

# **MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2024**

## **1. PURPOSE OF BILL**

The Tax Administration Laws Amendment Bill, 2024 (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);
- the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000);
- the Tax Administration Act, 2011 (Act No. 28 of 2011); and
- the Tax Administration Laws Amendment Act, 2022 (Act No. 16 of 2022).

## **2. OBJECTS OF BILL**

### **2.1 Income Tax Act, 1962: Amendment of section 30A**

The proposed amendment corrects an incorrect cross-reference.

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

Paragraph 2(5)(a)(i) of the Fourth Schedule refers to a person being registered as a provisional taxpayer under the provisions of paragraph 17(8). Paragraph 17(8) of the Fourth Schedule was deleted by the Tax Administration Laws Amendment Act, 2015. As such, no obligation to register as a provisional taxpayer exists. A taxpayer

automatically becomes a provisional taxpayer if the taxpayer meets the requirements of the definition of provisional taxpayer. It is proposed that the obsolete reference to paragraph 17(8) be deleted, and that a labour broker in respect of which a certificate of exemption has been issued in terms of paragraph 2(5)(a), be specifically included in the definition of provisional taxpayer.

### **2.3 Income Tax Act, 1962: Amendment of paragraph 2 of Fourth Schedule**

Paragraphs (a) and (b): The proposed amendment is consequential to the amendment of section 11(nA) by the Taxation Laws Amendment Bill, 2024.

Paragraph (c): See the note on the proposed amendment to the definition of “provisional taxpayer” in paragraph 1 of the Fourth Schedule.

### **2.4 Income Tax Act, 1962: Amendment of paragraph 19 of Fourth Schedule**

The proposed amendment corrects an incorrect cross-reference.

### **2.5 Customs and Excise Act, 1964: Amendment of section 4**

The proposed amendment aims to give effect to the order made by the Constitutional Court in *Arena Holdings (Pty) Limited t/a Financial Mail and Others v South African Revenue Services and others* [2023] ZACC 13, regarding measures to address the constitutional invalidity of certain provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as well as provisions relating to secrecy of taxpayer information in the Tax Administration Act, 2011 (Act No. 28 of 2011). Although the

Court's finding did not directly pertain to the Customs and Excise Act, the Act also contains secrecy provisions relating to taxpayer information which are now adjusted accordingly.

## **2.6 Customs and Excise Act, 1964: Amendment of section 38**

The proposed amendment relates to the announcement in the 2024 Budget Review concerning the timeframe for submission of certain export bills of entry. Section 38(3) provides that the Commissioner may allow a reasonable timeframe for submission of bills of entry in respect of certain goods, The proposed amendment to this subsection aims firstly to ensure that prohibited and restricted goods in respect of which compliance with requirements has already taken place are not excluded from the Commissioner's discretion, and secondly to enable the Commissioner to determine the process for exercising the discretion provided for in subsection (3) by rule. An application process is foreseen which will ensure proper governance as well as facilitation of the export procedure for exporters that face legitimate challenges in relation to complying with the timeframe for submission of the export bill of entry.

## **2.7 Customs and Excise Act, 1964: Amendment of section 40**

The proposed amendment relates to the announcement in the 2024 Budget Review concerning the simplification of the process of substitution of a bill of entry in certain circumstances dealt with in section 40(3)(a)(ii). No separate cancellation by way of a voucher of correction will be required in the circumstances set out in the provision and the substituting bill of entry will replace the previous bill of entry.

## **2.8 Customs and Excise Act, 1964: Amendment of section 69**

The proposed amendments are technical corrections aimed at removing references in section 69 to certain items in Section B of Part 2 of Schedule No. 1 to the Act which were deleted from Schedule No. 1 some years ago when the *ad valorem* duties on recorded media and road tractors were abolished. The consequential amendments required to this section were inadvertently not effected at the time of deletion of the items from the Schedule.

## **2.9 Value-Added Tax Act, 1991: Amendment of section 14**

In terms of the Value-Added Tax Act, VAT should be accounted for and is payable by the recipient of imported services within 30 days of the earlier of receipt of the invoice issued by the supplier or the recipient or the time any payment is made by the recipient in respect of that supply. In many instances it is impractical to comply with the 30-day time period. Failure to pay VAT within this timeframe will result in the imposition of penalties and interest. To address this concern, it is proposed that the 30-day time period be extended to 60 days.

## **2.10 Value-Added Tax Act, 1991: Amendment of section 16**

Prior to the introduction of the Tax Administration Act, 2011, the Value-Added Tax Act made specific provision for a refund of tax paid in excess of what was properly chargeable under the Value-Added Tax Act. While the Value-Added Tax Act, read with

the Tax Administration Act, provides for a refund of an amount under an assessment of an amount erroneously paid, it does not adequately cater for a reduction in the amount of tax chargeable as result of a subsequent event in respect of the importation of goods by persons who are not registered as vendors or in respect of imported services where there is no assessment. The proposed amendment aims to correct this.

