**Report of the Standing Committee on Finance on the Tax Administration Laws Amendment Bill [B27B - 2022] (National Assembly- section 75), dated 16 November 2022**

The Standing Committee on Finance, having considered the Tax Administration Laws Amendment Bill [B27B - 2022] (National Assembly- section 75) referred to it, reports the Bill, with amendments, as follows:

1. **INTRODUCTION AND BACKGROUND**
	1. The Tax Administration Laws Amendment Bill (TALAB) was tabled in Parliament by the Minister of Finance on 26 October 2022, together with the 2022 Medium-Term Budget Policy Statement (2022 MTBPS). TALAB is an ordinary (section 75 of the Constitution) Bill dealing with tax administration.
	2. The tabling of this Bill was preceded by the publication of its draft version (Draft TALAB) on 29 July 2022, to solicit comments. It contained some tax announcements made in Annexure C of the 2022 Budget Review.
2. **PUBLIC PARTICIPATION**
	1. The Committee was briefed by National Treasury and SARS on the Draft TALAB on 23 August 2022 and held public hearings on 14 September 2022. On 21 September 2022, National Treasury and SARS presented their detailed responses to submissions received on the Draft TALAB to the Committee, addressing all the comments made during the public hearings and Committee briefings and deliberations.
	2. The National Treasury and SARS reported that they received 104 written submissions from the public and responded to these comments during their own consultation processes. They also hosted workshops which ran for two days on 8 and 9 September 2022.
	3. The Committee received written and oral submissions from the following organisations and/or individuals: South African Institute of Chartered Accountants (SAICA), South African Institute of Tax Practitioners (SAIT) PricewaterhouseCoopers (PwC).
3. **OVERVIEW OF THE TAX PROPOSALS IN THE TALAB**
	1. The 2022 TALAB seeks to amend:
		1. the Transfer Duty Act, 1949, so as to effect a consequential amendment;
		2. the Estate Duty Act, 1955, so as to effect a textual correction;
		3. the Income Tax Act, 1962, so as to effect a consequential amendment; to allow a regulated intermediary to recover refundable dividends tax from the Commissioner in certain instances; to make a textual correction; and to effect a technical correction;
		4. the Customs and Excise Act, 1964, so as to insert a definition and effect consequential changes related thereto; to effect technical corrections; to provide for the publication of advance rulings in certain circumstances; to enable the Commissioner to make rules for the time for submission of entries in respect of any types of cargo; to clarify a provision relating to particulars on invoices and to effect changes to other provisions consequential to this clarification to ensure consistency of wording relating to invoice particulars; to repeal an outdated provision; to insert a chapter providing for advance rulings in respect of the tariff classification, the application of a specific valuation criterion and the origin of goods of a specific class or kind and for related matters; to provide for consequential amendments relating to advance rulings; and to enhance the general enabling rule provision;
		5. the Value-Added Tax Act, 1991, so as to effect consequential amendments and insert a specific exception from registration for non-resident suppliers under certain circumstances;
		6. the Tax Administration Act, 2011, so as to amend a definition; to provide for the reduction of a penalty in certain circumstances; delete a recognised controlling body; to provide that the tax compliance status of a taxpayer must also include an indication that a taxpayer is a newly registered taxpayer as stipulated; and to clarify that SARS has the right to revoke third party access to a taxpayer’s tax compliance status under certain circumstances; and
		7. the Employment Tax Incentive Act, 2013, so as to classify employment tax incentive reimbursements as refunds for purposes of the Tax Administration Act, 2011, and specifically as refunds of tax for purposes of the understatement penalty provisions in terms of the Tax Administration Act, and to provide for matters connected therewith.
4. **KEY ISSUES RAISED IN THE PUBLIC HEARINGS**
	1. Most issues raised during the written submissions and public hearings under TALAB were on the Customs and Excise Act, 1964 and the Tax Administration Act, 2011. In this report, only the key issues raised are reported.

