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REPUBLIC OF SOUTH AFRICA

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DRAFT TAX ADMINISTRATION  
AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75)*

*(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

2 July 2012

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## GENERAL EXPLANATORY NOTE:

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

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

# BILL

To—

- enact an international agreement into law;
- amend the Estate Duty Act, 1955, so as to effect a consequential amendment;
- amend the Income Tax Act, 1962, so as to effect textual amendments; to amend certain provisions; to insert new provisions; and to effect consequential amendments;
- amend the Customs and Excise Act, 1964, so as to amend a provision;
- amend the Unemployment Insurance Contributions Act, 2002, so as to effect a textual amendment;
- amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to insert certain provisions;
- to amend the Taxation Laws Second Amendment Act, 2011, so as to postpone an effective date;
- amend the Tax Administration Act, 2011, so as to effect technical corrections, to regulate tax practitioners;

and to provide for matters connected therewith.

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**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## **Enactment into law of an international agreement contemplated in section 231 of the Constitution of the Republic of South Africa, 1996**

1. (1) Notwithstanding anything to the contrary contained in this Act or any other law, an international agreement on combined border control posts that binds the Republic as contemplated in section 231 of the Constitution of the Republic of South Africa, 1996 shall, on publication in the *Gazette*, have the effect as if enacted in any law in terms of which any power must be exercised or a function must be performed to give effect to that agreement, including any law regulating the movement of goods, persons or means of transport into or out of the Republic.

(2) Any amendment to such agreement shall likewise be enacted into law on publication in the *Gazette*.

## **Amendment of section 10 of Act 45 of 1955**

2. Section 10 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1)[**If the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the prescribed rate shall be**]Interest in terms of Chapter 12 of the Tax Administration Act, 2011, is payable [as from a date twelve months after the date of death] on the difference (if any) between the duty assessed and any deposit (if any) made on account of the duty payable[**within the said period of twelve months**].”.

**Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979,**

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section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009 and section 6 of Act 7 of 2010, section 7 of Act 24 of 2011 and paragraph 23 of Schedule 1 to Act 28 of 2011

3. Section 1 of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of ‘representative taxpayer’ for paragraph (c) of the following paragraph:

“(c) in respect of income which is the subject of any trust or in respect of the income of any minor or mentally disordered or defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving moneys on behalf of such person under disability;”.

**Amendment of section 61 of Act 58 of 1962, as amended by section 25 of Act 90 of 1988 and section 57 of Act 45 of 2003**

4. (1) Section 61 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) the reference in paragraphs (b) and (c) of the definition of ‘representative taxpayer’ in section *one* to the income under the management, disposition or control of an agent or to income which is the subject of any trust, as the case may be, shall be deemed to include a reference to any property disposed of under a donation which is under the management, disposition or control of the agent or to

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property disposed of under a donation which is the subject of the trust, as the case may be;”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

## **Amendment of section 64FA of Act 58 of 1962 as inserted by section 79 of Act 24 of 2011**

5. Section 64FA of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

“(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the exemption applicable to the beneficial owner referred to in subparagraph (i) change or the beneficial owner cease to be a beneficial owner;”;

(b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in paragraph (a) change or the beneficial owner cease to be the beneficial owner.”.

## **Amendment of section 64G of Act 58 of 1962 as inserted by section 56 of Act 60 of 2008, Amended by section 53 of Act 17 of 2009, section 73 of Act 7 of 2010 and section 80 of Act 24 of 2011**

6. Section 64G of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)(a) for subparagraph (bb) of the following subparagraph:

“(bb) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the exemption applicable to the beneficial owner referred to in subparagraph (aa) change or the beneficial owner cease to be the beneficial owner;”;

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

“(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in item (i) change or the beneficial owner cease to be the beneficial owner.”.