### **2.11 Value-Added Tax Act, 1991: Amendment of section 23**

Due to the wide definition of “enterprise”, non-resident vendors may be required to register as vendors, despite not having any physical presence in South Africa or having a very limited presence for a short period of time. These non-residents have difficulties in appointing a representative vendor who resides in South Africa and in opening a South African bank account, as is required to register as a vendor. As a result, non-resident suppliers of electronic services were exempted from these requirements.

To facilitate engagement and compliance, the proposed amendment provides that electronic services suppliers be required to appoint a representative vendor, but that the requirement that such person must reside in South Africa be waived while maintaining the exemption from opening a South African bank account. Furthermore, it is recommended that this concession be afforded to non-resident vendors with no, or a limited, presence in South Africa in specified circumstances.

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

Paragraph (a): See the note on the proposed amendment of section 23 above. The proposed amendment is consequential to the amendment of section 23.

Paragraph (b): See the note on the proposed amendment of section 16 above. The proposed amendment is consequential to the amendment of section 16.

## **2.13 Value-Added Tax Act, 1991: Amendment of section 46**

See the note on the proposed amendment of section 23 above. The proposed amendment is consequential to the amendment of section 23.

## **2.14 Promotion of Access to Information Act, 2000: Amendment of section 46**

The proposed amendment aims to give effect to the order made by the Constitutional Court in *Arena Holdings (Pty) Limited t/a Financial Mail and Others v South African Revenue Services and others* [2023] ZACC 13, regarding measures to address the constitutional invalidity of certain provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), as well as provisions relating to secrecy of taxpayer information in the Tax Administration Act, 2011 (Act No. 28 of 2011). Although the Court's finding did not directly pertain to the Customs and Excise Act, the Act also contains secrecy provisions relating to taxpayer information which are now adjusted accordingly.

## **2.15 Tax Administration Act, 2011: Amendment of section 12**

Paragraph (a): The proposed amendment will enable senior SARS officials who appear on behalf of SARS or the Commissioner in legal proceedings, to also appear in proceedings before the Supreme Court of Appeal and Constitutional Court, in addition to the High Court and tax court, as is currently the case.

Paragraph (b): The proposed amendment is a consequential amendment to the amendment of section 12(1).

Paragraph (c):

*Addition of subsection (3):* The proposed amendment enables a natural person, other than a legal practitioner duly admitted and enrolled in terms of the Legal Practice Act, 2014, to appear on behalf of the taxpayer in the tax court, if the president of the tax court is satisfied that the person is a fit and proper person to appear on the taxpayer's behalf in tax court proceedings.

*Addition of subsection (4):* The proposed amendment provides that where a legally qualified and admitted senior SARS official appeared on behalf of SARS or the Commissioner in any proceedings, fees and costs may be taxed and recovered in the same manner as if such functions had been performed by a legal practitioner in private practice, as is the case for the State Attorney.

*Addition of subsection (5):* The proposed amendment provides that any costs awarded by a court under this section must be determined in accordance with the fees prescribed by the rules of the relevant court, and in the case of the tax court, the rules of the High Court.

## **2.16 Tax Administration Act, 2011: Amendment of section 47**

SARS may require a person to attend the offices of SARS to be interviewed by a SARS official concerning the tax affairs of a person. This would be the case where the interview is intended to clarify issues of concern to SARS that would render further verification or audit unnecessary or to expedite a current verification or audit. The proposed amendment aims to expand the provision to also include instances where a taxpayer is subject to recovery proceedings for an outstanding tax debt or has applied for debt relief, to also resolve or expedite these proceedings.

## **2.17 Tax Administration Act, 2011: Amendment of section 67**

In *Arena Holdings (Pty) Limited t/a Financial Mail and Others v South African Revenue Service and Others* [2023] ZACC 13, the Constitutional Court made findings regarding the constitutional invalidity of certain provisions of the Promotion of Access to Information Act, 2000, as well as the Tax Administration Act. The court ordered that Parliament considers measures to address their constitutional validity and, in the meantime, the court ordered a “read-in” to the relevant provisions of the Promotion of Access to Information Act, and those of the Tax Administration Act. The proposed amendment aims to address these measures and affect the necessary amendments to the affected legislation.

## **2.18 Tax Administration Act, 2011: Amendment of section 69**

See the notes on the proposed amendment of section 67 above.



## **2.19 Tax Administration Act, 2011: Amendment of section 91**

Concerns have been raised that the current legislative framework only covers certain types of original assessments by implication. The proposed amendments aim to further clarify the legislative framework in order to address this concern, in particular in the context of “auto-assessments”.

## **2.20 Tax Administration Act, 2011: Amendment of section 104**

Paragraph (a): Section 104(4) read with rule 7(3) and rule 52(2)(c) of the dispute resolution rules promulgated under section 103 of the Act, may create the impression that extension can only be requested for cases that fall under section 104(4) and not those falling under section 104(5). The proposed amendment aims to clarify this matter by aligning the wording of section 104 with that of section 107(2) of the Act. It is further proposed that the time-period of the extension be aligned with the structure used in section 107 of the Act, which also makes provision for a maximum period of extension, and other limitations in the Act (see for example, sections 9 and 99(1)).