**CUSTOMS AND EXCISE ACT AMENDMENTS**

Insertion of definition of “invoice”

* 1. On the Customs and Excise Act, the issues raised were on the insertion of a definition of “invoice” and related reference changes (Main reference: section 1 of the Customs and Excise Act: clause 7). Comments were received on the definition of “invoice”, which SARS noted and offered to consider in the final Bill. SARS clarified that the intention of providing a definition was to avoid repetition and to ensure consistency in relation to wording referring to invoices or particulars on invoices in the Customs and Excise Act. It said that throughout the Act there are different words used when referring to an invoice, for example *“prescribed invoice”*, *“invoice as prescribed”*, *“correct and sufficient invoice”*, *“true, correct and sufficient invoice”* and *“relative prescribed invoice”*. It explained that the invoice itself cannot be prescribed by SARS because it is up to the seller what their actual invoice looks like. It further explained that SARS’ aim is to avoid qualifying “invoice” in every instance where it is used by stating additionally that it must be true, correct and sufficient for the purposes of a making a valid entry and contain any additional information as may be prescribed.

Insertion of Chapter IXA – Advance Rulings*.*

* 1. The key comments were on the “applicant’s tax matters to be in order” in order to obtain an advance ruling (Main reference: section 74B read with 74C of the Customs and Excise Act; clause 17). Commentators stated that an advance ruling should be a means of facilitating compliant trade. They contended that considering and resolving a person’s complete tax matters will hinder the applicant’s good intention of applying for a binding ruling to ensure future customs compliance. They added that an advance ruling should not be seen as an incentive for customs compliance but rather a tool to aid taxpayers to be compliant and to avoid further tax cases.
	2. They explained that if an applicant under the Tax Administration Act (TAA) wishes to apply for a ruling, they are required to have no outstanding payments in terms of a “tax Act” which as defined in the TAA, excludes customs and excise legislation. They said that this means that a party applying for a ruling in terms of the TAA could possibly have outstanding payments in respect of customs and excise legislation, and the ruling would still be granted. However, if an applicant under the proposed rulings system in Chapter IXA wishes to apply for a ruling, all their tax payments arising under any tax legislation need to be up to date in order to have their customs and excise advance ruling application considered. They argued that this unequal treatment could deter applicants from using the proposed ruling process, even applicants who have legitimate disputes with SARS regarding amounts demanded from them under the Customs and Excise Act. It was submitted that this proposed requirement be dropped or amended to only apply to outstanding customs and excise liabilities, and only in cases where the applicant is not legitimately disputing the liability with SARS.
	3. In its response, SARS explained that tax compliance is currently a requirement for registration, licensing and accreditation and will be verified on application for a binding ruling. Furthermore, an advance ruling benefits an applicant because it creates certainty due to its binding nature. It explained that the applicant must be tax compliant to obtain this benefit. It should be noted that tax compliance is not a requirement to obtain a determination. SARS said that the proposed amendment will, however, be adjusted to make provision for cases where arrangements acceptable to SARS have been made to file outstanding tax returns or pay outstanding tax debt.
	4. On the “applications for advance rulings limited to tariff, value and origin” **(**Main reference: section 74C of the Customs and Excise Act; clause 17), comments were received that this proposed provision should be amended to allow applications to be brought to obtain clarity, consistency and certainty regarding the interpretation and application of the Customs and Excise Act. It was explained that a substantial portion of customs and excise disputes with SARS arise due to disagreements on the interpretation of provisions of the Customs and Excise Act. It was further explained that the Internal Administrative Appeal (IAA) process is costly, time-consuming, and often fails to provide certainty on matters of interpretation. It was submitted that a system allowing for advance rulings on interpretational issues could assist with this issue and help reduce the burden on customs and excise Appeal Committees.
	5. It was argued that the narrow focus of the proposed system which only provides for rulings on tariff classification, customs valuation, and the origin of goods, means that the IAA process remains the only internal mechanism to resolve questions of interpretation under the Customs and Excise Act. The commentators submitted that wording like that governing the advance rulings system under Chapter 7 of the TAA could be incorporated into the proposed Chapter IXA of the Customs and Excise Act, to widen its ambit. Alternatively, the proposed Chapter IXA could incorporate wording like that of section 114A of the Customs and Excise Act, in terms of which a specific part of the TAA is deemed to apply to the Customs and Excise Act, with any necessary changes as the context may require. They added that the latter option is arguably the more elegant solution, and there is precedent for it in section 114A.
	6. SARS did not accept this submission and explained that advance rulings in the customs context should not be confused with advance rulings in the tax context, which relate to interpretation issues and specifically provide for SARS to reject ruling applications relating to the value of an asset. SARS explained that the reason for specifically enabling a system of advance rulings in respect of tariff, valuation and origin is South Africa’s commitment in terms of Article 3 of the World Trade Organisation Trade Facilitation Agreement. SARS explained further that Article 3 obliges member states to provide for a system of advance rulings for the tariff classification and origin of goods as well as on the appropriate method or criteria to be used for determining the customs value of goods. South Africa has committed to implementing such a system by 2028. It said that interpretation rulings are not foreseen at this stage but may be considered as the programme matures.
	7. On “Limiting applicants to importers and exporters”(Main reference: section 74C of the Customs and Excise Act; clause), commentators contended that the requirements may unnecessarily exclude certain applicants with legitimate interests. They submitted that applications should be allowed to be made on behalf of a "class" as this could allow entities representing diverse members who share common interests to approach SARS for rulings. They said that a broader array of applicants should be encouraged to apply for advance rulings on a wider variety of topics, and unnecessarily onerous restrictions should not be placed on applicants.
	8. SARS did not accept this proposal stating that the facility will only be available to applicants who are registered importers. It said that representatives authorised to do so may submit on behalf of individual applicants. SARS further explained that class rulings are not foreseen because the tax matters of the applicant, which is a requirement of registration, licensing and accreditation, will also be verified on application for a binding ruling. Furthermore, advance rulings relate to a client’s specific circumstances/goods. Although advance rulings in the tax context include class rulings, the distinction between customs and tax context above should again be noted.
	9. Another comment was that subsection (1) of this proposed provision will limit the person that may apply for an advance ruling to registered “importers and exporters” only, whereas there are other participants in the customs and excise arena that may benefit from the advance rulings process. Again SARS did not accept this submission, explaining that it is foreseen that registered importers will be the persons in the customs environment who will make application for advance rulings on tariff, value and origin. SARS said that changes would be effected to the provisions of the Draft TALAB to reflect this position. Representatives authorised to do so may submit applications on behalf of individual applicants.
	10. Other comments were on the following provisions: “Manner of submission of applications”; “Consideration of applications”; “Granting of an application”; “Validity period of advance ruling”; “Entry of goods under advance ruling”; “Recipient to advise Commissioner of change in circumstances”; “Offence contemplated in section 79”; and “Reference to “document purported to be an invoice” in sections 84, 86 and 107. SARS addressed all the comments, accepting some and rejecting some.

