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REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL, 2018

(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 - 2018]

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GENERAL EXPLANATORY NOTE:

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

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

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To—

- amend the Income Tax Act, 1962, so as to amend definitions; remove a requirement to submit a return; to clarify a provision; to update certain references; to amend the Fourth Schedule to amend a definition; to amend a provision to require the Commissioner's approval before an employer may amend certain periods; to amend the Seventh Schedule to amend a definition;
- amend the Customs and Excise Act, 1964, so as to insert a provision enabling the Commissioner to implement anti-forestalling measures in respect of anticipated increases in excise duties; to insert a provision providing for the writing off or compromise of any duty, interest, penalty or forfeiture incurred, and owed to the Commissioner for the benefit of the National Revenue Fund;
- amend the Value-Added Tax Act, 1991, so as to amend a provision relating to tax invoices; to amend a provision relating to the sale of an enterprise as a going concern; to update certain references; to remove a requirement to submit a return; to update certain references; to clarify a provision relating to refunds; to simplify set-off and recovery provisions;
- amend the Securities Transfer Tax Act, 2007, so as to broaden the scope of a provision;
- amend the Tax Administration Act, 2011, so as to ensure taxpayers are informed at the commencement of an audit; to effect a consequential amendment; to effect a technical correction; to clarify a provision relating to refunds; to allow for the deregistration of non-compliant tax practitioners;
- amend the Customs Control Act, 2014, so as to effect changes to certain definitions; to amend a provision to ensure that reporting requirements in respect of the departure of trucks due to leave the Republic are adhered to irrespective of whether a truck has cargo on board; to insert a provision providing for the writing off or

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compromise of debt owed to the Commissioner for credit of the National Revenue Fund;

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 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 and section 2 of Act 17 of 2017

1. Section 1 of the Income Tax Act, 1962, is hereby amended by—

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(a) the substitution for the definition of “Financial Services Board” of the following definition:

“**Financial [Services Board]Sector Conduct Authority**’ means the **[board]authority** established **[by]in terms of section 56 of** the Financial **[Services Board]Sector Regulation** Act;”;

(b) the substitution for the definition of “**Financial Services Board Act**”

“**Financial [Services Board]Sector Regulation Act**’ means the Financial **[Services Board]Sector Regulation** Act, **[1990 (Act No. 97 of 1990)]2017 (Act No. 9 of 2017)**;”.

Amendment of section 64K of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008 and amended by section 53 of Act 17 of 2009, section 84 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 55 of Schedule 1 to that Act, section 14 of Act 21 of 2012, section 5 of Act 39 of 2013, section 5 of Act 44 of 2014, section 4 of Act 23 of 2015, section 3 of Act 16 of 2016 and section 4 of Act 13 of 2017

2. Section 64K of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1A) of the following subsection:

“(1A) If, in terms of this Part a person has[—

(a)] paid a dividend[; **or**

(b)] received a dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D that is exempt or partially exempt from dividends tax in terms of section 64F or 64FA],

that person must submit a return in respect of that dividend to the Commissioner by the last day of the month following the month during which the dividend is paid **[or received, unless the dividend received—**

(i)] is derived from a tax free investment contemplated in section 12T;
or

(ii)] is received by a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or a beneficiary fund defined in section 1 of the Pension Funds Act, of which the receipts and accruals are exempt from normal tax in terms of section 10(1)(d)(i)].”.

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Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001, section 26 of Act 30 of 2002, section 38 of Act 74 of 2002, section 61 of Act 45 of 2003, section 18 of Act 16 of 2004, section 7 of Act 34 of 2004, section 9 of Act 32 of 2005, section 8 of Act 4 of 2008, section 4 of Act 61 of 2008 and section 271 of Act 28 of 2011

3. Section 66 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (13) for paragraph (a) of the following paragraph:

“(a) in the case of a person (other than a company), for the whole period of twelve months ending upon the last day of **[the year of assessment under charge]**~~February~~: Provided that where—”.

