

REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 45437
of 8 November 2021)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 23—2021]

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

To—

- amend the Estate Duty Act, 1955, so as to make textual corrections;
- amend the Income Tax Act, 1962, so as to enable the Commissioner to request certain information by public notice; to align the provision with regard to submission of a return by a foreign person in respect of withholding tax on royalties with that of withholding tax on interest; to align the refund limitation rules for dividends paid in specie with that of dividends paid in cash; to provide that the prescription periods will not apply with regard to certain deductions claimed by farmers and to provide for extended record-keeping periods; to provide for textual corrections; to provide for a penalty to be raised on an estimate of employees' tax; to provide that a first provisional tax payment and return will not be required when the duration of a year of assessment does not exceed six months; and to provide for the deletion of a penalty;
- amend the Customs and Excise Act, 1964, so as to make technical corrections; to expand the purposes for which air cargo may be removed to degrouping depots to include consolidation and removal to transit sheds for export; to effect amendments consequential to changes to the SARS customs accreditation system; to expand the scope of matters that SARS may investigate to confirm the validity of a diesel refund claim; and to make the unlawful possession or use of a customs uniform an offence;
- amend the Tax Administration Act, 2011, so as to make textual corrections; to provide for an extension in submission of a return or relevant material with regard to assessments based on an estimate; to provide for a date from which a taxpayer may lodge an objection and appeal with regard to assessments based on an estimate; to provide for an exception to prescription; and to correct a cross-reference;
- amend the Disaster Management Tax Relief Administration Act, 2020, so as to amend certain dates in order to provide relief under the Act, and to provide for matters connected therewith.

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

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

1. Section 5 of the Estate Duty Act, 1955, is hereby amended—

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

“in the case of any right to any annuity referred to in paragraph (a) of subsection (2) of section three, an amount equal to the value of the annuity capitalized at twelve per cent[.]—”.
- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“in the case of any right to any annuity referred to in paragraph (b) of subsection (2) of section *three*, an amount equal to the value of the annuity capitalized at twelve per cent[.] over the expectation of life of the lesser period than the life of such person, over such lesser period;”;
- (c) by the substitution in subsection (1)(f) for paragraphs (i), (ii) and (iii) of the following paragraphs:
 - “(i) in the case of a usufructuary interest, by capitalizing at twelve per cent [.] the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life of the person entitled to such interest, or if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;
 - (ii) in the case of an annuity charged upon the property, by capitalizing at twelve per cent[.] the amount of the annuity over the expectation of life of the person entitled to such annuity, or if it is to be held for a lesser period than the life of such person, over such lesser period; or
 - (iii) in the case of any other interest, by capitalizing at twelve per cent[.] such amount as the Commissioner may consider reasonable as representing the annual yield of such interest, over the expectation of life of the person entitled to such interest, or if such interest is to be held for a lesser period than the life of such person, over such lesser period;”;
- (d) by the substitution for subsection (1)(f) of the following subsection:

“(f) in the case of any property referred to in paragraph (d) of subsection (3) of section *three* which consists only of profits, an amount determined by capitalizing at twelve per cent[.] such amount as the Commissioner may consider reasonable as representing the annual value of such profits over the expectation of life of the deceased immediately prior to the date of his or her death, and in the case of any other property referred to in the said paragraph the amount remaining after deducting from the fair market value of that property as at the date of death of the deceased the expenses and liabilities which the deceased would have had to bear or assume if he or she had at that date exercised his or her power of disposition;”;
- (e) by the substitution in subsection (2) for the first proviso of the following proviso:

“Provided that where the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to [12] twelve per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may be reasonable, and the sum so fixed shall be deemed to be the annual value of the right of enjoyment of such property.”.

Amendment of section 18A of Act 58 of 1962, as substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011, section 7 of Act 21 of 2012, section 52 of Act 31 of 2013, section 29 of Act 43 of 2014, section 3 of Act 44 of 2014, section 34 of Act 15 of 2015, section 31 of Act 17 of 2017 and section 35 of Act 23 of 2018 5

2. Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution at the end of subsection (2)(a)(vi) of the word “or” for “and” and the addition of the following item: 10

“(vii) such further information as the Commissioner may prescribe by public notice; or”.