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**Amendment of section 64H of Act 58 of 1962 as inserted by section 56 of Act 60 of 2008, substituted by section 53 of Act 17 of 2009 and amended by section 74 of Act 7 of 2010 and section 81 of Act 24 of 2011**

7. Section 64H of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)(a) for subparagraph (bb) of the following subparagraph:

“(bb) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the circumstances affecting the exemption applicable to the beneficial owner in subparagraph (aa) change or the beneficial owner cease to be the beneficial owner; or”;

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

“(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in item (i) change or the beneficial owner cease to be the beneficial owner.”.

**Amendment of section 64K of Act 58 of 1962 as inserted by section 56 of Act 60 of 2008, substituted by section 53 of Act 17 of 2009 and amended by section 84 of Act 24 of 2011**

8. Section 64K of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) **[If]Where**, in terms of this Part, a person **[is required to make payment of any amount of dividends tax]**has paid a dividend[, ] that person must**[, together with that payment,]** submit a return to the Commissioner.”.

**Amendment of section 64L of Act 58 of 1962 as inserted by section 56 of Act 60 of 2008 and substituted by section 53 of Act 17 of 2009**

9. Section 64L of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion Section 64L of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) If—

(a) an amount is withheld by a company from the payment of a dividend in terms of section 64G(1); and

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(b) a rebate in respect of foreign taxes paid on that dividend should have been deducted from that amount in terms of section 64N, so much of that amount as would not have been withheld had that rebate been deducted from the amount, is refundable to the person to whom the dividend was paid: Provided such rebate is claimed within three years after the payment of the relevant dividend.”;

(b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) [a]both the declaration and the written undertaking contemplated in section 64G(2)(a) or (3)[is]are submitted to the company within three years after the payment of the dividend in respect of which it is made,”; and

(c) by the substitution for subsections (2), (3) and (4) of the following subsections:

“(2) Any amount that is refundable in terms of subsection (1) or (1A) must be refunded by the company that withheld that amount to the person to whom the dividend was paid—

(a) from any amount of dividends tax withheld by that company within a period of one year after the submission of the declaration contemplated in subsection (1)(c) or the claim of a rebate contemplated in subsection (1A); or

(b) to the extent that the amount that is refundable exceeds the amount of dividends tax withheld as contemplated in paragraph (a), from an amount recovered by the company from the Commissioner in terms of subsection (3).

(3) Subject to subsection (4), if any amount is refundable to any person by a company in terms of subsection (1) or (1A) and that amount exceeds the amount of dividends tax withheld as contemplated in subsection (2)(a), the company contemplated in subsection (2) may recover the excess from the Commissioner.

(4) No amount may be recovered in terms of subsection (3) if the company submits the claim for recovery to the Commissioner after the expiry of a period of four years reckoned from the date of the payment contemplated in subsection (1)(a) or (1A)(a).

## **Amendment of section 64M of Act 58 of 1962 as inserted by section 53 of Act 17 of 2009**

**10.** Section 64M of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A)If—

(c) an amount is withheld by a regulated intermediary from the payment of a dividend in terms of section 64H(1); and

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- (d) a rebate in respect of foreign taxes paid on that dividend should have been deducted from that amount in terms of section 64N, so much of that amount as would not have been withheld had that rebate been deducted from the amount, is refundable to the person to whom the dividend was paid: Provided such rebate is claimed within three years after the payment of the relevant dividend.”;
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:  
“(c) [a]both the declaration and the written undertaking contemplated in section 64H(2)(a) or (3)[is]are submitted to the regulated intermediary within three years after the payment of the dividend in respect of which it is made,”; and
- (c) by the substitution for subsection (2) of the following subsection:  
“(2) Any amount that is refundable in terms of subsection (1) or (1A) must be refunded by the regulated intermediary contemplated in subsection (1)(a) or (1A)(a) from any amount of dividends tax withheld by the regulated intermediary after the submission of the declaration as contemplated in subsection (1)(c) or the claim of a rebate contemplated in subsection (1A).”.

