Report of the Standing Committee on Finance on the Tax Administration Laws Amendment Bill [B23 - 2021] (National Assembly- section 75), dated 24 November 2021

The Standing Committee on Finance, having considered the Tax Administration Laws Amendment Bill [B23 - 2021] (National Assembly- section 75), referred to it, and classified by the JTM as a section 75 Bill, reports the Bill as follows:

1. INTRODUCTION AND BACKGROUND

1.1. The Tax Administration Laws Amendment Bill (TALAB) was tabled in Parliament by the Minister of Finance on 11 November 2021, together with the 2021 Medium-Term Budget Policy Statement. The TALAB is an ordinary section 75 (of the Constitution) Bill dealing tax administration.

1.2. As is usually the case, the tabling of this Bill was preceded by the publication of the draft version of the Bill (Draft TALAB) on 28 July 2021, together with the Draft Tax Laws Amendment Bill (Draft TLAB), and the second publication of the 2021 Draft Rates and Monetary Amounts and Amendment of Revenue Laws Bill (Draft Rates Bill).

1.3. The Draft TALAB contained some tax proposals made in Chapter 4 and Annexure C of the 2021 Budget Review. A separate second Batch of the Draft Tax Bills were published on 12 August 2021 containing emergency tax measures in response to the continuing COVID-19 pandemic and the recent July unrests. These latter measures were over and above the tax proposals that were announced with 2021 Budget on 24 February 2021.

1.4. The changes relating to emergency tax measures contained in the second batch of the 2021 Draft TALAB are incorporated into the Draft TALAB.

2. PUBLIC PARTICIPATION

2.1. The Committee was briefed by National Treasury and SARS on the Draft Bills on 17 August 2021 and held public hearings on 31 August 2021.

2.2. On 10 November 2021, National Treasury and SARS presented their detailed responses to the Draft Bills to the Committee, addressing all the comments made during the public hearings and Committee briefings and deliberations.

2.3. The National Treasury and SARS reported that they received 76 written submissions from the public and responded to these comments during their own consultation processes. They also hosted workshops which ran for three days on 07, 08 and 09 September 2021.

2.4. The Committee received written and oral submissions from the following organisations and/or individuals: South Africa Tobacco Transformation Alliance (SATTA), British American Tobacco South Africa (BATSA), Limpopo Tobacco Processors (LPT), Phillip Morris (PM), South African Liquor Brandowners Association (SALBA), Beer Association of South Africa (BASA), AgriSA, Agbiz, Dr. Seun Muller, Banking Association of South Africa, South African Institute of Taxation (SAIT), South African Institute of Chartered Accountants (SAICA), PwC, Tax Consult. It also received only written submissions from the Johannesburg Stock Exchange (JSE) and the Black Tobacco Farmers Association (BTFA).

3. OVERVIEW OF THE TAX PROPOSALS IN THE TALAB

3.1. TALAB contains the following proposals:

3.1.1. Information required by law in receipts issued for tax-deductible donations (Clause 2 of TALAB; section 18A of the Income Tax Act)

The information required by law in the receipts issued for tax-deductible donations is limited and entities issuing the receipts are not required to provide third-party data on the donations to SARS on a systematic basis. SARS has detected that receipts are being issued by entities that are not approved to do so. To ensure that only valid donations are claimed and to enhance SARS' ability to pre-populate individuals' returns, it is proposed that the information required in the receipts be extended to allow such information as the

Commissioner may prescribe by public notice from time to time. Third-party reporting will be extended in future to cover the receipts issued.

3.1.2. Administrative non-compliance penalties based on estimates for non-submission of six-monthly employees' tax returns (Clause 6 of TALAB; para 14 of Fourth Schedule to Income Tax Act)

SARS may impose a penalty for the non-submission of the six-monthly employees' tax returns by employers. The penalty is calculated as a percentage of the employees' tax for the period covered by the return. Where the employees' tax for the period is not known to SARS, due to the non-submission of monthly or six-monthly returns, the penalty can only be imposed retrospectively. This undermines the purpose and deterrent effect of the non-compliance penalty. The proposed amendment enables SARS to raise the penalty on an alternative basis in such cases, through an estimate of the employees' tax with an adjustment once the actual employees' tax is known.

