

REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 47284
of 11 October 2022)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 27—2022]

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

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

To—

- amend the Transfer Duty Act, 1949, so as to effect a consequential amendment;
- amend the Estate Duty Act, 1955, so as to effect a textual correction;
- amend the Income Tax Act, 1962, so as to effect a consequential amendment; to allow a regulated intermediary to recover refundable dividends tax from the Commissioner in certain instances; to make a textual correction; and to effect a technical correction;
- amend the Customs and Excise Act, 1964, so as to insert a definition and effect consequential changes related thereto; to effect technical corrections; to provide for the publication of advance rulings in certain circumstances; to enable the Commissioner to make rules for the time for submission of entries in respect of any types of cargo; to clarify a provision relating to particulars on invoices and to effect changes to other provisions consequential to this clarification to ensure consistency of wording relating to invoice particulars; to repeal an outdated provision; to insert a chapter providing for advance rulings in respect of the tariff classification, the application of a specific valuation criterion and the origin of goods of a specific class or kind and for related matters; to provide for consequential amendments relating to advance rulings; and to enhance the general enabling rule provision;
- amend the Value-Added Tax Act, 1991, so as to effect consequential amendments and insert a specific exception from registration for non-resident suppliers under certain circumstances;
- amend the Tax Administration Act, 2011, so as to amend a definition; delete a recognised controlling body; to provide that the tax compliance status of a taxpayer must also include an indication that a taxpayer is a newly registered taxpayer as stipulated; and to clarify that SARS has the right to revoke third party access to a taxpayer's tax compliance status under certain circumstances;
- amend the Employment Tax Incentive Act, 2013, so as to classify employment tax incentive reimbursements as refunds for purposes of the Tax Administration Act, 2011, and specifically as refunds of tax for purposes of the understatement penalty provisions in terms of the Tax Administration Act, and to provide for matters connected therewith.

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

Amendment of section 1 of Act 40 of 1949, as amended by section 11 of Act 80 of 1959, section 1 of Act 77 of 1964, section 5 of Act 103 of 1969, section 4 of Act 106 of 1980, section 1 of Act 86 of 1987, section 2 of Act 87 of 1988, Proclamation R.11 of 1994, section 8 of Act 37 of 1996, section 34 of Act 34 of 1997, section 1 of Act 5 of 2001, section 2 of Act 74 of 2002, section 1 of Act 45 of 2003, section 1 of Act 17 of 2009, section 1 of Act 7 of 2010, section 271, read with paragraph 1 of Schedule 1 of Act 28 of 2011, section 1 of Act 24 of 2011 and section 1 of Act 31 of 2013

1. Section 1 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for paragraph (e) of the definition of “property” of the following paragraph:

“(e) a share (other than a share contemplated in paragraph (g)) or member’s interest in a company which is a holding company (as defined in the [Companies Act, 1973 (Act [No.] 61 of 1973), or as defined in the] Close Corporations Act, 1984 (Act [No.] 69 of 1984), or as defined in the Companies Act, 2008 (Act No. 71 of 2008), as the case may be), if that company and all of its subsidiary companies (as defined in the [Companies Act, 1973, or] Close Corporations Act, 1984, or Companies Act, 2008), would be a residential property company if all such companies were regarded as a single entity;”.

Amendment of section 5 of Act 45 of 1955, as amended by section 3 of Act 59 of 1957, section 4 of Act 65 of 1960, section 10 of Act 71 of 1961, section 10 of Act 77 of 1964, section 4 of Act 81 of 1965, section 2 of Act 56 of 1966, section 7 of Act 114 of 1977, section 7 of Act 81 of 1985, section 12 of Act 87 of 1988, section 2 of Act 136 of 1991, section 9 of Act 97 of 1993, section 1 of Act 19 of 2001, section 12 of Act 60 of 2001, section 2 of Act 20 of 2021 and section 1 of Act 21 of 2021

2. Section 5 of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) in the case of any right to any annuity referred to in paragraph (b) of subsection (2) of section three, an amount equal to the value of the annuity capitalized at twelve per cent, over the expectation of life of the person to whom the right to such annuity accrues on the death of the deceased, or if it is to be held for a lesser period than the life of such person, over such lesser period;”.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of

2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014, section 3 of Act 25 of 2015, section 5 of Act 15 of 2016, section 2 of Act 17 of 2017, section 1 of Act 23 of 2018, section 34 of Act 34 of 2019, section 2 of Act 23 of 2020 and section 4 of Act 20 of 2021

3. Section 1 of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “neighbouring country” of the following definition:

“ “**neighbouring country**” means Botswana, eSwatini, Lesotho[,], and Namibia [and Swaziland];”.

Amendment of section 64M of Act 58 of 1962, as inserted by section 53 of Act 17 of 2009 and amended by section 271, read with paragraph 57 of Schedule 1 of Act 28 of 2011, section 16 of Act 21 of 2012 and section 7 of Act 13 of 2017

4. Section 64M of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) Any amount that is refundable in terms of subsection (1) or (1A) to the person to whom the dividend was paid must be refunded by the regulated intermediary that withheld the amount contemplated in subsection (1)(a) or (1A)(a)—

(a) from any amount of dividends tax withheld by the regulated intermediary within a period of one year after the submission of the declaration as contemplated in subsection (1)(c) or the claim of a rebate contemplated in subsection (1A); or

(b) to the extent that the amount that is refundable exceeds the amount of dividends tax withheld as contemplated in paragraph (a), from an amount recovered by the regulated intermediary from the Commissioner in terms of subsection (3).”; and

(b) by the addition after subsection (2) of the following subsections:

“(3) Subject to subsection (4), if any amount is refundable to any person by a regulated intermediary in terms of subsection (1) or (1A) and that amount exceeds the amount of dividends tax withheld as contemplated in subsection (2)(a), the regulated intermediary contemplated in subsection (2) may recover the excess from the Commissioner.

(4) No amount may be recovered in terms of subsection (3) if the regulated intermediary submits the claim for recovery to the Commissioner after the expiry of a period of four years reckoned from the date of the payment contemplated in subsection (1)(a) or (1A)(a).”.

Amendment of paragraph 5 of Fourth Schedule to Act 58 of 1962, as amended by section 19 of Act 18 of 2009, section 271, read with paragraph 79 of Schedule 1 of Act 28 of 2011 and section 7 of Act 23 of 2015

5. Paragraph 5 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to the provisions of subparagraph (6), if an employer is personally liable for the payment of employees’ tax under Chapter 10 of the Tax Administration Act, the employer shall pay that amount to the Commissioner not later than the date on which payment should have been made if the employees’ tax had in fact been deducted or withheld in terms of paragraph 2.”.

