

7. Report of the Standing Committee on Finance on the Tax Administration Laws Amendment Bill [B37 - 2023] (National Assembly- section 75), dated 22 November 2023.

The Standing Committee on Finance, having considered the Tax Administration Laws Amendment Bill [B37 - 2023] (National Assembly- section 75) referred to it, 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 01 November 2023, together with the 2023 Medium-Term Budget Policy Statement (2023 MTBPS). TALAB is an ordinary (section 75 of the Constitution) Bill dealing with tax administration.

1.2. The tabling of this Bill was preceded by the publication of its draft version (Draft TALAB) on 29 July 2023, to solicit comments. It contained some tax announcements made in Annexure C of the 2023 Budget Review.

2. PUBLIC PARTICIPATION

2.1. The Committee was briefed by NT and SARS on the Draft TALAB on 29 August 2023 and held public hearings on 19 and 20 September. On 25 October, NT and SARS presented their detailed responses to submissions, addressing all the comments made during the public hearings and Committee briefings and deliberations.

2.2. NT and SARS reported that they received written comments from 84 organisations and 258 individuals and responded to these comments during their own consultation processes. They also hosted workshops which ran for three days from 6 to 8 September 2023.

2.3. 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), Business Unity South Africa (BUSA), Futuregrowth, SAPOA, SAIPA, Sandra Cee, South African Breweries (SAB), PPS Investments, PKF Durban, Old Mutual, Coronation, and ASISA.

3. SUMMARY AND OVERVIEW OF THE TAX PROPOSALS IN THE TALAB

3.1. The Tax Administration Laws Amendment Bill (TALAB) aims to revise several South African tax-related laws and regulations to enhance tax administration, transparency, and compliance with international anti-money laundering and counter-terrorism financing standards. TALAB encompasses amendments to various acts, including the Income Tax Act, Customs and Excise Act, Value-Added Tax Act, and Tax Administration Act, aiming to address several critical matters. This summary provides an overview of the proposed amendments and their objectives.

3.2. Summary of Amendments to the Income Tax Act, 1962:

- Making specific decisions subject to objection and appeal.
- Clarifying existing provisions.
- Disqualifying certain individuals from managing collective interests common to specific associations.
- Disqualifying certain persons from accepting fiduciary responsibility for particular organizations and clubs.
- Introducing provisions for advance pricing agreements with taxpayers.
- Providing that non-resident employers that conduct business through a permanent establishment in the Republic must deduct employees' tax.
- Allowing the Commissioner to vary the basis for determining employees' tax in specific cases.

3.2.1. Amendment of Section 3:

- Introducing amendments regarding issuing reduced or additional assessments, particularly for foreign tax rebates or deductions.
- Empowering taxpayers to object or appeal SARS decisions not to issue reduced assessments.
- Extending similar provisions to decisions under other sections, like section 11D(20).

3.2.2. Amendment of Section 6quat:

- Clarifying prescription provisions related to issuing reduced or additional assessments for foreign taxes paid.

3.2.3. Amendment of Section 10:

- Aligning with the National Strategy on Anti-Money Laundering, Counter-Terrorism Financing, and Countering the Financing of Proliferation (AML/CTF/CFP).
- Introducing disqualification grounds for tax-exempt associations and procedures for removing disqualified office-bearers.

3.2.4. Amendment of Section 11D:

- Aligning wording with other sections to clarify when the Commissioner may issue reduced or additional assessments after specified periods.

3.2.5. Amendment of Section 12I:

- Aligning the wording in Section 12I(14) with provisions on issuing reduced or additional assessments after prescription periods.

3.2.6. Amendment of Section 30, 30A, 30B and 30C:

- Specifying that only natural persons can accept fiduciary responsibility for certain organizations and providing for disqualification of certain office bearers from accepting fiduciary responsibility.

3.2.7. Insertion of Part IA in Chapter III:

- Introducing the framework for an advance pricing agreement (APA) program.

- Empowering taxpayers with more certainty in international transactions with transfer pricing implications.

