REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 49576 of 27 October 2023)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 37—2023]

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GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To—

- **amend the Income Tax Act, 1962, so as to make certain decisions subject to objection and appeal; to clarify an existing provision; to provide for the disqualification of certain persons from managing the collective interests common to the members of a particular association of persons; to clarify existing provisions and align the wording with other provisions of the Act; to provide for the disqualification of certain persons from accepting fiduciary responsibility for the management or control of the income and assets of any approved public benefit organisation; to provide for the disqualification of certain persons from accepting fiduciary responsibility for the management or control of the income and assets of any approved recreational club; to provide for the disqualification of certain persons from accepting fiduciary responsibility for the management or control of the income and assets of any approved association; to provide for the disqualification of certain persons from accepting fiduciary responsibility for the management of any small business funding entity; to provide for the entering into of advance pricing agreements with taxpayers and, where applicable, in consultation with double taxation agreement partners; to make a consequential amendment; to clarify an existing provision; to provide that non-resident employers that conduct business through a permanent establishment in the Republic must deduct employees' tax, to widen the deduction obligation to include all representative employers and to make a textual correction; to enable the Commissioner to vary the basis for determining the amount of employees' tax to be deducted or withheld from the employees' remuneration in certain instances and to make a consequential amendment;**
- **amend the Customs and Excise Act, 1964, so as to provide for changes relating to the submission of advance passenger information by operators, including the introduction of the concept of passenger data; to provide for the exemption of an operator as may be prescribed from the obligation of submitting passenger data to the Commissioner if submitted to another organ of state serving as a single window for the collection and sharing of such data, and such organ of state transmits the data to the Commissioner in terms of an agreement contemplated in terms of section 2(1A); to provide for the submission of a traveller declaration prior to or upon entering or leaving the Republic in accordance with requirements determined by rule by the Commissioner; to enable the Commissioner to determine, by rule, the conditions for deferment of payment of duties due in respect of bills of entry; to include in the refund process the return of provisional payments lodged as security; to effect changes to the general rule enabling provision so as to enable the Commissioner to make rules concerning various aspects relating to the**

traveller declaration, as well as various matters in relation to deferment, and to further enhance the current processes and procedures relating to the liquidation of provisional payments;

- **amend the Value-Added Tax Act, 1991, so as to make a technical correction;**
- **amend the the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to make a consequential amendment;**
- **amend the Tax Administration Act, 2011, so as to include a definition for beneficial ownership; to enable the Commissioner to disclose certain information of all entities with a section 18A approval; to provide for disclosure of taxpayer information to certain organs of state; to provide for a consequential amendment; to enable the Commissioner to extend the period within which the taxpayer is required to make their request to SARS for a reduced or additional assessment, by public notice; to provide for the disqualification of certain persons from being appointed or designated as a public officer of a company,**

and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of 2008, section 2 of Act 61 of 2008, section 14 of Act 8 of 2010, section 271 of Act 28 of 2011, read with paragraph 25 of Schedule 1, section 2 of Act 39 of 2013, section 2 of Act 43 of 2014, section 2 of Act 44 of 2014, section 1 of Act 23 of 2015, section 1 of Act 16 of 2016, section 2 of Act 23 of 2018, section 1 of Act 33 of 2019 and section 3 of Act 24 of 2020

1. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection 4 for paragraph *(b)* of the following paragraph:

"*(b)* section 6*quat*(5), section 8(5)*(b)* and (*b*A), section 10(1)(*c*A), *(e)*(i)*(cc)*, *(j)* and (*n*B), section 10A(8), section 11*(e)*, *(f)*, *(g)*, (*g*A), *(j)* and *(l)*, section 11D(20)*(b)*, section 12B(6), section 12C, section 12E, section 12J(6), (6A) and (7), section 13, section 15, section 18A(1)*(a)(cc)*, *(b)*, (*b*A)*(dd)* and *(c)*, section 22(1) and (3), section 23H(2), section 23K, section 24(2), section 24A(6), section 24C, section 24D, section 24I(1) and (7), section 24J(9), section 24P, section 25A, section 27, section 28(9), section 30, section 30A, section 30B, section 30C, section 31, section 37A, section 38(2)*(a)* and *(b)* and (4), section 44(13)*(a)*, section 47(6)*(c)*(i), section 62(1)*(c)*(iii) and *(d)* and (2)*(a)* and (4), section 80B and section 103(2);".

Amendment of section 6*quat* of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969, repealed by section 5 of Act 94 of 1983, inserted by section 5 of Act 85 of 1987 and amended by section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 8 of Act 5 of 2001, section 9 and section 125 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007, section 9 of Act 17 of 2009, section 7 of Act 18 of 2009, section 11 of Act 24 of 2011, section 3 of Act 22 of 2012, section 3 of Act 39 of 2013, section 6 of Act 25 of 2015, section 10 of Act 15 of 2016, section 4 of Act 17 of 2017, section 7 of Act 23 of 2018 and section 271 of Act 28 of 2011, read with paragraph 29 of Schedule 1

2. Section 6*quat* of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) Notwithstanding **[section]** the provisions of sections 93, 99(1) **[or]** and 100 of the Tax Administration Act, an additional or reduced assessment in respect of a year of assessment to give effect to subsections (1) and (1A) may be

made within a period that does not exceed six years from the date of the original assessment in respect of that year.''.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, sections 8 and 62 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, sections 10 and 101 of Act 20 of 2006, sections 2, 10, 88 and 97 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, sections 1 and 9 of Act 3 of 2008, section 2 of Act 4 of 2008, section 16 of Act 60 of 2008, sections 13 and 95 of Act 17 of 2009, section 18 of Act 7 of 2010, sections 28 and 160 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 31 of Schedule 1, sections 19, 144, 157 and 166 of Act 22 of 2012, section 23 of Act 31 of 2013, section 14 of Act 43 of 2014, section 16 of Act 25 of 2015, section 23 of Act 15 of 2016, section 16 of Act 17 of 2017, section 22 of Act 23 of 2018, section 13 of Act 34 of 2019, section 10 of Act 23 of 2020 and section 5 of Act 20 of 2022

3. Section 10 of the Income Tax Act, 1962, is hereby amended by the addition after subsection (4) of the following subsection:

''(5) *(a)* A person is disqualified from managing the collective interests common to all its members as mentioned in subsection (1)*(e)*(i)*(cc)*(A) if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

(b) A person who manages the collective interests common to all its members, as mentioned in subsection (1)*(e)*(i)*(cc)*(A) in contravention of paragraph *(a)*, shall be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.''.

Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006, and amended by sections 13 and 99 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008, section 19 of Act 60 of 2008, section 16 of Act 17 of 2009, section 20 of Act 7 of 2010, section 32 of Act 24 of 2011, section 1 of Act 25 of 2011, section 271 of Act 28 of 2011, read with item 34 of Schedule 1, sections 5 and 35 of Act 21 of 2012, section 68 of Act 22 of 2012, section 29 of Act 31 of 2013, section 18 of Act 43 of 2014 and section 34 of Act 20 of 2022

4. Section 11D of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (19) of the following subsection:

''(19) The Commissioner may, notwithstanding the provisions of sections 99(1) and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment with respect to a deduction in respect of research and development which has been allowed, where approval has been withdrawn in terms of subsection (10).'';

(b) by the substitution in subsection (20) for the words in paragraph *(a)* that precede item (i) of the following words:

"A taxpayer may, notwithstanding **[Chapter 8]** the provisions of sections 93, 99(1) and 100 of the Tax Administration Act, apply to the Commissioner to allow all deductions provided for under this section in respect of research and development if—"; and

(c) by the substitution in subsection (20) for paragraph *(b)* of the following paragraph:

"*(b)* The Commissioner may, notwithstanding the provisions of sections 93, 99(1) and 100 of the Tax Administration Act, make a reduced assessment for a year of assessment where expenditure incurred during that year in respect of research and development would have been allowable as a deduction in terms of this section had the approval in terms of subsection (9) been granted during that year of assessment.".

Amendment of section 12I of Act 58 of 1962, as inserted by section 26 of Act 60 of 2008 and amended by section 24 of Act 17 of 2009, section 26 of Act 7 of 2010, section 37 of Act 24 of 2011, section 28 of Act 22 of 2012, section 22 of Act 43 of 2014, section 22 of Act 25 of 2015, section 31 of Act 15 of 2016 and section 27 of Act 17 of 2017

5. Section 12I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (14) for the words that precede paragraph *(a)* of the following words:

"The Commissioner may, notwithstanding the provisions of sections 99(1) and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment where—".

