

REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL, 2019

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

(MINISTER OF FINANCE)

[B - 2019]

21 July 2019

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 technical corrections; to subject a certain decision under the Act to objection and appeal; to provide a time period for the validity of a declaration and a written undertaking in respect of withholding tax on interest and withholding tax on royalties; to remove a requirement to submit a declaration to a regulated intermediary in respect of tax free investments; to clarify that a penalty may be imposed if an employer submits an incomplete return; and to insert a provision that an executor need not submit a provisional tax return for the second provisional period;
- amend the Customs and Excise Act, 1964, so as to make technical corrections; to insert definitions; to extend a provision providing for information sharing and exclude certain information from the application of the prohibition on disclosure of information; to clarify that an invoice may be amended by the issuing of an amended invoice or by the issuing of a credit or debit note in circumstances where the amount reflected on the invoice is amended; to clarify that tariff determinations, amendments to tariff determinations or new tariff determinations apply to all identical goods entered by the same person, whether the goods were entered before or after the date on which the determination is issued; to exclude bulk removals between excise manufacturing warehouses of alcoholic beverages classified under any subheading of heading 22.04 or 22.05 of Part 1 of Schedule 1 from compulsory tariff determinations; to clarify that value determinations, amendments to value determinations or new value determinations apply to goods mentioned therein entered by the same person before or after the date

on which the determination is issued; to limit the circumstances in relation to which applications for general refunds will be considered; to provide for additional mechanisms for the recovery of debt incurred and payable under the Act; and to extend the general rule enabling provision to include matters relating to the making of advance payments in relation to the importation of goods;

- amend the Value-Added Tax Act, 1991, so as to make technical corrections; to remove a requirement that the Minister of Finance must prescribe by regulation the particulars to be contained on a tax invoice issued by a foreign supplier of electronic services; and to clarify that rulings under the Act are not subject to the prescribed fee under the Tax Administration Act, 2011;
- amend the Skills Development Levies Act, 1999, so as to make technical corrections; to provide for a procedure if an employer has incorrectly indicated the jurisdiction of a SETA; and to align the time periods for a refund under the Act with the Tax Administration Act, 2011;
- amend the Unemployment Insurance Contributions Act, 2002, so as to align the time periods for a refund under the Act with the Tax Administration Act, 2011;
- amend the Tax Administration Act, 2011, so as to make technical corrections; to extend the notice period prior to the institution of legal proceedings; to effect consequential amendments pursuant to the Legal Practice Act, 2014; to clarify that an assessment or decision is final if an appeal is withdrawn; to clarify that an amount may be set-off against a customs and excise debt even if there is not outstanding tax debt under the Act; to clarify when SARS may make an assessment based on an estimate if no return is submitted or required; to provide for an administrative penalty for failure to report a common reporting standard avoidance scheme or opaque offshore scheme under the Common Reporting Standard regulations issued under the Act; to subject erroneous, incomplete or false third party returns to criminal sanction under the Act; and to align the provisions regulating the tax compliance status of a taxpayer with the automation thereof;

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 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 to that Act, 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 and section 2 of Act 22 of 2018

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 8 (5)(b) and (bA), section 10 (1) (cA), (e)(i)(cc), (j) and (nB), section 10A(8), section 11(e), (f), (g), (gA), (j) and (l), section 12B(6), section 12C, section 12E, section 12J(6), (6A) and (7), section 13, section 15, section 18A[(5C)](1)(a)(cc), (b) 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 49E of Act 58 of 1962, inserted by section 12 of Act 21 of 2012 and amended by section 61 of Act 43 of 2014 and section 69 of Act 25 of 2015

2. Section 49E of the Income Tax Act, 1962, is hereby amended—

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

“(b) if the foreign person to or for the benefit of which that payment is to be made has[—

- (i) by a date determined by the person making the payment; or**
- (ii) if the person making the payment did not determine a date as contemplated in subparagraph (i), by the date of the payment,]**

before the payment of the royalty submitted to the person making the payment—

- (i) a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 49D(a) or (b), exempt from the withholding tax on royalties in respect of that payment; and
- (ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing should the circumstances affecting the exemption referred to in item (i) change or the payment of the royalty is no longer made to or for the benefit of that foreign person.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) The rate referred to in section 49B(1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has[—

- (a) by a date determined by the person making the payment; or**
- (b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,]**

before the payment of the royalty submitted to the person making the payment—

- (a) a declaration in such form as may be prescribed by the Commissioner that the royalty is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and

(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing should the circumstances affecting the application of the agreement referred to in paragraph (a) change or the payment of the royalty is no longer made to or for the benefit of that foreign person.”;
and

(c) by the insertion of the following subsection after subsection (3):

“(4) A declaration and written undertaking in terms of subsections (2) and (3) are no longer valid after a period of 2 years.”.

