the reasons as set out above. These entities are any institution, board or body as contemplated in section 10(1)(*c*A)(i), any association, corporation or company as contemplated in section 10(1)(*c*A)(ii), any benefit fund as defined in section 1(1) and exempt under section 10(1)*(d)*(ii), and any water services provider as defined in section 1(1) and exempt under section 10(1)*(t)*(ix).

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

The Fourth Schedule to the Income Tax Act was amended by the Tax Administration Laws Amendment Act, 2023, to extend the obligation to withhold employees' tax to non-resident employers conducting business through a permanent establishment (PE) in South Africa. It has been argued that this amendment can have anomalous consequences if the employee in question is not also effectively connected to the PE. For example, a non-resident employer with a PE in South Africa could employ a South African resident employee, in its home country, who does not have any connection to the South African PE. In such circumstances, the non-resident employer would have a withholding obligation in relation to the South African resident employee although employment is not exercised in South Africa. Hence it is proposed that the PE requirement for non-resident employers should be amended to include an additional requirement that the employee is effectively connected to the PE in South Africa.

2.3 Clause 3: Amendment of paragraph 20 of Fourth Schedule to Income Tax Act, 1962

Paragraphs *(a)* and *(b)*: The R1 million cap for relying on amounts based on historical assessments, rather than current estimates, will be increased to R1.8 million, in line with changes in personal income tax brackets, for years of assessment commencing on or after 1 March 2026.

Paragraph *(c)*: To trigger the penalty for underestimating provisional tax, a taxpayer must first underestimate their taxable income outside acceptable tolerances. If the taxpayer submits an estimate that is within the acceptable tolerance but pays no provisional tax, the underestimation penalty cannot be imposed. The only penalty applicable in these instances is the lesser late payment penalty. It is proposed that, with effect from 25 February 2026, timely payment of the amount of the estimate be required before it may be relied on. There are existing rules to ensure that there is no duplication of the underestimation and the late payment penalties.

2.4 Clause 4: Amendment of section 1 of Customs and Excise Act, 1964

This proposed amendment relates to the amendment of section 38 enabling the Commissioner to prescribe rules in respect of requirements for the issuing and use as well as submission of international carnets when goods are temporarily imported or exported.

2.5 Clause 5: Amendment of section 20 of Customs and Excise Act, 1964

The proposed amendment deletes an obsolete cross-reference.

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

The Temporary Admission (ATA) Carnet system, established under the ATA and Istanbul Conventions, enables the temporary admission of certain goods such as commercial samples, professional equipment and exhibition items, into foreign territories without the payment of duties or taxes.

The proposed amendment inserts a reference to goods temporarily exported under international carnets and further aims to facilitate international changes in relation to the handling of international carnets brought about by the launching of an electronic ATA Carnet Project by the World Customs Organisation and the International Chamber of Commerce, which mandates fully digitised carnets. Carnets were historically issued in paper format by National Guaranteeing Associations and manually processed at border posts. This amendment is proposed to ensure that South Africa can implement the new requirements in terms of the international changes, by enabling the Commissioner to prescribe rules relating to, amongst others, requirements for the issuing and use, as well as the submission of international carnets when goods are temporarily imported or exported.

2.7 Clause 7: Amendment of section 54D of Customs and Excise Act, 1964

The insertion of section 17A in the Carbon Tax Act, 2019, in 2025, provides for a refund where an entity complies with carbon budgets over a five-year period. Carbon tax refunds are administered in terms of the Customs and Excise Act and a two-year prescription period applies in relation to customs and excise refund claims. It is, therefore, proposed that section 54D be amended to make provision for carbon tax refunds to be claimed in accordance with the timeframes contemplated in section 17A of that Act, and as provided for in any specific provisions set out in the Schedule in terms of section 75(15) of the Customs and Excise Act.

2.8 Clause 8: Amendment of section 75 of Customs and Excise Act, 1964

Section 75(10) of the Customs and Excise Act grants the Commissioner a broad discretion to exempt non-compliance by taxpayers who fail to meet conditions or requirements prescribed by rule or in the notes to Schedules No. 3, 4 and 6 in respect of any goods specified in an item of such Schedules.

This amendment mainly aims to circumscribe the Commissioner’s discretion and to allow exemption only in relation to non-compliance with specified conditions or requirements that had to have been complied with prior to the entry of the goods for home consumption in terms of Schedule 3, 4 or 6.

The modern legislative approach is to move away from broad discretions and provide criteria for the exercise of discretions to enhance clarity and certainty. It is proposed that the discretion be redrafted in this light.

Other amendments to the subsection are proposed for purposes of clarity.

2.9 Clause 9: Amendment of section 20 of Value-Added Tax Act, 1991

Paragraph *(a)*: The zero-rate on exports does not apply to second-hand goods on which the supplier has deducted notional input tax. In this case, the supplier must levy VAT equal to the notional input tax deducted to recoup the notional input tax. Similarly, in the case of an indirect export by a qualifying purchaser, the VAT Refund Administrator may only refund the qualifying purchaser to the extent that the VAT charged exceeds the notional input tax deduction.

