MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2022 (the ''Bill''), proposes to amend the Transfer Duty Act, 1949 (Act No. 40 of 1949), the Estate Duty Act, 1955 (Act No. 45 of 1955), 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), the Tax Administration Act, 2011 (Act No. 28 of 2011), and the Employment Tax Incentive Act, 2013 (Act No. 26 of 2013).

2. OBJECTS OF BILL

2.1 Clause 1: Amendment of section 1 of Transfer Duty Act, 1949

The proposed amendment is a consequential amendment.

2.2 Clause 2: Amendment of section 5 of Estate Duty Act, 1955

The proposed amendment is a textual correction.

2.3 Clause 3: Amendment of section 1 of Income Tax Act, 1962

The proposed amendment is a consequential amendment.

2.4 Clause 4: Amendment of section 64M of Income Tax Act, 1962

Section 64L of the Income Tax Act, 1962, deals with refunds from a company which has withheld dividends tax and provides that if the amount refundable exceeds the amount of dividends tax withheld by the company during a period of at least one year after the amount became refundable, the company may recover the excess from the South African Revenue Service (''SARS''). However, a similar provision is not found in section 64M of the Act, pertaining to regulated intermediaries, which merely states that amounts that are refundable must be refunded from an amount of dividends tax withheld by the regulated intermediary going forward.

For many regulated intermediaries, a majority of their client base consists of corporates. When a corporate which received a large dividend provides an exemption declaration after withholding has taken place, the ability for the corporate to receive a full refund from the regulated intermediary is limited to future dividends tax liabilities that are created as a result of beneficial owners who are subject to dividends tax. Under these circumstances the refund process can take years.

In order to resolve this matter, the proposed amendment aligns the position of a regulated intermediary with that of a company withholder so that it may recover refundable dividends tax from SARS in instances where the refundable amount exceeds the dividends tax withheld by the regulated intermediary during a period of at least one year after the amount became refundable.

2.5 Clause 5: Amendment of paragraph 5 of Fourth Schedule to Income Tax Act, 1962

The proposed amendment is a textual correction.

2.6 Clause 6: Amendment of paragraph 24 of Fourth Schedule to Income Tax Act, 1962:

The proposed amendment corrects an incorrect cross reference.

2.7 Clause 7: Amendment of section 1 of Customs and Excise Act, 1964

The proposed amendment is intended to assist with the interpretation of provisions of the Act relating to invoices, to avoid repetition and to ensure consistency in relation to wording referring to invoices or particulars on invoices. The insertion of the definition has a consequential impact on several provisions.

2.8 Clause 8: Amendment of section 4 of Customs and Excise Act, 1964

The proposed amendment relates to the announcement in Budget 2022 that provision will be made in the Customs and Excise Act, 1964, for an enabling framework for advance rulings. Clause 17 of this Bill provides for this framework by the insertion of Chapter IXA.

The amendment of subsection (3D) provides for the publication of advance rulings with a view to provide guidance and enhance predictability, consistency and transparency in respect of the tariff classification, customs valuation and origin of goods. Publication of such rulings may only take place in accordance with rules to be prescribed by the Commissioner in terms of section 120 of the Act, which will make adequate provision for the protection of private information.

2.9 Clause 9: Amendment of section 38 of Customs and Excise Act, 1964

There is currently no provision in the Customs and Excise Act, 1964, enabling the Commissioner to prescribe the period within which entry must be made in respect of a particular type of cargo. An amendment is therefore proposed to section 38(1)*(a)* of the Act to enable the Commissioner to make rules for the time for submission of entries in respect of any type of cargo. This will enable the Commissioner to provide by rule for timeframes for entry in respect of, for example, loose or break bulk cargo imported by sea, air or rail, for which there is currently no legislated timeframe.

2.10 Clause 10: Amendment of section 39 of Customs and Excise Act, 1964

The proposed amendment is consequential to the insertion of the definition for ''invoice'' and ensures consistency in relation to the wording of provisions referring to invoices or particulars on invoices. Furthermore, it is not a particular invoice that is prescribed, but rather the particulars that must be reflected.

2.11 Clause 11: Amendment of section 40 of Customs and Excise Act, 1964

The aim of the proposed amendments is twofold. Paragraph *(a)* is a technical correction to rectify the omission of a reference to reports under section 8 of the Customs and Excise Act, 1964. Reporting of conveyances and goods takes place in terms of rules under section 8 and should therefore be included here.