Amendment of section 50E of Act 58 of 1962 as inserted by section 98 of Act 31 of 2013, amended by section 65 of Act 43 of 2014 and section 57 of Act 15 of 2016

3. Section 50E of the Income Tax Act, 1962, is hereby amended—

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

“(b) if the foreign person to or for the benefit of which that payment is to be made has[—

(i) **by a date determined by the person making the payment;**
or

(ii) **if the person making the payment did not determine a date as contemplated in subparagraph (i), by the date of the payment,]**

before the payment of the interest submitted to the person making the payment—

(i) a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 50D(3) or an agreement for the **[prevention]**avoidance of double taxation, exempt from the withholding tax on interest in respect of that payment; and

(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing should the circumstances affecting the exemption referred to in item (i) change or the payment of the interest is no longer made to or for the benefit of that foreign person.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) The rate referred to in subsection (1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has[—

- (a) **by a date determined by the person making the payment; or**
- (b) **if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,]**

before the payment of the interest submitted to the person making the payment—

[(i)](a) a declaration in such form as may be prescribed by the Commissioner that the interest is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and

[(ii)](b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing should the circumstances affecting the application of the agreement referred to in **[subparagraph (i)]**paragraph (a) change or the payment of the interest is no longer made to or for the benefit of that foreign person.”; and

(c) by the addition of the following subsection after subsection (3):

“(4) A declaration and written undertaking in terms of subsections (2) and (3) are no longer valid after a period of 2 years.”.

Amendment of section 60 of Act 58 of 1962 as amended by section 39 of Act 85 of 1974, section 28 of Act 90 of 1988 and section 271 read with paragraph 50 of Schedule 1 of Act 28 of 2011

4. Section 60 of the Income Tax Act, 1962, is hereby amended by the repeal of subsection (5).

Amendment of section 64G of Act 58 of 1962 as inserted by section 56 of Act 60 of 2008, substituted by section 53 of Act 17 of 2009, amended by section 53 of Act 17 of 2009, section 73 of Act 7 of 2010, section 80 of Act 24 of 2011, section 88 of Act 22 of 2012 and section 106 of Act 31 of 2013

5. Section 64G of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection after subsection (3):

“(4) A declaration and written undertaking in terms of subsections (2) and (3) are no longer valid after a period of 2 years.”.

Amendment of section 64H of Act 58 of 1962 as inserted by section 56 of Act 60 of 2008, amended by section 53 of Act 17 of 2009, amended by section 74 of Act 7 of 2010, section 81 of Act 24 of 2011, section 89 of Act 22 of 2012 and section 107 of Act 31 of 2013

6. Section 64H of the Income Tax Act, 1962, is hereby amended:

(a) by the deletion in subsection (2) of “or” after paragraph (a) and the insertion of “or” after paragraph (b);

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

“(c) the dividend is exempt from dividends tax in terms of section 64F(1)(o).”; and

(d) by the addition of the following subsection after subsection (3):

“(4) A declaration and written undertaking in terms of subsections (2) and (3) are no longer valid after a period of 2 years.”.

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 16 of Act 61 of 2008, section 21 of Act 18 of 2009, section 22 of Act 8 of 2010, section 271 read with paragraph 85 of Schedule 1 of Act 28 of 2011, section 20 of Act 21 of 2012 and section 13 of Act 23 of 2015

7. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (6) of the following subparagraph:

