

DRAFT
REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL, 2023

*(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 - 2023]

GENERAL EXPLANATORY NOTE:

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

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

BILL

To—

- **amend the Income Tax Act, 1962, so as to make certain decisions subject to objection and appeal; to clarify an existing provision; to provide for the disqualification of certain persons from managing the collective interests common to the members of a particular association of persons; to clarify existing provisions and align the wording with other provisions of the Act; to provide for the disqualification of certain persons from accepting fiduciary responsibility for the management or control of the income and assets of any approved public benefit organisation; to provide for the disqualification of certain persons from accepting fiduciary responsibility for the management or control of the income and assets of any approved recreational club; to provide for the disqualification of certain persons from accepting fiduciary responsibility for the management or control of the income and assets of any approved association; to provide for the disqualification of certain persons from accept fiduciary responsibility for the management of any small business funding entity; to provide for the entering into of advanced pricing**

agreements with taxpayers in consultation with double taxation agreement partners; to make a consequential amendment; to clarify an existing provision; to remove the distinction between resident and non-resident employers so that any employer must deduct employees' tax; to widen the deduction obligation to include all representative employers and to make a textual correction; to enable the Commissioner to vary the basis for determining the amount of employees' tax to be deducted or withheld from the employees' remuneration in certain instances;

- amend the Customs and Excise Act, 1964, so as to provide for changes relating to the submission of advance passenger information by operators, including the introduction of the concept of passenger data, to provide for the exemption of an operator as may be prescribed from the obligation of submitting passenger data to the Commissioner if submitted to another organ of state serving as a single window for the collection and sharing of such data, and such organ of state transmits the data to the Commissioner in terms of an agreement contemplated in terms of section 2(1A); to provide for the submission of a traveller declaration prior to or upon entering or leaving the Republic in accordance with requirements determined by the Commissioner by rule; to enable the Commissioner to determine conditions for deferment of payment of duties due in respect of bills of entry by rule; to include in the refund process the return of provisional payments lodged as security; to effect changes to the general rule enabling provision so as to enable the Commissioner to make rules concerning various aspects relating to the traveller declaration, as well as various matters in relation to deferment

and to further enhance the current processes and procedures relating to the liquidation of provisional payments;

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

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

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of 2008, section 2 of Act 61 of 2008, section 14 of Act 8 of 2010, section 271, read with paragraph 25 of Schedule 1 to Act 28 of 2011,

section 2 of Act 39 of 2013, section 2 of Act 43 of 2014, section 2 of Act 44 of 2014, section 1 of Act 23 of 2015, section 1 of Act 16 of 2016, section 2 of Act 23 of 2018, section 1 of Act 33 of 2019, and section 3 of Act 24 of 2020

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

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

Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969, repealed by section 5 of Act 94 of 1983, inserted by section 5 of Act 85 of 1987, amended by section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 8 of Act 5 of 2001, section 9 and section 125 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of

2004, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007, section 9 of Act 17 of 2009, section 7 of Act 18 of 2009, section 11 of Act 24 of 2011, section 3 of Act 22 of 2012, section 3 of Act 39 of 2013, section 6 of Act 25 of 2015, section 10 of Act 15 of 2016, section 4 of Act 17 of 2017, section 7 of Act 23 of 2018 and section 271 read with paragraph 29 of Schedule 1 of Act 28 of 2011

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

“(5) Notwithstanding **[section]**the provisions of sections 93, 99(1) [or]and 100 of the Tax Administration Act, an additional or reduced assessment in respect of a year of assessment to give effect to subsections (1) and (1A) may be made within a period that does not exceed six years from the date of the original assessment in respect of that year.”.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of

1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, sections 8 and 62 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, sections 10 and 101 of Act 20 of 2006, sections 2, 10, 88 and 97 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, sections 1 and 9 of Act 3 of 2008, section 2 of Act 4 of 2008, section 16 of Act 60 of 2008, sections 13 and 95 of Act 17 of 2009, section 18 of Act 7 of 2010, sections 28 and 160 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 31 of Schedule 1 to that Act, sections 19, 144, 157 and 166 of Act 22 of 2012, section 23 of Act 31 of 2013, section 14 of Act 43 of 2014, section 16 of Act 25 of 2015, section 23 of Act 15 of 2016, section 16 of Act 17 of 2017, section 22 of Act 23 of 2018, section 13 of Act 34 of 2019 and section 10 of Act 23 of 2020 and section 5 of Act 20 of 2022