3.1.3. Removal of double-penalty for the same incidence of non-compliance relating to employees' tax (Clause 9 of TALAB: Para 17 of Seventh Schedule to Income Tax Act)

Under paragraph 13 of the Fourth Schedule to the Income Tax Act, employers have an obligation to issue employees' tax certificates (IRP5/IT3(a)) to their employees. The certificates must reflect the total remuneration, including any fringe benefit and allowance, and the sum of employees' tax (PAYE) deducted during that period. If the employer under deducts PAYE and underpays SARS as a result of understating taxable fringe benefits SARS must impose a penalty of 10% on the underpayment. The employer has an obligation to determine the cash equivalent of the value of the taxable benefit granted to its employees. Paragraph 17 of the Seventh Schedule provides that the nature of the taxable benefit and the cash equivalent of the value thereof must be reflected on the employees' tax certificate or a separate certificate. If an employer fails to comply with this requirement, SARS may impose a penalty equal to 10% of the amount by which the cash equivalent is understated. Two separate penalties may thus be imposed for the same fringe benefit understatement. The proposed amendment removes this double penalty.

3.1.4. Expanding the purposes for which air cargo may be removed to degrouping depots (Clause 11 of TALAB: Section 6 of the C&E Act)

Section 6(1)(hC) of the Customs and Excise Act, 1964, contemplates inter alia the unpacking or deconsolidation of imported air cargo at degrouping depots. Current practice has however shown that there is also a need to regulate the consolidation of air cargo at degrouping depots for export and the removal thereof to transit sheds. The proposed amendment is intended to expand the purposes for which air cargo may be removed to degrouping depots to include consolidation and removal to transit sheds for export.

3.1.5. Amendments related to changes in the accreditation system (Clauses 12 and 14 of TALAB: Section 38A and 64E of the C&E Act, 1964)

Amendments to sections 38A and 64E are required as a result of the announcement in Budget 2021 that SARS is changing its accreditation system to more closely reflect the requirements of the SAFE Framework of Standards issued by the World Customs Organisation. The changes to the accreditation system have been introduced by a Rule in terms of section 64E(2) and these amendments remove outdated provisions.

3.1.6. Increasing the caps for refunds and underpayments of duties (Clauses 13 and 16 of TALAB: Sections 47 and 76 of the C&E Act)

Section 47(1) provides for the minimum thresholds in respect of underpayments of customs duties by taxpayers which the Commissioner may condone. These values are currently very low and Clause 13 provides for increasing the values to R100. A similar amendment is proposed in respect of section 76(5) in relation to minimum thresholds for refunds of duty to taxpayers. Clause 16 provides for the increase of these values to R100.

4. KEY ISSUES RAISED IN THE PUBLIC HEARINGS

4.1. Key issues raised during the public hearings were on amendments to the Income Tax Act, 1962, and the Customs and Excise Act, 1964, Tax Administration, and the Disaster Management Tax Relief Administration Bill.

4.2. Under the Income Tax Act, submissions were received on: Information required by law in receipts issued for tax-deductible donations (Clause 2 of the draft TALAB; section 18A of the Income Tax Act); Administrative non-compliance penalties for non-submission of six-monthly employees' tax (EMP 501) returns (Main reference: Paragraph 14(6) of Fourth Schedule; clause 6 of the Draft Bill); and the Removal of a double penalty (Main reference: Paragraph 17 of Seventh Schedule; clause 9 of the Draft Bill);