**TAX ADMINISTRATION ACT AMENDMENTS**

Imposition of understatement penalty (USP) for ETI

* 1. On the TAA, comments were received on the “Imposition of understatement penalty for employment tax incentives (ETI) improperly claimed” (Main reference: section 221 of the Tax Administration Act, 2011, read with section 10 of the Employment Tax Incentive Act, 2013 (ETI Act); clauses 26 and 29). Commentators stated that as it currently stands, the amendment will apply retrospectively to periods prior to the date on which the Bill comes into effect. It was argued that the provisions would seemingly place SARS in the position whereby an assessment raised prior to the implementation date could not impose USP for a certain tax period, monthly PAYE tax periods in the current instance, whereas an assessment raised on or after the implementation date could impose understatement penalties for that same tax period.
	2. It was submitted that the effect of the amendment should be that taxpayers that claimed the ETI in periods before the implementation date should face the same risk and should not be worse off or face additional understatement penalties, purely because of when they are audited and receive additional assessments. Consequently, the implementation date should be amended to state that the provisions will only come into operation on 1 March 2023 and will only apply to tax periods commencing on or after this date. SARS said that the effective date will be changed to indicate that the proposed amendment will apply to returns filed on or after 1 September 2022.
	3. Commentators said that the USP should only be imposed to the extent that the penalty under section 4(2) of the ETI Act is not also levied on the same amount. Section 4(2) levies a 100% penalty where the employer claims an ETI despite not being eligible in terms of section 4(1). They said that the USP imposed should therefore either be excluded in full if an ETI Act penalty was imposed or should apply similar to para 20(2B) of the Fourth Schedule to the Income Tax Act where the penalty imposed in the ETI Act is deducted from the understatement penalty amount. SARS accepted this submission and stated that the interaction between section 4(2) of the ETI Act and the USP will be clarified to ensure that there is no duplication of penalties.