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

“(5) (a) A person will be disqualified from managing the collective interests common to all its members as mentioned in subsection (1)(e)(i)(cc)(A)

if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) by the deletion in subsection (3) of the word “and” after paragraph (f);
- (b) by the deletion in subsection (3) of the full stop after paragraph (h) and the insertion of “; and”;
- (c) by the addition in subsection (3) after paragraph (h), of the following paragraph:

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

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

“(11A) A person may not act in a fiduciary capacity as referred to in subsection (3)(b)(i) if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

“(11B) A person who acts in contravention of subsection (11A) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.”.

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

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

- (a) by the deletion in subsection (2) of the word “and” after paragraph (b);
- (b) by the deletion in subsection (2) for the full stop after paragraph (c) and the insertion of “; and”;
- (c) by the addition in subsection (2) after paragraph (c) of the following paragraph:

“(d) the Commissioner is satisfied that the club does not have a person acting in a fiduciary capacity as referred to in paragraph (a)(i), who is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit

Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.”; and

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

“(9A) A person may not act in a fiduciary capacity as referred to in subsection (2)(a)(i) if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

“(9B) A person who acts in contravention of subsection (9A) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.”.

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

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

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

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

“(c) the Commissioner is satisfied that the association does not have a person acting in a fiduciary capacity as referred to in paragraph (b)(i), who is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit

Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.”; and

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

“(10A) A person may not act in a fiduciary capacity as referred to in subsection (2)(b)(i) if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.”.

(10B) A person who acts in contravention of subsection (10A) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.”.

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

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

(a) by the deletion in subsection (1) for the full stop after paragraph (d), and the insertion of “; and”;

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

“(e) the Commissioner is satisfied that the entity does not have a person acting in a fiduciary capacity as referred to in paragraph (d)(i)(aa), who is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations

Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.”;

and

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

“(7A) A person may not act in a fiduciary capacity as referred to in subsection (1)(d)(i)(aa) if that person is disqualified in terms of section 6 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), section 25A of the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997), or section 69 of the Companies Act.

(7B) A person who acts in contravention of subsection (7A) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.”.

Insertion of Chapter III of Act 58 of 1962

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

“Part IA

Advance Pricing Agreements

76A. Definitions.—In this Part, unless the context indicates otherwise, the following terms, if in single quotation marks, have the following meanings—

‘adjustment’ is an application of the most appropriate ‘transfer pricing method’ to an ‘affected transaction’, as agreed to in an ‘advance pricing agreement’, to attribute the profit from the ‘affected transaction’ to an ‘affected party’ to determine the taxable income of the ‘affected party’;

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

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

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

'affected party' means a person that is contractually bound by an 'affected transaction';

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

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

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

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

'competent authority' is an official in a country who is authorised by the government of the country to administer an agreement for the avoidance of double taxation and includes a person duly delegated by that official to perform the role;

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

'critical assumptions' means the fundamental factors that are necessary for each party to an 'advance pricing agreement' to remain contractually bound by the 'advance pricing agreement';

'most appropriate transfer pricing method' means a 'transfer pricing method', having regard to the nature of an 'affected transaction', and other relevant factors prescribed by the Commissioner by public notice, that forms the basis for establishing an 'arm's length transfer price' and 'arm's length allocation' to meet the requirements of section 31 and an agreement for the avoidance of double taxation, for the affected transaction;

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

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

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

76C. Scope —The 'competent authority' of the Republic may enter into an 'advance pricing agreement' with an 'applicant', after consulting with the 'competent authority' of another country which will be party to the 'affected transaction', within the parameters prescribed by the Commissioner by public notice.

76D. Persons eligible to apply.—The persons eligible to apply to the Commissioner for an 'advance pricing agreement' must be prescribed by the Commissioner by public notice.

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

- (a) a pre-application consultation fee;
- (b) an application fee;
- (c) a cost recovery fee for processing an 'advance pricing agreement application';
and
- (d) fees associated with the maintenance or extension of an existing agreement.

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

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

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

76F. Pre-application consultation.—(1) A prospective 'applicant' must request, together with proof of payment of the prescribed fee in section 76E(1)(a), in the prescribed form and manner, a pre-application consultation meeting.