Amendment of paragraph 24 of Fourth Schedule to Act 58 of 1962, as amended by section 27 of Act 72 of 1963, section 30 of Act 88 of 1965, section 54 of Act 85 of 1974, section 52 of Act 94 of 1983 and section 12 of Act 44 of 2014

6. The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 24 of the following paragraph:

“24. The Commissioner may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of paragraph 21(1)(a) or paragraph 23(1)(a), if the Commissioner is satisfied that the taxable income which may be derived by such taxpayer for the year of assessment in question

cannot be estimated on the facts available at the time when payment of the amount in question has to be made.”.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 32 of Act 60 of 1989, section 51 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 34 of Act 34 of 1997, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 66 of Act 32 of 2004, section 85 of Act 31 of 2005, section 7 of Act 21 of 2006, section 10 of Act 9 of 2007, section 4 of Act 36 of 2007, section 22 of Act 61 of 2008, section 1 of Act 32 of 2014, section 20 of Act 23 of 2015, section 11 of Act 33 of 2019, section 9 of Act 24 of 2020 and section 11 of Act 21 of 2021

7. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended by the insertion after the definition of “International Trade Administration Commission” of the following definition:

“**“invoice”** means an invoice contemplated in section 41(1);”.

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

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, section 3 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, section 34 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006, section 9 of Act 21 of 2006, section 5 of Act 36 of 2007, section 25 of Act 61 of 2008, section 24 of Act 8 of 2010, section 3 of Act 25 of 2011 and section 16 of Act 39 of 2013, repealed by section 4 of Act 32 of 2014, and amended by section 21 of Act 23 of 2015, section 11 of Act 13 of 2017, section 12 of Act 33 of 2019 and section 10 of Act 24 of 2020

8. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the deletion in subsection (3D) of the word “and” at the end of paragraph (b) and the insertion of the expression “; and” after paragraph (c); and
- (c) by the addition in subsection (3D) after paragraph (c) of the following paragraph:

“(d) advance rulings contemplated in Chapter IXA: Provided that the publication of such information shall take place in accordance with the rules prescribed in terms of section 120(1)(mD);”.

(2) Subsection (1) comes into effect on the date when Chapter IXA becomes effective in terms of section 17(2) of this Act.

Amendment of section 38 of Act 91 of 1964, as amended by section 3 of Act 44 of 1996, section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 9 of Act 84 of 1987, section 18 of Act 59 of 1990, section 28 of Act 45 of 1995, section 123 of Act 60 of 2001, sections 32 and 91 of Act 61 of 2008 and section 25 of Act 32 of 2014

9. Section 38 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (a) of the following words:

“(a) Every importer of goods shall within seven days of the date on which such goods are, in terms of section ten deemed to have been imported except in respect of goods in a container depot as provided for in section 43(1)(a) or within such time as the Commissioner may prescribe by rule in respect of any type of cargo, means of carriage or any person having control thereof after landing, make due entry of those goods as contemplated in section 39: Provided that, subject to the permission of the Controller—”.

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 and section 27 of Act 32 of 2014

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

“(c) The said person shall further produce the transport document or such other document in lieu thereof as may be approved by the Commissioner, invoices, **[as prescribed,]** shipper’s statement of expenses incurred by him, copy of the confirmation of sale or other contract of purchase and sale, importer’s written clearing instructions, unless exempted by rule, and such other documents relating to such goods as the Controller may require in each case and answer all such questions relating to such goods as may be put to him by the Controller, and furnish in such manner as the Commissioner may determine such information regarding the tariff classification of such goods as the Commissioner may require.”.

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

Amendment of section 40 of Act 91 of 1964, as amended by section 9 of Act 95 of 1965, section 6 of Act 71 of 1975, section 5 of Act 105 of 1976, section 2 of Act 93 of 1978, section 4 of Act 86 of 1982, section 3 of Act 89 of 1983, section 11 of Act 84 of 1987, section 30 of Act 45 of 1995, section 35 of Act 61 of 2008, section 29 of Act 32 of 2014 and section 12 of Act 24 of 2020

11. (1) Section 40 of the Customs and Excise Act, 1964, is hereby amended—
(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) in the case of imported or exported goods, the description and particulars of the goods and the marks and particulars of the packages declared in that entry correspond with the description and particulars of the goods and the marks and particulars of the packages as reported in terms of section seven, eight or twelve or in any certificate, permit or other document, by which the importation or exportation of those goods is authorized;”;

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

“(d) in the case of goods purchased by or sold, consigned or disposed of to any person in or outside the Republic, **[correct and sufficient]** an invoice thereof, **[as prescribed,]** has been produced to the Controller;”.

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

Amendment of section 41 of Act 91 of 1964, as amended by section 15 of Act 105 of 1969, section 6 of Act 112 of 1977, section 3 of Act 93 of 1978, section 5 of Act 86 of 1982, section 2 of Act 85 of 1986, section 12 of Act 84 of 1987, section 20 of Act 59 of 1990, sections 31 and 41 of Act 45 of 1995, section 17 of Act 32 of 2005, section 22 of Act 21 of 2006, section 30 of Act 32 of 2014 and section 13 of Act 33 of 2019

12. (1) Section 41 of the Customs and Excise Act, 1964, is hereby amended—

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

“(1) **[The exporter of any]** Any goods imported into or exported from the Republic or **[the owner of]** any excisable goods or fuel levy goods manufactured in any customs and excise warehouse shall **[render]** be supported by a true, correct and sufficient invoice, certificate of value and certificate of origin of such goods in such form and **[declaring]** reflecting such particulars of such goods as may be prescribed in the rules and as may be necessary to make a valid entry of such goods, and **[shall furnish]** such additional information in connection with such invoice, certificate, particulars or goods as the Commissioner may, for the

purposes of this Act, require at any time, shall be furnished: Provided that different requirements may be prescribed in the rules in respect of invoices and certificates relating to goods of different classes or kinds or goods to which different circumstances specified in the rules apply.”;