3.3. Summary of Amendments to the Customs and Excise Act, 1964:

- Changes related to the submission of advance passenger information by operators.
- Exempting specific operators from submitting passenger data under certain conditions.
- Allowing traveler declarations **prior to** or upon entering or leaving the Republic.
- Empowering the Commissioner to determine deferment conditions for payment of duties.
- Enhancing processes for liquidation of provisional payments.

3.3.1. Amendment of Section 7A:

- Introducing a single window concept for collecting advance passenger and passenger name record information.
- Exempting operators from transmitting data to the Commissioner if shared with the Department of Home Affairs.
- Expanding the requirement for transmitting passenger data to operators of prescribed conveyances.

3.3.2. Amendment of Section 15:

- Allowing travelers to submit declarations prior to or upon entry or exit.
- Requiring declaration of currency exceeding a prescribed threshold.

3.3.3. Amendment of Section 39:

- Empowering the Commissioner to prescribe rules for deferment of duties.

3.3.4. Amendment of Section 76:

- Provision for the liquidation of provisional payments serving as security.

3.3.5. Amendment of Section 101B:

- Aligning the definition of "personal information" with the Protection of Personal Information Act, 2013.

3.3.6. Amendment of Section 120:

- Empowering the Commissioner to make rules related to various aspects, including traveler management, deferment of duty, and liquidation of provisional payments lodged as security.

3.4. **Technical correction to the Value-Added Tax Act, 1991**, due to the repeal of section 44(1).

3.5. **Consequential amendment in the Mineral and Petroleum Resources Royalty (Administration) Act, 2008**, related to proposed changes in the Taxation Laws Amendment Bill, 2023.

3.6. **Summary of Amendments to the Tax Administration Act, 2011:**

- Inclusion of a definition for beneficial ownership.
- Disclosure of certain information of entities with section 18A approval.
- Disclosure of taxpayer information to specific state authorities.
- Extension of the period for taxpayers to request reduced or additional assessments by public notice.
- Disqualification of certain persons from being appointed as a public officer of a company.

3.6.1. Amendment of Section 1:

- Insertion of a definition of "beneficial owner" in line with AML/CTF/CFP standards.

3.6.2. Amendment of Section 69:

- Allowance for the disclosure of entities with section 18A approval.

3.6.3. Amendment of Section 70:

- Permitting the disclosure of taxpayer information to specific authorities for cross-verification of beneficial ownership information.

3.6.4. Amendment of Section 80:

- Alignment with previous amendments in section 31 of the Income Tax Act concerning "associated enterprises."

3.6.5. Amendment of Section 95:

- Empowerment of the Commissioner to extend the period for taxpayers to request reduced or additional assessments.
- Clarification of the intent behind a previous amendment to the section.

4. KEY ISSUES RAISED IN THE PUBLIC HEARINGS

4.1. Most issues raised during the written and oral submissions were on all the related tax legislation being amended, as reported below. Only the key issues raised are reported.

CUSTOMS AND EXCISE ACT: ADMINISTRATION

4.2. In brief, submissions on the proposed Customs and Excise Act amendments conveyed overall support for the initiatives and a keen interest in forthcoming rules linked to the single window concept and related proposals. SARS acknowledged these submissions and assured that rules associated with these amendments would be publicly available for comment in the future. Additionally, the effective date of these changes would be aligned with the Department of Home Affairs.

INCOME TAX ACT: ADMINISTRATION

Alignment with Anti-Money Laundering and Terrorism Combatting Measures

4.3. The proposed amendments regarding anti-money laundering and counter-terrorism financing are aligned with the National Strategy and establish consistent grounds for the

disqualification of tax-exempt entities. Subsequent clarifications and adjustments in response to stakeholder feedback aim to enhance the effectiveness and lucidity of these legislative changes.