## **Amendment of section 64N of Act 58 of 1962 as inserted by section 54 of Act 17 of 2009**

11. Section 64N of the Income Tax Act, 1962, is hereby amended by the addition after subsection (4) of the following subsection:

“(5) A company or regulated intermediary must obtain proof of any tax paid to any sphere of government of any country other than the Republic and deducted from the dividend tax payable in terms of this section, in the form and manner prescribed by the Commissioner.”.

**Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 30 of Act 103 of 1976, section 28 of Act 113 of 1977, section 29 of Act 104 of 1980, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007, section 65 of Act 35 of 2007, section 18 of Act 18 of 2009 and section 94 of Act 24 of 2011**



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12. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962 is hereby amended—

(a) by the insertion after subparagraph (1A) of the following subparagraph:

“(1B) Notwithstanding the provisions of subparagraph (1), a person shall deduct or withhold employees’ tax in respect of any amount payable in respect of variable remuneration, as defined in section 7B(1), on the date on which the amount is paid to the employee by the employer as contemplated in section 7B(2).”;

(b) by the deletion in subparagraph (4) of item (d); and

(c) by the substitution in subparagraph (4)(f) for subitem (i) of the following subitem:

“(i) as does not exceed 5 per cent of that remuneration after deducting therefrom the amounts contemplated in items (a) to [(d)](cA); and”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2013 and applies in respect of amounts received or accrued on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 March 2014 and apply in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962 as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 16 of Act 61 of 2008, section 21 of Act 18 of 2009, section 22 of Act 8 of 2010 and paragraph 85 of Schedule 1 to Act 28 of 2011**

13. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (6) for the following subparagraph:

“(6) If an employer fails to render to the Commissioner a return referred to in subparagraph (3) within the period prescribed in that subparagraph, the Commissioner may impose [under Chapter 15 of the Tax Administration Act]on that employer a[percentage based] penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, for each month that the employer fails to submit a complete return which in total may not exceed 10 per cent of the total amount of employees’ tax deducted or withheld or which should have been deducted or withheld by the employer from the remuneration of employees for the period described in that subparagraph.”.

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**Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962 as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005, section 46 of Act 3 of 2008, section 18 of Act 61 of 2008, section 23 of Act 18 of 2009 and paragraph 90 of Schedule 1 to Act 28 of 2011**

**14.** Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item (a) of the following item:

“(a) Every provisional taxpayer (other than a company) shall, during every period within which provisional tax is or may be payable by that provisional taxpayer as provided in this Part, submit to the Commissioner (should the Commissioner so require) a return of an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is or may be payable by the taxpayer: Provided that such estimate will not include any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or any severance benefit received by or accrued to or to be received by or accrue to the taxpayer during the relevant year of assessment .”; and

(b) by the substitution in subparagraph (1)(d)(i) for item (bb) of the following item:

“(bb) the taxable portion of any lump sum contemplated in [section 7A(4A) **and**]paragraph (d) of the definition of “gross income” in section 1; and”.

**Amendment of paragraph 20 of Fourth Schedule to Act 58 of 1962 as amended by section 25 of Act 72 of 1963, section 29 of Act 88 of 1965, section 47 of Act 89 of 1969, section 44 of Act 88 of 1971, section 51 of Act 85 of 1974, section 36 of Act 69 of 1975, section 50 of Act 94 of 1983, section 39 of Act 121 of 1984, section 19 of Act 61 of 2008, section 24 of Act 18 of 2009 and paragraph 91 of Schedule 1 to Act 28 of 2011**

**15.** Paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item (a) of the following item:

“(a) more than R1 million and such estimate is less than 80 per cent of the amount of the actual taxable income the Commissioner [**may, if he or she is not satisfied that the amount of such estimate was seriously calculated with due regard to the factors having a bearing thereon or was not deliberately or negligently understated, subject to the provisions of subparagraph (3),**] must impose, in