4.3. Under the Customs and Excise: Administration, submissions were received on: Interpretation of expression "Trade and Industry" where it occurs in certain provisions of the Customs and Excise Act, 1964 (Main reference: Sections 4, 21A, 43, 48, 53, 55, 56A, 75 and 114 Customs and Excise Act, 1964; Clause 10 of the draft Bill); expanding the purposes for which air cargo may be moved to degrouping depots to include consolidation and removal to transit sheds for export (Main reference: Section 6 of the Customs and Excise Act, 1964; Clause 11 of the draft Bill); deletion of reference to accreditation for purposes of changes in SARS' accreditation system (Main reference: Section 38A of the Customs and Excise Act, 1964; Clause 12 of the draft Bill); increasing the minimum thresholds for underpayments of duty by taxpayers to ease administrative burden (Main reference: section 47(1) of the Customs and Excise Act, 1964; clause 13 of the draft Bill); expanding the scope of SARS investigation to confirm diesel refund claims to accommodate "wet" contractors (Main reference: Section 75(1C)(a) of the Customs and Excise Act, 1964; Clause 15 of the draft Bill); increasing the minimum thresholds for payments of refunds by SARS to ease administrative burden (Main reference: Section 76(5) of the Customs and Excise Act, 1964; Clause 16 of the draft Bill); and unlawful possession or use of customs uniform an offence (Main reference: Section 79 of the Customs and Excise Act, 1964; Clause 17 of the draft Bill)

4.4. Under the Tax Administration, submissions were received on: the extension of period within which taxpayer can request revision of an assessment based on an estimate (Main reference: Section 95 of the Tax Administration Act, 2011; clause 18 of the Draft Bill); and the extension of prescription in certain instances (Main reference: Section 99 of the Tax Administration Act, 2011; clause 19 of the Draft Bill).

4.5. Under the Disaster Management Tax Relief Administration Act, a submissions were received on the expansion of deferral of payment of employees' tax liabilities for tax compliant small to medium sized businesses (Main reference: Definition of qualifying taxpayer in section 1 of the Disaster Management Tax Relief Administration Act, 2020; Clause 1 of Second Batch of draft Tax Administration Laws Amendment Bill, 2021).

Income Tax: Administration

Some issues raised on Information required in receipts issued for tax deductible donations (Main reference: Section 18A of the Income Tax Act, 1962: clause 2 of the Draft Bill)

4.6. Stakeholders commented that the proposed amendment may increase the compliance burden on public benefit organisations (PBOs), especially the smaller and unsophisticated ones that are already struggling with high compliance costs. They said that in effect, the Commissioner may, as a result of the proposed amendment, require PBOs to file third-party returns in the future in respect of section 18A receipts issued. They submitted that these smaller PBOs may not be able to comply with the third-party reporting requirements.

4.7. SARS stated that this amendment is not required for third party reporting. It clarified that the proposed amendment simply ensures consistency of the section 18A certificates with such reporting. It explained that it is cognizant of the impact third party reporting may have on smaller PBOs and is therefore considering a differentiated approach for example by providing a simpler mechanism for third party reporting by smaller PBOs. It explained further that the aim of third party reporting is to make it easier for those receiving the receipts (donors), as well as those issuing the receipts (PBOs), to comply with their obligations. It said that it will be able to

auto populate returns thereby making it easier for donors to claim their valid donations. It added that this will encourage donations to PBOs by donors and lessen the burden on PBOs where taxpayers approach them for additional documentation requested by SARS during the verification process.
It said that PBOs will also be protected from fraudulent claims using their details and the reputational impact such claims have.

Some issues raised on administrative non-compliance penalties for non-submission of six-monthly employees' tax (EMP 501) returns (Main reference: Paragraph 14(6) of Fourth Schedule; clause 6 of the Draft Bill)

4.8. Stakeholders stated that the proposed paragraph 14(8) references to a subparagraph (6A). It appears that the reference should be to subparagraph (7). SARS accepted this and explained that this incorrect cross-referencing will be corrected in the final Bill to be submitted to Parliament.

4.9. Some stakeholders commented that while it is clear that the purpose of levying penalties is to act as a deterrent against non-compliance, it is proposed that further clarity be provided on how the estimation will be calculated. SARS explained that the PAYE administrative non-compliance penalty will be estimated using data readily available to SARS; for example, prior monthly or six-monthly liability details where such liability is not available for the reconciliation period that is outstanding. In addition, SARS said that it may use information relating to salary paid per the corporate income tax return in order to estimate the PAYE liability on which to base the PAYE administrative penalty calculation.