- 4.4. To adhere to the National Strategy on Anti-Money Laundering, Counter-Terrorism Financing, and Counter-Financing of Proliferation (AML/CTF/CFP) and adhere to the Financial Action Task Force (FATF) Mutual Evaluation Report (MER) action plan, Parliament enacted the Anti-Money Laundering and Combating Terrorism Financing Amendment Act, 2022 (the General Laws Amendment Act (GLA Act)).
- 4.5. Amendments to the Income Tax Act are being made to harmonize it with the AML/CTF/CFP strategy, ensuring uniformity with the GLA Act. These changes encompass disqualification grounds for tax-exempt entities, including individuals serving as office-bearers within such organizations. Disqualified office-bearers can be removed, and if a tax-exempt entity appoints a disqualified person and fails to address this non-compliance, the Commissioner can withdraw the entity's approval.
- 4.6. Stakeholders recommended amending the legislation to specify that only natural persons can assume fiduciary responsibility for public benefit organizations, recreational clubs, and certain dedicated associations. They also suggested aligning the definition of "person" in sections 30, 30A, and 30B with the one in section 30C for consistency.
- 4.7. SARS acknowledged this proposal and indicated that the draft Taxation Laws Amendment Bill already contains amendments aiming to clarify the acceptance of fiduciary responsibility by natural persons for the mentioned entities. These proposed amendments will be incorporated into the draft TALAB as they address administrative matters.
- 4.8. Stakeholders raised concerns regarding the use of a "similar" clause in various sections to impose disqualification and sought clarification on the scope of disqualified persons, including whether it applies to executive/top management. SARS accepted the request for

clarification on the scope of disqualified persons and intends to amend the legislation to provide clarity, encompassing anyone accepting fiduciary responsibility within the organization or entity.

- 4.9. Stakeholders also suggested that individuals holding a fiduciary position must notify the entity within 7 days of becoming disqualified to protect the entity's tax exemption. SARS clarified that this submission of notifying the entity within 7 days is misplaced, as disqualified fiduciary office holders should resign immediately to comply with the law, making additional legislative duties on notification unnecessary.

Insertion of an Advance Pricing Agreement Programme

- 4.10. The proposed introduction of the Advance Pricing Agreement (APA) program aligns with SARS' strategic goal of enhancing clarity and certainty for taxpayers, fostering voluntary compliance. It complements the existing Advance Tax Rulings (ATR) system, which addresses the tax implications of domestic transactions.
- 4.11. Stakeholders expressed concern about the confidentiality of agreed APAs and requested guidance on how SARS would ensure the confidentiality of these agreements. They also sought clarification on instances where external industry experts might assist in the APA process.
- 4.12. SARS responded by noting that APA information would be considered taxpayer information, safeguarded by the secrecy provisions of the Tax Administration Act, 2011. SARS would adhere to these secrecy provisions and uphold double taxation agreement confidentiality for bilateral and multilateral APAs. Regarding engaging external industry experts, SARS explained that it would be constrained by the secrecy provisions but was open to limited external expertise from the transfer pricing community. SARS emphasized building internal capacity for the APA program.

- 4.13. Stakeholders recommended the inclusion of unilateral APAs in the program. SARS partially accepted this proposal, explaining that the APA program was designed in alignment with OECD transfer pricing principles advocating bilateral and multilateral APAs as best practices. Unilateral APAs might be considered later, with corresponding changes to the draft Bill to enable them.
- 4.14. Stakeholders noted that the APA program's scope appeared too narrow, excluding simple transactions, and suggested starting with simpler cases to establish standards. They also advised extending the bilateral limit and giving SARS full discretion in choosing cases.
- 4.15. SARS partially accepted these recommendations and proposed changing the criteria and rejection of APA applications by public notice, allowing the program's expansion over time. SARS emphasized compliance with Best Practice 5 of the OECD for completing bilateral APA applications.
- 4.16. Stakeholders raised concerns about time periods within the draft APA legislation. Some suggested shortening time periods in the pre-application process, while others called for extensions in certain instances. SARS partially accepted these recommendations, proposing a flexible approach similar to the ATR system, with turnaround times based on published service standards.
- 4.17. Stakeholders inquired about the fee structure for APAs, requesting early disclosure to alleviate concerns. SARS acknowledged this request and explained that fees for each stage, including the processing fee, would be clarified in a public notice released for public comment.
- 4.18. Stakeholders sought clarity on the process if SARS rejected an APA application and the taxpayer disagreed. SARS partially accepted this recommendation and indicated that an engagement process like the ATR system would be considered.