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addition to the normal tax chargeable in respect of the taxpayer's taxable income for such year of assessment, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between **[the amount of normal tax as calculated in respect of such estimate and]**—

- (i) the amount of normal tax calculated, at the rates applicable in respect of such year of assessment, in respect of a taxable income equal to 80 per cent of such actual taxable income; and
- (ii) the amount of employees' tax and provisional tax in respect of such year of assessment paid by the end of the year of assessment;" and

(b) by the substitution in subparagraph (1) for item (b) of the following item:

“(b) in any other case, less than 90 per cent of the amount of such actual taxable income and is also less than the basic amount applicable to the estimate in question, as contemplated in paragraph 19(1)(d), the taxpayer shall, subject to the provisions of subparagraphs (2) and (3), be liable to pay to the Commissioner, in addition to the normal tax chargeable in respect of his or her taxable income for such year of assessment, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between **[the amount of normal tax as calculated in respect of such estimate and]** the lesser of**[the following amounts, namely]**—

- (i) the amount of normal tax calculated, at the rates applicable in respect of such year of assessment, in respect of a taxable income equal to 90 per cent of such actual taxable income; and
- (ii) the amount of normal tax calculated in respect of a taxable income equal to such basic amount, at the rates applicable in respect of such year of assessment, and the amount of employees' tax and provisional tax in respect of such year of assessment paid by the end of the year of assessment.”.

(c) by the substitution for subparagraph (2) of the following subparagraph:

“(2) Where the Commissioner is satisfied that the amount of any estimate referred to in subparagraph (1)**[(b)]** was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated, or if the Commissioner is partly so satisfied, the Commissioner may in his or her discretion remit the penalty or a part thereof.”.

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**Amendment of paragraph 20A of Fourth Schedule to Act 58 of 1962 as amended by section 25 of Act 52 of 1970, section 45 of Act 88 of 1971, section 52 of Act 85 of 1974, section 40 of Act 121 of 1984, section 88 of Act 45 of 2003 and paragraph 92 of Schedule 1 to Act 28 of 2011**

16. Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by that provisional taxpayer during any year of assessment and the estimate of **[his or her]the taxpayer’s** taxable income for that year required to be submitted by **[him or her]the taxpayer** under paragraph 19(1) during the period contemplated in paragraph 21(1)(b), 22(1) or 23(b), as the case may be, was not submitted by **[him or her]the taxpayer** on or before the last day of that year the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 19(2) or has increased the amount thereof under paragraph 19(3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the amount by which the normal tax payable by **[him or her]the taxpayer** in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by **[him or her]the taxpayer** in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part and any amounts of employees’ tax deducted or withheld from **[his or her]the taxpayer’s** remuneration by **[his or her]the taxpayer’s** employer during such year.’’.

**Amendment of paragraph 27 of Fourth Schedule to Act 58 of 1962 as amended by section 43 of Act 121 of 1984, section 29 of Act 65 of 1986, section 48 of Act 32 of 2004 and paragraph 95 of Schedule 1 to Act 28 of 2011**

17. Paragraph 27 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) If any provisional taxpayer fails to pay any amount of provisional tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 21 or 23, or paragraph 25(1), the Commissioner must, under Chapter 15 of the Tax

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Administration Act, impose a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to ten per cent of the amount not paid.”.

## **Amendment of paragraph 11 of Sixth Schedule to Act 58 of 1962 as amended by paragraph 99 of Schedule 1 to Act 28 of 2011**

**18.** Paragraph 11 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (6) of the following subparagraph:

“(6) Where the estimate described in subparagraph 4(a) is less than 80 per cent of the taxable turnover for the year of assessment, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between the tax payable on 80 per cent of the taxable turnover for the year of assessment and the tax payable on that estimate must be charged.”.