Amendment of section 30 of Act 58 of 1962, as amended by section 26 of Act 113 of 1993, section 20 of Act 21 of 1994, section 35 of Act 30 of 2000, section 73 of Act 59 of 2000, section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008, section 41 of Act 60 of 2008, section 41 of Act 17 of 2009, section 53 of Act 7 of 2010, section 8 of Act 21 of 2012, section 79 of Act 31 of 2013, section 48 of Act 43 of 2014, section 4 of Act 44 of 2014, section 54 of Act 25 of 2015, section 51 of Act 15 of 2016 and section 35 of Act 34 of 2019

6. Section 30 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (3)*(b)* for subparagraph (i) of the following subparagraph:

"(i) required to have at least three natural persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation and no single person directly or indirectly controls the decision-making powers relating to that organisation: Provided that the provisions of this subparagraph shall not apply in respect of any trust established in terms of a will of any person;";

(b) by the deletion in subsection (3) of the word "and" after paragraph *(f)*;

(c) by the deletion in subsection (3) of the full stop after paragraph *(h)*, and the insertion of the expression "; and";

(d) by the addition in subsection (3) after paragraph *(h)* of the following paragraph:

"*(i)* the Commissioner is satisfied, does not have a person acting in a fiduciary capacity, who is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act."; and

(e) by the insertion after subsection (11) of the following subsections:

"(11A) A person may not act in a fiduciary capacity if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

(11B) A person who fails to comply with the provisions of subsection (11A) shall be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.''.

Amendment of section 30A of Act 58 of 1962, as inserted by section 25 of Act 20 of 2006, amended by section 26 of Act 8 of 2007, section 42 of Act 60 of 2008, section 42 of Act 17 of 2009, section 54 of Act 7 of 2010, section 9 of Act 21 of 2012, section 80 of Act 31 of 2013 and section 36 of Act 34 of 2019

7. Section 30A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)*(a)* for subparagraph (i) of the following subparagraph:

''(i) it is required to have at least three natural persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that club and no single person directly or indirectly controls the decision making powers relating to that club;'';

(b) by the deletion in subsection (2) of the word ''and'' after paragraph *(b)*;

(c) by the deletion in subsection (2) of the full stop after paragraph *(c)*, and the insertion of the expression ''; and'';

(d) by the addition in subsection (2) after paragraph *(c)* of the following paragraph:

''*(d)* the Commissioner is satisfied that the club does not have a person acting in a fiduciary capacity, who is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.''; and

(e) by the insertion after subsection (9) of the following subsections:

''(9A) A person may not act in a fiduciary capacity if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

(9B) A person who fails to comply with the provisions of subsection (9A) shall be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.''.

Amendment of section 30B of Act 58 of 1962, as inserted by section 55 of Act 7 of 2010 and amended by section 56 of Act 24 of 2011, section 10 of Act 21 of 2012 and section 81 of Act 31 of 2013

8. Section 30B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)*(b)* for subparagraph (i) of the following subparagraph:

''(i) the entity must have a committee, board of management or similar governing body consisting of at least three natural persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of that entity;'';

(b) by the deletion in subsection (2) of the full stop after paragraph *(b)* and the insertion of the expression ''; and'';

(c) by the addition in subsection (2) after paragraph *(b)* of the following paragraph:

''*(c)* the Commissioner is satisfied that the association does not have a person acting in a fiduciary capacity, who is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.''; and

(d) by the insertion after subsection (10) of the following subsections:

''(10A) A person may not act in a fiduciary capacity if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

(10B) A person who fails to comply with the provisions of subsection (10A) shall be guilty of an offence and liable, on conviction, to a fine or to imprisonment for a period not exceeding 24 months.''.

Amendment of section 30C of Act 58 of 1962, as inserted by section 49 of Act 43 of 2014 and amended by section 55 of Act 25 of 2015 and section 52 of Act 23 of 2018

9. Section 30C of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) of the full stop after paragraph *(d)*, and the insertion of the expression ''; and'';

(b) by the insertion in subsection (1) after paragraph *(d)* of the following paragraph:

''*(e)* the Commissioner is satisfied that the entity does not have a person acting in a fiduciary capacity, who is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.''; and

(c) by the insertion after subsection (7) of the following subsections:

''(7A) A person may not act in a fiduciary capacity if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

(7B) A person who fails to comply with the provisions of subsection (7A) shall be guilty of an offence and liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.''.

Insertion of Chapter III of Act 58 of 1962

10. The Income Tax Act, 1962, is hereby amended by the insertion after Part I of Chapter III of the following Part:

''***Part IA***

ADVANCE PRICING AGREEMENTS

Definitions

76A. In this Part, unless the context otherwise indicates—

''advance pricing agreement'' means—

(a) a DTA advance pricing agreement; and

(b) a unilateral advance pricing agreement;

''advance pricing agreement application'' means an application by a person to the Commissioner under section 76F(1) to enter into an advance pricing agreement;

''affected transaction'' means an affected transaction, as defined in section 31, excluding paragraph *(b)* of the definition;

''affected party'' means a person that is a party to an affected transaction;

''agreement for the avoidance of double taxation'' means an agreement under section 108 that contains Articles that are the same as, or similar to, Article 9(2) and Article 25(3), as amended from time to time, of the *Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development*;

''applicant'' means a person who submits an advance pricing agreement application to SARS;

''arm's length allocation'' means an allocation of the profit in an affected transaction that would have been the allocation of the profit if the affected parties had been independent persons dealing at arm's length with each other;

''arm's length transfer price'' means a transfer price in an affected transaction that would have been the transfer price if the affected parties had been independent persons dealing at arm's length with each other;

''competent authority'' is an official in a country who is authorised by the government of the country to administer an agreement for the avoidance of

double taxation that the Republic is a party to, and includes a person duly delegated by that official to perform the role;

"country of residence" is the country in which a person is considered to be a resident, after the application of an agreement for the avoidance of double taxation;

"DTA advance pricing agreement" means an agreement between an applicant and the competent authority of the Republic, in consultation with the competent authority of another country, which has an agreement for the avoidance of double taxation with the Republic, regarding the application of section 31 to an affected transaction in which the applicant is an affected party;

"transfer price" means the price at which persons trade a service, tangible property or intangible property with each other across international borders;

"transfer pricing method" means a transfer pricing method referred to in the *OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations,* as amended from time to time;

"unilateral advance pricing agreement" means an agreement between an applicant and the Commissioner regarding the application of section 31 to an affected transaction in which the applicant is an affected party.

Purpose

76B. The purpose of this Part is to promote tax certainty in respect of an affected transaction that will prevent or minimise double taxation and associated dispute resolution procedures.

Persons eligible to apply

76C. The Commissioner may prescribe, by public notice, the persons eligible to apply to the Commissioner for an advance pricing agreement.

Fees for advance pricing agreements

76D. (1) In order to defray the costs of administering the advance pricing agreement system, the Commissioner may, by public notice, prescribe fees payable by an applicant, including—

(a) a pre-application consultation fee;

(b) an application fee;

(c) a cost recovery fee for processing an advance pricing agreement application; and

(d) fees associated with the maintenance or extension of an existing agreement.

(2) An applicant must pay the fees in subsection (1) based on an invoice issued by SARS.

(3) SARS may retain the fees referred to in subsection (1), or a portion thereof, if it rejects an advance pricing agreement application or terminates the agreement.

(4) The fees imposed under this section constitute fees imposed by SARS in terms of section 5(1)*(h)* of the SARS Act and constitute funds of SARS within the meaning of section 24 of that Act.

Pre-application consultation

76E. (1) A prospective applicant must request a pre-application consultation meeting, in the prescribed form and manner.

(2) The Commissioner must arrange a pre-application consultation meeting with the prospective applicant after receipt of a valid request under subsection (1).

(3) The pre-application consultation meeting must—

(a) identify the affected parties, the relationship between the parties, and their countries of residence;

(b) discuss the most recent annual financial statements of the prospective applicant;
(c) discuss the affected transaction that will form part of the advance pricing agreement;
(d) discuss the most appropriate transfer pricing method to apply to the affected transaction;
(e) in the case of a DTA advance pricing agreement, discuss if the prospective applicant or another affected party has consulted with the competent authority of the other country that will be party to an affected transaction;
(f) discuss the applicable fees in section 76D; and
(g) determine further information that may be required from the prospective applicant.

(4) The Commissioner may notify the prospective applicant that the prospective applicant may submit an advance pricing agreement application after—
(a) the pre-application consultation meeting; and
(b) in the case of a potential DTA advance pricing agreement application, after consultation with the competent authority of the other country that will be party to an affected transaction.

Application for advance pricing agreement

76F. (1) A prospective applicant may submit an advance pricing agreement application after receiving notification from the Commissioner under section 76E(4).

(2) If there is more than one applicant in respect of an advance pricing agreement, the applicants must join their applications into a joint application and designate one representative for the applicants.

(3) An advance pricing agreement application must be made in the prescribed form and manner.

(4) After considering an application for a DTA advance pricing agreement, the competent authority of the Republic must enter into discussions with the competent authority of the other country, which will be party to an affected transaction, on the feasibility of entering into the agreement with the applicant.

Amendments to advance pricing agreement application

76G. (1) An applicant may make a written request to the Commissioner for an amendment to an advance pricing agreement application submitted to the Commissioner.

(2) The Commissioner may allow the amendment to the advance pricing agreement application if the amendment does not have the effect of materially altering the nature of the application that was originally submitted.

(3) The amendment will be considered only if the applicant agrees to, and pays, an additional cost recovery fee in terms of section 76D(1)*(c)* that is invoiced in terms of section 76D(2).

Withdrawal of advance pricing agreement application

76H. (1) An applicant may withdraw an advance pricing agreement application before the notification under section 76J(4) or 76J(7).