(2) The Commissioner must arrange a pre-application consultation meeting with the prospective 'applicant' within 60 days of receipt of the request in subsection (1).

(3) The pre-application consultation meeting must, among other things—

- (a) discuss the scope of the 'advance pricing agreement';
- (b) identify the 'affected parties', their organisational structures, the relationship between the parties, and their 'countries of residence';
- (c) discuss the most recent annual financial statements of the prospective 'applicant';
- (d) discuss the suitability and value of an 'affected transaction' that will form part of the 'advance pricing agreement';
- (e) discuss the most appropriate 'transfer pricing method' to apply to an 'affected transaction';
- (f) discuss to which 'affected party' the profit from an 'affected transaction' is most likely to be attributed;
- (g) discuss if the prospective 'applicant' or another 'affected party' has consulted with the 'competent authority' of the other country that will be party to an affected transaction;

- (h) discuss the applicable fees in section 76E; and
- (j) determine further information that may be required from the prospective 'applicant'.

(4) After consulting with the 'competent authority' of the other country, which will be party to an affected transaction, the Commissioner must notify the prospective 'applicant' within 90 days from the last pre-application consultation meeting if the prospective 'applicant' may submit an 'advance pricing agreement application'.

76G. Application for an advance pricing agreement.—(1) A prospective 'applicant' that chooses to submit an 'advance pricing agreement application', after receiving notification from the Commissioner under section 76F(4), must do so within 90 days from receipt of the notification.

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

(3) An 'advance pricing agreement application' must be in the prescribed form and manner and must include the following—

- (a) the name, tax reference number or proof of identity, e-mail address, postal address, physical address, telephone number and country of residence of the applicant;
- (b) a list of the 'affected parties', their e-mail addresses, postal addresses, physical addresses and telephone numbers;
- (c) the organisational structure of the 'applicant' in relation to the other affected parties and their organisational structures;
- (d) the most recent annual financial statements, forecasts and business plans of the applicant;

- (e) the scope of the market for the 'applicant', with geographic analyses, and the primary business activities of the 'applicant';
 - (f) the 'affected transaction' that will form part of the 'advance pricing agreement' with the following in respect of the 'affected transaction' —
 - (i) the applicable legislation in a tax Act and an interpretation thereof;
 - (ii) the applicable provisions in the agreement for the avoidance of double taxation and an interpretation thereof;
 - (iii) the applicable 'critical assumptions';
 - (iv) the quantum;
 - (v) the most appropriate 'transfer pricing method';
 - (vi) the 'arm's length transfer price';
 - (vii) the 'arm's length allocation'; and
 - (viii) the adjustment, where necessary;
 - (g) a history of past and current tax audits of the 'affected transaction' in paragraph (f) in the Republic and elsewhere;
 - (h) the views of the 'competent authority' of the other country, which will be party to an affected transaction, where applicable;
 - (i) the expected duration of the 'advance pricing agreement', but not exceeding the periods in sections 76L(5) and 76L(6);
 - (j) the proposed 'advance pricing agreement';
 - (k) confirmation that the applicant is tax compliant to the extent referred to in section 256(3) of the Tax Administration Act; and
 - (l) confirmation that the prescribed fee in section 76E(1)(b) has been paid.
- (4) The Commissioner may require the 'advance pricing agreement application' to be supplemented by further information.

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

76H. Amendments to an ‘advance pricing agreement application’.—(1) An ‘applicant’ may make a written request for an amendment to an ‘advance pricing agreement application’ within 60 days from submitting the application’ to the Commissioner.

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

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

76I. Withdrawing an ‘advance pricing agreement application’.—(1) An ‘applicant’ may withdraw an ‘advance pricing agreement application’ before the Commissioner complies with section 76K(4).