## **Amendment of section 3 of Act 91 of 1964 as amended by section 114 of Act 60 of 2001, section 42 of Act 30 of 2002, section 132 of Act 45 of 2003 and section 25 of Act 18 of 2009**

**19.** Section 3 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) Any decision made and any notice or communication signed or issued by **[any]** such officer or person may be withdrawn or amended by==

(i) the officer or person concerned;

(ii) the officer or person in charge of Customs Operations or Excise Operations;

or

(iii) the Commissioner.

**[the Commissioner or by the officer or person concerned (] with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof [)]** and shall, until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made, signed or issued by the Commissioner.”.

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## Amendment of section 10 of Act 4 of 2002

20. Section 10 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) ~~[The]~~Each employer contemplated in section 8 and 9, must, before the seventh day of each month, submit to the ~~[Commissioner or the]~~ Unemployment Insurance Commissioner, **[whichever is applicable to such employer in terms of section 8 or 9]**, such information relating to its employees as the Minister may prescribe by regulation, including details relating to—”.

## Amendment of section 19 of Act 29 of 2008, as amended by section 39 of Act 8 of 2010

21. (1) Section 19 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008), is hereby amended—

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“In respect of a year of assessment an extractor must annually submit to the Minister of Finance a report in the form and manner that the Minister may prescribe advising the Minister of—”;

(b) by the addition to subsection (1) after paragraph (f) of the following paragraphs:

“(g) the amounts of the royalty imposed in terms of section 2 of the Royalty Act in respect of refined minerals and unrefined minerals, respectively;

“(h) the amount of earnings before interest and taxes determined in accordance with section 5(1) and (2) of the Royalty Act, respectively;

“(i) the amount of the royalty that would have been imposed on an extractor in respect of mineral resources transferred had that extractor not been exempt from the royalty in terms of section 7(1)(a) of the Royalty Act;

“(j) the amount of the royalty that would have been imposed on an extractor in respect of mineral resources transferred had that extractor not been exempt from the royalty in terms of section 7(1)(b) of the Royalty Act; and

“(k) the amount of the royalty that would have been imposed on an extractor had that extractor not been exempt from the royalty in terms of section 8 of the Royalty Act.”.

(2) Subsection (1) comes into operation on 1 January 2013.

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## Amendment of section 1 of Act 25 of 2011

22. Section 1 of the Taxation Laws Second Amendment Bill, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [**1 April 2012**] 1 October 2012[**unless a later date is determined by the Minister by notice in the *Gazette***] and applies in respect of research and development on or after [**1 April 2012, or such later date determined by the Minister by notice in the *Gazette***] 1 October 2012, but on or before 1 [**April**]October 2022.”.

(2) Subsection (1) is deemed to have come into operation on 14 December 2011.

## Amendment of section 1 of Act 28 of 2011

23. Section 1 of the Tax Administration Act, 2011, is hereby amended—

(a) by the insertion of the following definition after the definition of “reduced assessment”:

“**registered tax practitioner**” means a person registered under section 240;”;

(b) by the substitution for paragraph (c) of the definition of “SARS official” of the following paragraph:

“(c) a person contracted or engaged by SARS for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner;”.

## Amendment of section 3 of Act 28 of 2011

24. Section 3 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for paragraph (f) in subsection (2) of the following paragraph:

“(f) investigate whether [**an**]a tax offence has been committed [**in terms of a tax Act**], and, if so—

(i) to lay criminal charges; and

(ii) to provide the assistance that is reasonably required for the investigation and prosecution of a tax [**offences or related common law offences**]offence;”;

and

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

“(a) information, SARS may obtain the information requested for transmission to the competent authority of the other country as if it were relevant material required

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for purposes of a tax Act and must treat the information obtained as [if it were] taxpayer information;”.

## **Amendment of section 6 of Act 28 of 2011**

25. Section 6 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Powers and duties not specifically required by this Act to be exercised by the Commissioner or by a senior SARS official, may be exercised by a SARS official employed,~~[or]~~contracted or engaged to exercise or perform powers or duties for purposes of the administration of a tax Act.”.