Tax compliance status (TCS) system abuse

* 1. On “Tax compliance status system abuse” (Main reference: section 256 of the Tax Administration Act; clause 28), comments were received that in paragraph 2.28 of the Draft Memorandum of Objects of the Draft TALAB reference is made to the submission of so-called “nil returns” in order to appear compliant. This is a risk management matter for SARS, as there would surely be a risk indicator if a taxpayer applies for a tax compliance status (TCS) PIN, and nil returns have been submitted. The individual cases where this happens can therefore be investigated by SARS prior to penalising the taxpayer. SARS did not accept this submission explaining that the audit process requires a significant amount of time and involves a number of procedural steps which mean that the mischief intended by submitting nil returns will have been achieved by the time revised assessments can be issued.
	2. Commentators noted with concern the proposal to endorse TCS documents, and elsewhere, with a note to state that the taxpayer is a newly registered taxpayer. The commentators said that they understand that there are many instances of manipulation of the TCS system, mainly resulting in tender fraud, the risk will remain with the user of the TCS PIN. They said that in (almost) all instances, a taxpayer submitting a tender will have to submit their Companies and Intellectual Property Commission (“CIPC") registration documents, which will already indicate that the entity is newly registered and the user of the TCS PIN should be aware of this fact prior to contracting with the taxpayer. They raised concern that the endorsement will be used to prejudice newly registered SMMEs in applying for tenders. SARS did not accept this submission and explained that the indication of a taxpayer as a “newly registered taxpayer” will not prejudice newly registered SMMEs in any way if suppliers are already asking for this information at the time of applying for tenders. This information will in any event demonstrate that a taxpayer is a new taxpayer. SARS demonstrating this as part of the taxpayer’s TCS will have no further negative effect on the taxpayer.
	3. SARS explained further that a taxpayer’s TCS is based on actual history. The intention is that the indication whether a taxpayer is a “newly registered taxpayer” should only apply to the first date that a return would generally be required for the first tax for which the taxpayer is registered. After this date SARS would be able to determine whether the taxpayer in fact submitted a return or not, and therefore supply a tax compliance status based on actual history. If the taxpayer is not registered for a particular tax, this provision will not apply to that tax.
	4. SARS said that changes will be made to address the challenge that may be encountered by dormant companies registered for corporate income tax that are not required to submit provisional tax returns (these companies are only required to submit a return within one year after the financial year end of the company) or individuals registered for personal income tax that fall within the auto-assessment population (i.e. they are not required to submit returns at all). It said that the proposed wording will be changed to indicate that a taxpayer will no longer be regarded as a “newly registered taxpayer” on the *earlier of* the following three events:
		+ The taxpayer has reached the first date on which the taxpayer is required to submit a return or make a payment under a tax Act, in respect of a tax for which the taxpayer is registered;
		+ The taxpayer has submitted a return or made a payment, prior to the first date on which the taxpayer is required to submit a return or make a payment as mentioned; or
		+ A period of one year from the date the taxpayer was registered for a tax in terms of a tax Act has lapsed.
	5. Another comment was received that the ability to revoke access to compliance status can have far-reaching consequences for taxpayers, including a restraint on its ability to conduct business. This power is afforded to SARS in general and is not reserved for senior SARS officials. The ability to revoke access to the compliance status in the case of fraud, misrepresentation or non-disclosure of material facts or the suspicion thereof should be reserved for senior SARS officials. SARS accepted this submission explaining that the proposed legislation will be changed to reserve the power to revoke the access for a senior SARS official.
1. **COMMITTEE OBSERVATIONS**
	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 on the Draft TALAB were adequately responded to by SARS and the Committee supports the Bill.
2. **CONCLUSION**
	1. The Committee agrees with technical amendments proposed in the A list of the Bill as presented to the Committee on 16 November 2022.
	2. The Committee reports the Bill [B27B-2022].

The Democratic Alliance (DA) reserves its position.

Report to be considered.