(2) The withdrawal does not absolve an applicant from the liability for fees that are due and payable in terms of section 76D.

Rejection of advance pricing agreement application

76I. The Commissioner may reject an advance pricing agreement application if the application does not meet—
(a) the requirements of this Part; and

(b) such additional requirements as the Commissioner may prescribe by public notice.

Processing of advance pricing agreement application

76J. (1) Once the Commissioner accepts the advance pricing agreement application, the Commissioner must process the application in accordance with the requirements as prescribed, by public notice, by the Commissioner.

(2) The Commissioner must, in writing, inform the applicant at 90-day intervals, commencing on receipt of the advance pricing agreement application referred to in section 76F(1), of the progress made in processing the advance pricing agreement application, and must issue invoices for purposes of section 76D(2) with the progress reports.

(3) Based on the information provided in the advance pricing agreement application, the Commissioner must prepare a preliminary advance pricing agreement containing such information as may be prescribed, by public notice, by the Commissioner.

(4) In the case of a unilateral advance pricing agreement, the Commissioner must send the preliminary agreement to the applicant to accept or reject the agreement.

(5) In the case of a DTA advance pricing agreement, the Commissioner must send the preliminary agreement to the competent authority of the other country, which will be party to an affected transaction in the agreement, for the competent authority to consider if it is in agreement with the position adopted in the agreement, after taking into account the agreement for the avoidance of double taxation with that country.

(6) The Commissioner must, in writing, notify the applicant once subsection (5) has been complied with.

(7) If the competent authority in subsection (5) agrees, in writing, to the position adopted in the preliminary agreement, the Commissioner must send the preliminary agreement to the applicant to accept or reject the agreement.

Finalisation of advance pricing agreement

76K. (1) If an applicant accepts the preliminary advance pricing agreement in terms of section 76J(4) or 76J(7), the applicant must sign the agreement and return it to the Commissioner.

(2) At least two SARS officials delegated to do so, one of whom is the competent authority of the Republic in the case of a DTA advance pricing agreement, must sign the preliminary advance pricing agreement once subsection (1) has been complied with.

(3) Once subsection (2) has been complied with, the Commissioner must send the advance pricing agreement to the applicant and, in the case of a DTA advance pricing agreement, also to the competent authority of the other country referred to in section 76J(5).

(4) An advance pricing agreement will come into effect once subsections (1), (2) and (3) have been complied with.

(5) The advance pricing agreement is applicable for up to a maximum of five consecutive years of assessment, commencing on the day after the end of the year of assessment in which the associated advance pricing agreement application is received by the Commissioner.

(6) Based on a specific request by the applicant in an advance pricing agreement application, the Commissioner may allow the associated advance pricing agreement to be applicable for up to a maximum of three consecutive years of assessment, ending on the last day of the year of assessment in which the advance pricing agreement application is received by the Commissioner: Provided that the advance pricing agreement will not result in a cumulative decrease in taxable income or increase in assessed loss for the years of assessment.

(7) The total duration in subsection (6) will be in addition to the total duration in subsection (5).

Compliance report

76L. (1) An applicant that is party to an advance pricing agreement must submit a compliance report to the Commissioner for each of the years of assessment referred to in sections 76K(5) and 76M(3) by no later than the day by which the return for each year of assessment must be submitted.

(2) The compliance report must be in the prescribed form and manner, and must include the following information:

(a) Any changes to the information provided in the advance pricing agreement application subsequent to submitting the application;

(b) details of an affected transaction in the advance pricing agreement that has been concluded or is in the process of being concluded; and

(c) confirmation and a demonstration of compliance with the terms and conditions of the advance pricing agreement.

Extension of advance pricing agreement

76M. (1) The applicant that is party to an advance pricing agreement may, not less than 60 days before the end of the last of the years of assessment referred to in section 76K(5), request the Commissioner to extend the agreement.

(2) The request under subsection (1) must be in the prescribed form and manner and must include the following information:

(a) Any changes to the information provided in the advance pricing agreement application subsequent to submitting the application;

(b) confirmation that all terms and conditions of the existing advance pricing agreement have been complied with; and

(c) any changes that must be taken into account in the extended advance pricing agreement, such as economic, technical, product, industry or geographical developments.

(3) The Commissioner may extend the advance pricing agreement, in writing, for a period that does not exceed three consecutive years of assessment, commencing on the day after the end of the last of the years of assessment referred to in section 76K(5).

(4) Sections 76F, 76G, 76H, 76I, 76J and 76K apply with the necessary changes required for the extension of an advance pricing agreement.

(5) The Commissioner may reject a request to extend an advance pricing agreement and may require the requestor to submit a new advance pricing agreement application.

Termination of advance pricing agreement

76N. (1) A party to an advance pricing agreement may choose to terminate the agreement prospectively by informing, in writing, the other parties to the agreement of the grounds for the termination.

(2) The Commissioner may, in writing, terminate an advance pricing agreement prospectively if—

(a) there is an amendment to the legislation on which the agreement is based, unless the general interpretation upon which the agreement was based is unaffected by the amendment;

(b) there is a change to the agreement for the avoidance of double taxation on which the agreement is based, unless the general interpretation upon which the agreement was based is unaffected by the change; or

(c) a court overturns or modifies an interpretation of the legislation on which the agreement is based, unless—

(i) the judgment is under appeal;

(ii) the judgment is fact-specific and the general interpretation upon which the agreement was based is unaffected; or

(iii) the reference to the interpretation upon which the agreement was based was *obiter dicta*; or

(d) the applicant that is party to the agreement failed to comply with the terms and conditions of the agreement.

(3) The Commissioner may, in writing, terminate an advance pricing agreement retrospectively if—

(a) it was issued in error, and if—

(i) the applicant that is party to the advance pricing agreement has not yet commenced an affected transaction in the agreement or has not yet incurred significant costs in respect of the affected transaction;

(ii) a person, other than the applicant that is party to the advance pricing agreement, will suffer a significant tax disadvantage if the agreement is not terminated; or

(iii) the effect of the agreement will materially erode the tax base of the Republic;

(b) any of the critical assumptions is breached and the breach is not remedied within a period acceptable to the Commissioner;

(c) an affected transaction was carried out in a materially different manner from that disclosed in the advance pricing agreement application; or

(d) there is fraud, misrepresentation or non-disclosure of a material fact by the applicant that is party to the advance pricing agreement.

(4) A party to an advance pricing agreement must, in writing, inform other parties to the agreement within 30 days of becoming aware of a condition in subsection (2) or (3) that may result in the termination of the agreement.

(5) A party that chooses to terminate an advance pricing agreement must first provide the other parties to the agreement with notice, in writing, of the proposed termination of the agreement, the grounds for the proposed termination and provide a reasonable opportunity to the other parties to make representations prior to the decision to terminate the agreement.

(6) The Commissioner must, in writing, inform all parties to an advance pricing agreement of the effective date from which the agreement has been terminated.

Record retention

76O. In addition to the records required under a tax Act, the applicant that is party to an advance pricing agreement must maintain the records that will enable the Commissioner to determine if the applicant is complying with the agreement.

Procedures and guidelines

76P. The Commissioner may, by public notice, specify procedures and guidelines for the implementation and operation of the advance pricing agreement system.''.

Amendment of section 89*bis* of Act 58 of 1962, as inserted by section 14 of Act 6 of 1963, amended by section 21 of Act 95 of 1967, substituted by section 28 of Act 88 of 1971, and amended by section 45 of Act 85 of 1974, section 26 of Act 91 of 1982, section 35 of Act 94 of 1983, section 32 of Act 121 of 1984, section 21 of Act 65 of 1986, section 48 of Act 59 of 2000 and section 271 of Act 28 of 2011, read with paragraph 66 of Schedule 1

11. Section 89*bis* of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) If any amount of employees' tax is not paid in full within the period of seven days prescribed for payment of such amount by paragraph 2(1) of the Fourth Schedule, or if any amount of provisional tax is not paid in full within the relevant period prescribed for payment of such amount by paragraph 21, **[22,]** 23, 23A or 25(1) of that Schedule, interest shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be paid by the person liable to pay the amount in question at the prescribed rate (but subject to the provisions of section 89*quin*) on so much of such amount as remains unpaid in respect of the period (reckoned from the end of the relevant period prescribed as aforesaid for payment of such amount) during which the amount underpaid remains unpaid.''.

Amendment of paragraph 13 of First Schedule to Act 58 of 1962, as amended by section 21 of Act 90 of 1972, section 17 of Act 101 of 1978, section 43 of Act 94 of 1983, section 79 of Act 25 of 2015, section 271 of Act 28 of 2011, read with paragraph 74 of Schedule 1, section 79 of Act 25 of 2015 and section 5 of Act 21 of 2021

12. Paragraph 13 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (6) of the following subparagraph:

"(6) The Commissioner may, notwithstanding the provisions of sections 93, 99(1) and 100 of the Tax Administration Act, raise an assessment for any year of assessment with respect to which a deduction in terms of subparagraph (1) is allowed.".