- (b) by the substitution for subsection (2) of the following subsection: 5

“(2) **[Every exporter or manufacturer shall allocate to any]** Any goods of a class or kind specified in the rules for the purposes of this subsection and exported to or from or manufactured in the Republic must have a distinctive and permanent identification number, code, description, character or other mark allocated in such manner and in accordance with such method as may be prescribed in the rules, and such number, code, description, character or other mark shall be quoted or reproduced in all **[prescribed]** invoices relating to such goods and in all such other documents relating to such goods as may be specified in the rules.”; 10

- (c) by the substitution for subsection (3) of the following subsection: 15

“(3) All particulars in any **[prescribed]** invoice and certificate in respect of imported goods shall relate to the goods in the condition in which they are imported into the Republic and for the purposes of section 107(2) no change in such condition shall be deemed to have taken place between the time of importation and the time of any examination or analysis decided upon by the Controller or the Commissioner unless the importer is able to satisfy the Commissioner of any such change and the extent thereof: Provided that the Commissioner may refuse to act upon the result of any such examination or analysis if the particulars in such invoice are thereby proved to be incorrect.”; 20 25

- (d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) **[All]** An invoice in respect of imported goods shall contain all particulars necessary to make a valid entry and all particulars as may be prescribed by rule **[in respect of the transaction value or of any commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever which relates to and has a bearing on such value shall be declared by the exporter in any prescribed invoice in respect of any imported goods]** and such particulars shall, except where the Commissioner otherwise determines, relate to the final amount of **[such]** the transaction value **[or commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate or remission and to the final particulars or information regarding such goods]**.”; 30 35 40

- (e) by the substitution in subsection (4) for subparagraph (i) of paragraph (b) of the following subparagraph:

“(i) Any particulars referred to in paragraph (a) and **[declared]** reflected in any **[prescribed]** invoice or certificate in respect of any imported goods shall be subject to any amount credited or debited on the transaction by the exporter or to any refund on the transaction made or becoming due by the exporter or any amount paid or becoming due to the exporter (directly or indirectly, in money or in kind or in any other manner) or to any change of any nature whatever in such particulars in respect of such goods after the date of issue of such invoice or certificate.”; and 45 50

- (f) by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) If any particulars referred to in paragraph (a) of any imported goods are not declared in the **[prescribed]** document purported to be an invoice or a certificate in respect thereof or if any change in the particulars declared in any **[prescribed]** invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Controller by the importer of such goods or if the Commissioner has reason to believe that an offence referred to in section 86(f) or (g) has been committed in respect of any imported goods the Commissioner may determine a transaction value, origin, date of 55 60

purchase, quantity, description or the characteristics of such goods according to the best information available to him, which shall, subject to the provisions of this Act, be deemed to be the transaction value, origin, date of purchase, quantity, description or the characteristics of such goods.”.

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

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, section 9 of Act 98 of 1980, section 8 of Act 86 of 1982, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002, section 138 of Act 45 of 2003, section 68 of Act 32 of 2004, section 3 of Act 10 of 2005, section 90 of Act 31 of 2005, section 11 of Act 36 of 2007, section 94 of Act 60 of 2008, section 36 of Act 32 of 2014, section 15 of Act 44 of 2014 and section 14 of Act 33 of 2019

13. (1) Section 47 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (9) for the words preceding item (aa) of subparagraph (i) of paragraph (a) of the following words:

“(i) The Commissioner may, in writing, subject to section 74G(2)(b), determine—”; and

(b) by the substitution in subsection (9) for the words preceding item (aa) of subparagraph (i) of paragraph (d) of the following words:

“(i) The Commissioner shall, subject to section 74G(2)(b)—”.

(2) Subsection (1) comes into effect on the date when Chapter IXA becomes effective in terms of section 17(2) of this Act.

Amendment of section 49 of Act 91 of 1964, as substituted by section 3 of Act 7 of 1974, section 12 of Act 27 of 1997, section 65 of Act 30 of 1998, section 55 of Act 53 of 1999 and amended by section 24 of Act 34 of 2004, section 60 of Act 30 of 2000, section 127 of Act 60 of 2001, section 46 of Act 30 of 2002, section 24 of Act 34 of 2004, section 12 of Act 36 of 2007, and repealed by section 38 of Act 32 of 2014

14. (1) Section 49 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—

(a) by the substitution in subsection (6) for subparagraph (vi) of paragraph (a) of the following subparagraph:

“(vi) **[a binding origin determination]** an advance origin ruling and any procedure in connection therewith;”;

(b) by the substitution in subsection (7) for subparagraph (ii) of paragraph (b) of the following subparagraph:

“(ii) subject to **[the provisions of subsection (8)]** any applicable advance origin ruling contemplated in Chapter IXA, any decision or determination may be amended or withdrawn and a new decision or determination made from the date the decision or determination was given, but such a decision or determination shall *mutatis mutandis* be subject to the provisions of section 76B if any refund of duty is involved;”;

(c) by the repeal of subsection (8).

(2) Any binding origin determination issued under section 49(8) of the Customs and Excise Act, 1964, in force when this section comes into effect in terms of subsection (3)—

(a) is regarded as an advance ruling in terms of Chapter IXA of the Customs and Excise Act; and

(b) remains valid for a period of three years from the date of issue as contemplated in repealed section 49(8)(f).

(3) Subsections (1) and (2) come into effect on the date when Chapter IXA becomes effective in terms of section 17(2) of this Act.

Amendment of section 65 of Act 91 of 1964, as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969, section 20 of Act 112 of 1977, section 5 of Act 93 of 1978, section 7 of Act 110 of 1979, substituted by section 13 of Act 86 of 1982, and amended by section 8 of Act 101 of 1985, section 8 of Act 52 of 1986, section 9 of Act 68 of 1989, section 48 of Act 45 of 1995, section 5 of Act 44 of 1996, section 59 of Act 53 of 1999, section 128 of Act 60 of 2001, section 144 of Act 45 of 2003, section 70 of Act 32 of 2004, section 93 of Act 35 of 2007, section 96 of Act 60 of 2008, section 59 of Act 32 of 2014 and section 16 of Act 33 of 2019

15. (1) Section 65 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (4) for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) The Commissioner may in writing, and subject to section 74G(2)(b), determine the transaction value of any imported goods, which is required to be ascertained or may be determined as provided in section 66.”; and

(b) by the substitution in subsection (5) for the words preceding subparagraph (i) of paragraph (a) of the following words:

“(a) The Commissioner shall, subject to section 74G(2)(b)—”.

(2) Subsection (1) comes into effect on the date when Chapter IXA becomes effective in terms of section 17(2) of this Act.