- (a) a person dies, a return shall be made for the period commencing on the first day of that **[year of assessment]**period and ending on the date of death;
- (b) the estate of a person is sequestrated, separate returns must be made for the periods—
 - (i) commencing on the first day of that **[year of assessment]**period and ending on the date preceding the date of sequestration; and
 - (ii) commencing on the date of sequestration and ending on the last day of that **[year of assessment]**period;
- (c) a person ceases to be a resident, a return shall be made for the period commencing on the first day of that **[year of assessment]**period and ending on the day preceding the date that the person ceases to be a resident; or”.

Amendment of section 89*quat* of Act 58 of 1962, as repealed by section 271 of Act 28 of 2011 read with paragraph 66 of Schedule 1 to that Act

4. Section 89*quat* of the Income Tax Act, 1962, pending its repeal, is hereby amended by the substitution in subsection (1) for the definition of “normal tax” of the following definition:

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“**normal tax**’ includes any additional amounts payable in terms of section 76 and [paragraphs] paragraph 20 [and 20A] of the Fourth Schedule.”.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008, section 66 of Act 60 of 2008, section 17 of Act 18 of 2009, section 18 of Act 8 of 2010, section 93 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 77 of Schedule 1 to that Act, section 7 of Act 44 of 2014, section 6 of Act 23 of 2015, section 5 of Act 16 of 2016 and section 8 of Act 13 of 2017

5. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in the definition of “employee” of paragraph (g); and
- (b) by the substitution in paragraph (a) of the definition of “provisional taxpayer” of the words preceding subparagraph (i) of the following words:

“(a) any person (other than a company) who derives taxable income by way of—”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2019 and applies to years of assessment commencing on or after that date.

Amendment of paragraph 13 of Fourth Schedule to Act 58 of 1962, as amended by section 24 of Act 72 of 1963, section 29 of Act 113 of 1977, section 49 of Act 101 of 1990, section 23 of Act 19 of 2001, section 11 of Act 39 of 2013 and section 12 of Act 23 of 2015

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6. Paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1A) of the following subparagraph:

“(1A) The period referred to in subparagraph (1) shall be the period of 12 months ending on the last day of February of any year or, unless the Commissioner, at the [option]request of the employer, **[which may be exercised by him]** in relation to all his employees or any class of his employees, approved that the period, whether of 12 months or not (to be known as an alternate period), **[commencing]shall commence** on the day following the last day of the preceding alternate period in relation to the employer and **[ending]ends** on a date falling not more than 14 days (or such greater number of days as the Commissioner having regard to the circumstances of the case may allow) before or after the last day of February of any year.”.

Amendment of paragraph 1 of Seventh Schedule to Income Tax Act as amended by section 26 of Act 96 of 1985, section 33 of Act 65 of 1986, section 28 of Act 85 of 1987, section 24 of Act 70 of 1989, section 55 of Act 101 of 1990, section 49 of Act 129 of 1991, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996, section 54 of Act 30 of 2000, section 59 of Act 59 of 2000, section 62 of Act 74 of 2002, section 47 of Act 3 of 2008, section 90 of Act 7 of 2010, section 101 of Act 24 of 2011, section 117 of Act 31 of 2013, section 73 of Act 43 of 2014, section 93 of Act 25 of 2015, section 67 of Act 17 of 2017

7. Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “employee” of the following definition:

““**employee**”, in relation to any employer, means a person who is an employee in relation to such employer for the purposes of the Fourth Schedule, excluding any person who prior to 1 March 1992 by reason of superannuation, ill-health or other infirmity retired from the employ of such employer, but including—,

(a) in relation to any company, any director of such company and any person who was previously employed by, or was a director of, such company if such person is or was the sole holder of shares in or one of the controlling holders of shares in such company and, for the purposes of paragraphs 2(h) and 13, including any person who has retired as aforesaid and who, after the employee’s retirement, is released by the employee’s employer from an obligation which

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arose before the employee's retirement to reimburse the employer for an amount paid by the employer on behalf of the employee or to pay any amount which became owing by the employee to the employer before the employee's retirement; and

(b) a non-executive director where a company affords to the non-executive director of that company a benefit that would have been a taxable benefit had that non-executive director been an employee of that company;”.