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 28 of Act 113 of 1977, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007, section 65 of Act 35 of 2007, section 20 of Act 4 of 2008, section 67 of Act 60 of 2008, section 18 of Act 18 of 2009, section 94 of Act 24 of 2011, section 19 and 92 of Act 21 of 2012, section 8 of Act 39 of 2013, section 13 of Act 26 of 2013, section 6 of Act 16 of 2016, section 9 of Act 13 of 2017, section 66 of Act 17 of 2017, section 67 of Act 23 of 2018, section 51 of Act 34 of 2019, section 79 of Act 23 of 2020 and section 37 of Act 20 of 2021

13. Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

"(1) Every—

(a) employer **[who]** that is a resident; or

(b) **[representative employer in the case of any]** employer **[who]** that is not a resident and conducts business through a permanent establishment in the Republic; or

(c) representative employer,

(whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph 2(1)*(b)* of the Second Schedule, deduct from the employee's benefit or minimum individual reserve as contemplated in that paragraph, by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10 or 11 or section 95 of the Tax Administration Act, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee's spouse, in respect of such liability of that spouse, and shall, subject to the Employment Tax Incentive Act, 2013, pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which that person ceased to be an employer, or in either case within such further period as the Commissioner may approve."; and

(b) by the substitution in subparagraph (5) for item *(c)* of the following item:

"*(c)* An employer shall not be required to deduct or withhold employees' tax from any remuneration paid or payable by **[him]** the employer to any person who produces to the employer a valid certificate of exemption issued by the Commissioner under item *(a)*.".

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 46 of Act 28 of 1997, section 55 of Act 59 of 2000, section 21 of Act 19 of 2001, section 41 of Act 20 of 2006, section 116 of Act 35 of 2007, section 66 of Act 35 of 2007, section 68 of Act 60 of 2008, section 20 of Act 18 of 2009, section 95 of Act 24 of 2011, section 8 of Act 23 of 2015 and section 7 of Act 16 of 2016

14. Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his budget statement and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe—

(a) deduction tables applicable to such classes of employees as the Commissioner may determine, taking into account the rebates applicable in terms of section 6; and

(b) the manner in which such tables shall be applied,

and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of subparagraphs (3) and (4) of this paragraph and paragraphs 10, **[and]** 11, 11A(4) and section 95 of the Tax Administration Act, be determined in accordance with such tables or where subparagraph (3) or (4) is applicable, in accordance with that subparagraph.".

Amendment of paragraph 10 of Fourth Schedule to Act 58 of 1962, as substituted by section 8 of Act 16 of 2016

15. Paragraph 10 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) If the Commissioner is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 or 11A(4) for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer, the Commissioner may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of paragraph 11 and section 95 of the Tax Administration Act, be determined accordingly.".

Amendment of paragraph 20 of Fourth Schedule to Act 58 of 1962, as amended by section 25 of Act 72 of 1963, section 29 of Act 88 of 1965, section 47 of Act 89 of 1969, section 44 of Act 88 of 1971, section 51 of Act 85 of 1974, section 36 of Act 69 of 1975, section 50 of Act 94 of 1983, section 39 of Act 121 of 1984, section 19 of Act 61 of 2008, section 24 of Act 18 of 2009, section 271 of Act 28 of 2011, read with paragraph 91 of Schedule 1, section 23 of Act 21 of 2012, section 10 of Act 44 of 2014, section 17 of Act 23 of 2015 and section 13 of Act 16 of 2016

16. Paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2B) of the following subparagraph:

"(2B) Any penalty imposed under subparagraph (1) in respect of a year of assessment must be reduced by any penalty imposed under paragraph 27(1) in respect of payment referred to in paragraph 21(1)*(b)* or 23(1)*(b)*.".

Amendment of section 7A of Act 91 of 1964, as inserted by section 27 of Act 61 of 2008 and repealed by section 4 of Act 32 of 2014

17. (1) Section 7A of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby substituted for the following section:

"**Special provisions relating to [Advance Passenger Information] passenger data**

7A. (1) In this section and the rules thereto, unless the context indicates otherwise—

["Advance Passenger Information" means an electronic message, including any updated or revised version thereof, transmitted to the Commissioner by an operator within the periods and containing the particulars the Commissioner may prescribe by rule;]

"Advance Passenger Information" or **"API"** means information, including personal information in relation to a passenger, recorded by means of automated scanning of the machine readable zone of that passenger's travel document during the passenger check-in process at the place of entry or exit, contemplated in subsection (2)*(b)*;

["airline" means any air transport enterprise offering or operating an international air passenger service to and from the Republic;]

"conveyance" means a conveyance as may be prescribed by rule in terms of subsection (8)*(a*A*)*;

"operator" means the person having the management of **[an aircraft at any time, and includes any airline or the person who owns or hires such aircraft or in whose name the aircraft is registered in terms of the regulations made under the Aviation Act, 1962 (Act No. 74 of 1962)]** a conveyance, carrying on business by transporting goods or passengers to and from the Republic for reward;

["operator system information" means any information an operator keeps electronically relating to—

(a) **any flights scheduled by the operator (including information about schedules, aircraft arrival and departure terminals and routes);**

(b) **persons taking, or proposing to take, any flights scheduled by the operator;**

(c) **baggage, cargo or anything else carried, or proposed to be carried, on any flights scheduled by the operator and the tracking and handling of those things;]**

"passenger" means a person arriving on **[an aircraft]** a conveyance from a place outside the Republic or departing on **[an aircraft]** a conveyance to a place outside the Republic and includes, unless the context otherwise indicates, a crew member**[.]**;

"passenger data" means an electronic message, including any updated or revised version thereof, in respect of Advance Passenger Information (API) or Passenger Name Record (PNR) information, transmitted to the Commissioner by an operator or an organ of state in circumstances contemplated in subsection (7A);

"Passenger Name Record" or **"PNR"** means information, including personal information, recorded by an operator in relation to a passenger, concerning each booking made by or on behalf of a passenger on the reservation system of the operator, contemplated in subsection (2)*(b)*(ii); and

"personal information" has the meaning assigned to it in section 1 of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

(2) *(a)* The operator of any **[aircraft referred to in section 7 (1) or (3)]** conveyance arriving in or departing from the Republic shall, unless exempted in circumstances contemplated in subsection (7A), transmit electronically **[Advance Passenger Information]** passenger data to the Commissioner which may be used by the Commissioner for the purposes of—

[*(a)*](i) facilitating the processing of passengers arriving or departing on such **[aircraft]** conveyance;

[*(b)*](ii) preventing, detecting, investigating or punishing any offences committed under this Act or any other law by such passengers;

[*(c)*](iii) facilitating any border security measures at **[an international airport]** a place of entry or exit; or

[*(d)*](iv) protecting the health and safety of passengers and members of the public.

(b) For purposes of paragraph *(a)*, passenger data comprising—

(i) Advance Passenger Information, consists of information as may be determined by the Commissioner by rule and which relates to—
- *(aa)* the relevant passenger's personal details;
- *(bb)* that passenger's travel document;
- *(cc)* the relevant flight, voyage or journey as may be applicable; and
- *(dd)* any other relevant matter; and

(ii) Passenger Name Record information, consists of information as may be determined by the Commissioner by rule and which relates to—
- *(aa)* the relevant passenger's personal details;
- *(bb)* the passenger's travel document;
- *(cc)* the passenger's booking;
- *(dd)* the reservation date, travel dates and any amendment thereof;
- *(ee)* the travel agent used;
- *(ff)* the issuing of the ticket and details relating to the ticket booked;
- *(gg)* the payment method;
- *(hh)* the passenger's itinerary;
- *(ii)* check-in details;
- *(jj)* baggage details; and
- *(kk)* any other relevant matter.

(3) Any **[Advance Passenger Information]** collection and processing of passenger data comprising personal information shall be subject to compliance with section 101B.

(4) The operator shall **[communicate Advance Passenger Information]** transmit passenger data within the periods the Commissioner may prescribe by rule.

[(5)*(a)* An operator of an aircraft contemplated in subsection (2), may apply to the Commissioner for an extension regarding the obligation to communicate electronically Passenger Information data to the Commissioner if—

(i) such an application is delivered to the Commissioner—
- ***(aa)*** **within a period of one month from the date this section comes into operation; or**
- ***(bb)*** **if the first flight to or from the Republic is after that date, within one month from the date of such flight;**

(ii) the operator shows good cause as to why the extension is necessary;

(iii) the operator demonstrates when he or she will be able to comply with this section; and

(iv) the operator complies with such conditions and interim measures as the Commissioner may impose.

***(b)* An operator who has been granted an extension as contemplated in paragraph *(a)*, shall provide officers with ongoing access to that operator's operator system information for the duration of the extension.]**

(6) Nothing in this section—

(a) affects any existing obligation imposed under this Act on a person to report or declare the arrival or departure of **[an aircraft]** a conveyance (whether scheduled or actual) and any goods carried on, or passengers travelling on, such **[an aircraft]** conveyance; or

(b) limits or alters any of the powers conferred on officers under this Act.