- 4.19. Stakeholders requested clarification on using information disclosed during the APA application process. SARS committed to drawing on its experience with the ATR system and voluntary disclosure program to address these concerns.
- 4.20. Stakeholders recommended removing the provision in section 76O that allows termination of an APA if a court overturns or modifies an interpretation of the legislation. SARS did not accept this proposal, emphasizing the importance of SARS' right to terminate APAs under specific circumstances. Section 76O aims to maintain administrative transparency and address international concerns about base erosion and profit shifting.

Non-resident employers' obligation to deduct employees' tax.

- 4.21. The proposed amendment intends to eliminate the differentiation between resident and non-resident employers, mandating all employers (resident or foreign) to withhold employees' tax (PAYE). Additionally, the scope of deduction obligations extends to all representative employers, ensuring that non-resident employers are also required to deduct PAYE. These changes aim to create parity between resident and non-resident employers and ensure alignment with skills development levies and unemployment insurance contributions, which many employers are already complying with.
- 4.22. Stakeholders indicated that the current structure of the employees' tax system in South Africa makes provision for South African-based employees without a representative employer in South Africa to pay taxes through the provisional tax system. They questioned the need for introducing an amendment that imposes significant administrative burdens on foreign companies, such as registration as an employer, PAYE deduction and payment, skills development levies, and unemployment insurance fund contributions for local employees. Stakeholders argued that the existing provisional tax system addresses these requirements.

- 4.23. SARS partially accepted this feedback, indicating that changes would be made to limit the obligation of withholding employees' tax to non-resident employers conducting business through a permanent establishment in South Africa. This adjustment is expected to reduce the administrative burden on non-resident employers in general and will only apply to non-resident employers engaged in business activities within South Africa.
- 4.24. Stakeholders also raised concerns about the impact of the proposed amendment on the global labor market, particularly in the context of the increasing prevalence of "remote/hybrid" work arrangements. They pointed out that this amendment could impose an additional administrative burden on global employers, potentially making South African labor resources less attractive. Given the high unemployment rate in South Africa, they were concerned that this change might hinder South African residents' participation in the global labor market. In response, SARS partially accepted these concerns and explained that changes would be introduced to require non-resident employers conducting business through a permanent establishment in South Africa to withhold employees' tax. This adjustment aims to reduce the administrative burden on non-resident employers in general.
- 4.25. Stakeholders questioned the practicality of implementing the proposed amendment, especially for offshore employers without business activities or a presence in South Africa. They emphasized that non-resident employers would now be required to register with SARS as employers and account for payroll taxes on remuneration paid to employees living and working in South Africa. This would also include individuals who remain South African tax residents but work as employees outside South Africa. In response, SARS accepted this feedback, acknowledging that the changes to be introduced would relieve non-resident employers without a business presence in South Africa from withholding employees' tax.

- 4.26. Stakeholders highlighted that the proposed amendment lacked a "trigger clause" that would activate the requirement for withholding PAYE and did not specify the criteria for a non-resident employer to be subject to registration and withholding requirements in South Africa. SARS accepted this feedback, and changes would be implemented to limit the obligation to withhold employees' tax to non-resident employers conducting business through a permanent establishment in South Africa.
- 4.27. Stakeholders proposed a further amendment to the definition of "employer" contained in the Fourth Schedule, in addition to the proposed amendment to paragraph 2 of the Fourth Schedule. They recommended the insertion of a "carve-out" for foreign employers with South African tax-resident employees living and working outside South Africa on a full-time basis. In response, SARS did not accept this proposal, as the proposed changes would already relieve non-resident employers without a permanent establishment in South Africa from withholding employees' tax.
- 4.28. Stakeholders also suggested that in cases where a South African tax-resident employee is physically based abroad, working for a foreign employer, and is in South Africa for a limited number of days (e.g., thirty days in aggregate), a "de minimis" rule should be introduced. They further recommended that a de minimis should apply when a non-resident employee is physically present in South Africa for less than 183 days in a year of assessment, in alignment with the taxing rights under a double taxation agreement. SARS did not accept this proposal, as the proposed changes would already address these concerns and relieve non-resident employers without a permanent establishment in South Africa from withholding employees' tax.
- 4.29. Lastly, stakeholders recommended postponing the implementation of the amendment for a year until 1 March 2025. They emphasized the need for extensive consultation with stakeholders during this interim period before finalizing the proposed amendment.