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

76J. Rejection of an ‘advance pricing agreement application’.—The Commissioner will reject an ‘advance pricing agreement application’ if the application does not meet the requirements of this Part including if—

- (a) an 'affected transaction' is not complex enough or its value is less than an amount prescribed by the Commissioner in a public notice;
- (b) the proposed 'advance pricing agreement' would not ensure that there is alignment between economic activities and the profit outcomes in the Republic;
- (c) the application requires the Commissioner to consider the legal form of an 'affected transaction' without taking the substance of the transaction into account;
- (d) an 'affected transaction' appears to lack commercial substance or is entered into primarily to avoid tax;
- (e) the application involves the interpretation of a general or specific anti-avoidance provision or doctrine;
- (f) the application is in respect of an issue that is the same as, or substantially similar to, an issue that is subject to—
 - (i) a proposed amendment to a tax Act that has been published; or
 - (ii) dispute resolution under Chapter 9 of the Tax Administration Act or an Article in an agreement for the avoidance of double taxation;
- (g) the application is submitted for academic purposes;
- (h) the application is in respect of a frivolous or vexatious issue;
- (i) the 'applicant' fails or refuses to provide additional information requested by the Commissioner;
- (j) the 'applicant' does not pay the prescribed fees in section 76E; or
- (k) the 'competent authority' referred to in section 76K(4) does not agree to the position adopted in the preliminary 'advance pricing agreement'.

76K. Processing an 'advance pricing agreement application'.—(1) The Commissioner must process the 'advance pricing agreement application' in section

76G after accepting the application in a notice that sets out the terms and conditions under which the application will be considered.

(2) The Commissioner must inform the 'applicant' at 90-day intervals of the progress it has made in processing the 'advance pricing agreement application' and must issue invoices for purposes of section 76E(2) with the progress reports.

(3) Based on the information provided in the 'advance pricing agreement application', the Commissioner must prepare a preliminary 'advance pricing agreement' that includes the following—

- (a) the names, e-mail addresses, postal addresses, physical addresses, and countries of residence of the parties to the advance pricing agreement;
- (b) the type of 'advance pricing agreement' being entered into for purposes of section 76C;
- (c) a definition of each of the key terms in the 'advance pricing agreement';
- (d) the primary business activities of the 'applicant';
- (e) the organisational structure of the 'applicant' in relation to the other 'affected parties' and their organisational structures;
- (f) the applicable accounting standards on which the 'applicant's' financial statements are based;
- (g) the critical assumptions on which the 'advance pricing agreement' is based;
- (h) an 'affected transaction' that will form part of the 'advance pricing agreement' with the information in section 76G(3)(f), as determined by the Commissioner, in respect of the 'affected transaction'; and
- (i) the duration of the 'advance pricing agreement' but not exceeding the periods in sections 76L(5) and 76L(6).

(4) The Commissioner must send the preliminary 'advance pricing agreement' to the 'competent authority' of the other country, which will be party to an affected transaction in the agreement, to consider agreeing to the position adopted in the agreement after taking into account the agreement for the avoidance of double taxation with that country.

(5) If the 'competent authority' in subsection (4) agrees in writing to the position adopted in the preliminary 'advance pricing agreement', the Commissioner must send the preliminary agreement to the 'applicant' to accept or reject the agreement within 60 days of being sent.

76L. Finalisation of an advance pricing agreement.—(1) If an 'applicant' accepts the preliminary 'advance pricing agreement' in section 76K(5), the applicant must sign the agreement and return it to the Commissioner.

(2) At least two SARS officials delegated to do so and the 'competent authority' of the Republic must sign the preliminary 'advance pricing agreement' after subsection (1) has been complied with.

(3) After subsection (2) has been complied with, the Commissioner must send the 'advance pricing agreement' to the applicant and the 'competent authority' of the other country referred to in section 76K(5).

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

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

(6) Based on a specific request by the 'applicant' in an 'advance pricing agreement application', the Commissioner may allow the associated 'advance pricing agreement' to be applicable for up to a maximum of three consecutive years of assessment ending on the last day of the year of assessment in which the 'advance pricing agreement application' is received by the Commissioner, provided that the advance pricing agreement will not result in an adjustment that will reduce taxable income in any of the three tax periods.

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

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

- (a) confirmation that the information provided in the 'advance pricing agreement application' has not changed subsequent to submitting the application;
- (b) an 'affected transaction' in the 'advance pricing agreement' that has been concluded or is in the process of being concluded; and
- (c) confirmation and a demonstration of compliance with the terms and conditions of the 'advance pricing agreement'.

76N. Extension of an advance pricing agreement.—(1) The applicant that is party to an 'advance pricing agreement' may request the Commissioner to extend the agreement not less than 60 days before the end of the last of the years of assessment in section 76L(5).