4.10. Stakeholders stated that where the employees' tax is overestimated, this will result in a higher interim penalty being levied. Upon correction at a later stage, an adjustment to a lower penalty amount may increase the unallocated payments against the taxpayer's SARS account. SARS explained that account and payment processing needs will be monitored. It said that the current legislation permits SARS to adjust the administrative penalty in line with changes in the liability of the taxpayer and this principle applies to personal and corporate income tax administrative penalties as well.

4.11. Some stakeholders commented that it appears that an EMP501 submitted via e@syfile is regarded as not being submitted on eFiling if SARS performs an Employment Taxes Verification (ETV) on the return. They submitted than an EMP501 should not be regarded as not being submitted if it is subject to the SARS ETV process. They said that the EMP501 should be reflected on the SARS system as being submitted but it should then be flagged as being under review, to prevent the proposed non-submission penalty from being raised incorrectly. SARAS accepted this submission and explained that e@syFile and eFiling submissions are treated in the same manner and all submissions may go through the ETV process. It explained that when the reconciliation is submitted, the status is updated to received, regardless of the ETV process being initiated or not. SARS explained that this matter was further discussed with the commentator, which undertook to raise it through the recognised controlling body (RCB) channels for SARS to investigate should it resurface with the RCB member who raised it or more broadly.

Some issues raised on the removal of a double penalty (Main reference: Paragraph 17 of Seventh Schedule; clause 9 of the Draft Bill)

4.12. Stakeholders commented that whilst they expect the proposed amendment would be welcomed by most tax practitioners and taxpayers, consideration should be given to whether the paragraph 17 penalty should remain. They submitted that additional safeguards must be in place to ensure accurate determination of fringe benefits – hence the paragraph 17 penalty. They added that at the same time, however, taxpayers should not be penalised under the Fourth and the Seventh Schedules where the mistake is the understatement of PAYE merely because of the understatement of fringe benefits. They proposed that the Seventh Schedule penalty should only apply where an employer has understated the value of fringe benefits on the IRP5 but not for the purpose of completion of the EMP201.

4.13. SARS did not accept this submission and explained that the PAYE penalties are wide-ranging, and it is submitted will always be imposable in situations where the fringe benefit was not declared on the certificate to the detriment of the fiscus.

Customs and Excise: Administration

Some issues raised on the interpretation of expression "Trade and Industry" where it occurs in certain provisions of the Customs and Excise Act, 1964 (Main reference: Sections 4, 21A, 43, 48, 53, 55, 56A, 75 and 114 Customs and Excise Act, 1964; Clause 10 of the draft Bill)

4.14. Stakeholders commented that the proposed provision is drafted in such a way that it doesn't actually amend the expressions in the Customs and Excise Act, but merely requires them to be read in a certain way. They said that this would result in the Customs and Excise Act always having to be read with the Tax Administration Laws Amendment Act, 2021. They said that the changes should be made by way of amendments to the Customs and Excise Act. SARS explained that rather than amend multiple provisions in the Customs and Excise Act relating to the name change, Clause 10 will be replaced by an amendment of section 1 of the Customs and Excise Act providing for the insertion of the interpretation provision as a new subsection (5A).

Some issues raised on expanding the purposes for which air cargo may be moved to degrouping depots to include consolidation and removal to transit sheds for export (Main reference: Section 6 of the Customs and Excise Act, 1964; Clause 11 of the draft Bill)

4.15. Stakeholders commented that the proposed amendment is welcomed as it enhances and streamlines the process and usage of de-grouping facilities in order to avoid unnecessary delays and congestions at transit sheds.

Some issues raised on the deletion of reference to accreditation for purposes of changes in SARS' accreditation system (Main reference: Section 38A of the Customs and Excise Act, 1964; Clause 12 of the draft Bill)

4.16. Comment: The amendment is as a result of the announcement in the Budget Review, 2021 that indicates that SARS is changing its accreditation system to more closely reflect the requirements of the SAFE Framework of Standards issued by the World Customs Organisation. A simultaneous amendment to section 21(3)(c) of the Customs and Excise Act, is proposed so as to ensure uniformity with the announcement that was contained in the Budget Review, 2021.