Insertion of section 58A in Act 91 of 1964

8.(1) The following section is hereby inserted into the Customs and Excise Act, 1964, after section 58:

“Anti-forestalling measures in respect of anticipated increases in excise duties

58A. (1) In order to combat duty forestalling in respect of an anticipated increase in the rate of duty on excisable goods, the Commissioner may limit the quantities of excisable goods that may be entered for home consumption during a controlled period leading up to the anticipated increase, to such quantities as may be determined in accordance with a formula determined by rule in terms of subsection (4)(b)(i).

(2) No person may during a controlled period contemplated in subsection (1) enter excisable goods for home consumption in excess of the quantities contemplated in subsection (1).

(3) A person that contravenes subsection (2) is guilty of an offence and is liable on conviction to a fine not exceeding R40 000 or treble the value of the goods cleared in excess of the quantity contemplated in subsection (1), whichever is the greater, and the goods cleared in excess of the relevant quantity shall be liable to forfeiture.

(4) The Commissioner may make rules for the effective implementation of this section, including rules to—

(a) determine—

(i) the kind or description of the excisable goods to which this section applies; and

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(ii) the controlled period before the anticipated increase in duty during which this section will apply; and

(b) prescribe—

(i) the formula to be used for calculating the quantity of excisable goods that may be entered for home consumption during the controlled period; and

(ii) the penalties that may be imposed for an offence referred to in subsection (3).”.

(2) Subsection (1) takes effect on a date to be determined by the Minister by Notice in the Government Gazette.

Insertion of section 114A in Act 91 of 1964

9. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 114, whilst the existing section 114A becomes section 114AA:

“Application of Tax Administration Act for write off or compromise of debt 114A. 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 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 and section 26 of Act 23 of 2015

10. Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (1A) of the following subsection:

“(1B) Notwithstanding the provisions of subsection (1)(i), where an original tax invoice issued by a supplier or recipient, as the case may be, contains a material

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error and the circumstances contemplated in section 21(1)(a) to (e) of this Act are not applicable, the supplier or the recipient, as the case may be, must—

- (i) cancel the original tax invoice and issue a tax invoice, subject to this section, with the correct information, within 21 days from the date of the request to correct the original tax invoice: Provided that the time of supply contemplated in section 9 of this Act shall be determined in accordance with the date reflected on the original tax invoice, notwithstanding that the date reflected on the corrected tax invoice may be different from the date reflected on the original tax invoice;
- (ii) obtain and retain information sufficient to identify the transaction to which the original tax invoice and the corrected tax invoice refers; and
- (iii) document the reasons for the cancellation of the original tax invoice and the issuance of the corrected tax invoice.”.

Amendment of section 21 of Act 89 of 1991 as amended by section 26 of Act 136 of 1992, section 34 of Act 97 of 1993, section 176 of Act 45 of 2003, section 48 of Act 16 of 2004, section 36 of Act 18 of 2009, section 150 of Act 22 of 2012, section 27 of Act 23 of 2015 and section 136 of Act 25 of 2015

11. Section 21 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) the goods or services or part of the goods or services supplied have been returned to the supplier, including the return to—

- (i) a vendor of a returnable container, the vendor in such case being deemed for the purposes of this Act to have made the supply of the container in respect of which the deposit was charged, whether the supply was made by him or any other person; or
- (ii) a vendor, where a supply of an enterprise as a going concern, contemplated in section 11(1)(e) of this Act, was made to that vendor, the vendor in such case being deemed for purposes of this Act to have made the supply of the goods or services to the recipient, whether the supply was made by him or any other vendor; or”.

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Amendment of section 25 of Act 89 of 1991 as amended by section 96 of Act 30 of 1998, section 94 of Act 53 of 1999, section 40 of Act 34 of 2004, section 10 of Act 10 of 2005 and section 271 of Act 28 of 2011

12. (1) Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of section 25(dA).