Additionally, they urged the creation of practical employer registration requirements for foreign employers, suggesting that these requirements should be efficient and less onerous than the existing registration and deregistration requirements. SARS did not accept this proposal, as the changes to be introduced would already alleviate the concerns and relieve non-resident employers without a permanent establishment in South Africa from withholding employees' tax.

TAX ADMINISTRATION ACT AMENDMENTS

Insertion of a definition for Beneficial Owner

- 4.30. The insertion of a definition for "beneficial owner" in the Tax Administration Act aims to align with the National Strategy on Anti-Money Laundering/Counter-Terrorist Financing/Counter-Proliferation Financing (AML/CTF/CPF). This alignment seeks to create a national integrated, interoperable, and harmonized beneficial ownership (BO) framework that includes BO registries and other sources, providing timely access to law enforcement and other competent authorities, including SARS. The objective is to ensure access to reliable legal ownership and BO information in accordance with the Financial Action Task Force (FATF) BO standards and Immediate Outcome 5 of the action plan.
- 4.31. BO information is essential for effective tax administration as it enhances transparency and accountability in financial transactions. It enables tax authorities to identify the individuals who ultimately benefit from assets or income, thereby facilitating the accurate determination of tax liabilities and the prevention of tax evasion. This information is also valuable for other competent authorities in investigating money laundering and illicit activities. Additionally, BO information supports international cooperation and the exchange of tax-related information among jurisdictions, which is crucial for detecting and addressing cross-border tax evasion.

- 4.32. Stakeholders welcomed the insertion of a definition for "beneficial owner" in the Tax Administration Act but raised concerns about its application. They noted that the definition appears to be standalone and not explicitly used in the Tax Administration Act. Stakeholders also emphasized the need for uniformity in requesting beneficial ownership information for trusts by various authorities, including the Master of the High Courts' Office, SARS, and the Financial Intelligence Centre (FIC).
- 4.33. In response, SARS noted the feedback and explained that BO information would be prescribed in a return under section 25(2) or 26(2) of the Tax Administration Act. These sections require a return to contain the prescribed information and be a full and accurate return. SARS clarified that the proposed amendments ensure consistent interpretation of BO in line with foundational legislation and international standards, such as FATF Recommendation 10.
- 4.34. Stakeholders expressed concerns about the potential interpretation challenges for the proposed definition of "beneficial owner" for partnerships. They highlighted that the definition in the Financial Intelligence Centre Act, 2001, included terms defined solely for the Act's purposes, such as "client." SARS accepted this feedback and committed to making changes to the proposed definition to address these concerns.
- 4.35. Stakeholders raised the issue of the existing different channels for lodging beneficial ownership information and called for centralization of this reporting function due to its time-consuming nature. SARS did not accept this recommendation and explained its commitment to implementing new transparency requirements for beneficial owners of companies and legal arrangements, including trusts and partnerships. The BO information would be kept in a repository, functioning as a Tier 2 replicator BO registry within the planned National BO registry framework. This approach aligns with the National Strategy on AML/CTF/CPF and FATF recommendations, which emphasize a multi-pronged

approach for efficient access to BO information by competent authorities. This approach also ensures information accuracy and timeliness by cross-referencing BO information held by other entities such as CIPC and the Master of the High Court.

Extension of period to request an additional or reduced assessment

- 4.36. SARS was empowered to make assessments based on estimates when a taxpayer failed to submit a return, and taxpayers could request reduced or additional assessments within 40 days from the date of the assessment by submitting a true and full return. The proposed amendment allows the Commissioner to extend this 40-day period by public notice to ensure it aligned with the filing season for non-provisional taxpayers.
- 4.37. One submission suggested that the amendment did not achieve its intended retroactive result, emphasizing that auto-assessments did not legally fall under Section 95 as it applied to non-compliant taxpayers and imposed a harsher process. The stakeholder recommended withdrawing the amendment.
- 4.38. SARS rejected the recommendation, explaining that the auto-assessment initiative was launched in 2020, and the amendment was aimed at supporting and enhancing this initiative. The changes in Section 95 in 2020 allowed SARS to issue assessments based on estimates even when no tax was due or a refund was due to the taxpayer, easing the compliance burden. SARS further assured that the auto-assessment process did not deny taxpayers their rights and remedies.
- 4.39. The stakeholder submission stated that Section 95(6) did not empower the Commissioner to issue a "notice to submit a return" as Section 25 did. The proposal only extended the period for taxpayers to request to submit a return but did not extend the submission date based on a public notice. SARS clarified that Sections 25 and 95(6) were separate provisions with different purposes and should not be conflated. The amendment's intention was to ensure that the date for taxpayers to request reduced or additional

assessments aligned with the date for filing non-provisional returns specified by public notice.