“(6) If an employer fails to render to the Commissioner a return referred to in subparagraph (3) within the period and in the form and manner prescribed in that subparagraph, the Commissioner may impose on that employer a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, for each month that the employer fails to submit a complete return which in total may not exceed 10 per cent of the total amount of employees’ tax deducted or withheld or which should have been deducted or withheld by the employer from the remuneration of employees for the period described in that subparagraph.”.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005, section 46 of Act 3 of 2008, section 18 of Act 61 of 2008, section 23 of Act 18 of 2009, section 271 read with item 90 of Schedule 1 to Act 28 of 2011, section 22 of Act 21 of 2012, section 13 of Act 39 of 2013, section 9 of Act 44 of 2014, section 16 of Act 23 of 2015 and section 12 of Act 16 of 2016

8. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the proviso in item (a) of the following proviso:

“Provided that—

- (i) such estimate will not include any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or any severance benefit received by or accrued to or to be received by or accrue to the taxpayer during the relevant year of assessment; and
- (ii) in respect of the year of assessment in which a person dies, no estimate is required to be made in respect of the period ending on the date of death of that person.”.

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 and section 20 of Act 23 of 2015

9. Section 1 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for the definition of “SACU” of the following definition:

“**“SACU”** means the Southern African Customs Union between the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of **[Swaziland]eSwatini;**”;
and

(c) by the insertion after the definition of “surcharge goods” of the following definition:

“**“Tax Administration Act”** means the Tax Administration Act, 2011 (Act No. 28 of 2011);”.

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, sections 3 and 15 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, Schedule 3 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, amended by section 22 of Act 23 of 2015 and section 11 of Act 13 of 2017

10. Section 4 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014, is hereby amended—

(a) by the insertion in subsection (3), after paragraph (iv) of the proviso, of the following paragraphs:

“(ivA) disclosing to the Director-General of the Department of Energy such information as may be required for the administration of the regulations in respect of carbon offsets in terms of the Carbon Tax Act, 2019 (Act No. 15 of 2019);

(ivB) disclosing to the Director-General of the Department of Environmental Affairs such information in relation to greenhouse gas emissions reporting as may be required for purposes of the National Atmospheric Emissions Inventory System in terms of the National Environmental Management Air Quality Act, 2004 (Act No. 39 of 2004);

(ivC) disclosing to a public officer as contemplated in section 246 of the Tax Administration Act of an authorised dealer in foreign exchange appointed by the Minister of Finance for purposes of the Exchange Control Regulations published under Government Notice No. R1111 of 1 December 1961, as amended, such information as may be required by the authorised dealer for

purposes of verification of applications for advance foreign exchange payments in respect of goods that are to be imported;”;

(b) by the deletion in subsection (3), of the word “and” at the end of paragraph (vi) of the proviso;

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

“(3A) The Statistician-General or the Director-General of the Department of Trade and Industry or the Economic Development Department or the National Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or the Department of Energy or the Department of Environmental Affairs or the public officer of an authorised dealer in foreign exchange or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state or any person acting under the direction and control of such Statistician-General or Director-General of the Department of Trade and Industry or the Economic Development Department or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury or the Department of Energy or the Department of Environmental Affairs or the public officer of an authorised dealer in foreign exchange or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state shall not disclose any information supplied under the proviso to subsection 3 to any person or permit any person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties under any Act from which such powers or duties are derived.”; and

(d) by the substitution for subsection (3D) of the following subsection:

“(3D) The **[provisions of this section]**prohibition in subsection (3) shall not apply in respect of—

- (a) information about a person licensed or registered in terms of this Act in an anonymised form; and
- (b) any information relating to any person, where that person has consented that such information may be published or made known to any other person.”.

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 and section 30 of Act 32 of 2014

11. Section 41 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) (i) Any particulars referred to in paragraph (a) and declared in any prescribed invoice or certificate in respect of any imported goods shall be subject to any **[credit or debit note passed]**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]**

(ii) Whenever an event referred to in subparagraph (i) occurs—

(aa) the exporter shall **[whenever any such note is passed, or refund is made or becomes due or amount is paid or becomes due or change takes place forthwith issue an amended invoice or certificate to]**effect an amendment to the invoice or certificate by issuing—

(A) an amended invoice or certificate replacing the previous one; or

(B) a credit or debit note, if an amount reflected on the invoice is amended; and

(bb) the importer **[who]** shall produce such amended invoice or certificate or credit or debit note to the Controller within one month of receipt thereof and report the circumstances to him.”.