Amendment of section 29 of Act 89 of 1991, as amended by section 49 of Act 16 of 2004 and section 271 of Act 28 of 2011

13. Section 29 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(a) **[furnish the Commissioner with a return reflecting]**obtain and retain the following information—

- (i) the name and address of the seller and, if registered as a vendor, his or her VAT registration number;
- (ii) the name and address of the person whose goods are sold (hereinafter referred to as the owner) and, if the owner is registered under this Act, the VAT registration number of the owner;
- (iii) the date of the sale;
- (iv) the description and quantity of the goods sold; and
- (v) the selling price of the goods and the amount of tax charged in respect of the supply of goods under the sale, being the tax leviable in respect of such supply under section 7(1)(a); **[and**
- (vi) such other particulars as may be required;]**

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

“(c) send or deliver to the owner a copy of the document reflecting the information referred to in paragraph (a),”;

(c) by the substitution for the words after paragraph (c) of the following words:

“and the seller and the owner shall exclude from any return which the seller or owner is required to furnish under section 28 the tax charged on the supply of goods under the sale **[in respect of which the return is furnished under]**contemplated in this section.”.

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Amendment of section 41 of Act 89 of 1991 as amended by Government Notice 2695 of 8 November 1991, section 32 of Act 136 of 1992, section 36 of Act 97 of 1993, section 41 of Act 27 of 1997, section 167 of Act 60 of 2001, section 40 of Act 32 of 2005, section 39 of Act 21 of 2006, section 16 of Act 9 of 2007 and section 28 of Act 23 of 2015

14. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Notwithstanding anything to the contrary in this Act (other than the provisions of section [41A or] 41B)—”.

Amendment of section 44 of Act 89 of 1991 as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001, section 88 of Act 20 of 2006, section 271 of Act 28 of 2011, section 180 of Act 31 of 2013 and section 31 of Act 44 of 2014

15. Section 44 of the Value-Added Tax Act, 1991, is hereby amended by the addition after subsection (10) of the following subsection:

“(11)(a) A refund of the amount erroneously paid as contemplated in section 190(1)(b) of the Tax Administration Act may only be made by the Commissioner where the claim for the refund of such erroneous payment is received by the Commissioner within five years after the date the erroneous payment was made.

(b) A claim for a refund under paragraph (a) shall be deemed not to have been received where the vendor has not furnished the Commissioner in writing with the particulars of the enterprise’s banking account as contemplated in subsection (3)(d) prior to or together with the claim.”.

Amendment of section 50 of Act 89 of 1991 as amended by section 38 of Act 136 of 1991 and section 271 of Act 28 of 2011

16. Section 50 of the Value-Added Tax Act, 1991, is hereby amended by the addition after subsection (6) of the following subsection:

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“(7) Notwithstanding the provisions of this section, where—

- (a) the vendor referred to in subsection (1) has an outstanding tax debt, any amount that is refundable under section 190 of the Tax Administration Act (including interest thereon) to any separate enterprise, branch or division, which is registered separately in terms of subsection (2), may be set off against the outstanding tax debt; or
- (b) any separate enterprise, branch or division, which is registered separately in terms of subsection (2) has an outstanding tax debt, any amount that is refundable under section 190 of the Tax Administration Act (including interest thereon) to the vendor referred to in subsection (1), may be set off against the outstanding tax debt; or
- (c) any separate enterprise, branch or division, which is registered separately in terms of subsection (2) has an outstanding tax debt, any amount that is refundable under section 190 of the Tax Administration Act (including interest thereon) to any other separate enterprise, branch or division, which is registered separately in terms of subsection (2), may be set off against the outstanding tax debt.”.

Alternative proposal:

“(7) Notwithstanding the provisions of this section, any amount that is refundable under section 190 of the Tax Administration Act (including interest thereon) to the vendor referred to in subsection (1) or any separate enterprise, branch or division, which is registered separately in terms of subsection (2), may be set off against the outstanding tax debt of the vendor referred to in subsection (1) or any separate enterprise, branch or division, which is registered separately in terms of subsection (2), as the case may be.”.