4.40. Stakeholders submitted that applying Section 95 for auto-assessments required compliance with Section 96, including providing grounds for the assessment. They recommended specifying additional grounds or information for the assessment. SARS responded by stating that the assessment already contained the necessary grounds and information. Taxpayers could access more detailed information on eFiling, including third-party tax certificates. The stakeholder was encouraged to provide specific suggestions through recognized controlling bodies if additional grounds or information were needed.

4.41. Stakeholders raised concerns about Section 95(8) deeming the date of assessment for objection purposes as the date of the auto-assessment, not the date of the decision under Section 95(6). The stakeholder recommended amending Section 95(8) to reflect the actual date of the Section 95(6) decision. SARS partially accepted this recommendation and explained that the previous amendment had already changed the date of assessment to be the date of the decision under Section 95(6). SARS would propose a further amendment to ensure clarity in this regard.

4.42. Stakeholders noted that errors in auto-assessments had occurred, resulting from incomplete or incorrect information provided by third parties for SARS's system. This practice penalized taxpayers for others' mistakes and prevented them from submitting correct information, potentially leading to punitive consequences.

4.43. SARS pointed out the high acceptance rate of auto-assessments by taxpayers of 94.7%. While SARS continued to engage with third-party data providers to improve data quality, it may consider penalties for inaccurate data providers. SARS also noted that when taxpayers provided conflicting information, they might face verification or audit, emphasizing the importance of addressing inaccuracies with third-party data providers.

5. COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

5.1. The Committee welcomes the amendments which are directed at improving SARS' administrative capacity, efficiency and enforcing compliance. The Committee conducted a robust and thorough legislative process of the proposed amendments to TALAB, taking into consideration the submissions and comments made by various stakeholders, as well as the responses provided by SARS. The Committee's observations and recommendations on the proposed amendments are outlined below.

CUSTOMS AND EXCISE ACT AMENDMENTS - ADMINISTRATION

- 5.2. Stakeholders submitted comments expressing overall support for the proposed amendments to the Customs and Excise Act. There is a keen interest from stakeholders in the forthcoming rules related to the single window concept and related proposed amendments to the Customs and Excise Act.
- 5.3. In this regard, the Committee notes and appreciates the overall support for the Customs and Excise Act amendments.
- 5.4. It is recommended that SARS actively engages with stakeholders and ensures that the rules associated with the single window concept and related provisions are developed in a transparent and inclusive manner.
- 5.5. These rules should be made publicly available for stakeholders' input and feedback before finalization.
- 5.6. The alignment of the effective date of these changes with the Department of Home Affairs is a positive step and should be maintained to ensure consistency and coordination in implementation.
- 5.7. Close collaboration between SARS and relevant government departments is encouraged to facilitate the smooth implementation of these amendments.

INCOME TAX ACT: ADMINISTRATION

Alignment with Anti-Money Laundering and Terrorism Combatting Measures

- 5.8. The Committee notes and welcomes that the proposed amendments seek to align with the National Strategy on AML/CFT/CFP. The introduction of a definition for "beneficial owner" is intended to ensure compliance with international standards for transparency and accountability. These are therefore important and welcome amendments as South Africa aims to exit the grey list of FATF.
- 5.9. The Committee recognizes the importance of aligning with international measures to prevent financial crimes. It is recommended that SARS continues to work closely with relevant authorities to ensure that the implementation of these measures is effective and consistent with international standards.
- 5.10. The Committee supports the inclusion of the definition for "beneficial owner" and recommends that SARS provides clear and practical guidance to stakeholders on how to adhere to these AML, CFT, and CFP measures.
- 5.11. Close cooperation between SARS, the Financial Intelligence Centre, and other competent authorities is crucial to ensure that South Africa becomes compliant with international standards, effectively combats and prosecutes financial crimes, and exits FATF's grey list.