Amendment of section 71 of Act 91 of 1964, as amended by section 10 of Act 105 of 1976, section 5 of Act 89 of 1984 and section 4 of Act 105 of 1992, and repealed by section 62 of Act 32 of 2014

16. Section 71 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 repeal of subsection (1).

Insertion of Chapter IXA of Act 91 of 1964

17. (1) The following Chapter is hereby inserted in the Customs and Excise Act, 1964, after Chapter IX:

“CHAPTER IXA

ADVANCE RULINGS

Definitions

74B. (1) For the purposes of this Chapter—

“**advance origin ruling**” means a ruling issued by the Commissioner on the origin of goods of a specific class or kind in order to settle in advance the origin of goods of that class or kind when entered by or on behalf of the recipient for home consumption or another purpose for which the goods are entered during the validity period of the ruling;

“**advance ruling**” means—

- (a) an advance tariff ruling;
- (b) an advance valuation ruling; or
- (c) an advance origin ruling;

“**advance tariff ruling**” means a ruling issued by the Commissioner on the tariff classification of goods of a specific class or kind in order to settle in advance the tariff classification of goods of that class or kind when entered by or on behalf of the recipient for home consumption or for another purpose in terms of the provisions of this Act during the validity period of the ruling;

“**advance valuation ruling**” means a ruling issued by the Commissioner on a valuation criterion in order to settle in advance, prior to the application of that valuation criterion in the valuation of goods of that class or kind when entered by or on behalf of the recipient for home consumption or for another purpose in terms of the provisions of this Act during the validity period of the ruling; and

“application” means an application for an advance ruling in terms of this Chapter;

“recipient”, in relation to an advance ruling, means a person to whom an advance ruling has been issued; and

“valuation criterion” means a criterion for determining the customs value of goods of any specific class or kind in accordance with sections 65, 66 and 67 which criterion remains constant in different transactions between the same parties for the same kind of goods.

(2) An applicant’s tax matters must be considered to be in order—

(a) if that applicant has no outstanding—

(i) taxes, interest, penalties or other amounts due and payable to SARS for which he or she is liable in terms of this Act, or has made arrangements with SARS for the payment of any outstanding amounts; or

(ii) tax returns or other documents that must be submitted for tax purposes to SARS in terms of this Act, or has made arrangements with SARS for the submission of any outstanding documents; and

(b) if that applicant is tax compliant as contemplated in section 256(3) of the Tax Administration Act.

Application for advance ruling

74C. (1) Any person who is a registered importer may apply to the Commissioner for—

(a) an advance tariff ruling;

(b) an advance valuation ruling; or

(c) an advance origin ruling.

(2) An application for an advance ruling—

(a) must relate to only—

(i) one class or kind of goods; and

(ii) transactions between the same parties; and

(b) must—

(i) be made in the form and manner and in accordance with any requirements as may be prescribed by rule;

(ii) contain the information required on the application form or prescribed by rule;

(iii) be signed by the applicant, which in the case of electronic submission through a computer system, must be an electronic signature; and

(iv) be supported by any relevant supporting documents and information as may be prescribed by rule, which must be submitted to the Commissioner on request and in a manner indicated in the request.

(3) The Commissioner may request the applicant to submit, within a timeframe indicated in the request, any additional information that may be required before considering an application for an advance ruling.

(4) A fee as may be prescribed by rule is payable in respect of each application.

Consideration of application

74D. (1) The Commissioner must consider an application and may—

(a) grant the application, and issue the advance ruling subject to conditions, if required; or

(b) refuse the application.

(2) The Commissioner may grant an application only if there is sufficient certainty as to the application of the advance ruling to the goods to which the ruling will relate.

(3) The Commissioner must refuse an application if—

(a) subsection (2) is not complied with;

(b) the applicant—

(i) is not a registrant contemplated in section 74C(1);

- (ii) has not in respect of the application complied with a requirement of this Act;
 - (iii) has made a false or misleading statement in the application or has omitted to state a fact which is material to the consideration of the application;
 - (iv) raises a frivolous or vexatious issue in the application; or
 - (v) refuses or fails to provide the Commissioner with additional information in connection with the application, if requested to do so;
 - (c) the tax matters of the applicant are not in order; or
 - (d) the application raises an issue that is the same as or substantially similar to an issue involving the applicant—
 - (i) that is pending before a court; or
 - (ii) that is the subject of proceedings in terms of Chapter XA of this Act.
- (4) The applicant must be notified in writing of the outcome of the application, and if the application is refused, reasons must be provided to the applicant.

Granting of application

- 74E.** (1) If the Commissioner grants an application, the Commissioner must issue to the applicant an advance ruling, stating—
- (a) the title, number and date of the ruling;
 - (b) the name of the recipient;
 - (c) whether it is an advance tariff ruling, an advance valuation ruling or an advance origin ruling, and, if an advance valuation ruling, particulars of the valuation criterion to which it relates;
 - (d) the class or kind of goods to which the ruling relates;
 - (e) particulars of the transactions to which the ruling relates, including the names of the parties to these transactions;
 - (f) particulars of the ruling made;
 - (g) any assumptions made or conditions imposed by the Commissioner in connection with the application of the ruling;
 - (h) the period for which the ruling will remain valid; and
 - (i) any other relevant information.
- (2) An advance ruling applies subject to the provisions of the ruling, and only—
- (a) to goods of the class or kind specified in the ruling when entered by or on behalf of the recipient for a purpose in terms of this Act during the validity period of the ruling; and
 - (b) in the case of an advance valuation ruling, to transactions between the parties specified in the ruling.

Validity period of advance ruling

- 74F.** An advance ruling is valid for a period of two years as from the date of issue, unless—
- (a) another period for the validity of the advance ruling is specified in the ruling;
 - (b) the advance ruling is withdrawn by the Commissioner in terms of section 74K;
 - (c) the advance ruling is set aside by a court;
 - (d) section 74L becomes applicable to the advance ruling;
 - (e) in the case of an advance tariff ruling, an amendment to an international instrument referred to in section 47(8) causes the advance ruling to lapse;
 - (f) in the case of an advance ruling on a valuation criterion, an amendment to an international instrument referred to in section 74A causes the advance ruling to lapse; or
 - (g) in the case of an advance origin ruling, an amendment to an international instrument referred to in section 49(2) relating to applicable rules of origin causes the advance ruling to lapse.

Binding effect of advance ruling

74G. (1) An advance ruling binds both the recipient and the Commissioner.