Amendment of section 51 of Act 89 of 1991

17. Section 51 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Subject to the provisions of section 46, every member of a partnership or joint venture shall be liable jointly and severally with other members of the partnership or joint venture for performing the duties of the partnership or joint venture in terms of

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this Act and paying the tax imposed by this Act on the partnership or joint venture in respect of supplies made by the partnership or joint venture while such member was a member of the partnership or joint venture: Provided that this subsection shall not apply to any such member of a partnership who in relation to that partnership is a partner *en commandite* or a special partner as defined in the Special Partnerships' Limited Liability Act, 1861 (Act No. 24 of 1861), of the Cape of Good Hope or in Law No. 1 of 1865 of Natal, who has not held himself out as an ordinary or general partner of the partnership concerned.”.

Amendment of section 8 of Act 25 of 2007 as amended by section 73 of Act 3 of 2008, section 127 of Act 60 of 2008, section 97 of Act 17 of 2009, section 127 of Act 7 of 2010, section 148 of Act 24 of 2011, section 155 of Act 22 of 2012, section 183 of Act 31 of 2013 and section 138 of Act 25 of 2015

18. Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) The Commissioner may for the purposes of this section prescribe any declaration to be submitted by any person to the participant or authorised user in respect of any security referred to in subsection (1).”

(3) No exemption referred to in subsection (1) applies in respect of any transfer of the security referred to in that subsection, unless there is lodged with a participant or authorised user a declaration referred to in subsection (2) in respect of that security.”.

Amendment of section 42 of Act 28 of 2011 as amended by section 48 of Act 21 of 2012

19. Section 42 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A SARS official involved in or responsible for an audit under this Chapter must, in the form and in the manner as may be prescribed by the Commissioner by public notice, provide the taxpayer with an audit engagement letter and, thereafter, a report indicating the stage of completion of the audit.”.

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Amendment of section 44 of Act 28 of 2011

20. Section 44 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Relevant **[information]**material obtained during a criminal investigation may be used for purposes of audit as well as in subsequent civil and criminal proceedings.”.

Amendment of section 70 of Act 28 of 2011 as amended by section 13 of Act 26 of 2013, section 42 of Act 39 of 2013 and section 48 of Act 23 of 2015

21. Section 70 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) the Financial **[Services Board]**Sector Conduct Authority, the information as may be required for the purpose of carrying out the **[Board’s]**Financial Sector Conduct Authority’s duties and functions under the Financial **[Services Board Act, 1990 (Act No. 97 of 1990)]**Sector Regulation Act, 2017 (Act No. 9 of 2017).”.

Amendment of section 129 of Act 28 of 2011 as amended by section 52 of Act 39 of 2013

22. Section 129 of the Tax Administration Act, 2011, is hereby amended by—

- (a) the deletion in subsection (2) of the word “or” at the end of paragraph (b);
- (b) the deletion in subsection (2) of the full stop and the addition of the phrase “; or” at the end of paragraph (c); and
- (c) the addition in subsection (2) of the following paragraph:

“(d) make an appropriate order in a procedural matter.”.

Amendment of section 170 of Act 28 of 2011

23. Section 170 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (b) of the following paragraph—

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“(b) except in the case of proceedings on appeal instituted under Chapter 9 against the assessment, that all the particulars of the assessment are correct.”.

Amendment of section 190 of Act 28 of 2011 as amended by section 71 of Act 39 of 2013, section 53 of Act 44 of 2014 and section 60 of Act 23 of 2015

24. Section 190 of the Tax Administration Act, 2011, is hereby amended by—

- (a) the deletion in subsection (4) of the word “or” after paragraph (a);
- (b) the addition in subsection (4) of the phrase “; or” after paragraph (b);
- (c) the addition in subsection (4) of the following paragraph:

“(c) an erroneous payment claimed by a taxpayer within the period referred to in subparagraph (a) or (b), but not paid by SARS within the period.”.