Insertion of an Advance Pricing Agreement Programme

- 5.12. The proposed amendment introduces the Advance Pricing Agreement (APA) program in line with SARS' strategic goal of enhancing clarity and certainty for taxpayers. Stakeholders expressed concerns about the confidentiality of agreed APAs and sought guidance on how SARS would ensure confidentiality. SARS responded by stating that APA

information would be considered taxpayer information, safeguarded by the secrecy provisions of the Tax Administration Act.

5.13. The Committee acknowledges the importance of introducing the APA program to enhance transparency and compliance. The Committee notes all the submissions made by stakeholders and responded to comprehensively by SARS. The Committee makes the following recommendations:

5.14. SARS should ensure that the confidentiality of agreed APAs is maintained, with a focus on safeguarding taxpayer information.

5.15. SARS should provide guidance on how it will uphold double taxation agreement confidentiality for bilateral and multilateral APAs.

5.16. For instances where external industry experts might assist in the APA process, the Committee suggests a balanced approach, considering secrecy provisions while allowing limited external expertise.

5.17. The inclusion of changes to permit unilateral APAs at a later stage, as recommended by stakeholders are welcomed subject to existing international best practice.

5.18. SARS should consider broadening the scope of the APA program to include simpler transactions and establish standards.

5.19. Flexibility in time periods within the draft APA legislation, similar to the ATR system, should be maintained to accommodate various situations.

5.20. SARS should disclose the fee structure for APAs early to alleviate stakeholders' concerns.

5.21. An engagement process similar to the ATR system should be established for cases where SARS rejects an APA application, and the taxpayer disagrees.

- 5.22. SARS should leverage its experience with the ATR system and the voluntary disclosure program to address concerns related to using information disclosed during the APA application process.
- 5.23. The provision in section 76O allowing termination of an APA if a court overturns or modifies an interpretation of the legislation should be maintained to ensure administrative transparency and address international concerns about base erosion and profit shifting.

Non-resident Employers' Obligation to Deduct Employees' Tax

- 5.24. The Committee acknowledges the proposed amendments to eliminate differentiation between resident and non-resident employers and recommends a focused approach to reduce the administrative burden on non-resident employers.

TAX ADMINISTRATION ACT

Insertion of Definition of Beneficial Ownership

- 5.25. The Committee welcomes the introduction of a definition for "beneficial owner" in the Tax Administration Act as a pivotal step in aligning South Africa with international standards as outlined in the National Strategy on AML/CTF/CPF.
- 5.26. This alignment seeks to establish a unified national framework for beneficial ownership (BO) that encompasses BO registries and other data sources. The primary objective is to ensure timely access to this information for law enforcement and relevant authorities, including SARS, in line with FATF BO standards and Immediate Outcome 5 of the action plan.
- 5.27. The Committee notes that BO information will play a critical role in effective tax administration, enhancing transparency and accountability in financial transactions. It will equip tax authorities to identify the ultimate beneficiaries of assets or income, facilitating precise determination of tax liabilities and serving as a deterrent against tax evasion.

- 5.28. Furthermore, this information could prove invaluable to other competent authorities investigating money laundering and illicit financial activities. It will also support international collaboration and the exchange of tax-related information among jurisdictions, which is essential for detecting and addressing cross-border tax evasion.
- 5.29. The Committee notes that while stakeholders have expressed their approval of the "beneficial owner" definition's inclusion in the Tax Administration Act, concerns have been raised about its practical application. The definition appears to stand alone and is not explicitly incorporated into the Tax Administration Act. Stakeholders have emphasized the importance of consistency in the procedures for requesting beneficial ownership information for trusts, particularly from various authorities, including the Master of the High Courts' Office, SARS, and the Financial Intelligence Centre (FIC).
- 5.30. In response to these concerns, SARS has clarified that BO information will be prescribed in a return under section 25(2) or 26(2) of the Tax Administration Act. These sections mandate that a return should contain the prescribed information and be comprehensive and accurate.
- 5.31. The Committee notes SARS' assurance to stakeholders that the proposed amendments are designed to ensure a uniform interpretation of BO, aligning South Africa with foundational legislation and international standards, such as FATF Recommendation 10.
- 5.32. Stakeholders have raised concerns about the potential interpretation challenges presented by the proposed definition of "beneficial owner" for partnerships. They have noted that the definition in the Financial Intelligence Centre Act, 2001, includes terms defined solely for the purposes of that Act, such as "client."
- 5.33. The Committee notes further that SARS has acknowledged this feedback and pledged to make the necessary adjustments to the proposed definition to adequately address these concerns.

