

REPUBLIC OF SOUTH AFRICA

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# TAX ADMINISTRATION LAWS AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 43830  
of 23 October 2020)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

[B 28—2020]

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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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# **BILL**

To—

- amend the Estate Duty Act, 1955, so as to make textual corrections;
- amend the Income Tax Act, 1962, so as to delete obsolete wording; to make a decision subject to objection and appeal; to enable a public benefit organisation to provide funds and assets to any department of government of the Republic and effect consequential amendments relating thereto; to align provisions to provide that only approved public benefit organisations can provide certain certificates; to provide that audit certificates must be obtained and retained by certain organisations; to align situations where withholding tax on royalties was due and payable but subsequently becomes irrecoverable with that of withholding tax on interest; to provide that certain entities be excluded from the definition of provisional taxpayer; to align the wording with certain current processes and remove a reference to a deleted provision; to modify the requirement of intent for certain criminal offences; to effect a consequential amendment; and to replace a reverse onus provision with an evidentiary burden;
- amend the Customs and Excise Act, 1964, so as to make technical corrections; to extend a provision concerning information sharing and to exclude certain information from the application of the prohibition on disclosure of information; to clarify the movement in bond of containerized goods on the strength of a manifest and without furnishing security to licensed container depots or container terminals appointed or prescribed; to clarify how bills of entry may be adjusted; to broaden provisions relating to the disposal of goods on failure to make due entry on importation to also include failure to make due entry on exportation of goods on which export duty is payable; to provide for the commencement of liability for export duty; to provide for the liability of the master of a ship or pilot of an aircraft or other carrier for duty on goods deemed imported to cease upon delivery of the goods to a licensed remover in bond, for the assumption of such liability by a licensed remover in bond, as well as for the circumstances in which liability of the licensed remover in bond will cease; to clarify the meaning of “free on board“ in relation to goods exported; to provide for the limitation of the period for applications for refunds of export duty; and to broaden a provision relating to the production of permits or certificates required in respect of imported goods to apply to exported goods as well;

- amend the Value-Added Tax Act, 1991, so as to substitute the requirement to submit a return with the obligation to obtain, complete and retain the form prescribed by the Commissioner; to substitute obsolete wording; and to modify the requirement of intent for certain criminal offences;
- amend the Skills Development Levies Act, 1999, so as to provide that the Commissioner may refuse to authorise a refund if a return is outstanding;
- amend the Unemployment Insurance Contributions Act, 2002, so as to provide that the Commissioner may refuse to authorise a refund if a return is outstanding;
- amend the Tax Administration Act, 2011, so as to provide for a textual correction in order to clarify certain terminology; to provide for consequential and technical amendments; to provide for the issue of assessments based on an estimate where a taxpayer provides relevant information that is incomplete or inadequate or does not respond to a request for relevant material; to amend the period within which a reduced assessment can be requested; to align the period within which an extension may be granted with the period for prescription; to provide for a specific effective date with regards to interest calculated on an erroneous overpayment of tax; to provide for interest on royalties payable in terms of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 and to provide for the interest rate with regards to refunds due under that Act; to provide that a refund does not need to be authorised where a matter is under criminal investigation and to modify the requirement of intent for certain criminal offences, and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 10 of Act 45 of 1955, as amended by section 271, read with paragraph 18 of Schedule 1 to Act 28 of 2011, section 3 of Act 21 of 2012 and section 2 of Act 13 of 2017**

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1. Section 10 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:

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

**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, 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,**

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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, sections 1 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, read with item 23 of Schedule 1 to Act 28 of 2011, section 4 of Act 21 of 2012, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014, section 3 of Act 25 of 2015, section 5 of Act 15 of 2016, section 2 of Act 17 of 2017, section 1 of Act 23 of 2018 and section 2 of Act 34 of 2019

2. Section 1 of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “representative taxpayer” for paragraph (c) of the following paragraph:

“(c) in respect of income which is the subject of any trust or in respect of the income of any minor or **[mentally disordered or defective person or]** any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving moneys on behalf of such person under disability;”.

**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 and section 1 of Act 33 of 2019**

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

“(b) section 8(5)(b) and (bA), section 10(1)(cA), (e)(i)(cc), (j) and (nB), section 10A(8), section 11(e), (f), (g), (gA), (j) and (l), section 12B(6), section 12C, section 12E, section 12J(6), (6A) and (7), section 13, section 15, section 18A(1)(a)(cc), (b) and (c), section 18A(1)(bA)(dd), 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 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 24 of Act 25 of 2015, section 31 of Act 17 of 2017, section 35 of Act 23 of 2018 and section 22 of Act 34 of 2019**

4. Section 18A of the Income Tax Act, 1962, is hereby amended—

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

“(b) any public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, **[or]** institution, board or body contemplated in paragraph (a), or any department

- contemplated in paragraph (c) and which has been approved by the Commissioner for the purposes of this section; or”;
- (b) by the deletion in subsection (1)(bA) of the word “and” at the end of item (bb), the substitution at the end of item (cc) for the word “or” of the word “and” and the addition after item (cc) of the following item: 5  
“(dd) has been approved by the Commissioner for the purposes of this section; or”;
- (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 10  
“(c) any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a), which has been approved by the Commissioner for the purposes of this section, to be used for purpose of any activity contemplated in Part II of the Ninth Schedule,  
as does not exceed— 15  
(A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:  

$$A = B \times 0,005$$
in which formula:  
(AA) “A” represents the amount to be determined; 20  
(BB) “B” represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or 25  
(B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 6quat(1C):  
Provided that any amount of a donation made as contemplated in his 30  
subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.”; 35
- (d) by the substitution in subsection (2A) for item (ii) in paragraph (b) of the following item:  
“(ii) [if that public benefit organisation]which provides funds or assets to public benefit organisations, institutions, boards or bodies or any department that carry on public benefit activities contemplated in [Part]Parts I and II of the Ninth Schedule [and to other entities], that donation will be utilised solely to provide funds or assets to a public benefit organisation, institution, board or body contemplated in subsection (1)(a), which will utilise those funds or assets solely in carrying on activities contemplated in Part II of the Ninth 45  
Schedule or to any department contemplated in subsection (1)(c) which will utilise those funds or assets solely for the purpose of any activity contemplated in Part II of the Ninth Schedule; or”;
- (e) by the substitution for subsection (2D) of the following subsection: 50  
“(2D) Any public benefit organisation contemplated in subsection (1)(b), in respect of any amount that is not distributed [referred to in] as required by subsection (2A)(b)(i), shall distribute or incur the obligation to distribute all amounts received in respect of investment assets held by it, other than amounts received in respect of disposals of those investment assets to any public benefit organisation, 55  
institution, board or body contemplated in subsection (1)(a) or to any department contemplated in subsection (1)(c), no later than six months after—”; and