

# TAX & EXCHANGE CONTROL

## ALERT

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#### More or less admin? A closer look at some of the 2022 TALAB proposals

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Following on from our Tax & Exchange Control alerts of [4 August 2022](#) and [19 August 2022](#), in today's alert, we discuss two of the amendments included in the Draft Tax Administration Laws Amendment Bill (2022 Draft TALAB), pertaining to understatement penalties (USPs) and the tax compliance status (TCS) provisions.

### **UNDERSTATEMENT PENALTIES AND THE EMPLOYMENT TAX INCENTIVE**

In our [2022 Special Edition Budget Speech Alert](#), we explained that the rationale behind the introduction of the employment tax incentive (ETI) in 2014, was to address high rates of unemployment among South Africa's youth. However, after potential abuse of the ETI was identified, amendments were made to the ETI legislation in 2021, which came into effect earlier this year. Following this, a further amendment is proposed, which would affect employers who claim the ETI, and whose ETI claims are audited by the South African Revenue Service (SARS).

The Draft Memorandum on the Objects of the Draft Tax Administration Laws Amendment Bill, 2022 (Draft Memo), states that in view of the abuse of the ETI that has been encountered it is proposed that the Employment Tax Incentive Act 26 of 2013 (ETIA) be amended to facilitate the imposition of USPs on ETI reimbursements improperly claimed. It notes this would be achieved by classifying ETI reimbursements as refunds for purposes of the Tax Administration Act 28 of 2011 (TAA), and specifically as refunds for tax purposes of the USP provisions.

In terms of the 2022 Draft TALAB, section 221 of the TAA and section 10 of the ETIA are proposed to be amended, with effect from 1 September 2022, meaning that the proposed amendment will apply retrospectively. It is unclear whether SARS will interpret this provision to mean that USPs can be imposed where any additional assessment is issued after the implementation date,

or whether it will only apply where the ETI is claimed from 1 September 2022 onwards - it is hoped that this is clarified. It would be unreasonable, if after the amendment, employers who claimed the ETI in periods prior to the implementation date face the risk of USPs being imposed, whereas employers that have been audited by SARS for claiming the ETI in these prior periods, do not face the same risk.

### **TCS SYSTEM**

Section 256 of the TAA sets out the rules regarding obtaining TCS letters. The practical importance of the TCS rules is that it has implications for taxpayers in the private and public sector context. In the public sector, entities applying to government for a tender would often need to be able to confirm their TCS for the purposes of the tender. Similarly, it is becoming more common for taxpayers to provide their customers with TCS letters indicating that they are in good standing, before such customers would be willing to enter into

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contracts with them or before paying them. However, from reading the Draft Memo, it appears that potential abuse has been identified and for this reason an amendment to section 256 of the TAA is proposed. Specifically, the Draft Memo states the following:

*SARS has noted increased abuse of the tax compliance status system. Taxpayers that are economically active may file nil or otherwise inaccurate returns to meet the requirement that there be no outstanding returns, amongst other abuses, for them to be indicated as tax compliant on the system. As part of the Budget Review, it was proposed that approaches to ensuring that the tax compliance system provides a more accurate reflection of the actual tax compliance status of taxpayers be investigated. As a preliminary step in combatting the abuse, it is proposed that the Tax*

*Administration Act be clarified that SARS has the right to revoke third party access to a taxpayer's tax compliance status should it be suspected at any point in time that the taxpayer's tax compliance status is in question due to fraud, misrepresentation or non-disclosure of material facts. Taxpayers will continue to be given at least 10 business days' notice to respond to SARS' concerns before revocation takes place. As a further precautionary measure, it is proposed that the tax compliance status of a taxpayer also include an indication that a taxpayer is a newly registered taxpayer between the dates that third party access to the system is provided and the date that the taxpayer reaches the date for the submission of a return or making of a payment in respect of any of the taxes for which the taxpayer*

*is registered, or submitted a return or made a payment prior to such date. Users of the tax compliance status will thus be aware that the status is not based on actual returns or payments and that additional due diligence may be required.*

While we note the potential abuse identified by SARS, it is hoped that if the proposed amendment comes into effect, it will not have an adverse impact on taxpayers' ability to conduct their business and potentially lose out on tenders and business from customers, solely because SARS incorrectly concludes in a particular instance that there was fraud, misrepresentation or non-disclosure of material facts.

### **LAST CHANCE TO COMMENT**

Persons interested in submitting comments on these or any other proposed amendments, must note that the last day to submit comments is Monday, 29 August 2022.