(7) Any person who—

(a) is required by this section to **[submit]** transmit and fails to **[submit Advance Passenger Information]** transmit passenger data in respect

of a flight, voyage or journey, as may be applicable, or a passenger on that flight, voyage or journey;

(b) dishonestly or fraudulently prepares, transmits or alters any **[Advance Passenger Information]** passenger data; or

(c) is a passenger and furnishes **[passenger]** information to be used as passenger data which he or she knows is false in a material respect,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(7A) An operator is exempt from transmitting passenger data to the Commissioner directly in circumstances where—

(a) the operator has submitted the passenger data contemplated in subsection (2)*(b)* to an organ of state indicated in rules prescribed under subsection (8)*(a*B*)*; and

(b) that organ of state transmits such data to SARS in terms of an agreement contemplated in section 2(1A).

(8) The Commissioner may make rules as to—

(a) **[as to]** all matters required or permitted by this section to be prescribed by rule; **[and]**

*(a*A*)* the type of conveyances in respect of which transmission of passenger data is required as well as any particular requirements as may be necessary for different conveyances;

*(a*B*)* the exemption of operators, as contemplated in subsection (7A), in circumstances where another organ of state serves as the single entry point for submission of passenger data required to fulfil regulatory requirements regarding the entry or exit of passengers in terms of legislation administered by various organs of state in order to avoid repeated submission of the same information; and

(b) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.''.

(2) Subsection (1) comes into effect on a date to be determined by the Minister by notice in the Government *Gazette*.

Amendment of section 15 of Act 91 of 1964, as amended by section 2 of Act 98 of 1970, section 2 of Act 89 of 1984, section 4 of Act 101 of 1985, section 12 of Act 59 of 1990, section 20 of Act 34 of 2004 and section 29 of Act 61 of 2008 and repealed by section 4 of Act 32 of 2014

18. (1) Section 15 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) Any person about to travel to or travelling to or from the Republic **[entering or leaving]**, except a category of persons as may be excluded by rule, shall, prior to or upon entering or leaving the Republic **[shall]**, make a traveller declaration in accordance with such requirements as prescribed by the Commissioner by rule **[in such a manner as the Commissioner may determine]**, and shall unreservedly declare—

(a) **[at the time of such entering,]** all goods (including goods of another person), which are upon his or her person or in his or her possession when entering the Republic, and which—

(i) were purchased or otherwise acquired abroad or on any ship, vehicle or in any shop selling goods on which duty has not been paid;

(ii) were remodelled, processed or repaired abroad;

(iii) are prohibited, restricted or controlled under any law; **[or]**

(iiiA) consist of foreign or local currency or bearer negotiable instruments in excess of a threshold prescribed in terms of section 30 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); or

(iv) were required to be declared before leaving the Republic as contemplated in paragraph *(b)***[.]**; or

(b) **[before leaving,]** all goods which he or she proposes taking with him or her beyond the borders of the Republic when leaving the Republic, including goods which **[are]**—

(i) are carried on behalf of another person;

(ii) are intended for remodel, process or repair abroad;

(iii) are prohibited, restricted or controlled under any law; **[or]**

(iiiA) consist of foreign or local currency or bearer negotiable instruments in excess of a threshold prescribed in terms of section 30 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); or

(iv) are goods which a person who temporarily entered the Republic was required to declare upon entering the Republic as contemplated in paragraph *(a)*(iv)**[.]**,

and shall furnish an officer with full particulars thereof, answer fully and truthfully all questions put to him or her by such officer and, if required by such officer to do so, produce and open such goods in his or her possession for inspection by the said officer, and shall pay the duty that may be payable **[assessed]** on any goods **[by such officer, if any, to the Controller]** in the manner that may be prescribed by rule.''.

(2) Subsection (1) comes into effect on a date to be determined by the Minister by notice in the Government *Gazette*.

Amendment of section 39 of Act 91 of 1964, as amended by section 1 of Act 85 of 1968, section 14 of Act 105 of 1969, section 1 of Act 93 of 1978, section 4 of Act 110 of 1979, sections 8 and 15 of Act 98 of 1980, section 10 of Act 84 of 1987, section 3 of Act 69 of 1988, section 19 of Act 59 of 1990, section 29 of Act 45 of 1995, section 27 of Act 32 of 2014 and section 10 of Act 16 of 2022

19. (1) Section 39 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

''*(b)* At the same time the said person shall deliver such duplicates of the bill of entry as may be prescribed or as may be required by the Controller and shall pay all duties due on the goods: Provided that the Commissioner may, on such conditions, including conditions relating to security, as may be determined by **[him]** rule, allow the deferment of payment of duties due in respect of such relevant bills of entry and for such periods as **[he]** may **[specify]** be prescribed.''.

(2) Subsection (1) comes into effect on a date to be determined by the Minister by notice in the Government *Gazette.*

Amendment of section 76 of Act 91 of 1964, as amended by section 9 of Act 85 of 1968, section 5 of Act 98 of 1970, section 10 of Act 71 of 1975, section 11 of Act 110 of 1979, section 20 of Act 86 of 1982, section 5 of Act 89 of 1983, section 24 of Act 84 of 1987, section 14 of Act 68 of 1989, section 30 of Act 59 of 1990, section 5 of Act 105 of 1992, section 54 of Act 45 of 1995, section 28 of Act 34 of 2004, section 65 of Act 32 of 2014, section 17 of Act 33 of 2019, section 59 of Act 23 of 2020 and section 62 of Act 30 of 2020

20. (1) Section 76 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the insertion in subsection (2) after paragraph *(e)* of the following paragraph:

''*(e*A*)* the return of security contemplated in section 107(2)*(a)* lodged on a bill of entry by the applicant in the form of a provisional payment;''; and

(b) by the substitution in subsection (2) for paragraph *(g)* of the following paragraph:

''*(g)* the duty having been reduced or withdrawn as provided for in section 48 (2), (2A) or (4), 56(2), 56A (2), **[or]** 57(2) or 57A(4) or (5); or''.

(2) Subsection (1) comes into effect on a date to be determined by the Minister by notice in the Government *Gazette.*

Amendment of section 101B of Act 91 of 1964, as inserted by section 38 of Act 61 of 2008, amended by section 17 of Act 44 of 2014 and repealed by section 77 of Act 32 of 2014

21. Section 101B of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended by the substitution for the definition of ''personal information'' of the following definition:

'' **"personal information" [means information relating to an identified or identifiable natural person and where it is applicable an identified or identifiable juristic person as determined by the Commissioner]** has the meaning assigned to it in section 1 of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013);''.

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990, section 11 of Act 19 of 1994, section 73 of Act 45 of 1995, section 74 of Act 30 of 1998, section 35 of Act 21 of 2006, section 24 of Act 36 of 2007, section 40 of Act 61 of 2008, section 86 of Act 32 of 2014, section 18 of Act 33 of 2019 and section 22 of Act 16 of 2022

22. (1) Section 120 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the insertion in subsection (1) after paragraph *(c)* of the following paragraph:

''*(c*A*)* as to matters relating to the traveller declaration contemplated in section 15, including rules relating to—

(i) the information to be reflected in a traveller declaration, including information regarding personal details, travelling details, a disclosure of whether the traveller has goods contemplated in section 15(1)*(a)* or *(b)* upon his or her person or in his or her possession upon entering or leaving the Republic, and any other relevant information required;

(ii) the requirements for submission of traveller declarations, including the manner, format and time of submission: Provided that different requirements may be prescribed in respect of different modes of transport by air, sea, rail or land;

(iii) assistance to be provided to travellers in relation to the submission of traveller declarations at places of entry or exit and the circumstances in which such assistance will be provided;

(iv) procedures, subsequent to the submission of traveller declarations, to inform travellers of how to proceed when entering the area where travellers are customs processed at the relevant place of entry or exit;

(v) the information to be declared in relation to goods contemplated in section 15(1)*(a)* or *(b)* which were disclosed in a traveller declaration;

(vi) the entry of the following goods in the accompanied or unaccompanied baggage of a traveller that are imported into or exported from the Republic:

(aa) Commercial goods for trade or other business purposes; and

(bb) goods exceeding the duty free allowance contemplated in rebate item 407.02 of Schedule No. 4;

(vii) the payment of any duties payable, including the method of payment; and

(viii) measures to assist in combatting illicit financial activity amongst travellers to and from the Republic through the processing of traveller declarations, including the sharing of information as contemplated in paragraph (vii) of the proviso to section 4(3);'';

(b) by the insertion in subsection (1) after paragraph *(e)* of the following paragraph:

"*(e*A*)* as to matters relating to the deferment of payment of duties contemplated in section 39(1)*(b)*, including rules relating to—

(i) the circumstances in which application may be made for approval of deferment of duty as contemplated in section 39(1)*(b)*;

(ii) the persons who may apply or submit such applications;

(iii) the requirements for such applications and the documents to be used in support of such applications;

(iv) the conditions on which a deferment of duty may be allowed, including security;

(v) requirements relating to deferment accounts and payment of such accounts, including deferment limits and payment dates;

(vi) the utilisation by a clearing agent of the deferment account of an importer;

(vii) requests for amendment in relation to security required, deferment limits or deferment payment dates; and

(viii) the suspension or cancellation of deferment.''; and

(c) by the substitution in subsection (1) for paragraph (*m*A) of the following paragraph:

"(*m*A) as to matters relating to security, including rules relating to the circumstances in which—

(i) the liquidation of security in the form of a provisional payment may be initiated by the Commissioner, and the requirements and procedures for such initiation; and

(ii) security in the form of a provisional payment may accrue to the National Revenue Fund and the procedures for such accrual, which may include circumstances where the provisional payment remained unliquidated for a prescribed period;''.