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

- (a) confirmation that the information provided in the ‘advance pricing agreement application’ has not changed subsequent to submitting the application;
- (b) confirmation that all terms and conditions of the existing ‘advance pricing agreement’ have been complied with;
- (c) confirmation that the Commissioner has been informed of any changes that need to be taken into account in the extended ‘advance pricing agreement’, such as economic, technical, product, industry or geographical developments; and
- (d) confirmation that the prescribed fee in section 76E(1)(d) has been paid.

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

(4) Sections 76G, 76H, 76I, 76J, 76K, and 76L will apply to changes that are required for the extension of an ‘advance pricing agreement’.

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

76O. Termination of an advance pricing agreement.—(1) A party to an ‘advance pricing agreement’ may choose to terminate the agreement prospectively by informing the other parties to the agreement of the reasons for the termination.

(2) The Commissioner may terminate an ‘advance pricing agreement’ prospectively if—

- (a) there is an amendment to the legislation on which the agreement is based unless the general interpretation upon which the agreement was based is unaffected by the amendment; or
- (b) there is a change to the agreement for the avoidance of double taxation on which the agreement is based unless the general interpretation upon which the agreement was based is unaffected by the change; or
- (c) a court overturns or modifies an interpretation of the legislation on which the agreement is based unless—
- (i) the judgment is under appeal;
 - (ii) the judgment is fact-specific and the general interpretation upon which the agreement was based is unaffected; or
 - (iii) the reference to the interpretation upon which the agreement was based was *obiter dicta*; or
- (d) the applicant that is party to the agreement failed to comply with the terms and conditions of the agreement.
- (3) The Commissioner may terminate an ‘advance pricing agreement’ retrospectively if—
- (a) the ‘applicant’ that is party to the ‘advance pricing agreement’ has not yet commenced an ‘affected transaction’ in the agreement or has not yet incurred significant costs in respect of the ‘affected transaction’; or
 - (b) a person other than the ‘applicant’ that is party to the ‘advance pricing agreement’ will suffer a significant tax disadvantage if the agreement is not terminated; or
 - (c) the effect of the agreement will materially erode the tax base of the Republic; or
 - (d) an ‘affected transaction’ was carried out in a materially different manner from that disclosed in the ‘advance pricing agreement application’; or

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

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

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

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

76P. Record retention.—(1) In addition to obligations under a tax Act, the 'applicant' that is party to an 'advance pricing agreement' must maintain information that will enable the Commissioner to determine if the applicant is complying with the agreement.

(2) Information requested by the Commissioner with regard to compliance with this Part must be made available to the Commissioner within a reasonable period that will be specified in the written request.

76Q. Procedures and guidelines.—The Commissioner may by public notice specify procedures and guidelines for the implementation and operation of the 'advance pricing agreement' system."

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

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

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

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

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

Schedule 1 of Act 28 of 2011, section 79 of Act 25 of 2015 and section 5 of Act 21 of 2021

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

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

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

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

(a) by the substitution in subparagraph (1) for items (a) and (b) of the following words:

“**[(a)] employer [who is resident] or representative employer**”; or

(b) representative employer in the case of any employer who is not a resident]”; and

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

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

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

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

“(1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister

in his budget statement and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe—

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

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

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

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

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

“(1) If the Commissioner is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 or 11A(4) for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer, the Commissioner may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and

the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of paragraph 11 and section 95 of the Tax Administration Act, be determined accordingly.”.

Amendment of paragraph 20 of Fourth Schedule to Act 58 of 1962, as amended by section 25 of Act 72 of 1963, section 29 of Act 88 of 1965, section 47 of Act 89 of 1969, section 44 of Act 88 of 1971, section 51 of Act 85 of 1974, section 36 of Act 69 of 1975, section 50 of Act 94 of 1983, section 39 of Act 121 of 1984, section 19 of Act 61 of 2008, section 24 of Act 18 of 2009, section 271 read with paragraph 91 of Schedule 1 of Act 28 of 2011, section 23 of Act 21 of 2012, section 10 of Act 44 of 2014, section 17 of Act 23 of 201 and section 13 of Act 16 of 2016

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

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

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

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

“7A. Special provisions relating to [Advance Passenger Information] passenger data

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

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

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

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

“conveyance” means a conveyance as may be prescribed by rule in terms of subsection (8)(aA);