4.17. SARS did not accept this submission and explained that Rules under section 64E containing detail with respect to the new SARS accreditation system were promulgated on 23 July 2021. It said that these rules contain transitional provisions and provide for the lapsing of Level 1 accredited client status in terms of the rules under section 64E as it existed immediately before that date. It said that the effect of the new accreditation system is that certain provisions in the Act requiring a person to have accredited client status were reviewed, for example section 38A(2)(a)(i). SARS explained that section 21(3)(c) providing that only importers who are accredited may store imported goods which are free of duty in special customs and excise storage warehouses for export, is retained. The reason being that the payment of VAT on these goods is deferred while the goods are stored in a special customs and excise storage warehouse. This is still considered a benefit that only accredited importers should have.

Some issues raised on increasing the minimum thresholds for underpayments of duty by taxpayers to ease administrative burden (Main reference: section 47(1) of the Customs and Excise Act, 1964; clause 13 of the draft Bill)

4.18. Stakeholders commented that a consequential amendment is proposed to the Value-Added Tax Act, 1991, to ensure alignment of the minimum values as it relates to VAT levied upon importations. SARS responded that the suggestion deserves further consideration but the interaction between VAT and duty raises difficult questions in this context. As a result this amendment is withdrawn for further consideration of the potential for an integrated approach.

Some issues raised on expanding the scope of SARS investigation to confirm diesel refund claims to accommodate “wet” contractors (Main reference: Section 75(1C)(a) of the Customs and Excise Act, 1964; Clause 15 of the draft Bill)

4.19. Stakeholders commented that one of the current requirements is that, in order for a user to qualify for a diesel refund, the contracts must be on “dry” basis. They explained that this means that the user must supply the diesel to the contractors, and they must just bring their own equipment. They stated that the proposed amendment now allows contractors to purchase the fuel themselves and just invoice the user (“wet” basis). They stated further that this is a welcomed development because it will ensure
that smaller users are not excluded as they often collect and dispense their diesel purchases directly for use without it being stored at the user’s premises. It further allows for convenience because the contractors can get the diesel at their own time and just invoice the user.

Some issues raised on increasing the minimum thresholds for payments of refunds by SARS to ease administrative burden (Main reference: Section 76(5) of the Customs and Excise Act, 1964; Clause 16 of the draft Bill)

4.20. Stakeholders submitted that a consequential amendment be made to the Value-Added Tax, 1991, to ensure alignment of the minimum values as it relates to VAT amounts paid upon importation on which refunds are claimed. SARS conceded that the suggestion deserves further consideration but the interaction between VAT and duty raises difficult questions in this context. As a result this amendment is withdrawn for further consideration of the potential for an integrated approach.

Unlawful possession or use of customs uniform an offence (Main reference: Section 79 of the Customs and Excise Act, 1964; Clause 17 of the draft Bill)

4.21. Some stakeholders that the amendment is welcome as it clearly displays SARS’ intent to curb corruption.

Tax Administration

Some issues raised on the extension of period within which a taxpayer can request revision of an assessment based on an estimate (Main reference: Section 95 of the Tax Administration Act, 2011; clause 18 of the Draft Bill)

4.22. Stakeholders commented that in order to achieve and clarify what the amendment sets out to do, i.e. to provide SARS with the opportunity to extend the period in which a taxpayer may request a revision of an estimated assessment for up to forty days after the prescription date, the following wording is proposed: “(7) A senior SARS official may extend the period referred to in subsection (6) within which the return or relevant material must be submitted, for a period not exceeding forty business days after the relevant period referred to in section 99(1).” SARS did not accept this submission and explained that the proposed wording does not take account of the fact that the end of the initial period to request a reduced or additional assessment may fall after the prescription date, so the forty-day extension may fall later than forty days after the date. It also provides for an extension past prescription, even where prescription is not an issue due to the timing of the making of an assessment based on an estimate. The current wording of the proposed amendment is regarded as clear as to the purpose it seeks to achieve.