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 and section 15 of Act 44 of 2014

12. Section 47 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the deletion in paragraph (a) of subsection (9) of subparagraph (iii);
- (b) by the insertion in subsection (9) after item (gg) in subparagraph (a)(iv) of the following item:

“(ggA) Notwithstanding anything to the contrary contained in this subparagraph or the rules thereto, application for a tariff determination shall not be made in respect of bulk removals of alcoholic beverages classified under any subheading of heading 22.04 or 22.05 of Part 1 of Schedule 1 between excise manufacturing warehouses.”; and

- (c) by the insertion of the following subsection after subsection (11):

“(11A) Any determination made under subsection (9) shall operate—

- (a) in respect of the person in whose name it is issued, the goods mentioned therein and in respect of identical goods entered by that person, whether before or after the date when the determination is issued; and
- (b) subject to the provisions of section 44(11)(c) and 76B and subsections (10) and (11).”.

Amendment of section 53 of Act 91 of 1964, as amended by section 19 of Act 105 of 1969, section 12 of Act 112 of 1977, section 37 of Act 97 of 1986, section 20 of Act 84 of 1987, section 6 of Act 61 of 1992, section 5 of Act 19 of 1994 and section 42 of Act 45 of 1995, and repealed by section 40 of Act 32 of 2014

13. (1) Section 53 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 in subsection (2) for the expression “Part 7” of the expression “Part 13”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2018.

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 Act 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 section 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 and section 59 of Act 32 of 2014

14. Section 65 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subparagraph (ii) of paragraph (a) of subsection (4) of the following subparagraph:

“(ii) Any determination made under **[this subsection]** paragraph (a) or subsection (5) shall operate—

- (aa) **[only]** in respect of **[the goods mentioned therein and]** the person in whose name it is issued and the goods mentioned therein, entered by that person before or after the date when the determination is issued; and
- (bb) subject to the provisions of sections 44(11)(c) and 76B and subsections (7) and (7A)[, **from the date of the determination is issued].”**.

Amendment of section 76 of Act 91 of 1964, as amended by section 9 of Act 85 of 1968, substituted by section 5 of Act 98 of 1970, amended by 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 and section 14 of Act 68 of 1989, substituted by section 30 of Act 59 of 1990, and amended by section 5 of Act 105 of 1992, section 54 of Act 45 of 1995, section 62 of Act 30 of 2000, section 28 of Act 34 of 2004 and section 65 of Act 42 of 2014

15. Section 76 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) the goods concerned having been damaged, destroyed or irrecoverably lost by circumstances beyond his control prior to the release thereof for home consumption: Provided that, for purposes of this section, such circumstances exclude damage, destruction or loss of goods due to robbery or theft;”.

Substitution of section 114A of Act 91 of 1964 as inserted by section 60 of Act 22 of 2018

16. The Customs and Excise Act, 1964, is hereby amended by the substitution for section 114A of the following section:

“Application of Tax Administration Act for other mechanisms of recovery and for write off or compromise of debt

114A. (1) Part D of Chapter 11 of the Tax Administration Act, including any criminal and other sanctions contained in that Act for the

enforcement of that Part, applies, with any necessary changes as the context may require, to the recovery of any amount of any duty, interest, penalty or forfeiture incurred under this Act and owed to the Commissioner for the benefit of the National Revenue Fund.

(2) Chapter 14 of the Tax Administration Act, including any criminal and other sanctions contained in that Act for the enforcement of that Chapter, applies, with any necessary changes as the context may require, to the writing off or compromise of any duty, interest, penalty or forfeiture incurred under this Act and owed to the Commissioner for the benefit of the National Revenue Fund.”.

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 and section 86 of Act 32 of 2014

17. Section 120 of the Customs and Excise Act, 1964, is hereby amended by the insertion after paragraph (*mB*) of the following paragraph:

“(*mC*) as to matters relating to the making of certain advance foreign exchange payments in relation to goods that are to be imported, through authorised dealers in foreign exchange appointed by the Minister of Finance for purposes of the Exchange Control Regulations, 1961, including rules prescribing—

- (i) the type of advance foreign exchange payments to which the rules apply;
- (ii) requirements and procedures for notifying the Commissioner of the intention to submit an application to an authorised dealer in foreign exchange to effect an advance foreign exchange payment in respect of goods to be imported into the Republic; and
- (iii) reporting requirements for authorised dealers in foreign exchange in relation to advance foreign exchange payments by persons intending to import goods into the Republic;”.