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

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

- (a) any flights scheduled by the operator (including information about schedules, aircraft arrival and departure terminals and routes);**
- (b) persons taking, or proposing to take, any flights scheduled by the operator;**
- (c) baggage, cargo or anything else carried, or proposed to be carried, on any flights scheduled by the operator and the tracking and handling of those things;]**

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

“passenger data” means an electronic message, including any updated or revised version thereof, in respect of Advance Passenger Information

(API) or Passenger Name Record (PNR) information, transmitted to the Commissioner by an operator or an organ of state in circumstances contemplated in subsection (7A);

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

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

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

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

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

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

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

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

(i) Advance Passenger Information, consists of information as may be determined by the Commissioner by rule and relating to—

(aa) the relevant passenger's personal details;

(bb) that passenger's travel document;

(cc) the relevant flight, voyage or journey as may be applicable; and

(dd) any other relevant matter; and

(ii) Passenger Name Record information, consists of information as may be determined by the Commissioner by rule and relating to—

(aa) the relevant passenger's personal details;

(bb) the passenger's travel document;

(cc) the passenger's booking;

(dd) the reservation date, travel dates and any amendment thereof;

(ee) the travel agent used;

(ff) the issuing of the ticket and details relating to the ticket booked;

(gg) the payment method;

(hh) the passenger's itinerary;

(ii) check-in details;

(jj) baggage details; and

(kk) any other relevant matter.

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

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

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

(i) such an application is delivered to the Commissioner—

(aa) within a period of one month from the date this section comes into operation; or

(bb) if the first flight to or from the Republic is after that date, within one month from the date of such flight;

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

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

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

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

(6) Nothing in this section—

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

(7) Any person who—

- (a) is required by this section to **[submit]** transmit and fails to **[submit]** transmit **[Advance Passenger Information]** passenger data in respect of a flight, voyage or journey, as may be applicable, or a passenger on that flight, voyage or journey;
- (b) dishonestly or fraudulently prepares, transmits or alters any **[Advance Passenger Information]** passenger data; or
- (c) is a passenger and furnishes **[passenger]** information to be used as passenger data which he or she knows is false in a material respect, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

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

- (a) the operator has submitted the passenger data contemplated in subsection (2)(b) to an organ of state indicated in rules prescribed under subsection (8)(aB); and
- (b) that organ of state transmits such data to SARS in terms of an agreement contemplated in section 2(1A).

(8) The Commissioner may make rules as to—

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

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

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

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

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

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

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

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

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

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

(ii) were remodelled, processed or repaired abroad;

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

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

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

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

including goods which **[are]**—

- (i) are carried on behalf of another person;
- (ii) are intended for remodel, process or repair abroad;
- (iii) are prohibited, restricted or controlled under any law; **[or]**
(iiiA) consist of foreign or local currency or bearer negotiable instruments in excess of a threshold prescribed in terms of section 30 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); or
- (iv) are goods which a person who temporarily entered the Republic was required to declare upon entering the Republic as contemplated in paragraph (a)(iv);

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

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

Amendment of section 39 of Act 91 of 1964, as amended by section 1 of Act 85 of 1968, section 14 of Act 105 of 1969, section 1 of Act 93 of 1978, section 4 of Act 110 of 1979, sections 8 and 15 of Act 98 of 1980, section 10 of Act 84 of 1987,

section 3 of Act 69 of 1988, section 19 of Act 59 of 1990, section 29 of Act 45 of 1995, section 27 of Act 32 of 2014 and section 10 of Act 16 of 2022

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

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

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

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

20. (1) Section 76 of the Customs and Excise Act, 1964, is hereby amended –
(a) by the insertion in subsection (2) of the following paragraph after paragraph (e):

“(eA) the return of security contemplated in section 107(2)(a) lodged on bill of entry by the applicant in the form of a provisional payment;”;

and

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

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

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

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

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

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

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

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

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

“(cA) as to matters relating to the traveller declaration contemplated in section 15, including rules relating to—

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

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

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

provided;