4.23. Stakeholders commented that to the extent that the taxpayer has submitted the relevant information before the prescription date, the Commissioner is mandated to revise the assessments to reflect the correct outcome. It now appears that the taxpayer’s submission of the relevant information to the Commissioner before the expiry of timelines does not guarantee the issuing of the revised assessments, as such a decision will depend on the Commissioner’s discretion. SARS explained that based on the proposed revised wording of section 95(5) and (6), once a taxpayer submits the relevant material as required in terms of section 95(6), SARS has one of the following three options and the taxpayer may respond accordingly: Option 1: After review SARS accepts the relevant material and makes a reduced or additional assessment as requested by the taxpayer; Option 2: After review SARS does not accept some of the relevant

material and makes a reduced or additional assessment accordingly. It said that in this instance, the reduced or additional assessment will be subject to objection and appeal in the ordinary course, since it replaces the assessment contemplated in section 95(1)(a) or (c); Option 3: After review SARS does not accept any of the relevant material, does not make a reduced or additional assessment and relies on the assessment based on an estimate. In this regard the proposed new section 95(8) clarifies that, should SARS decide not to make a reduced or additional assessment,
the taxpayer may object and appeal within the normal timeframes from the date of the decision.

4.24. Stakeholders submitted that the proposal that the Commissioner may extend prescription or not in terms of his/her discretion may have adverse consequences against the taxpayer. It is requested that some certainty is required in terms of how the Commissioner's discretion will be exercised or alternatively, the relevant factors that the Commissioner will consider when exercising his/her discretion. SARS explained that its discretion in granting the extension requested under section 95(7) is governed by section 33 of the Constitution, 1996, read with Promotion of Administrative Justice Act, 2000, (PAJA) which gives effect to section 33. SARS further explained that it is required to be lawful, reasonable and procedurally fair as required by the circumstances of each case. It said that as such circumstances will differ from case to case, it is not possible to legislate the criteria for all foreseeable circumstances that can lead to a request for an extension. SARS explained that the requirements for a valid administrative decision are set out in PAJA and need not be restated for each of such decisions in each statute. It added that in instances where SARS does not grant the requested extension, that decision will be subject to review in a court of law or alternatively the taxpayer may approach the Office of the Tax Ombud if the taxpayer believes SARS did not act in a lawful, reasonable and procedurally fair manner in the circumstances. However, it is proposed to align the wording with the approach taken in the Tax Administration Act in respect of certain other
extension decisions, namely that SARS may extend the period if reasonable
grounds for an extension are submitted by the taxpayer.

4.25. Stakeholders commented that section 95 should include some wording that requires the Commissioner to request the relevant information within a reasonable timeframe, such as the proposed 40-day period before prescription to afford the taxpayer sufficient time to adequately address the request from the Commissioner. They submitted that affording the Commissioner the opportunity to raise assessments first "without the reasonable timeframe requirement for the Commissioner to request information" may disadvantage the taxpayer.

4.26. SARS did not accepted and explained that where it has raised an assessment based on an estimate under section 95(1)(c), it would be in instances where it requested
relevant material from the taxpayer on more than one occasion, without receiving
a response to those requests. It said that section 95(6), read together with section 95(7), then provides the taxpayer with up to 80 business days to submit the relevant material
even when prescription is an issue. It added that this is regarded as sufficient time in order for the taxpayer to comply with the requirements of section 95(6).

4.27. Stakeholders stated that the addition to subsection (7) provides for an additional period for the submission of a return or relevant material pursuant to the issuing of an estimated assessment by SARS. It is proposed that SARS include a practical example in the draft explanatory memorandum to assist taxpayer with the counting of the 40-day period. SARS accepted this and explained that a practical example will be provided in the Memorandum of Objects.

4.28. Stakeholder requested clarity as to the form of the notice that SARS will issue to a taxpayer in the event of a taxpayer submitting relevant material in terms of section 95(6), where SARS finds that the material does not support an adjustment to the estimated assessment. SARS explained that in the event that SARS finds that the return or relevant material submitted does not support the making of a reduced or additional assessment, a
letter will be issued to the taxpayer, containing SARS' grounds for the decision.