- (2) An advance ruling must, to the extent applicable, be applied in—
- (a) any description or declaration provided in terms of section 40(1)(b) or (c) by or on behalf of the recipient in respect of the tariff, value or origin of goods of the class or kind specified in the ruling entered for any purpose in terms of this Act by or on behalf of the recipient; and
 - (b) any tariff determination, value determination or origin determination or amendment of such a determination made or effected by the Commissioner in terms of section 47(9), 65(4) or 49(6), in relation to goods of the class or kind specified in the ruling entered in terms of this Act by or on behalf of the recipient.

Entry of goods under advance ruling

74H. When entering goods for any purpose in terms of this Act under an advance ruling, the recipient or other person entering the goods on behalf of the recipient must—

- (a) indicate on the bill of entry the reference number of any advance ruling that may be applicable to the goods in terms of this Chapter;
- (b) on request, furnish such information concerning the goods as the Commissioner may require; and
- (c) provide proof to the Commissioner that the ruling applies to those goods on request.

Recipient to advise Commissioner of change in circumstances

74I. (1) A recipient must, within a prescribed timeframe, give notice to the Commissioner in writing of any change in circumstances which has an impact on the ruling.

- (2) A notification referred to in subsection (1) must be supported by all relevant documents setting out the nature of the change in circumstances, which documents must be submitted to the Commissioner on request.

Amendment of advance ruling

74J. (1) The Commissioner may amend an advance ruling either on application by the recipient or on own initiative to correct an administrative error in the ruling.

- (2) An advance ruling as it read immediately before an amendment effected in terms of subsection (1) remains, despite the amendment, effective in respect of goods for which the recipient is contractually bound by an existing contract concluded on the basis of the advance ruling before its amendment.

(3) The unamended version of an advance ruling remains effective in terms of subsection (2) only if the recipient so chooses and the Commissioner so authorises, and then only—

- (a) for a period of 90 calendar days from the date of the amendment or for the remainder of the validity period of the advance ruling, whichever expires first; and
- (b) for determining whether any duty is payable on goods referred to in subsection (2), and if so, for assessing the amount of duty payable on those goods.

(4) The recipient who chooses to rely in relation to any specific goods on the unamended version of an advance ruling, must—

- (a) notify the Commissioner; and
- (b) submit to the Commissioner any necessary supporting documents to prove the existence of a contract referred to in subsection (2).

Withdrawal of advance ruling

74K. (1) The Commissioner must withdraw an advance ruling if—

- (a) the advance ruling was issued as a result of fraud, misrepresentation, incorrect information or the omission of a fact which was material to the consideration of the application insofar as the inclusion of such fact would have resulted in a different ruling; or
- (b) in the case of an advance origin ruling, the advance ruling is in conflict with an international trade agreement concluded by the Republic.

(2) (a) The withdrawal of an advance ruling in terms of subsection (1)(a) is effective retrospectively from the date of issue of the advance ruling.

(b) Subsequent to the withdrawal of an advance ruling in terms of this section, the Commissioner must determine in writing, with effect from the date of first entry of the goods to which that ruling relates, the tariff, value or origin of such goods for purposes of assessing the correct amount of duty payable.

Effect of subsequent change in law

74L. (1) An advance ruling ceases to be effective if—

- (a) a provision of this Act affecting the advance ruling is repealed or amended and that repeal or amendment renders the advance ruling incompatible with this Act;
- (b) a court in a final judgement places an interpretation on a provision of this Act which renders the advance ruling legally incorrect and interpreting that provision was necessary for deciding the case before the court.
- (c) in the case of an advance tariff ruling, an amendment to an international instrument referred to in section 47(8) affects the ruling;
- (d) in the case of an advance valuation ruling, an amendment to an international instrument referred to in section 74A affects the ruling; or
- (e) in the case of an advance origin ruling, an amendment to an international instrument referred to in section 49(2) relating to applicable rules of origin, affects the ruling.

(2) An advance ruling ceases to be effective immediately upon the occurrence of the circumstances described in subsection (1)."

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

Amendment of section 79 of Act 91 of 1964, as amended by section 2 of Act 64 of 1974, section 11 of Act 52 of 1986, section 7 of Act 105 of 1992, section 56 of Act 45 of 1995, section 69 of Act 32 of 2014 and section 17 of Act 21 of 2021

18. (1) Section 79 of the Customs and Excise Act, 1964, is hereby amended by the insertion in subsection (1) after paragraph (f) of the following paragraph:

“(fA) fails to comply with a request issued by the Commissioner to that person in terms of section 74H(b);”.

(2) Subsection (1) comes into effect on the date when Chapter IXA becomes effective in terms of section 17(2) of this Act.

Amendment of section 84 of Act 91 of 1964, as amended by section 11 of Act 57 of Act 1966, section 28 of Act 105 of 1969, section 29 of Act 112 of 1977, section 15 of Act 52 of 1986, section 14 of Act 61 of 1992 and section 11 of Act 105 of 1992

19. (1) Section 84 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) For the purposes of subsection (1), any document purported to be an invoice or any other document relating to any denomination, description, class, grade or quantity of goods shall be deemed to contain a false statement if the price charged by the exporter or any value, price, commission, discount, cost, charge, expense, royalty, freight, duty, tax, drawback, refund, rebate, remission or other information whatever

declared therein which has a bearing on value for the purposes of payment of any duty or on classification in terms of any Schedule to this Act or on anti-dumping duty, countervailing duty or safeguard duty or on extent of rebate, refund or drawback of duty—”; and

- (b) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 5

“(c) represents any average or adjustment or amendment, particulars of which are not disclosed in such purported invoice or other document, or such values, prices, commissions, discounts, costs, charges, expenses, royalties, freight, duties, taxes, drawbacks, refunds, rebates, remissions or other information in respect of goods of the same or of different denominations, descriptions, classes, grades or quantities supplied by the same supplier.”. 10

- (2) Subsection (1) comes into effect on a date to be determined by the Minister by notice in the Government *Gazette*. 15

Amendment of section 86 of Act 91 of 1964, as substituted by section 11 of Act 85 of 1968, and amended by section 17 of Act 52 of 1986, section 13 of Act 105 of 1992 and section 58 of Act 45 of 1995

- 20.** (1) Section 86 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for paragraph (a) of the following paragraph: 20

“(a) fails to advise the Controller of the receipt of any amended **[prescribed]** invoice or any credit note or debit note or of any change in the circumstances or particulars of whatever nature as declared in any **[prescribed]** invoice or in any other document or of any refund of money or deferred or secret discount, commission or other credit or debit which relates to any goods and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;”; 25