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009, section 30 of Act 8 of 2010, section 29 of Act 21 of 2012, section 176 of Act 31 of 2013, section 26 of Act 23 of 2015 and section 7 of Act 22 of 2018

18. Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for subsection (5B) of the following subsection:

“(5B) Notwithstanding any other provision of this Act, if the supply by a vendor relates to any enterprise contemplated in paragraphs (b)(vi) and (b)(vii) of the definition of “enterprise” in section 1, the vendor shall be required to provide a tax invoice containing such particulars as must be prescribed by the **[Minister by regulation]**Commissioner by notice in the *Gazette*.”.

Amendment of section 41B of Act 89 of 1991 as inserted by section 40 of Act 21 of 2006, and amended by section 28 of Act 9 of 2007, section 17 of Act 9 of 2007, amended by section 42 of Act 61 of 2008, section 40 of Act 18 of 2009 and section 271 read with paragraph 131 of Schedule 1 to Act 28 of 2011

19. Section 41B of the Value-Added Tax Act, 1991, is hereby amended by the substitution in the proviso to subsection (1) for item (i) of the following item:

“(i) the provisions of sections 79(4)(f), **[and]** (k), **[and]** (6) and 81(1)(b) of the Tax Administration Act shall not apply to any VAT class ruling or VAT ruling;”.

Amendment of section 5 of Act 9 of 1999 as amended by section 92 of Act 30 of 2000

20. Section 5 of the Skills Development Levies Act, 1999, is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) If the Director-General is satisfied that an employer has incorrectly indicated the jurisdiction of a SETA under subsection (1), the Director-General may direct that the employer be classified under the jurisdiction of the correct SETA.”; and

(b) by the substitution of subsection (3) of the following subsection:

“(3) A selection by an employer in terms of subsection (2) is binding on the employer, unless the **[Commissioner]**~~Director-General~~, having regard to the factors contemplated in subsection (2)(a), (b) and (c), otherwise directs.”.

Amendment of section 7 of Act 9 of 1999

21. Section 7 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If the amount of a levy, interest or penalty paid by an employer to the SETA or approved body was not leviable or payable, or was in excess of the amount leviable or payable, in terms of this Act, that amount must be refunded to the employer by the SETA or approved body from the funds of the SETA if that amount is claimed by the employer within 5 years from the date the payment was made in terms of this Act.”.

Amendment of section 11 of Act 9 of 1999 as amended by section 123 of Act 74 of 2002 and section 45 of Act 18 of 2009

22. Section 11 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6 ~~[(2)](1), (1A)~~ or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of “prescribed rate” in section 1 of the Income Tax Act, calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be.”

Amendment of section 12 of Act 9 of 1999 as amended by section 113 of Act 53 of 1999, section 197 of Act 45 of 2003, section 46 of Act 18 of 2009 and section 271 read with paragraph 153 of Schedule 1 of Act 28 of 2011

23. Section 12 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2), if any levy remains unpaid after the last day for payment thereof as contemplated in section 6~~[(2)](1), (1A)~~ or 7(4), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty of 10 per cent of that unpaid amount.”.

Amendment of section 9 of Act 4 of 2002

24. Section 9 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If the amount of any contribution, interest or penalty paid by an employer to the Unemployment Insurance Commissioner was not due or payable, or was in excess of the amount due or payable in terms of this Act, that amount or such excess amount must be refunded to that employer by the Unemployment Insurance Commissioner from the Unemployment Insurance Fund if that amount is claimed by the employer within 5 years from the date the payment was made in terms of this Act.”.

Amendment of section 11 of Act 28 of 2011 as amended by section 40 of Act 21 of 2012, section 33 of Act 39 of 2013, section 36 of Act 23 of 2015 and section 48 of Act 16 of 2016

25. Section 11 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Unless the court otherwise directs, no legal proceedings may be instituted in the High Court against the Commissioner unless the applicant has given the Commissioner written notice of at least **[one weeks]** 21 business days of the applicant’s intention to institute the legal proceedings.”.