(2) The respective amendments in subsection (1) come into effect as follows:

(a) Paragraph *(a)*, on the date determined by the Minister in terms of section 18 of this Act;

(b) paragraph *(b)*, on the date determined by the Minister in terms of section 19 of this Act; and

(c) paragraph *(c)*, on the date determined by the Minister in terms of section 20 of this Act.

Amendment of section 45 of Act 89 of 1991, as amended by section 33 of Act 136 of 1992, section 4 of Act 61 of 1993, section 19 of Act 140 of 1993, section 24 of Act 20 of 1994, section 33 of Act 37 of 1996, section 43 of Act 27 of 1997, section 101 of Act 30 of 1998, section 169 of Act 60 of 2001 and section 44 of Act 61 of 2008

23. Section 45 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) for the words that precede the proviso of the following words:

"(1) Where the Commissioner does not within the period of 21 business days after the date on which the vendor's return in respect of a tax period is received by an office of the South African Revenue Service refund any amount refundable in terms of section 44**[(1)]**, interest shall be paid on such amount at the prescribed rate (but subject to the provisions of section 45A) and calculated for the period commencing at the end of the first-mentioned period to the date of payment of the amount so refundable:''; and

(b) by the substitution in subsection (1) for paragraph (ii) of the following paragraph:

"(ii) where the Commissioner is prevented from satisfying himself as to the amount refundable in terms of section 44**[(1)]** by reason of not being able to gain access to the books and records of the vendor concerned after having, within a reasonable time, made a request by registered post, facsimile transmission, electronic

means or personal delivery, to the vendor for access to such books and records during the period of 21 business days contemplated in this subsection, the said period of 21 business days shall be suspended from the date of despatch of such request by registered post, facsimile transmission, electronic means or the date of delivery of the personal delivery, until the date on which such access is granted.''.

Amendment of section 19 of Act 29 of 2008, as amended by section 38 of Act 8 of 2010, section 33 of Act 21 of 2012, section 29 of Act 39 of 2013 and section 46 of Act 16 of 2016

24. Section 19 of the Mineral and Petroleum Resources Royalty (Administration Act), 2008, is hereby amended by the substitution in subsection (1) for paragraph *(c)* of the following paragraph:

''*(c)* the percentage determined in terms of section 4(1), (1A) and (2) of the Royalty Act;''.

Amendment of section 1 of Act 28 of 2011, as amended by section 36 of Act 21 of 2012, section 30 of Act 39 of 2013, section 37 of Act 44 of 2014, section 33 of Act 23 of 2015 and section 47 of Act 16 of 2016

25. Section 1 of the of the Tax Administration Act, 2011, is hereby amended by the insertion in section 1 after the definition of ''asset'' of the following definition:

'' **"beneficial owner"—**

(a) of a company, has the meaning assigned to it by section 1 of the Companies Act, 2008 (Act No. 71 of 2008);

(b) of a partnership, means a natural person who, directly or indirectly, ultimately owns, or exercises effective control of, the partnership, and includes—

(i) every partner, including every member of a partnership *en commandite*, an anonymous partnership or any similar partnership;

(ii) if a partner in the partnership is a legal person or a natural person acting on behalf of a partnership or in pursuance of the provisions of a trust agreement, the beneficial owner of that legal person, partnership or trust; and

(iii) the natural person who exercises executive control over the partnership; and

(c) of a trust, has the meaning assigned to it by section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988).''.

Amendment of section 69 of Act 28 of 2011, as amended by section 41 of Act 39 of 2013, section 48 of Act 44 of 2014, section 47 of Act 23 of 2015 and section 53 of Act 16 of 2016

26. Section 69 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (8)*(b)* for subparagraph (ii) of the following subparagraph:

''(ii) **[public benefit]** organisations approved **[for the purposes of]** under sections 18A and 30 of the Income Tax Act and the type of approval;''.

Amendment of section 70 of Act 28 of 2011, as amended by section 42 of Act 39 of 2013, section 48 of Act 23 of 2015, section 18 of Act 22 of 2018 and section 25 of Act 24 of 2020

27. Section 70 of the Tax Administration Act, 2011, is hereby amended—

(a) by the deletion in subsection (3) of the word ''and'' at the end of paragraph *(c)*;

(b) by the deletion in subsection (3) of the full stop at the end of paragraph *(d)* and insertion of the expression ''; and'';

(c) by the addition in subsection (3) after paragraph *(d)* of the following paragraphs:

''*(e)* the Companies and Intellectual Property Commission, the information as may be required for the purpose of carrying out

the Commission's duties and functions under the Companies Act, 2008 (Act No. 71 of 2008);

(f) the Directorate for Nonprofit Organisations, the information as may be required for the purpose of carrying out the Directorate's duties and functions under the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997); and

(g) the Master as defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), the information as may be required for the purpose of carrying out the Master's duties and functions under that Act.''.

Amendment of section 80 of Act 28 of 2011, as amended by section 57 of Act 21 of 2012

28. Section 80 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph *(a)*(iii) of the following paragraph:

''(iii) the pricing of goods or services supplied by or rendered to a connected person or associated enterprise, as defined in section 31 of the Income Tax Act, in relation to the 'applicant' or a 'class member';''.

Amendment of section 95 of Act 28 of 2011, as amended by section 29 of Act 24 of 2020 and section 19 of Act 21 of 2021

29. (1) Section 95 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for subsection (6) of the following subsection:

''(6) 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 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.''; and

(b) by the substitution for subsection (8) of the following subsection:

''(8) If SARS decides not to make a reduced or additional assessment as requested under subsection (6), the date of the assessment made under subsection (1)*(a)* or (1)*(c)*, for purposes of Chapter 9, is **[regarded as]** extended to the date of the written notice of the decision.''.

(2) Subsection (1)*(a)* is deemed to have come into operation on 31 July 2023.

Amendment of section 246 of Act 28 of 2011, as amended by section 86 of Act 21 of 2012, section 84 of Act 39 of 2013 and section 45 of Act 33 of 2019

30. Section 246 of the Tax Administration Act, 2011, is hereby amended by the addition after subsection (7) of the following subsection:

''(8) A person who is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act, 2008 (Act No. 78 of 2008), may not be appointed as a public officer under this section.''.

Short title and commencement

31. (1) This Act is called the Tax Administration Laws Amendment Act, 2023.

(2) Save in so far as is otherwise provided for in this Act, or the context otherwise indicates, the amendments effected by this Act come into operation on the date of promulgation of this Act.

MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2023

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2023 (the ''Bill''), proposes to amend the following Acts:

- The Income Tax Act, 1962 (Act No. 58 of 1962) (the ''Income Tax Act'');
- the Customs and Excise Act, 1964 (Act No. 91 of 1964) (the ''Customs and Excise Act'');
- the Value-Added Tax Act, 1991 (Act No. 89 of 1991) (the ''Value-Added Tax Act'');
- the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008) (the ''Mineral and Petroleum Resources Royalty (Administration) Act''); and
- the Tax Administration Act, 2011 (Act No. 28 of 2011) (the ''Tax Administration Act'').

2. OBJECTS OF BILL

2.1 Income Tax Act: Amendment of section 3

Section 6*quat*(5) of the Income Tax Act provides that notwithstanding the prescription provisions contained in the Tax Administration Act for the issuing of a reduced or additional assessment, an additional or reduced assessment may be made in respect of a year of assessment to take account of a rebate or deduction in respect of foreign taxes paid by the taxpayer (in terms of subsections (1) or (1A)) within a period that does not exceed six years from the date of the original assessment in respect of that year. If the Commissioner for example, decides not to issue the reduced assessment, the taxpayer may object against the original assessment within the time-periods allowed in section 104 of the Tax Administration Act, read with the dispute resolution rules issued in terms of section 103 of the Act.

Section 104(4) of the Tax Administration Act provides that a senior official of the South African Revenue Service (''SARS'') may extend the period prescribed in the rules within which an objection must be made if satisfied that reasonable grounds exist for the delay in lodging the objection. However, section 104(5) of the Act provides, *inter alia*, that the period for objection must not be so extended if more than three years have lapsed from the date of assessment or the decision under section 104(2) of the Act. In order to address the situation where SARS decides not to issue a reduced assessment under section 6*quat* of the Income Tax Act and the taxpayer is out of time to object against the original assessment, it is proposed that the decision not to issue a reduced assessment as aforesaid be included as a decision that may be objected to or appealed against under section 3 of the Act, read with section 104(2)*(c)* of the Tax Administration Act.

The same scenario will apply with regards to a decision by SARS not to issue a reduced assessment in terms of section 11D(20) of the Income Tax Act, hence this provision is also included in the proposed amendment to section 3 of the Act.