- (iv) procedures, subsequent to the submission of traveller declarations, to inform travellers of how to proceed when entering the area where travellers are customs processed at the relevant place of entry or exit;
- (v) the information to be declared in relation to goods contemplated in section 15(1)(a) or (b) which were disclosed in a traveller declaration;
- (vi) the entry of the following goods in the accompanied or unaccompanied baggage of a traveller that are imported into or exported from the Republic:
 - (aa) Commercial goods for trade or other business purposes; and
 - (bb) goods exceeding the duty free allowance contemplated in rebate item 407.02 of Schedule No.4;
- (vii) the payment of any duties payable, including the method of payment; and
- (viii) measures to assist in combatting illicit financial activity amongst travellers to and from the Republic through the processing of traveller declarations, including the sharing of information as contemplated in paragraph (vii) of the proviso to section 4(3);”;

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

“(eA) as to matters relating to the deferment of payment of duties contemplated in section 39(1)(b), including rules relating to—

- (i) the circumstances in which application may be made for approval of deferment of duty as contemplated in section 39(1)(b);
- (ii) the persons who may apply or submit such applications;
- (iii) the requirements for such applications and the documents to be used in support of such applications;
- (v) the conditions on which a deferment of duty may be allowed, including security;
- (vi) requirements relating to deferment accounts and payment of such accounts, including deferment limits and payment dates;
- (vii) the utilisation by a clearing agent of the deferment account of an importer;
- (viii) requests for amendment in relation to security required, deferment limits or deferment payment dates; and
- (ix) the suspension or cancellation of deferment.”; and

(c) by the substitution in subsection (1) for paragraph (mA) of the following paragraph:

“(mA) as to matters relating to security, including rules relating to the circumstances in which—

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

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

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

- (a) Paragraph (a), on the date determined by the Minister in terms of section 18 of this Act;
- (b) Paragraph (b), on the date determined by the Minister in terms of section 19 of this Act; and
- (c) Paragraph (c), on the date determined by the Minister in terms of section 20 of this Act.

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

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

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

“(1) Where the Commissioner does not within the period of 21 business days after the date on which the vendor’s return in respect of a tax

period is received by an office of the South African Revenue Service refund any amount refundable in terms of section 44[(1)], interest shall be paid on such amount at the prescribed rate (but subject to the provisions of section 45A) and calculated for the period commencing at the end of the first-mentioned period to the date of payment of the amount so refundable”; and

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

“(ii) where the Commissioner is prevented from satisfying himself as to the amount refundable in terms of section 44[(1)] by reason of not being able to gain access to the books and records of the vendor concerned after having, within a reasonable time, made a request by registered post, facsimile transmission, electronic means or personal delivery, to the vendor for access to such books and records during the period of 21 business days contemplated in this subsection, the said period of 21 business days shall be suspended from the date of despatch of such request by registered post, facsimile transmission, electronic means or the date of delivery of the personal delivery, until the date on which such access is granted;”.

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

24. Section 1 of the of the Tax Administration Act, 2011, is hereby amended by the addition in section 1 of the following definition after the definition of “asset”:

“beneficial owner”—

- (a) of a company, has the meaning assigned to it by section 1 of the Companies Act, 2008 (Act No. 71 of 2008);
- (b) of a partnership, has the meaning referred to in paragraph (1) of the definition of “beneficial owner” in section 1 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001); and
- (c) of a trust, has the meaning assigned to it by section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988);”.

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

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

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

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

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

- (a) by the deletion in subsection (3) of the word “and” at the end of paragraph (c);

- (b) by the deletion in subsection (3) of the full stop at the end of paragraph (d) and insertion of “; and”;
- (c) by the addition in subsection (3) of the following paragraphs after paragraph (d):
- “(e) the Companies and Intellectual Property Commission, the information as may be required for the purpose of carrying out the Commission’s duties and functions under the Companies Act, 2008 (Act No. 71 of 2008);
- (f) the Directorate for Nonprofit Organisations, the information as may be required for the purpose of carrying out the Directorate’s duties and functions under the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997); and
- (g) the Master as defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988), the information as may be required for the purpose of carrying out the Master’s duties and functions under that Act.”.

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

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

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

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

28. (1) Section 95 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The taxpayer in relation to whom the assessment under subsection (1)(a) or (c) has been issued may, within 40 business days from the date of assessment, or such longer period as the Commissioner may prescribe by public notice, request SARS to make a reduced or additional assessment by submitting a true and full return or the relevant material.

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

Amendment of section 246 of Act 28 of 2011 as amended by section 57 of Act 21 of 2012

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

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

Short title and commencement

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

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