Amendment of section 221 of Act 28 of 2011 as amended by section 61 of Act 16 of 2016

25. Section 221 of the Tax Administration Act, 2011, is hereby amended by the substitution in the definition of ‘understatement’ for paragraph (a) of the following paragraph:

“(a) **[a default in rendering]**failure to submit a return as required under a tax Act or by the Commissioner;”.

Amendment of section 222 of Act 28 of 2011 as amended by section 75 of Act 39 of 2013

26. Section 222 of the Tax Administration Act, 2011, is hereby amended by—

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

“(2) The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table in section 223 to each shortfall determined under subsections (3) and (4) in relation to each ‘understatement’**[in a return]**.”;

- (b) the substitution in subsection (3) for paragraph (a) of the following paragraph:

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- “(a) the difference between the amount of ‘tax’ properly chargeable for the tax period and—
- (i) the amount of ‘tax’ that would have been chargeable for the tax period if the ‘understatement’ were accepted; or
 - (ii) if the ‘understatement’ is a failure to submit a return, the amount of ‘tax’ that would have been chargeable for the tax period if the ‘understatement’ were accepted is regarded as nil;”.

Alternative to amendment of subsection (3)

- (b) the substitution for subsection (4) for paragraph (a) of the following subsection:

“(4) (a) If there is a difference under both paragraphs (a) and (b) of subsection (3), the shortfall must be reduced by the amount of any duplication between the paragraphs.

(b) Where the ‘understatement’ is a default in rendering a return, the ‘tax’ that resulted from the ‘understatement’, had the understatement been accepted, for purposes of paragraph (3) must be regarded as nil.”.

Amendment of section 240 of Act 28 of 2011 as amended by section 82 of Act 21 of 2012, section 81 of Act 39 of 2013 and section 60 of Act 44 of 2014

27. Section 240 of the Tax Administration Act, 2011, is hereby amended by—

- (a) the deletion in subsection (3) of the word “or” at the end of paragraph (b);
- (b) the deletion in subsection (3) of the full stop and the addition of the phrase “; or” at the end of paragraph (c);
- (c) the addition in subsection (3) of the following paragraph:

“(d) during the preceding period of six months has repetitively or for a continuous period of at least three months not been tax compliant to the extent referred to in sections 256(3)(a) and (b) and has failed to remedy such non-compliance within the period specified in a notice by SARS.”.

Amendment of section 1 of Act 31 of 2014, as amended by section 83 of Act 23 of 2015 and section 70 of Act 16 of Act 2016

28. Section 1 of the Customs Control Act, 2014, is hereby amended by—

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- (a) the deletion in subsection (1) from the definition of “cargo reporter” of the word “actually”; and
- (b) the substitution in subsection (1) for the definition of “FCL container” of the following definition:

“**FCL container**” means a container containing goods consigned from one or more [than one] consignor to a single consignee;”.

Amendment of section 71 of Act 31 of 2014, as amended by section 89 of Act 23 of 2015

29. Section 71 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The on-board operator of a truck due to leave the Republic [**with cargo on board**] must, at the land border-post where the truck will leave the Republic, report to the customs authority at that land border-post, in a manner as may be prescribed by rule—”.

Insertion of section 705A in Act 31 of 2014

30. The following section is hereby inserted in the Customs Control Act, 2014, after section 705:

“Application of Tax Administration Act for write off or compromise of debt

705A. 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 a debt referred to in section 695 owed to the Commissioner for credit of the National Revenue Fund.”.

Short title and commencement

31. (1) This Act is called the Tax Administration Laws Amendment Act, 2018.

(2) Subject to subsections (3) and (4), and 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.

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(3) The amendments to the Customs Duty Act, 2014, take effect immediately after the Customs Duty Act, 2014, has taken effect in terms of section 229 of that Act.

(4) The amendments to the Customs Control Act, 2014, take effect immediately after the Customs Control Act, 2014, has taken effect in terms of section 944(1) of that Act.