2.2 Income Tax Act: Amendment of section 6*quat*

Section 6*quat*(5) of the Income Tax Act provides that notwithstanding the prescription provisions contained in the Tax Administration Act, for the issuing of a reduced or additional assessment, an additional or reduced assessment may be made in respect of a year of assessment to take account of a rebate or deduction in respect of foreign taxes paid (in terms of subsection (1) or (1A)) within a period that does not exceed six years from the date of the original assessment in respect of that year. This section provides an additional basis for a reduced assessment other than that envisaged in section 93 of the

Tax Administration Act. The proposed amendment aims to clarify this position.

2.3 Income Tax Act: Amendment of section 10

The Mutual Evaluation Report of South Africa adopted by the Financial Action Task Force (''FATF MER'') in October 2021, identified a wide range of technical deficiencies in South Africa's Anti-Money Laundering, Countering Terrorism Financing and Countering the Financing of Proliferation (''AML/CTF/CFP'') regime and adopted an action plan for South Africa to address deficiencies.

In order to give effect to the National Strategy on AML/CTF/CFP, developed as a response to the FATF MER, and give effect to the action plan, Parliament adopted the legislative changes in the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 (the ''GLA Act''). The GLA Act amended the Companies Act, 2008 (Act No. 71 of 2008), Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) (''NPO Act''), and Trust Property Control Act, 1988 (Act No. 57 of 1988), by, *inter alia*, requiring certain non-profit organisations (''NPOs'') to require disclosure of beneficial ownership (''BO'') and provide for additional grounds for a person to be appointed or continue to act as a director, office-bearer of a registered NPO or trustee or to be disqualified from being so appointed or continuing to act in such capacity.

In order to align with the National Strategy on AML/CTF/CFP and achieve consistency with the GLA Act, amendments are inserted in the Income Tax Act to provide for similar grounds for disqualification for tax exempt associations, including persons to be appointed or continuing to act as an office-bearer of an organisation approved as a tax-exempt entity and for the removal of disqualified office-bearers.

2.4 Income Tax Act: Amendment of section 11D

The proposed amendment aims to align the wording used in section 11D of the Income Tax Act with that used in other sections of the Act, for example section 6*quat*(5), dealing with instances where the Commissioner may issue a reduced or additional assessment after the prescribed periods as stipulated in the Tax Administration Act, have lapsed.

2.5 Income Tax Act: Amendment of section 12I

The proposed amendment aims to align the wording in section 12I(14) of the Income Tax Act with that proposed for section 6*quat*(5) of the Act, dealing with instances where the Commissioner may issue a reduced or additional assessment after the periods for prescription, as stipulated in the Tax Administration Act have lapsed.

2.6 Income Tax Act: Amendment of section 30

Paragraph *(a)*: Public benefit organisations, recreational clubs and certain dedicated associations are all generally engaged in activities of either a benevolent or supportive nature with a sole or principal object of prioritising the needs, interests and well-being of the general public, group of persons or contributing members.

As such, these entities all enjoy a special tax benefit in an effort by Government to support these shared responsibilities for the social and developmental needs of the country. The tax benefit is structured as a partial or complete exemption from income tax on the receipts and accruals of these entities and in certain instances as a tax deduction for the originators of the funding to these entities.

In order to ensure that the above-mentioned tax benefit obtained in respect of these entities are utilised for its intended purpose, Government requires stringent accountability and stricter governance, including requirements that the establishment must have at least three unconnected persons who accept fiduciary responsibility and that no single person may directly or indirectly control the decision-making powers of the entity.

At issue is the application of interpretation on the word ''person'' and whether the fiduciary requirements of these entities refer to a natural person or a juristic person.

Section 30C of the Income Tax Act already makes the distinction between natural or juristic persons as it relates to fiduciary responsibility for small business funding entities. Hence, it is proposed that the legislation be amended to clarify that only natural persons can accept the fiduciary responsibility for public benefit organisations, recreational clubs and certain dedicated associations.

Paragraphs *(b)* to *(e)*: Refer to the proposed amendment to section 10 of the Income Tax Act above. It should also be noted that, should a public benefit organisation appoint a disqualified person and fail to remedy such non-compliance upon notification by the Commissioner, the Commissioner may withdraw the approval of the public benefit organisation as provided under section 30 of the Act.

2.7 Income Tax Act: Amendment of section 30A

Paragraph *(a)*: Refer to paragraph *(a)* of the proposed amendment to section 30 of the Income Tax Act, above.

Paragraphs *(b)* to *(e)*: Refer to the proposed amendment to section 10 of the Income Tax Act, above. It should also be noted that, should a recreational club appoint a disqualified person and fail to remedy such non-compliance upon notification by the Commissioner, the Commissioner may withdraw the approval of the club as provided under section 30A of the Act.

2.8 Income Tax Act: Amendment of section 30B

Paragraph *(a)*: Refer to paragraph *(a)* of the proposed amendment to section 30 of the Income Tax Act, above.

Paragraphs *(b)* to *(e)*: Refer to the proposed amendment to section 10 of the Income Tax Act, above. It should also be noted that, should an association appoint a disqualified person and fail to remedy such non-compliance upon notification by the Commissioner, the Commissioner may withdraw the approval of the association as provided under section 30B of the Act.

2.9 Income Tax Act: Amendment of section 30C

Refer to the proposed amendment to section 10 of the Income Tax Act, above. It should also be noted that, should a small business funding entity appoint a disqualified person and fail to remedy such non-compliance upon notification by the Commissioner, the Commissioner may withdraw the approval of the small business funding entity as provided under section 30C of the Act.

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

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.

2.11 Income Tax Act: Amendment of section 89*bis*

Paragraph 22 of the Fourth Schedule to the Income Tax Act was repealed by section 60(1) of the Revenue Laws Amendment Act, 2002 (Act No. 74 of 2002). The reference in section 89*bis* of the Act to paragraph 22 of the Fourth Schedule must therefore be deleted.

2.12 Income Tax Act: Amendment of paragraph 13 of First Schedule

Paragraph 13 of the First Schedule provides that the cost of livestock purchased by farmers in certain instances shall be allowed, at the option of such farmer, as a deduction in the determination of the farmers taxable income for the year of assessment during which the livestock was so sold, provided the claim for such deduction is made within five years or 10 years after the close of that year of assessment as the case may be. Paragraph 13(6) provides that the Commissioner may, notwithstanding the prescription provisions contained in the Tax Administration Act, for the issuing of a reduced or additional assessment, raise an assessment for any year of assessment with respect to which a deduction in terms of this paragraph is allowed. This section provides an additional basis for a reduced assessment other than that envisaged in section 93 of the Tax Administration Act. The proposed amendment aims to clarify this position.

2.13 Income Tax Act: Amendment of paragraph 2 of Fourth Schedule

Paragraph *(a)*: The proposed amendment widens the employees' tax (''PAYE'') deduction obligation to include a non-resident employer that conduct business through a permanent establishment in the Republic, and then also widens the deduction obligation to include all representative employers.

Paragraph *(b)*: The proposed amendment is a textual correction.

2.14 Income Tax Act: Amendment of paragraph 9 of Fourth Schedule

As a result of the amendments to section 10(1)*(o)*(ii) of the Income Tax Act (which amendments became effective on 1 March 2020) employers may, in terms of paragraph 10 of the Fourth Schedule to the Act, request the Commissioner (by applying for an IRP3q tax directive) to vary the basis (as provided in paragraph 9 of the Fourth Schedule) for determining the amount of PAYE to be deducted or withheld from the employees' remuneration to take into account foreign taxes paid. The PAYE to be deducted or withheld by that employer in terms of paragraph 2 of the Fourth Schedule shall, subject to the provisions of paragraph 11 of the Fourth Schedule and section 95 of the Tax Administration Act, be determined accordingly.

Paragraph 9, in turn, states that the Commissioner may from time to time prescribe deduction tables applicable, and the manner in which such tables must be applied and indicates that the PAYE to be deducted from any remuneration must, subject to the provisions of paragraph 10 and 11 and section 95 of the Tax Administration Act, be determined in accordance with such tables.

In terms of paragraph 11A(4), where the remuneration includes section 8C share gains, the employer must, before deducting the PAYE payable on the gain, ascertain from the Commissioner the amount to be so withheld (by applying for an IRP3s tax directive). Given the amendments to section 10(1)*(o)*(ii), as stated above, employers may, in terms of paragraph 10, request a variation in the employees' tax withholding (by applying for an IRP3q tax directive) to take into account foreign taxes paid.

However, under the current wording of paragraphs 9 and 10, such a variation does not apply to withholding required under paragraph 11A (namely, share gains under section 8C of the Income Tax Act) and the foreign taxes paid in respect of section 8C gains cannot be taken into account for purposes of determining the tax due on the gain. This could result in cash flow implications for the affected employees (as they will only be entitled to claim a foreign tax credit at the time of completing their ITR12s). The proposed amendment aims to rectify this situation.

2.15 Income Tax Act: Amendment of paragraph 10 of Fourth Schedule

See the note on the amendment of paragraph 9 of the Fourth Schedule to the Income Tax Act.

2.16 Income Tax Act: Amendment of paragraph 20 of Fourth Schedule

The proposed amendment is a technical correction.