**LOUIS BOTHA**

## OUR TEAM

For more information about our Tax & Exchange Control practice and services in South Africa and Kenya, please contact:



### Emil Brincker

Practice Head & Director:  
Tax & Exchange Control  
T +27 (0)11 562 1063  
E [emil.brincker@cdhlegal.com](mailto:emil.brincker@cdhlegal.com)



### Sammy Ndolo

Managing Partner | Kenya  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E [sammy.ndolo@cdhlegal.com](mailto:sammy.ndolo@cdhlegal.com)



### Lance Collop

Director:  
Tax & Exchange Control  
T +27 (0)21 481 6343  
E [lance.collop@cdhlegal.com](mailto:lance.collop@cdhlegal.com)



### Mark Linington

Director:  
Tax & Exchange Control  
T +27 (0)11 562 1667  
E [mark.linington@cdhlegal.com](mailto:mark.linington@cdhlegal.com)



### Gerhard Badenhorst

Director:  
Tax & Exchange Control  
T +27 (0)11 562 1870  
E [gerhard.badenhorst@cdhlegal.com](mailto:gerhard.badenhorst@cdhlegal.com)



### Jerome Brink

Director:  
Tax & Exchange Control  
T +27 (0)11 562 1484  
E [jerome.brink@cdhlegal.com](mailto:jerome.brink@cdhlegal.com)



### Petr Erasmus

Director:  
Tax & Exchange Control  
T +27 (0)11 562 1450  
E [petr.erasmus@cdhlegal.com](mailto:petr.erasmus@cdhlegal.com)



### Dries Hoek

Director:  
Tax & Exchange Control  
T +27 (0)11 562 1425  
E [dries.hoek@cdhlegal.com](mailto:dries.hoek@cdhlegal.com)



### Alex Kanyi

Partner | Kenya  
Tax & Exchange Control  
T +254 731 086 649  
+254 204 409 918  
+254 710 560 114  
E [alex.kanyi@cdhlegal.com](mailto:alex.kanyi@cdhlegal.com)



### Heinrich Louw

Director:  
Tax & Exchange Control  
T +27 (0)11 562 1187  
E [heinrich.louw@cdhlegal.com](mailto:heinrich.louw@cdhlegal.com)



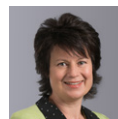
### Howmera Parak

Director:  
Tax & Exchange Control  
T +27 (0)11 562 1467  
E [howmera.parak@cdhlegal.com](mailto:howmera.parak@cdhlegal.com)



### Stephan Spamer

Director:  
Tax & Exchange Control  
T +27 (0)11 562 1294  
E [stephan.spamer@cdhlegal.com](mailto:stephan.spamer@cdhlegal.com)



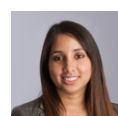
### Tersia van Schalkwyk

Tax Consultant:  
Tax & Exchange Control  
T +27 (0)21 481 6404  
E [tersia.vanschalkwyk@cdhlegal.com](mailto:tersia.vanschalkwyk@cdhlegal.com)



### Louis Botha

Senior Associate:  
Tax & Exchange Control  
T +27 (0)11 562 1408  
E [louis.botha@cdhlegal.com](mailto:louis.botha@cdhlegal.com)



### Varusha Moodaley

Senior Associate:  
Tax & Exchange Control  
T +27 (0)21 481 6392  
E [varusha.moodaley@cdhlegal.com](mailto:varusha.moodaley@cdhlegal.com)



### Ursula Diale-Ali

Associate:  
Tax & Exchange Control  
T +27 (0)11 562 1614  
E [ursula.diale-ali@cdhlegal.com](mailto:ursula.diale-ali@cdhlegal.com)



### Louise Kotze

Associate:  
Tax & Exchange Control  
T +27 (0)11 562 1077  
E [louise.kotze@cdhlegal.com](mailto:louise.kotze@cdhlegal.com)



### Tsanga Mukumba

Associate:  
Tax & Exchange Control  
T +27 (0)11 562 1136  
E [tsanga.mukumba@cdhlegal.com](mailto:tsanga.mukumba@cdhlegal.com)

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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**JOHANNESBURG**

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa.

Dx 154 Randburg and Dx 42 Johannesburg.

T +27 (0)11 562 1000 F +27 (0)11 562 1111 E [jhb@cdhlegal.com](mailto:jhb@cdhlegal.com)

**CAPE TOWN**

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.

T +27 (0)21 481 6300 F +27 (0)21 481 6388 E [ctn@cdhlegal.com](mailto:ctn@cdhlegal.com)

**NAIROBI**

Merchant Square, 3<sup>rd</sup> floor, Block D, Riverside Drive, Nairobi, Kenya. P.O. Box 22602-00505, Nairobi, Kenya.

T +254 731 086 649 | +254 204 409 918 | +254 710 560 114

E [cdhkenya@cdhlegal.com](mailto:cdhkenya@cdhlegal.com)

**STELLENBOSCH**

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.

T +27 (0)21 481 6400 E [cdhstellenbosch@cdhlegal.com](mailto:cdhstellenbosch@cdhlegal.com)

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