To ease compliance for purchasers and administration, it is proposed that section 20 of the Value-Added Tax Act be amended to require that the tax invoice issued by the supplier on the subsequent supply of second-hand goods on which a notional input tax may be claimed must reflect the amount of such notional input tax.

Paragraphs *(b)* and *(c)*: Certain second-hand goods remain part of the illicit economy. There is no requirement under the Value-Added Tax Act or the Tax Administration Act, 2011, for second-hand goods dealers to be licensed or have documents prescribed under any other relevant Acts, such as the Second-Hand Goods Act, 2009. The Second-Hand Goods Act seeks “to regulate the business of dealers in second-hand goods and pawnbrokers, in order to combat trade in stolen goods; to promote ethical standards in the second-hand goods trade; and to provide for matters connected therewith”.

Section 21 of the Second-Hand Goods Act requires dealers to keep a record in a prescribed form containing certain information, with additional information prescribed under section 24 of that Act for dealers in second-hand motor vehicles and section 26 for dealers in second-hand communications equipment. To mitigate the risk of fraudulent notional input tax claims, it is proposed that the documentation requirements for second-hand goods vendors under section 20(8) of the Value-Added Tax Act be extended to align to those prescribed under the Second-Hand Goods Act and its regulations.

2.10 Clause 10: Amendment of section 28 of Value-Added Tax Act, 1991

To encourage vendors to submit returns and make payments electronically, vendors using eFiling are permitted to do so on the last business day of the month in which filing is required, rather than on the 25th of that month. As the vast majority of VAT vendors now make use of eFiling, the objective of increasing uptake has been achieved. Hence, the proposed amendment aims to remove the distinction by creating a single, simplified system requiring all VAT vendors to submit returns and make payments on the last business day of the month.

2.11 Clause 11: Amendment of section 190 of Tax Administration Act, 2011

The Tax Administration Act requires banks to report suspicious tax refunds to SARS and hold the refunds for up to two business days while SARS investigates. SARS is working with banks to explore screening potential refunds prior to their deposit in taxpayers' accounts. This will expedite legitimate refunds. The proposed amendment therefore aims to explicitly permit pre- or post-deposit screening of refunds by banks.

2.12 Clause 12: Amendment of section 191 of Tax Administration Act, 2011

The proposed amendment is part of the alignment of the treatment of sections 164 and 215 of the Tax Administration Act discussed in 2.13 and 2.17.

2.13 Clause 13: Amendment of section 215 of Tax Administration Act, 2011

It is proposed that the periods for which a suspension of payment under sections 164 and 215 of the Tax Administration Act continues after a request for suspension of payment under these sections has been rejected by SARS, be aligned to 10 business days. The proposed amendment aims to align the time-periods as aforesaid.

2.14 Clause 14: Amendment of section 229 of Tax Administration Act, 2011

In the recent Medtronic International Trading S.A.R.L case, the Constitutional Court held that it is neither possible to vary a voluntary disclosure agreement once it has been concluded nor to combine a voluntary disclosure application with a request for remission of interest under the various tax acts without legislative authority to this effect.

In order to address the second aspect, it is proposed that provision be made to specifically permit applicants for voluntary disclosure relief to simultaneously apply under the provisions of the relevant tax Act, excluding any provision relating to objection and appeal, for the separate remission of interest in respect of the defaults disclosed in the voluntary disclosure application. It is further proposed that this amendment be deemed to come into effect on 1 March 2026 and will apply to all applications received on or after this date in order to assist potential applicants without affecting existing applications.

2.15 Clause 15: Amendment of section 230 of Tax Administration Act, 2011

The proposed amendment is consequential to the proposed amendment to section 229 of the Tax Administration Act.

2.16 Clause 16: Amendment of section 231 of Tax Administration Act, 2011

The proposed amendment is consequential to the proposed amendment to section 229 of the Tax Administration Act.

2.17 Clause 17: Amendment of section 256 of Tax Administration Act, 2011

Section 164(6) of the Tax Administration Act suspends the taxpayer's obligation to pay tax pending SARS' decision on the suspension of payment request. In terms of section 256 of the Act, a taxpayer must be indicated as "tax compliant" during this interim period. Section 256 of the Act does not provide for a scenario where a taxpayer's obligation to pay tax is automatically suspended pending the outcome of a request for remission of penalties in accordance with section 215(3) of the Act. The proposed amendment aims to address this anomaly.

2.18 Clause 18: Amendment of section 52 of the Tax Administration Laws Amendment Act, 2014

The proposed amendment aims to correct an effective date of a provision.

2.19 Clause 19: 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 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 2026 Budget Review, tabled in Parliament on 25 February 2026.

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.