- 5.34. Stakeholders, during public hearings, highlighted the existing disparate channels for submitting beneficial ownership information and have called for the centralization of this reporting function due to its time-consuming nature. However, SARS has not accepted this recommendation. Instead, SARS has outlined its commitment to implementing new transparency requirements for beneficial owners of companies and legal arrangements, including trusts and partnerships.
- 5.35. The BO information will be housed in a repository, serving as a Tier 2 replicator BO registry within the planned National BO registry framework. This approach aligns with the National Strategy on AML/CTF/CPF and FATF recommendations, which emphasize a multifaceted approach to ensure efficient access to BO information by competent authorities. This approach also ensures information accuracy and timeliness by cross-referencing BO data held by other entities, such as CIPC and the Master of the High Court.
- 5.36. The inclusion of the "beneficial owner" definition in the Tax Administration Act is a critical step toward aligning South Africa with international AML/CTF/CPF standards, and it offers significant benefits for tax administration and financial transparency.
- 5.37. The practical application and incorporation of the "beneficial owner" definition within the Tax Administration Act need continuous refinement to ensure its effective use.
- 5.38. Consistency in requesting beneficial ownership information for trusts is essential to avoid discrepancies between authorities.
- 5.39. SARS should provide clear guidelines and practical measures for implementing the "beneficial owner" definition within the Tax Administration Act, ensuring its consistent use and interpretation.
- 5.40. Efforts should be made to harmonize procedures for requesting beneficial ownership information for trusts among relevant authorities to promote consistency and efficiency.

5.41. The Committee acknowledges the importance of this amendment and recommends continuous refinement and transparency in its implementation, with a focus on ensuring consistency, clarity, and efficiency in the collection and use of beneficial ownership information.

Extension of the Period to Request an Additional or Reduced Assessment

5.42. The Committee acknowledges the importance of streamlining the tax assessment process, appreciating the steps taken through the auto-assessment initiative. To address stakeholder concerns, it is recommended that SARS conducts a thorough review of the auto-assessment process to ensure fairness and accuracy, particularly regarding inaccuracies from third-party data. Ongoing stakeholder engagement should be prioritized to enhance the system while safeguarding taxpayer interests.

5.43. SARS should monitor its mechanisms for promptly resolving disputes arising from auto-assessments. Ensuring adherence to principles of administrative justice is essential, with responses provided within reasonable timeframes, tailored to each case's complexity.

5.44. Clear and accurate communication and guidance are imperative to ensure taxpayers possess a comprehensive understanding of the auto-assessment process and their associated rights. Addressing inaccuracies originating from third-party data providers is vital, and penalties for inaccurate data providers should be considered.

5.45. A clear distinction should be established between Section 25 and Section 95(6), ensuring stakeholders have a precise comprehension of their respective purposes and how they interrelate.

5.46. It is recommended that the proposed amendment in Clause 28 progresses, contingent upon SARS effectively addressing the concerns and recommendations outlined above.

CONCLUSION

5.47. The Committee supports the proposed amendments to TALAB while emphasizing the need for transparency, fairness, and uniformity in their implementation. The Committee emphasizes close collaboration between SARS and stakeholders to address concerns, provide guidance/guidelines and improve the effectiveness and efficiency of the tax administration system. The aim is to ensure that the proposed amendments benefit both taxpayers and the broader national interest.

5.48. The Committee reports the Bill without amendments.

The Democratic Alliance and the Economic Freedom Fighters reserve their positions not to vote on the Bill.

Report to be considered.