Amendment of section 12 of Act 28 of 2011

26. Section 12 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A senior SARS official may appear in the tax court or a High Court only if the person—

(a) is **[an advocate]**a legal practitioner duly admitted and enrolled under the Legal Practice Act, 2014 (Act No. 28 of 2014)~~—~~

(i) **the Admission of Advocates Act, 1964 (Act No. 74 of 1964)**]; or

~~[(ii)]~~(b) is an advocate duly admitted under a law providing for the admission of advocates in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996]; **or**

(b) is an attorney duly admitted and enrolled under—

(i) **the Attorneys Act, 1979 (Act No. 53 of 1979)**]; or

(ii) **a law providing for the admission of attorneys in an area in the Republic which remained in force by virtue of paragraph 2 of Schedule 6 to the Constitution of the Republic of South Africa, 1996]**.”.

Amendment of section 42A of Act 28 of 2011 as inserted by section 41 of Act 23 of 2015

27. Section 42A of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) For purposes of Parts B, C and D, if a person alleges the existence of legal professional privilege in respect of relevant material required by SARS, during an inquiry or during the conduct of a search and seizure by SARS, the person must provide the following information to SARS and, if applicable, the presiding officer designated under section 51 or the **[attorney]**legal practitioner referred to in section 64:”.

Amendment of section 46 of Act 28 of 2011 as amended by section 50 of Act 21 of 2012, section 38 of Act 39 of 2013, section 46 of Act 44 of 2014 and section 42 of Act 23 of 2015

28. Section 46 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A request by SARS for relevant material from a person other than the taxpayer is limited to material maintained or kept or that should reasonably be maintained or kept by the person in **[respect of]**relation to the taxpayer.”.

Amendment of section 64 of Act 28 of 2011

29. Section 64 of the Tax Administration Act, 2011, is hereby amended by the substitution of subsections (1) to (6) of the following subsections:

“(1) If SARS foresees the need to search and seize relevant material that may be alleged to be subject to legal professional privilege, SARS must arrange for **[an attorney]**a legal practitioner from the panel appointed under section 111 to be present during the execution of the warrant.

(2) **[An attorney]**A legal practitioner with whom SARS has made an arrangement in terms of subsection (1) may appoint a substitute **[attorney]**legal practitioner to be present on the appointing **[attorney's]**legal practitioner's behalf during the execution of a warrant.

(3) If, during the carrying out of a search and seizure by SARS, a person alleges the existence of legal professional privilege in respect of relevant material and **[an attorney]**legal practitioner is not present under subsection (1) or (2), SARS must seal the material, make arrangements with **[an attorney]**a legal practitioner from the panel appointed under section 111 to take receipt of the material and, as soon as is reasonably possible, hand over the material to the **[attorney]**legal practitioner.

(4) **[An attorney]**A legal practitioner referred to in subsections (1), (2) and (3)—

(a) is not regarded as acting on behalf of either party; and

(b) must personally take responsibility—

(i) in the case of a warrant issued under section 60, for the removal from the premises of relevant material in respect of which legal privilege is alleged;

(ii) in the case of a search and seizure carried out under section 63, for the receipt of the sealed information; and

(iii) if a substitute attorney in terms of subsection (2), for the delivery of the information to the appointing **[attorney]**legal practitioner for purposes of making the determination referred to in subsection (5).

(5) The **[attorney]**legal practitioner referred to in subsection (1) or (3) must within 21 business days make a determination of whether the privilege applies and may do so in the manner the **[attorney]**legal practitioner deems fit, including considering representations made by the parties.

(6) If a determination of whether the privilege applies is not made under subsection (5) or a party is not satisfied with the determination, the **[attorney]**legal practitioner must retain the relevant material pending final resolution of the dispute by the parties or an order of court.”.

Amendment of section 100 of Act 28 of 2011 as amended by section 56 of Act 16 of 2016

30. Section 100 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) after decision of an objection, no notice of appeal has been filed or has been filed and is withdrawn.”.

Amendment of section 110 of Act 28 of 2011 as amended by section 49 of Act 39 of 2013 and section 24 of Act 13 of 2017

31. Section 110 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the chairperson, who must be **[an advocate or attorney]**legal practitioner from the panel appointed under section 111; and”.

Amendment of section 111 of Act 28 of 2011 as amended by section 53 of Act 23 of 2015

32. Section 111 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister must, in consultation with the Judge-President of the Division of the High Court with jurisdiction in the area where the tax board is to sit, by public notice appoint **[advocates and attorneys]**legal practitioners to a panel from which a chairperson of the tax board must be nominated from time to time.”.