Paragraph *(b)* contains an amendment which is consequential to the insertion of the definition for ''invoice'' and ensures consistency in relation to the wording of provisions referring to invoices or particulars on invoices. Furthermore, it is not a particular invoice that is prescribed, but rather the particulars that must be reflected.

2.12 Clause 12: Amendment of section 41 of Customs and Excise Act, 1964

The aim of the proposed amendments to section 41 of the Customs and Excise Act, 1964, is to clarify the requirements for invoices in respect of imported goods. It specifically allows the Commissioner to prescribe particulars in respect of invoices by rule. It is proposed that lists of particulars are deleted from the provisions where it occurs, as these

particulars can more appropriately be dealt with in the rules. The proposed amendment to section 102(1)*(f)* of the Act is related to these amendments.

Furthermore, the proposed insertion of a definition for ''invoice'' in section 1 of the Act has a consequential impact on section 41, as well as on other sections containing references to ''invoice''. The formulation ''prescribed invoice'' is now redundant as it is not the invoice itself that is prescribed, but the particulars to be reflected. Another consequential effect of the insertion of the definition is that a reference to ''invoice'', when used in a provision where the context indicates that the invoice document referred to in that provision does not in some respect conform to the description in the definition of ''invoice'', must be qualified as a ''document purported to be an invoice'' or a ''purported invoice''.

2.13 Clause 13: Amendment of section 47 of Customs and Excise Act, 1964

The proposed amendments relate to the announcement in Budget 2022 that provision will be made in the Customs and Excise Act, 1964, for an enabling framework for advance rulings. The amendments are consequential to the proposed insertion of Chapter IXA, providing for advance rulings.

2.14 Clause 14: Amendment of section 49 of Customs and Excise Act, 1964

These proposed amendments relate to the announcement in Budget 2022 that provision will be made in the Customs and Excise Act, 1964, for an enabling framework for advance rulings. The proposed repeal of section 49(8) of the Act providing for binding origin determinations is consequential to the proposed insertion of Chapter IXA dealing with advance rulings, which *inter alia* provides for advance origin rulings.

A transitional provision in subsection (2) contains arrangements relating to binding origin determinations which are in force when the insertion of Chapter IXA becomes effective. The transitional arrangements provide for such determinations to be regarded as advance origin rulings under Chapter IXA from the date when that Chapter becomes effective, and for the validity period to lapse when the relevant binding origin determination would have lapsed.

2.15 Clause 15: Amendment of section 65 of Customs and Excise Act, 1964

The proposed amendments relate to the announcement in Budget 2022 that provision will be made in the Customs and Excise Act, 1964, for an enabling framework for advance rulings. The proposed amendments are consequential to the insertion of Chapter IXA providing for advance rulings.

2.16 Clause 16: Amendment of section 71 of Customs and Excise Act, 1964

It is proposed that section 71(1) of the Customs and Excise Act, 1964, be repealed because it is outdated and has, since 1996, no longer been relevant to goods imported into the Republic through Mozambique.

In terms of section 71(1), the value for duty purposes of any goods imported into the Republic ex customs warehouses or ex bonded warehouses within the district of Maputo must be calculated or determined in accordance with Chapter IX of the Act as if such goods were imported directly into the Republic from the territory from where they were exported to Maputo. Maputo was, in terms of section 10(2) of the Act, deemed to be a place of entry for the Republic through which goods may be imported or exported, where goods may be landed for transit or coastwise carriage or where goods may be entered for customs and excise purposes. The effect of the deeming provision was that a bill of entry processed in Maputo was treated as having been processed in the Republic. The Maputo office was closed in 1996.

2.17 Clause 17: Insertion of Chapter IXA in Customs and Excise Act, 1964

The proposed insertion of Chapter IXA gives effect to the announcement in Budget 2022 that an enabling framework for advance rulings will be provided for in the Customs and Excise Act, 1964.

Article 3 of the World Trade Organisation Trade Facilitation Agreement obliges member states to provide for a system of advance rulings for the tariff classification and origin of goods as well as on the appropriate method or criteria to be used for determining the customs value of goods. South Africa has committed to implementing such a system by 2028. The advantages of advance rulings that are binding for a period of time include facilitating international trade by assisting clients to assess future duty liabilities and to do better financial planning, as well as providing clarity and certainty and thereby improving compliance by traders.