2.17 Customs and Excise Act: Amendment of section 7A

The proposed amendment relates to the announcement in the 2023 Budget Review that provision will be made for a single window concept in relation to the collection of advance passenger and passenger name record information. Because the Department of Home Affairs collects this type of information and an agreement between SARS and the Department of Home Affairs relating to the sharing of such information is anticipated, the amendment aims to exempt an operator from the obligation to transmit the relevant information to the Commissioner if the operator has submitted it to the Department of Home Affairs who, in terms of an agreement contemplated in section 2(1A) of the Customs and Excise Act, shared such information with SARS. Provision is also made for the Commissioner to prescribe rules to facilitate the exemption, which rules will inter alia provide for notification by SARS to the operator if for some reason the information was not received from the Department of Home Affairs.

Furthermore, the concept of ‘‘passenger data’’ is introduced. Passenger data, in terms of the amendment, comprises advance passenger information, as well as passenger name record information collected by operators. The proposed amendment also expands the requirement of transmission of passenger data to operators of conveyances as may be prescribed.

Currently, section 7A of the Act focuses on advance passenger information that only becomes available during the check-in process, provision is now also made to include passenger name record information that relates to the passenger booking made on the reservation system of the operator.

2.18 Customs and Excise Act: Amendment of section 15

The proposed amendment relates to the announcement in the 2023 Budget Review concerning SARS' new online traveller management system. The amendments are aimed at making provision for travellers to submit a traveller declaration in accordance with requirements determined by the Commissioner by rule, either prior to or upon entering or leaving the Republic. Provision is also made for the exclusion of certain persons by rule. The proposed amendment further clarifies that foreign or local currency or bearer negotiable instruments in excess of a threshold prescribed in terms of section 30 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), must be declared.

This amendment is related to the proposed amendment of section 120 of the Customs and Excise Act, that deals with the Commissioner's authority to make rules concerning various aspects relating to the traveller declaration.

2.19 Customs and Excise Act: Amendment of section 39

The proposed amendment relates to the announcement in the 2023 Budget Review that provision will be made in the Customs and Excise Act, to enable the Commissioner to prescribe rules providing for conditions under which deferment of duties will be allowed. This proposed amendment ties in with an amendment to section 120 of the Act that sets out the various matters in relation to deferment that the Commissioner may prescribe by rule.

2.20 Customs and Excise Act: Amendment of section 76

The proposed amendment relates to the announcement in the 2023 Budget Review concerning the liquidation of provisional payments that serve as security. Currently, there are no provisions in the Customs and Excise Act for the liquidation of provisional payments that serve as security, and the proposed amendment now includes in the refund process provided for in section 76, provisional payments lodged in terms of section 107(2)*(a)* where goods under customs control are allowed to pass from such control, as well as provisional payments in respect of anti-dumping, countervailing or safeguard duties in terms of section 57A, in circumstances set out in section 57A(4) or (5).

This proposed amendment ties in with the proposed amendment to section 120 of the Act that provides for the Commissioner to make rules to further enhance the current processes and procedures relating to liquidation of provisional payments.

2.21 Customs and Excise Act: Amendment of section 101B

The proposed amendment relates to the announcement in the 2023 Budget Review concerning the establishment of a single window for advance passenger information and passenger name record data. It aims to align the meaning of ‘‘personal information’’ with the definition of the term in the Protection of Personal Information Act, 2013.

2.22 Customs and Excise Act: Amendment of section 120

The proposed amendments are consequential to the proposed amendments to sections 15, 39 and 76 of the Customs and Excise Act and are intended to empower the Commissioner to make rules relating to various matters dealt with in those sections.

Paragraph *(a)*: The proposed insertion of subsection (1)*(c*A*)* aims to empower the Commissioner to make rules relating to various aspects of the implementation of SARS' new traveller management system, including the information to be reflected on the declaration, requirements for submission (which may vary depending on the mode of travel), the process of informing a traveller of how to proceed upon arrival at a place of entry or exit and assistance to travellers by means of traveller kiosks or officers with hand held devices. Other aspects to be dealt with relate to the information to be declared in relation to goods contemplated in section 15(1)*(a)* and *(b)*, the entry of commercial goods and goods exceeding the duty-free allowance, the payment of duties and the sharing by SARS of relevant information with the Financial Intelligence Centre as a measure to combat illicit financial activity.

Paragraph *(b)*: The proposed insertion of subsection (1)*(e*A*)* aims to empower the Commissioner to make rules relating to the requirements for applications for deferment, including the conditions for approval, payment of deferment accounts and deferment limits, the amendment of deferment limits, payment dates, amount of security required and suspension and cancellation of accounts.

Paragraph *(c)*: The proposed amendment to subsection (1)*(m*A*)* aims to empower the Commissioner to regulate the process for liquidation of security lodged in the form of a provisional payment, including the circumstances in which the Commissioner may initiate the liquidation process and the circumstances in which a provisional payment may accrue to the National Revenue Fund.

2.23 Value-Added Tax Act: Amendment of section 45

The proposed amendment is a consequential amendment as section 44(1) of the Value-Added Tax Act was repealed by section 271, read with paragraph 133 of Schedule 1, of the Tax Administration Act.

2.24 Mineral and Petroleum Resources Royalty (Administration) Act: Amendment of section 19

The proposed amendment is a consequential amendment to the proposed amendments to sections 3 and 4 of the Mineral and Petroleum Resources Royalty Act, 2008, contained in the Taxation Laws Amendment Bill, 2023, once enacted.

2.25 Tax Administration Act: Amendment of section 1

A definition of ''beneficial owner'' of a company, trust and partnership is inserted in order to align with the National Strategy on AML/CTF/CFP in developing a national integrated, interoperable and harmonised BO framework, comprising of BO registries and other sources to provide timely access to law enforcement and other competent authorities, including SARS, to reliable legal ownership and BO information in line with the FATF BO standards and Immediate Outcome 5 of the FATF MER action plan. This definition also seeks to achieve consistency with the GLA Act and to take account of other developments related to the FATF MER on South Africa, including commitments by SARS, and the consequent increased monitoring (''grey listing'') of South Africa by FATF in view of the country's deficiencies in its AML/CTF/CFP controls and the consequent higher risk of money laundering and terrorism financing being facilitated in South Africa through

legal entities such as companies, legal arrangements such as trusts and partnerships and associations such as NPOs.

BO is also crucial for tax administration because it helps to ensure transparency and accountability in financial transactions. By identifying the individuals who ultimately benefit from an asset or income, tax authorities can accurately determine tax liabilities and prevent tax evasion, which information may also assist other competent authorities in the investigation of money laundering, and other illicit activities. Furthermore, BO information facilitates international cooperation and exchange of tax-related information among jurisdictions. This cooperation is crucial in detecting and addressing cross-border tax evasion and ensuring that taxpayers fulfil their obligations in the appropriate jurisdictions.

2.26 Tax Administration Act: Amendment of section 69

In terms of the Tax Administration Act SARS may disclose a list of public benefit organisations approved in terms of sections 18A and 30 of the Income Tax Act. Approval to issue receipts for tax deductible donations in terms of section 18A of the Act may be granted to a broader range of entities than public benefit organisations. The proposed amendments explicitly empower SARS to disclose all entities with a section 18A approval.

2.27 Tax Administration Act: Amendment of section 70

The proposed amendment allows the disclosure of taxpayer information to the Companies and Intellectual Property Commission, the Master of the High Court and the NPO Directorate for purposes of duties and functions under the Companies Act, 2008, Trust Property Control Act, 1988, and Nonprofit Organisations Act, 1997, respectively, similar to such disclosures to the SARB, FIC and FSCA, to allow for the cross verification of beneficial ownership information under the beneficial ownership framework of the National AML/CTF/CFP Strategy.

2.28 Tax Administration Act: Amendment of section 80

The proposed amendment is a consequential amendment. Section 31 of the Income Tax Act was amended to include a reference to ‘‘associated enterprises’’ in addition to the reference to ‘‘connected persons’’ in the definition of an affected transaction. Hence, to ensure alignment with the amendment to section 31 of the Act, the cross-reference to ‘‘associated enterprise’’ needs to be added to the reference to connected person in section 80(1)*(a)*(iii) of the Tax Administration Act.

2.29 Tax Administration Act: Amendment of section 95

SARS may make an assessment based on an estimate where a taxpayer does not submit a return. The taxpayer may, within 40 days from the date of the assessment, request SARS to make a reduced or additional assessment by submitting a true and full return. The proposed amendment empowers the Commissioner to extend the period within which the taxpayer is required to make their request to SARS by public notice. This will allow the deadline for the request to be aligned with the close of the filing season for non-provisional taxpayers when it would otherwise have fallen earlier.

An amendment is also proposed to section 95(8) of the Act to clarify the intent of the amendment to this section by the Tax Administration Laws Amendment Act, 2021 (Act No. 21 of 2021).

2.30 Tax Administration Act: Amendment of section 246

Refer to the proposed amendment to section 10 of the Income Tax Act, above.

2.31 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 2023 Budget Review, tabled in Parliament on 22 February 2023.

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.

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