Paragraph (b): Alternative dispute proceedings can currently only be accessed at the appeal stage of a dispute, where they generally result in the resolution of the majority of appeals. In order to improve the efficiency of the dispute resolution process, the proposed amendment aims to also introduce alternative dispute proceedings at the objection phase of the dispute. This proposal will allow for earlier resolution of a tax dispute by way of improved engagement and exchange of documents at the objection stage of a dispute. The effective date for these provisions will be determined by the

Minister by notice in the Government Gazette, in order to ensure operational and system readiness from SARS' side, before these provisions come into effect.

### **2.21 Tax Administration Act, 2011: Amendment of section 107**

Where a taxpayer has not lodged an appeal within the time period provided under the rules, or an extended period as provided under this section, the taxpayer's appeal will be invalid. The proposed amendment aims to create an additional remedy for the taxpayer to approach the tax court for an extension of up to 120 business days, should such extension be in the interest of justice. Hence the taxpayer can make an application to the tax court under the dispute resolution rules for extension in these instances (i.e. where the senior SARS official refuses to grant extension or is no longer empowered to do so), should the criteria be met.

### **2.22 Tax Administration Act, 2011: Amendment of section 109**

Paragraph (a): Some taxpayers prefer that their tax dispute be heard by the tax court, even where the tax board is competent to decide on the matter. This may result in an unnecessary overflow of matters to the tax court and overfull court rolls, bearing in mind that only a limited number of days are available for the sittings of the tax court. The proposed amendment aims to remove the requirement that SARS and the taxpayer must agree on a matter to be referred to the tax board, and that a matter will automatically in the first instance be heard by the tax board if the tax in dispute does not exceed the amount determined by the Minister of Finance by public notice. It will

only be referred to the tax court if SARS and the taxpayer so agree should both parties regard it necessary, due to for example, the complexity of the matter.

Paragraph (b): See paragraph (a). The proposed amendment is a consequential amendment.

### **2.23 Tax Administration Act, 2011: Amendment of section 195**

A tax debt can be written off temporarily if it is “uneconomical to pursue”. “Uneconomical to pursue” means that the total cost of recovery of that tax debt is likely to exceed the anticipated amount to be recovered. In order to determine whether the cost of recovery is likely to exceed the anticipated amount to be recovered a senior SARS official must have regard to factors such as the steps that have been taken to date to recover the tax debt and the costs involved in those steps, the likely cost of continuing action to recover the tax debt and the anticipated return from that action, the financial position of the debtor, including the debtor’s assets and liabilities, cash flow and possible future income streams.

Where a taxpayer is engaged in business rescue proceedings SARS’ recovery efforts are suspended *ex lege* until the business rescue proceedings are over. Consequently, a tax debt tied up in this procedure cannot easily meet the test of “uneconomical to pursue” as laid out above, and this section was amended by the Tax Administration Laws Amendment Act, 2014, to allow SARS to temporarily write-off the tax debt during business rescue proceedings to recognise this suspension.

The application of accounting impairments in the financial statements of SARS has matured since and provides a better way to deal with matters such as these. It is therefore no longer necessary to account for the temporary write-off a tax debt during business rescue.

#### **2.24 Tax Administration Act, 2011: Amendment of section 236**

The proposed amendment corrects an incorrect cross-reference.

#### **2.25 Tax Administration Act, 2011: Amendment of section 246**

Every company that carries on business or has an office in South Africa must be represented by a public officer. Given that companies are automatically registered for income tax on formation, it is proposed that the one-month period within which the public officer must first be appointed be removed. A newly formed company will thus have both its directors and public officer in place on formation. Should a company fail to appoint a public officer at the time of formation, the proposed amendment provides for a default rule of senior officials of the company who will be regarded as the public officer in order of priority.

The public officer must be eligible to be so appointed in that they meet the requirements that they be a senior official of the company and resident in South Africa, amongst others, in subsection (2) and not be disqualified under subsection (8). Should the public officer not be so eligible or be regarded by SARS as not suitable to represent the company as public officer, the company will be regarded as not having appointed

a public officer. The company has 21 business days within which to appoint a new public officer who complies with the requirements as laid down by this section, failing which, a default list of who will be considered the public officer will apply or SARS can designate a suitable person to represent the company as public officer.

#### **2.26 Tax Administration Act, 2011: Amendment of section 247**

The proposed amendments are consequential to the proposed amendment of section 246. See the notes on the proposed amendment of section 246 above.

#### **2.27 Tax Administration Laws Amendment Act, 2022: Amendment of section 30**

The proposed amendment is a textual correction.

#### **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 2024 Budget Review, tabled in Parliament on 21 February 2024.

#### **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 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.