The proposed provisions of Chapter IXA include applicable definitions, provisions relating to applications for advance rulings, the circumstances in which advance rulings must be granted or refused, the validity period of such rulings, the binding effect of it on both the recipient and the Commissioner as well the amendment, withdrawal and cessation of advance rulings. The Commissioner is also empowered to make rules relating to various aspects of advance rulings. Consequential amendments are effected throughout the Act due to the insertion of this chapter.

2.18 Clause 18: Amendment of section 79 of Customs and Excise Act, 1964

This proposed amendment relates to the announcement in Budget 2022 that provision will be made in the Customs and Excise Act, 1964, for an enabling framework for advance rulings. Chapter IXA contains this framework and section 74H, included in this Chapter, provides in paragraph *(b)* thereof that the recipient of a ruling must, when entering goods under an advance ruling, furnish such information concerning the goods as the Commissioner may require. The effect of the proposed amendment is that failure to comply with such a request is an offence in terms of section 79 of the Act.

2.19 Clause 19: Amendment of section 84 of Customs and Excise Act, 1964

The proposed amendment is consequential to the insertion of the definition for ‘‘invoice’’.

2.20 Clause 20: Amendment of section 86 of Customs and Excise Act, 1964

The proposed amendments are consequential to the insertion of the definition for ‘‘invoice’’ and ensures consistency in relation to the wording of provisions referring to invoices or particulars on invoices. Furthermore, it is not a particular invoice that is prescribed, but rather the particulars that must be reflected.

A reference to ‘‘document purported to be an invoice’’ is required to be inserted in paragraph *(b)* because the context of the provision indicates that the invoice document referred to in that provision does not conform to the description in the definition of ‘‘invoice’’.

2.21 Clause 21: Amendment of section 107 of Customs and Excise Act, 1964

The proposed amendment is consequential to the insertion of the definition for ‘‘invoice’’ and ensures consistency in relation to the wording of provisions referring to invoices or particulars on invoices. Furthermore, it is not a particular invoice that is prescribed, but rather the particulars that must be reflected.

In this case a reference to ''document purported to be an invoice'' is inserted because the context of the provision indicates that the invoice document referred to in the provision does not conform to the description in the definition of ''invoice''.

2.22 Clause 22: Amendment of section 120 of Customs and Excise Act, 1964

The proposed amendment to section 120(1)*(f)* of the Customs and Excise Act, 1964, provides for the Commissioner to prescribe the details to be reflected on invoices or certificates in respect of goods to be imported into or exported from the Republic. A proviso is proposed to provide flexibility in respect of different categories of persons or different classes or kinds of goods, as particulars for the various categories of persons or classes or kinds of goods may differ.

The proposed insertion in section 120(1) of paragraph *(m*D*)* empowers the Commissioner to make rules relating to various matters concerning advance rulings, dealt with in inserted Chapter IXA.

2.23 Clause 23: Amendment of section 13 of Value-Added Tax Act, 1991

The proposed amendment is a consequential amendment.

2.24 Clause 24: Amendment of section 23(1A) of Value-Added Tax Act, 1991

Currently, a non-resident supplier of electronic service must register as a vendor at the end of the month where the value of taxable supplies exceeded R1 million, with no exception.

The proposed amendment inserts a specific exception to the rule to prevent unnecessary registrations, costs and administrative burden to both non-resident suppliers of electronic services and SARS in respect of one-off electronic services due to abnormal circumstances of a temporary nature in excess of R1 million in a period of 12 months. A similar principle applies to resident suppliers.

2.25 Clause 25: Amendment of Schedule to Value-Added Tax Act, 1991

The proposed amendment is a consequential amendment.

2.26 Clause 26: Amendment of section 221 of Tax Administration Act, 2011

In view of the abuse of the Employment Tax Incentive (''ETI'') that has been encountered it is proposed that the Employment Tax Incentive Act (''ETI Act'') be amended in order to facilitate the imposition of understatement penalties on ETI reimbursements improperly claimed. This is achieved by classifying ETI reimbursements as refunds for purposes of the Tax Administration Act, 2011, and specifically as refunds of tax for purposes of the understatement penalty provisions. The understatement penalty will imposed in terms of the Tax Administration Act, 2011, will be reduced by any penalty imposed on the relevant ETI reimbursement improperly claimed under the ETI Act. The proposed amendment will apply to returns filed on or after 1 September 2022.