- (b) by the substitution for paragraph (b) of the following paragraph:

“(b) fails to declare in or omits from any **[prescribed]** document purported to be an invoice any particulars (including value and origin) in respect of the goods to which such document purported to be an invoice relates and which would increase the duty on such goods or exclude them from any rebate or refund or other privilege under this Act;”; and 30 35

- (c) by the substitution for paragraph (d) of the following paragraph:

“(d) issues two or more different **[prescribed]** invoices or certificates in respect of the same goods or fails to issue an amended **[prescribed]** invoice or certificate where any particulars declared in any **[prescribed]** invoice or certificate in respect of any goods have changed in any manner whatever;”. 40

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

Amendment of section 107 of Act 91 of 1964, section 20 of Act 85 of 1968, section 11 of Act 93 of 1978, section 6 of Act 89 of 1983, section 67 of Act 45 of 1995, section 33 of Act 24 of 2004, section 11 of Act 10 of 2006, section 34 of Act 21 of 2006 and section 80 of Act 32 of 2014 45

- 21.** (1) Section 107 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The cost of analysis of any goods for the purposes of subsection (2) (a) shall be borne by the importer, exporter, manufacturer or owner of such goods except where the Commissioner considers the analysis necessary for the purposes of subsection (2) (a) and the result of the analysis confirms the correctness of the declaration or bill of entry made or presented by such importer, exporter, manufacturer or owner in respect of such goods: Provided that the cost of analysis shall in no case be borne by the State where it is carried out in connection with any application for refund of duty or substitution of any entry or where the result of analysis shows that the goods in question were incorrectly or insufficiently described on the **[relative prescribed]** document purported to be an invoice.”. 50 55

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

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 and section 18 of Act 33 of 2019

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

(a) by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) prescribing the form of **[and]** or the particulars to be **[inserted on]** reflected on invoices or certificates in respect of any goods to which this Act applies and which are imported into or exported from the Republic, or manufactured in the Republic; Provided that different particulars may be prescribed in respect of different categories of persons or different classes or kinds of goods;”;

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

“(mD) as to matters relating to the issuing of advance rulings contemplated in Chapter IXA, including—

- (i) the form and manner of submission of and the particulars to be included in an application, including the applicable fee and any other requirements for an application for an advance ruling;
- (ii) the documents to be used in support of an application;
- (iii) the requirements relating to the publication of advance rulings, including the circumstances in which publication of advance rulings may take place, the type of information that may be published and the form and manner in which such information must be published;
- (iv) the obligations of recipients in relation to changes in circumstances impacting advance rulings, including requirements for applications for amendment of rulings;
- (v) to regulate the implementation of sections 74J and 74K;
- (vi) the requirements in relation to record-keeping, including the type of records to be kept and the period for which it must be kept; and
- (vii) the delegation, subject to section 3(2), of any power which may be exercised by the Commissioner in terms of Chapter IXA, as well as the general administration of advance rulings.”

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

(b) Paragraph (b) of subsection (1) comes into effect on the date when Chapter IXA becomes effective in terms of section 17(2) of this Act.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004, section 106 of Act 31 of 2005, section 110 of Act 60 of 2008, section 271, read with paragraph 112 of Schedule 1 of Act 28 of 2011, section 135 of Act 24 of 2011, section 171 of Act 31 of 2013, section 132 of Act 43 of 2014, section 24 of Act 44 of 2014, section 160 of Act 25 of 2015, section 17 of Act 13 of 2017, section 79 of Act 13 of 2017 and section 82 of Act 17 of 2017

23. Section 13 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (iii) of the following paragraph:

“(iii) goods imported from or via Botswana, eSwatini, Lesotho, **[Swaziland]** or Namibia shall be declared and tax paid on entry

into the Republic as prescribed by the Commissioner in Chapter XIIA of the Rules under the Customs and Excise Act.”; and

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

“(b) where such goods have their origin in Botswana, eSwatini, Lesotho, [Swaziland] or Namibia and are imported from such a country, the amount of the value as contemplated in paragraph (a), except that such value shall not be increased by the factor of 10 per cent.”.

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 92 of Act 53 of 1999, section 37 of Act 27 of 1997, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008, section 113 of Act 60 of 2008, section 93 of Act 17 of 2009, section 37 of Act 18 of 2009, section 124 of Act 7 of 2010, section 141 of Act 24 of 2011, section 271, read with paragraph 117 of Schedule 1 to Act 28 of 2011, section 178 of Act 31 of 2013 and section 11 of Act 21 of 2018

24. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (1A) of the following subsection:

“(1A) Every person who carries on any enterprise as contemplated in paragraph (b)(vi) or (vii) of the definition of “enterprise” in section 1 and is not registered becomes liable to be registered at the end of any month where the total value of taxable supplies made by that person has exceeded R1 million in any consecutive 12-month period: Provided that such person shall not be liable to register where the said total value of taxable supplies made by that person has exceeded R1 million in any consecutive 12-month period solely as a consequence of abnormal circumstances of a temporary nature.”.

Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice No. 2244 of 31 July 1992, section 44 of Act 97 of 1993, Government Notice No. 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice No. R.111 in Government Gazette 24274 of 17 January 2003, section 189 of Act 45 of 2003, sections 52 to 55 of Act 16 of 2004, section 108 of Act 32 of 2004, sections 111 to 123 of Act 31 of 2005, sections 52 to 53 of Act 9 of 2006, section 89 of Act 20 of 2006, section 109 of Act 8 of 2007, section 85 of Act 8 of 2007, Government Notice No. R.958 in Government Gazette 30370 of 12 October 2007, section 107 of Act 35 of 2007, Government Notice No. R.766 in Government Gazette 32416 of 24 July 2009, Government Notices Nos. R.154 and R.157 in Government Gazette 34046 of 1 March 2011, section 143 of Act 24 of 2011, Government Notice No. R.187 in Government Gazette 35102 of 2 March 2012, Government Notice No. R.506 in Government Gazette 35481 of 6 July 2012, Government Notice No. 995 in Government Gazette 35932 of 7 December 2012, Government Notice No. R.1072 in Government Gazette 36002 of 14 December 2012, section 181 of Act 31 of 2013, Government Notice No. R.288 in Government Gazette 37554 of 17 April 2014, section 107 of Act 43 of 2014, Government Notice No. R.723 in Government Gazette 39100 of 14 August 2015, Government Notice No. R.558 in Government Gazette 40004 of 20 May 2016, section 87 of Act 15 of 2016, section 31 of Act 16 of 2016, section 74 of Act 34 of 2019, Government Notice No. R.226 in Government Gazette 43051 of 28 February 2020 and Government Notice No. R.1069 in Government Gazette 43781 of 9 October 2020

25. Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for the words preceding paragraph 1 of the following words:

“Goods imported, as contemplated in section 13(1), including imports from or via Botswana, eSwatini, Lesotho[,] or Namibia [or Swaziland], into the Republic and in respect of which the exemption under the provisions of section 13(3) applies, are set forth below.”;

- (b) by the substitution in paragraph 1 for the words preceding subparagraph (i) of the following words:

- “Any of the following items imported into the Republic in respect of which the Controller has, in terms of the proviso to section 38(1)(a) of the Customs and Excise Act and which shall apply also to imports from or via Botswana, eSwatini, Lesotho[,] or Namibia [**or Swaziland**], granted permission that entry need not be made:”;
- (c) by the substitution in paragraph 8 in item 412.00 for note 2 of the following note:
- “For the purposes of item no.’s 412.26 and 412.27, such exemptions are subject to compliance with sections 39 and 40 of the Customs and Excise Act and which shall apply also to imports from or via Botswana, eSwatini, Lesotho[,] or Namibia [**or Swaziland**].”;
- (d) by the substitution in paragraph 8 in item 412.00 for paragraph (i) and (ii) of the proviso to subitem 412.11/00.00/01.00 of the following paragraphs:
- “(i) the importation of any goods under this item shall be subject to a certificate issued by the International Trade Administration Commission and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, eSwatini, Lesotho[,] and Namibia [**and Swaziland**]; and
- (ii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, eSwatini, Lesotho[,] or Namibia [**or Swaziland**] without the permission of the International Trade Administration Commission”; and
- (e) by the substitution in paragraph 8 in item 412 for subitem 412.12/00.00/01.00 of the following subitem:
- “412.12/00.00/01.00 Goods imported for any purpose agreed upon between the Governments of the Republic, Botswana, eSwatini, Lesotho[,] and Namibia [**and Swaziland**]: Provided that—
- (i) the provisions of this item shall not apply in respect of any consignment or quantity or class of goods unless the prior approval of the Governments of Botswana, eSwatini, Lesotho[,] and Namibia [**and Swaziland**] has been obtained for the application of such provisions in respect of every such consignment or quantity or class of goods;
- (ii) the importation of any goods under this item shall be subject to a certificate issued by the International Trade Administration Commission and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, eSwatini, Lesotho[,] and Namibia [**and Swaziland**]; and
- (iii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, eSwatini, Lesotho[,] or Namibia [**or Swaziland**] without the permission of the Commissioner”.

Amendment of section 221 of Act 28 of 2011, as amended by section 22 of Act 22 of 2018, section 74 of Act 39 of 2013 and section 61 of Act 16 of 2016

- 26.** (1) Section 221 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the substitution for the definition of “tax” of the following definition:
- “**‘tax’** means a tax as defined in section 1, excluding a penalty and interest, and will for purposes of this Part include an employment tax incentive as referred to in section 2(1) of the Employment Tax Incentive Act, 2013 (Act No. 26 of 2013); and
- (b) by the addition after subsection (5) of the following subsection:
- “(6) Any penalty imposed under subsection (2) must be reduced by any penalty imposed under section 4(2) of the Employment Tax Incentive Act, 2013, in respect of the same employment tax incentive amount.”.
- (2) Subsection (1) is deemed to have come into operation on 1 September 2022, and applies to any return, for purposes of paragraph 14(2) of the Fourth Schedule to the Income Tax Act, submitted or after that date.

Amendment of section 240A of Act 28 of 2011, as inserted by section 83 of Act 21 of 2012 and amended by section 82 of Act 39 of 2013, section 61 of Act 44 of 2014 and section 44 of Act 33 of 2019

27. Section 240A of the Tax Administration Act, 2011, is hereby amended by the deletion in subsection (1) of paragraph (a). 5

Amendment of section 256 of Act 28 of 2011, as amended by section 89 of Act 21 of 2012, section 85 of Act 39 of 2013, section 64 of Act 44 of 2014, section 72 of Act 23 of 2015 and section 46 of Act 33 of 2019

28. Section 256 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for subsection (4) of the following subsection: 10

“(4) An indication of the tax compliance status of a taxpayer must include at least—

- (a) the date of the tax compliance status of the taxpayer;
- (b) the name and taxpayer reference number of the taxpayer; **[and]**
- (c) the taxpayer’s tax compliance status as at the date referred to in paragraph (a); and 15

(d) an indication that the taxpayer is a newly registered taxpayer until—

- (i) the taxpayer, on the date referred to in paragraph (a), has—
 - (aa) reached the first date on which the taxpayer is required to submit a return or make a payment under a tax Act in respect of a tax for which the taxpayer is registered; or 20
 - (bb) submitted the return or made the payment, prior to the date referred to in item (aa); or
- (ii) a period of one year from the date the taxpayer was registered for a tax in terms of a tax Act has lapsed, 25

whichever occurs first.”; and

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

“(6) A senior SARS official may revoke **[third party]** access to the taxpayer’s tax compliance status in terms of subsection (5), if **[the access]**— 30

(a) **[was issued]** the access was provided—

(i) in error; or

[(b)](ii) [was provided] on the basis of fraud, misrepresentation or non-disclosure of material facts; or

(b) the correctness of the taxpayer’s current tax compliance status is questioned due to suspicion of fraud, misrepresentation or non-disclosure of material facts, 35

and SARS has given the taxpayer prior notice and an opportunity to respond to the allegations of at least 10 business days prior to the revocation.”. 40

Amendment of section 10 of Act 26 of 2013, as amended by section 118 of Act 43 of 2014, section 142 of Act 25 of 2015 and section 6 of Act 13 of 2020

29. (1)The Employment Tax Incentive Act, 2013, is hereby amended by the substitution for section 10 of the following section:

“[Reimbursement] Refund 45

10. (1) At the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act, **[payment]** a refund of an amount equal to the excess contemplated in section 9(1) must be claimed from the South African Revenue Service in the form and manner and at the time and place prescribed by the Commissioner for the South African Revenue Service. 50

(2) **[An amount equal to the excess]** A refund contemplated in **[section 9]** subsection (1) must be paid in accordance with section 190(1)(a) of the Tax Administration Act to the employer from the National Revenue Fund and be treated as a drawback from revenue charged to the National Revenue Fund. 55

(3) Where an employer has claimed **[payment]** the refund in terms of subsection (1), the amount of the excess in respect of the period to which the **[claim]** refund relates must be deemed to be nil in the month immediately following that period.