Amendment of section 134 of Act 28 of 2011

33. Section 134 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A party who intends to lodge an appeal against a decision of the tax court (hereinafter in this Part referred to as the appellant) must,

within 21 business days after the date of the notice by the ‘registrar’ notifying the parties of the tax court’s decision under section 131, or within a further period as the president of the tax court may on good cause shown allow, lodge with the ‘registrar’ and serve upon the opposite party or the opposite party’s **[attorney]legal practitioner** or agent, a notice of intention to appeal against the decision.”.

Amendment of section 139 of Act 28 of 2011

34. Section 139 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A cross-appeal against a decision of the tax court in a case in which an appeal has been lodged under section 138, must be noted by lodging a written notice of cross-appeal with the ‘registrar’, serving it upon the opposite party or the opposite party’s **[attorney]legal practitioner** and lodging it with the registrar of the court to which the cross-appeal is noted.”.

Amendment of section 141 of Act 28 of 2011

35. Section 141 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A party may by notice in writing lodged with the ‘registrar’ and the opposite party or the opposite party’s **[attorney]legal practitioner** or agent, abandon the whole or a part of a judgment in the party’s favour.”.

Amendment of section 191 of Act 28 of 2011 as amended by section 72 of Act 39 of 2013 and section 61 of Act 23 of 2015

36. Section 191 of the Tax Administration Act, 2011, is hereby amended—

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

“(1) **[If a taxpayer has an outstanding tax debt, an]**An amount **[that is]** refundable under section 190, including interest thereon under

section 188(3)(a), must be treated as a payment by the taxpayer that is recorded in the taxpayer's account under section 165, **[to the extent of the amount outstanding]**of an outstanding tax debt, if any, and any remaining amount must be set off against any outstanding debt under customs and excise legislation.”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) If a taxpayer does not submit a return or is not required to submit a return and fails to pay the tax required under a tax Act, SARS may make an assessment based on an estimate under section 95 **[if that taxpayer fails to pay the tax required under a tax Act]**.”.

Amendment of section 210 of Act 28 of 2011 as amended by section 70 of Act 21 of 2012

37. Section 210 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) the failure to disclose information subject to a reportable arrangement or mandatory disclosure penalty under section 212.”.

Amendment of section 212 of Act 28 of 2011 as amended by section 62 of Act 23 of 2015

38. The Tax Administration Act, 2011, is hereby amended by the substitution for section 212 of the following subsection:

“212. Reportable arrangement and mandatory disclosure penalty

(1) A person referred to in—

(a) paragraph (a) or (b) of the definition of [‘]participant[’] in section 34 who fails to disclose the information in respect of a [‘]reportable arrangement[’] as required by section 37; or

(b) the definition of intermediary in the regulations issued under section 257 in respect of paragraph (a) of the definition of

international tax standard, who fails to disclose the information required to be disclosed under the regulations,

is liable to a 'penalty', for each month that the failure continues (up to 12 months), in the amount of—

[(a)](i) R50 000, in the case of a **[']participant[']** or intermediary, as the case may be, other than the **[']promoter[']**; or

[(b)](ii) R100 000, in the case of the **[']promoter[']**.

(2) The amount of 'penalty' determined under subsection (1) is doubled if the amount of anticipated **[']tax benefit[']** as defined in section 34 for the **[']participant[']** referred to in subsection (1)(a) by reason of the arrangement (within the meaning of section 35) exceeds R5 000 000, and is tripled if the benefit exceeds R10 000 000.

(3) A person referred to in paragraph (c) of the definition of **[']participant[']** in section 34 who fails to disclose the information in respect of a **[']reportable arrangement[']** as required by section 37 is liable to a 'penalty' in the amount of R50 000.”.

Amendment of section 223 of Act 28 of 2011 as amended by section 73 of Act 21 of 2012, section 76 of Act 39 of 2013, section 62 of Act 16 of 2016

39. Section 223 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) made full disclosure to SARS of the arrangement, as defined in section 34, that gave rise to the prejudice to SARS or the *fiscus* by no later than the date that the relevant return was due; and”.

Amendment of section 234 of Act 28 of 2011 as amended by section 77 of Act 21 of 2012

40. Section 234 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (g) of the following paragraph:

“(g) issues an erroneous, incomplete or false document required to be issued under a tax Act to SARS or another person;”.