2.27 Clause 27: Amendment of section 240A of Tax Administration Act, 2011

The Independent Regulatory Board for Auditors (''IRBA'') has requested that it be removed as a legislatively recognised controlling body in terms of the Tax Administration Act, 2011. This request is mainly due to the recent amendments to the Auditing Profession Act, 2005 (Act No. 26 of 2005). Individuals registered with IRBA must now also be registered with a professional body accredited by IRBA. The only accredited body is the South African Institute of Chartered Accountants (''SAICA''), which is also

a recognised controlling body under the Tax Administration Act, 2011. All disciplinary matters of a non-auditing nature must be referred to the accredited body. IRBA views tax practitioner activities as activities of a non-auditing nature. Consequently, the removal of IRBA will have no impact on its members as the members are required by law to be registered with SAICA, which is already a recognised controlling body in terms of the Tax Administration Act, 2011.

2.28 Clause 28: Amendment of section 256 of Tax Administration Act, 2011

SARS has noted increased abuse of the tax compliance status system. Taxpayers that are economically active may file nil or otherwise inaccurate returns to meet the requirement that there be no outstanding returns, amongst other abuses, for them to be indicated as tax compliant on the system. As part of Budget 2022, it was proposed that approaches to ensuring that the tax compliance system provides a more accurate reflection of the actual tax compliance status of taxpayers be investigated.

As a preliminary step in combatting the abuse, it is proposed that the Tax Administration Act be clarified that SARS has the right to revoke third party access to a taxpayer's tax compliance status should it be suspected at any point in time that the taxpayer's tax compliance status is in question due to fraud, misrepresentation or non-disclosure of material facts. Taxpayers will continue to be given at least 10 business days prior notice as well as an opportunity to respond to SARS' allegations before revocation takes place. Hence, SARS will only revoke the third-party access once it has considered the taxpayer's response to the allegations and come to the conclusion that it does not resolve SARS' concerns. The power to revoke third-party access will be reserved for a senior SARS official.

As a further precautionary measure, it is proposed that the tax compliance status of a taxpayer also include an indication that a taxpayer is a newly registered taxpayer between the dates that third party access to the system is provided and the date that the taxpayer reaches the date for the submission of a return or making of a payment in respect of any of the taxes for which the taxpayer is registered, or submitted a return or made a payment prior to such date, or until a period of one year from the date the taxpayer was registered for a tax in terms of a tax Act has lapsed.

If the taxpayer is registered for more than one tax type, whenever the first return or payment is due or a return is submitted or payment is made prior to the due date, with regard to any of the tax types for which the taxpayer is registered, as from that date the taxpayer will no longer be regarded as a ''newly registered taxpayer''. For example, if returns have already been submitted for PAYE and/or VAT, the taxpayer would no longer be indicated as a ''newly registered taxpayer'' from the date the first of those returns were submitted.

Including the reference to a period of one year from the date the taxpayer was registered for tax will address the challenge that may be encountered by taxpayers that are not required to file regular returns. As an example, individuals registered for personal income tax who fall within the auto-assessment population are not required to file income tax returns at all.

Users of the tax compliance status will thus be aware that the status is not based on actual returns or payments and that additional due diligence may be required.

2.29 Clause 29: Amendment of section 10 of Employment Tax Incentive Act, 2013

See the note on the amendment of section 221 of the Tax Administration Act, 2011.

2.30 Clause 30: Amendment of section 20 of Tax Administration Laws Amendment Act, 2014:

Section 9(1)*(b)* of the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2018 (Act No. 21 of 2018), amended section 7(3)*(a)* of the Value-Added Tax Act, 1991, to reflect the revised value-added tax rate of 15%. However, this section was previously amended by section 20(1)*(b)* of the Tax Administration Laws Amendment Act, 2014, with a future effective date, i.e. the date that the Customs Control Act, 2014, takes effect. The wording of the amendment in section 20(1)*(b)* of Tax Administration Laws Amendment Act. 2014, needs to be aligned with the amendment done in section 9(1)*(b)* of the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2018, as stated, to ensure that it will reflect the revised value-added tax rate when it comes into effect.

2.31 Clause 31: Amendment of section 2 of Tax Administration Laws Amendment Act, 2017

The proposed amendment is a technical correction.

2.32 Clause 32: Amendment of section 1 of Tax Administration Laws Amendment Act, 2020

The proposed amendment is a technical correction.

2.33 Clause 33: 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 2022 Budget Review, tabled in Parliament on 23 February 2022.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, the National Treasury and the 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 Leaders in terms of section 39(1)*(a)* dof the 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 communities.

Printed by Creda Communications

ISBN 978-1-4850-0824-8