(4) The **[amount of the excess]** refund contemplated in subsection (1) payable to an employer may not be paid to that employer if the employer—

(a) has failed to submit any return contemplated in section 8(a); or

(b) has any tax debt contemplated in section 8(b).

(5) Where—

(a) an employer has claimed **[payment]** a refund in terms of subsection (1); and

(b) the **[amount]** refund contemplated in subsection (2) was not paid in terms of subsection (4),

that **[amount]** refund must be paid to an employer during any month in the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act subsequent to the period contemplated in subsection (1) in the first month during that period in which the employer is not subject to subsection (4).

(6) Where **[an amount]** a refund contemplated in subsection (2) is not paid by virtue of subsection (4) and (5) that **[amount]** refund must be deemed to be nil at the end of the period contemplated in subsection (5).”.

(2) Subsection (1) is deemed to have come into operation on 1 September 2022, and applies to any return, for purposes of paragraph 14(2) of the Fourth Schedule to the Income Tax Act, submitted or after that date.

Amendment of section 20 of Act 44 of 2014

30. Section 20 of the Tax Administration Laws Amendment Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) by the substitution in subsection (3) for paragraphs (a), (b) and (d) of the following paragraphs:

“(3) (a) Where any goods manufactured in the Republic, being of a class or kind subject to excise duty or environmental levy under Part 2 or 3 of Schedule No. 1 to the **[Customs and]** Excise Duty Act, have been supplied at a price which does not include such excise duty or environmental levy and tax has become payable in respect of the supply in terms of subsection (1)(a), value-added tax shall be levied and paid at the rate **[of 14 per cent]** specified in section 7(1) for the benefit of the National Revenue Fund on an amount equal to the amount of such excise duty or environmental levy which, subject to any rebate of such excise duty or environmental levy under the said Act, is paid.

(b) The tax payable in terms of paragraph (a) shall be paid by the person liable in terms of the **[Customs and]** Excise Duty Act for the payment of the said excise duty or environmental levy.

(d) **[Subject to this Act, the provisions of the Customs and Excise Act relating to the clearance of goods subject to excise duty or environmental levy and the payment of that excise duty or environmental levy shall *mutatis mutandis* have effect as if enacted in this Act]** The tax on the clearance of goods subject to excise duty or environmental levy shall be recovered or refunded in terms of the relevant provisions of the Excise Duty Act, as if the tax were an excise duty or environmental levy contemplated in that Act, whether or not the said provisions apply for the purposes of any excise duty or environmental levy levied in terms of that Act.”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 2 of Act 13 of 2017

31. (1) Section 2 of the Tax Administration Laws Amendment Act, 2017, is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs:

“(1) (a) by the substitution for subsection (1)[, **pending its substitution by section 271 of the Tax Administration Act, 2011 (Act No. 28 of 2011), read with paragraph 18 of Schedule 1 to that Act and section 3 of the Tax Administration Laws Amendment Act, 2012 (Act No. 21 of 2012),**] of the following subsection:

“(1) If any duty remains unpaid at the expiration of a period of thirty days from the date **[of payment notified in accordance with subsection**

(2) of section *nine*] for payment prescribed in terms of section 9C, there shall be payable, in addition to the unpaid duty, interest at the rate of six per cent[.] per annum on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment: Provided that, where the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the rate of six per cent[.] per annum shall be payable as from a date twelve months after the date of death on the difference (if any) between the duty assessed and any deposit (if any) made on account of the duty payable within the said period of twelve months.’; and

(b) by the substitution for subsection (2) of the following subsection:

“(2) Whenever the Commissioner is satisfied that the delay in the payment of duty within the period of thirty days from the date [of payment notified in accordance with subsection (2) of section *nine*] for payment prescribed in terms of section 9C, or within the period of twelve months from the date of death, as the case may be, has not been occasioned either by the executor or by any person liable for the duty, [he] the Commissioner may allow an extension of time within which the duty may be paid without interest if, before the expiration of the said period of thirty days or the said period of twelve months, as the case may be or such further period as the Commissioner may allow—

- (a) a deposit on account of the duty payable is made of an amount which, in the opinion of the Commissioner, is reasonable, regard being had to the amount of the duty payable; and
- (b) application is made in writing to the Commissioner for such extension of time.”.

(2) Subsection (1) is deemed to have come into operation on 18 December 2017.

Amendment of section 1 of Act 24 of 2020

32. (1) Section 1 of the Tax Administration Laws Amendment Act, 2020, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 20 January 2021.

Short title and commencement

33. (1) This Act is called the Tax Administration Laws Amendment Act, 2022.

(2) Save in so far as is otherwise provided for in this Act, or where 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

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2022 (the “Bill”), proposes to amend the Transfer Duty Act, 1949 (Act No. 40 of 1949), the Estate Duty Act, 1955 (Act No. 45 of 1955), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Tax Administration Act, 2011 (Act No. 28 of 2011), and the Employment Tax Incentive Act, 2013 (Act No. 26 of 2013).

2. OBJECTS OF BILL

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

The proposed amendment is a consequential amendment.

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

The proposed amendment is a textual correction.

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

The proposed amendment is a consequential amendment.

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

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

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

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

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

The proposed amendment is a textual correction.

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

The proposed amendment corrects an incorrect cross reference.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The proposed amendment is consequential to the insertion of the definition for “invoice”.

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

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

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

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

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

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

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

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

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

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

The proposed amendment is a consequential amendment.

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

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

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

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

The proposed amendment is a consequential amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The proposed amendment is a technical correction.

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

The proposed amendment is a technical correction.

2.33 Clause 33: Short title and commencement

The clause makes provision for the short title of the proposed Act and provides that different provisions of the Act may come into effect on different dates.

3. CONSULTATION

The amendments proposed by this Bill were published on SARS' and National Treasury's websites for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large have been consulted in preparing the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2022 Budget Review, tabled in Parliament on 23 February 2022.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, the National Treasury and the South African Revenue Service are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it contains no provision pertaining to customary law or customs of traditional communities.

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