Some issues raised on the extension of prescription in certain instances (Main reference: Section 99 of the Tax Administration Act, 2011; clause 19 of the Draft Bill)

4.29. Some stakeholders acknowledged that prescriptions would have to be extended in the circumstances envisaged by section 95(7), however the proposed amendment seemingly results in prescription never applying to the tax period in question. They submitted that the extension of prescription should be only for a limited period and not in perpetuity. SARS explained that this comment was misplaced because where a taxpayer submits a request in terms of section 95(7) for an extension of the initial 40-business day period, such extension is limited to a maximum of 40 business days post the initial 40-business day period under section 95(6) and prescription would not apply to the extent that this period exceeds the relevant prescription periods contained in section 99(1). That is to say for a maximum of 80 business days. In the light of the following comment,
however, the proposed amendment to section 99(2)(e) will be replaced by a proposed amendment to section 99(2)(d)(iv) to provide that prescription will not apply to the extent that it is necessary to give effect to a reduced or additional assessment requested under section 95(6).

4.30. Stakeholders commented that the current proposal only allows SARS to reduce an assessment post prescription if the period within which the request should have been was extended post prescription in line with the proposal in clause 18 of the draft Bill. They proposed that section 99 be further amended to allow SARS to issue a reduced assessment post prescription where the section 93(1)(f) reduced assessment request was made prior to prescription, similar to section 99(2)(d)(iii) in respect of section 93(1)(d) reduced assessment requests. They said that in their view, this is required especially absent any time period within which SARS must issue reduced assessments under section 93(1)(f) (we will submit this matter as part of the Annexure C proposals).

4.31. SARS accepted the latter submission and explained that the amendment to section 95 to include the proposed new subsection (7), read with the amendment to section 99(2)(d) to include the proposed new item (iv), allows SARS to issue a reduced assessment post prescription where the reduced assessment request was made within the prescribed period.

Disaster Management Tax Relief Administration Bill

Some issues raised on the expansion of deferral of payment of employees' tax liabilities for tax compliant small to medium sized businesses (Main reference: Definition of qualifying taxpayer in section 1 of the Disaster Management Tax Relief Administration Act, 2020; Clause 1 of Second Batch of draft Tax Administration Laws Amendment Bill, 2021)

4.32. Stakeholder commented that to qualify for the new PAYE and ETI relief, a taxpayer must be a 'qualifying taxpayer' which is defined as a person conducting a trade. They said that Public Benefit Organisations (PBOs) approved in terms of section 30 of the Income Tax Act and many other exempt organisations such as recreational clubs, professional bodies and schools are effectively excluded from this definition as most of them do not conduct a trade. They added that as these organisations, especially PBOs, play a significant role in our society and have been affected dramatically by the COVID-19 lockdown (and will be affected for many months thereafter as they may no longer receive donations that they previously relied upon), they submit that the definition of 'qualifying taxpayer' should be amended to include these organisations as mentioned above.

4.33. SARS did not accept this submission and explained that the design of these measures mirrors that of the measures in 2020 in order to enable their speedy implementation without significant systems development on the part of employers, payroll providers and SARS. SARS further said that as noted when a similar comment was made with respect to the Disaster Management Tax Relief Administration Bill, 2020, automatic PAYE relief is targeted at small to medium sized businesses. SARS said that Gross income, which is a key requirement, is a poor measure of PBOs' size, since their receipts are often of a capital nature. It explained that PBOs may apply for case-by-case relief by SARS, where their actual circumstances can be properly considered. It further explained that the concept of a qualifying taxpayer is not used in the ETI relief measure.

5. COMMITTEE OBSERVATIONS

5.1. The Committee welcomes the amendments which are directed at improving SARS' administrative capacity, efficiency and enforcing compliance. The Committee believes that all public comments in the Bill were adequately responded to by SARS and supports this Bill.

6. CONCLUSION

6.1. The Standing Committee on Finance, having considered the Tax Administration Laws Amendment Bill [B23 - 2021] (National Assembly- section 75), referred to it, and classified by the JTM as a section 75 Bill, reports that it has agreed to the Bill. .

The Democratic Alliance (DA) reserves its position.

Report to be considered