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

41. Section 240A of the Tax Administration Act, 2011, is hereby amended—

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

“(b) **[a Law Society established in terms of Chapter 3 of the Attorneys Act, 1979 (Act No. 53 of 1979)]**the Legal Practice Council established under the Legal Practice Act, 2014 (Act No. 28 of 2014); and

(b) by the deletion in subsection (1) of paragraph (c).

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

42. Section 246 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) appointed by the company or by an agent or **[attorney]**legal practitioner who has authority to appoint such a representative for the purposes of a tax Act;”.

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 and section 72 of Act 23 of 2015

43. The Tax Administration Act, 2011, is hereby amended by the substitution for section 256 of the following subsection:

“**256. Tax compliance status.**—(1) A taxpayer may apply, in the prescribed form and manner, to SARS for **[a confirmation of]**third party access to the taxpayer’s tax compliance status.

(2) SARS must **[issue]**provide or decline to **[issue the confirmation of]**provide access to the taxpayer’s tax compliance status within 21

business days from the date the application is submitted or such longer period as may reasonably be required **[if a senior SARS official is satisfied that the confirmation of]**to confirm the correctness of the taxpayer's tax compliance status **[may prejudice the efficient and effective collection of revenue]**.

(3) **[A senior] SARS [official may provide a taxpayer with confirmation of]**may only reflect the taxpayer's tax compliance status as compliant **[only]** if **[satisfied that]** the taxpayer—

(a) is registered for tax as required in terms of a tax Act; **[and does not have any—]**

[(a)](b) does not have any outstanding tax debt, excluding a tax debt contemplated in section 167 or 204 or a tax debt that has been suspended under section 164 or does not exceed the amount referred to in section 169(4) or any higher amount that the Commissioner may determine by public notice; or

[(b)](c) does not have any outstanding return unless an arrangement **[acceptable to the]**with SARS **[official]** has been made for the submission of the return.

(4) A **[confirmation]**verification of the tax compliance status of a taxpayer must **[be in the prescribed format and]** include at least—

(a) the **[original]** date of **[issue]**verification of the tax compliance status **[confirmation to]**of the taxpayer;

(b) the name^[,]and taxpayer reference number **[and identity number or company registration number]** of the taxpayer;

[(c)] **the date of the confirmation of the tax compliance status of the taxpayer to an organ of state or a person referred to in subsection (5);** and

[(d)](c) **[a confirmation of]** the taxpayer's tax compliance status **[of the taxpayer]** as at the date referred to in paragraph **[(c)](a)**.

(5) Despite the provisions of Chapter 6, SARS may **[confirm]**provide access to the taxpayer's tax compliance status as at the date of the request, or a previous date as prescribed by the **[Minister in a regulation under section 257(2A)]**Commissioner by public notice, **[by]**to—

(a) an organ of state; or

(b) a person to whom the taxpayer has **[presented]**provided access to the taxpayer's tax compliance status [confirmation].

(6) SARS may revoke access to **[alter]** the taxpayer's tax compliance status **[to non-compliant]** if the **[confirmation—**

(a) was issued in error; or

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

and SARS has given the taxpayer prior notice and an opportunity to respond to the allegations of at least 14 days prior to the **[alteration]**revocation.

(7) A taxpayer's tax compliance status will be indicated as non-compliant by SARS for the period commencing on the date that the taxpayer no longer complies with a requirement under subsection (3) and ending on the date that the taxpayer remedies the non-compliance.”.

Amendment of section 262 of Act 28 of 2011

44. The Tax Administration Act, 2011, is hereby amended by the substitution for section 262 of the following section:

“62. Appointment of chairpersons of tax board.—[An attorney or advocate]A legal practitioner appointed to the panel of persons who may serve as chairpersons of the tax board under a tax Act, who is on that panel immediately before the commencement date of this Act, is regarded as appointed under the provisions of section 111 until the earlier of—

(a) the expiry of the **[attorney or advocate's]**legal practitioner's appointment under the provisions previously in force; or

(b) termination of the **[attorney or advocate's]**legal practitioner's appointment under section 111(3).”.

Short title and commencement

45. (1) This Act is called the Tax Administration Laws Amendment Act, 2019.

(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.