

REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 42800 of 28 October 2019)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 19—2019]

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

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

To—

- amend the Income Tax Act, 1962, so as to subject a certain decision under the Act to objection and appeal; to make technical corrections; to provide a time period for the validity of a declaration and a written undertaking in respect of the withholding of withholding tax on interest, withholding tax on royalties, and dividends tax; to remove a requirement to submit a declaration to a regulated intermediary in respect of tax free investments; to clarify that a penalty may be imposed if an employer submits an incomplete return; and to insert a provision that an executor need not submit a provisional tax return for the provisional period ending on the date of death;
- amend the Customs and Excise Act, 1964, so as to make technical corrections; to insert definitions; to extend a provision providing for information sharing and exclude certain information from the application of the prohibition on disclosure of information; to clarify that an invoice may be amended by the issuing of an amended invoice or by the issuing of a credit or debit note in circumstances where the amount reflected on the invoice is amended; to clarify that tariff determinations, amendments to tariff determinations or new tariff determinations apply to all identical goods entered by the same person, whether the goods were entered before or after the date on which the determination is issued; to exclude bulk removals between excise manufacturing warehouses of alcoholic beverages classified under any subheading of heading 22.04 or 22.05 of Part 1 of Schedule 1 from compulsory tariff determinations; to clarify that value determinations, amendments to value determinations or new value determinations apply to goods mentioned therein entered by the same person before or after the date on which the determination is issued; to limit the circumstances in relation to which applications for general refunds will be considered; and to extend the general rule-enabling provision to include matters relating to the making of advance payments in relation to the importation of goods;
- amend the Value-Added Tax Act, 1991, so as to make technical corrections; to remove a requirement that the Minister of Finance must prescribe by regulation the particulars to be contained on a tax invoice issued by a foreign supplier of electronic services; and to clarify that rulings under the Act are not subject to the prescribed fee under the Tax Administration Act, 2011;

- amend the Skills Development Levies Act, 1999, so as to make technical corrections; to provide for a procedure if an employer has incorrectly indicated the jurisdiction of a SETA; and to align the time periods for a refund under the Act with the Tax Administration Act, 2011;
 - amend the Unemployment Insurance Contributions Act, 2002, so as to align the time periods for a refund under the Act with the Tax Administration Act, 2011;
 - amend the Tax Administration Act, 2011, so as to make technical corrections; to extend the notice period prior to the institution of legal proceedings; to effect consequential amendments pursuant to the Legal Practice Act, 2014; to clarify that an assessment or decision is final if an appeal is withdrawn; to clarify that an amount may be set-off against a customs and excise debt even if there is no outstanding debt under the Act; to clarify when SARS may make an assessment based on an estimate if no return is submitted or required; to provide for an administrative penalty for failure to report a Common Reporting Standard avoidance scheme or opaque offshore scheme under the Common Reporting Standard regulations issued under the Act; to subject erroneous, incomplete or false third party returns to criminal sanction under the Act; and to align the provisions regulating the tax compliance status of a taxpayer with the automation thereof;
- and to provide for matters connected therewith.

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

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of 2008, section 2 of Act 61 of 2008, section 14 of Act 8 of 2010, section 271 of Act 28 of 2011, read with paragraph 25 of Schedule 1 to that Act, section 2 of Act 39 of 2013, section 2 of Act 43 of 2014, section 2 of Act 44 of 2014, section 1 of Act 23 of 2015, section 1 of Act 16 of 2016 and section 2 of Act 22 of 2018

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

“(b) section 8(5)(b) and (bA), section 10(1)(cA), (e)(i)(cc), (j) and (nB), section 10A(8), section 11(e), (f), (g), (gA), (j) and (l), section 12B(6), section 12C, section 12E, section 12J(6), (6A) and (7), section 13, section 15, section 18A[(5C)](1)(a)(cc), (b) and (c), section 22(1) and (3), section 23H(2), section 23K, section 24(2), section 24A(6), section 24C, section 24D, section 24I(1) and (7), section 24J(9), section 24P, section 25A, section 27, section 28(9), section 30, section 30A, section 30B, section 30C, section 31, section 37A, section 38(2)(a) and (b) and (4), section 44(13)(a), section 47(6)(c)(i), section 62(1)(c)(iii) and (d) and (2)(a) and (4), section 80B and section 103(2);”.

Amendment of section 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

2. Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2C) of the following subsection:

“(2C) The [Accounting Authority] accounting officer or accounting authority contemplated in the Public Finance Management Act or an accounting officer

contemplated in the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for the department which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).”.

Amendment of section 49E of Act 58 of 1962, as inserted by section 12 of Act 21 of 2012 and amended by section 61 of Act 43 of 2014 and section 69 of Act 25 of 2015

3. (1) Section 49E of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
- “(b) if the foreign person to or for the benefit of which that payment is to be made has,—
- (i) **by a date determined by the person making the payment; or**
- (ii) **if the person making the payment did not determine a date as contemplated in subparagraph (i), by the date of the payment,**
- before the royalty is paid, submitted to the person making the payment—
- (i) a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 49D(a) or (b), exempt from the withholding tax on royalties in respect of that payment; and
- (ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the exemption referred to in subparagraph (i) change or should the payment of the royalty no longer be for the benefit of that foreign person.”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) The rate referred to in section 49B(1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has,—
- (a) **by a date determined by the person making the payment; or**
- (b) **if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment,**
- before the royalty is paid, submitted to the person making the payment—
- (a) a declaration in such form as may be prescribed by the Commissioner that the royalty is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation; and
- (b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the person making the payment in writing, should the circumstances affecting the application of the agreement referred to in paragraph (a) change or should the payment of the royalty no longer be for the benefit of that foreign person.”; and
- (c) by the addition of the following subsection after subsection (3):
- “(4) A declaration and written undertaking submitted in terms of subsection (2)(b) or (3) are no longer valid after a period of five years from the date of the declaration.”.
- (2) Subsection (1)(c) comes into operation on 1 July 2020.

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

4. (1) Section 50E of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

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

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

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

before the interest is paid, submitted to the person making the payment—

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

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

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

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

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

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

before the interest is paid, submitted to the person making the payment—

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

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

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

“(4) A declaration and written undertaking submitted in terms of subsection (2)(b) or (3) are no longer valid after a period of five years from the date of the declaration, unless the person making the payment is subject to the provisions of—

(a) the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001);

(b) the Agreement Between the Government of the Republic of South Africa and the Government of the United States of America to improve International Tax Compliance and to Implement the US Foreign Account Tax Compliance Act; or

(c) the regulations for purposes of paragraph (a) of the definition of “international tax standard” in section 1 of the Tax Administration Act,

with regard to the foreign person to or for the benefit of which the payment is to be made and takes account of these provisions in monitoring the continued validity of the declaration.”.

(2) Subsection (1)(c) comes into operation on 1 July 2020.