Amendment of section 49F of Act 58 of 1962, as amended by section 12 of Act 21 of 2012 and section 62 of Act 43 of 2014 15

3. Section 49F of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If, in terms of section 49C, a foreign person is liable for any amount of withholding tax on royalties in respect of any amount of royalties that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax and submit a return by the last day of the month following the month during which the royalty is paid, unless the tax has been paid by any other person.”. 20

Amendment of section 64LA of Act 58 of 1962, as inserted by Act 44 of 2014 and amended by Act 13 of 2017 25

4. Section 64LA of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) both the declaration and the written undertaking are submitted to the company within three years after the date of payment of the [tax] dividend in respect of which they are made,”. 30

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 1983, section 79 of Act 25 of 2015, section 271 read with paragraph 74 of Act 28 of 2011 and section 79 of Act 25 of 2015

5. Paragraph 13 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (5) of the following subparagraphs: 35

“(6) The Commissioner may, notwithstanding the provisions of sections 99 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.

(7) Where a deduction in terms of subparagraph (1)(a) or (b) may be claimed in respect of a year of assessment, the period prescribed under section 29(3) of the Tax Administration Act after which records, books of account or documents need not be retained shall be extended to six years or eleven years respectively for such year of assessment. 40

(8) Where a deduction in terms of subparagraph (1)(b) may be claimed in a year of assessment, the period prescribed under section 97(4) of the Tax Administration Act after which a record of assessment may be destroyed shall be extended to eleven years for such year of assessment.”. 45

Amendment of paragraph 6 of Fourth Schedule to Act 58 of 1962, as amended by section 83 of Act 45 of 2003, section 18 of Act 34 of 2004, section 14 of Act 61 of 2008 and section 271 read with paragraph 80 and paragraph 193 of Schedule 1 of Act 28 of 2011

6. Paragraph 6 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph: 5

“(1) If an employer fails to pay any amount of employees’ tax for which [he or her] the employer is liable within the period allowable for payment thereof in terms of paragraph 2 SARS must, in accordance with Chapter 15 of the Tax Administration Act, impose a penalty equal to ten per cent of such amount.”. 10

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 22 of Act 4 of 2008, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 16 of Act 61 of 2008, section 21 of Act 18 of 2009, section 22 of Act 8 of 2010, section 271 read with paragraph 85 and 194 of Schedule 1 of Act 28 of 2011, section 20 of Act 21 of 2012, section 13 of Act 23 of 2015 and section 9 of Act 33 of 2019 15

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

“(7) If the total amount of employees’ tax deducted or withheld, or which should have been deducted or withheld for the period described in subparagraph (3), is unknown, the Commissioner may estimate the total amount based on information readily available and impose the penalty under subparagraph (6) on the amount so estimated. 20

(8) Where, upon determining the actual employees’ tax of the person in respect of whom the penalty was imposed under subparagraph (7), it appears that the total amount of employees’ tax was incorrectly estimated under subparagraph (7), the penalty must be adjusted in accordance with the correct amount of employees’ tax with effect from the date of the imposition of the penalty under subparagraph (6) read with subparagraph (7).” 25

Amendment of paragraph 21 of Fourth Schedule to Act 58 of 1962, as amended by section 30 of Act 88 of 1965, section 46 of Act 88 of 1971, section 59 of Act 74 of 2002 and section 89 of Act 45 of 2003 30

8. Paragraph 21 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (1) of the following subparagraph:

“(1A) Subparagraph (1)(a) does not apply where the duration of the year of assessment in question does not exceed a period of six months.”. 35

Amendment of paragraph 23 of Fourth Schedule to Act 58 of 1962, as amended by section 30 of Act 88 of 1965, section 53 of Act 85 of 1974, section 51 of Act 94 of 1983, section 41 of Act 121 of 1984, section 27 of Act 65 of 1986, section 53 of Act 101 of 1990 and section 11 of Act 9 of 2005 40

9. Paragraph 23 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the renumbering of the current paragraph as subparagraph (1); and

(b) by the addition after subparagraph (1) of the following subparagraph:

“(2) Subparagraph (1)(a) does not apply where the duration of the year of assessment in question does not exceed a period of six months.”. 45

Amendment of paragraph 17 of Seventh Schedule to Act 58 of 1962, as amended by section 271 read with paragraph 104 of Schedule 1 of Act 28 of 2011

10. Paragraph 17 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of subparagraph (4). 50