## **Amendment of section 11 of Act 28 of 2011**

26. Section 11 of the Tax Administration Act, 2011, is hereby amended by the deletion of subsection (3).

## **Amendment of section 14 of Act 28 of 2011**

27. Section 14 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) No person may be designated in terms of subsection (3) as acting Tax Ombud for a period longer than 90 business days at a time.”

## **Amendment of section 25 of Act 28 of 2011**

28. Section 25 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) SARS may extend the time period for filing a return in a particular case, in accordance with procedures and policy criteria [**in policies**] published by the Commissioner by public notice.”.

## **Amendment of section 29 of Act 28 of 2011**

29. Section 29 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (b) in subsection (1) of the following paragraph:



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“(b) are specifically required under a tax Act or by the Commissioner by public notice;  
and”.

## **Amendment of section 32 of Act 28 of 2011**

**30.** Section 32 of the Tax Administration Act, 2011, is hereby amended by the substitution for the words following paragraph (b) in subsection (1) of the following words:

“the person must retain the records relevant to the audit, investigation, objection or appeal until the audit is concluded or the assessment or the decision becomes final.”.

## **Amendment of section 34 of Act 28 of 2011**

**31.** Section 34 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of ‘promoter’ of the following definition:

“‘**promoter**’, in relation to an ‘arrangement’, means a person who is principally responsible for organising, designing, selling, financing or managing the reportable ‘arrangement’;”.

## **Amendment of section 46 of Act 28 of 2011**

**32.** Section 46 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If reasonable grounds for an extension are submitted by the person, SARS may extend the period within which the relevant material must be submitted [**on good cause shown**].”.

## **Amendment of section 49 of Act 28 of 2011**

**33.** Section 49 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for the words preceding paragraph (a) in subsection (1) of the following words:

“The person on whose premises an audit or criminal investigation is carried out and any other person on the premises, must provide such reasonable assistance as is required by SARS to conduct the audit or investigation, including—”; and

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

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“(3) The person may recover from SARS after completion of the audit or criminal investigation (or, at the person’s request, on a monthly basis) the cost for the use of photocopying facilities in accordance with the fees prescribed in section 92(1)(b) of the Promotion of Access to Information Act.”.

## **Amendment of section 61 of Act 28 of 2011**

**34.** Section 61 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subject to section 63, a SARS official’s failure to produce a warrant entitles a person to refuse access to the official, and if the owner or person in control of the premises is not present, the SARS official must affix a copy of the warrant to the premises in a prominent and visible place.”.

## **Amendment of section 63 of Act 28 of 2011**

**35.** Section 63 of the Tax Administration Act, 2011, is hereby amended by the addition after subsection (4) of the following subsection:

“(5) If the owner or person in control of the premises is not present, the SARS official must inform such person of the circumstances referred to in subsection (2) as soon as reasonably possible after the execution of the search and seizure.”.

## **Amendment of section 71 of Act 28 of 2011**

**36.** Section 71 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (b) in subsection (3) of the following paragraph:

“(b) the information will likely be [**critical**]material to the prosecution of the offence or avoidance of the risk; and”.

## **Amendment of section 72 of Act 28 of 2011**

**37.** The Tax Administration Act, 2011, is hereby amended by the substitution for section 72 of the following section:

“**72.**(1) A taxpayer may not refuse to comply with his or her obligations in terms of legislation to complete and file a return or an application on the grounds that to do so might incriminate him or her, and an admission by the taxpayer contained in a return,

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application, or other document submitted to SARS by a taxpayer is admissible in criminal proceedings against the taxpayer for **[an]a tax offence [under a tax Act]**, unless a competent court directs otherwise.

(2) An admission by the taxpayer of the commission of **[an]a tax offence [under a tax Act]** obtained from a taxpayer under Chapter 5 is not admissible in criminal proceedings against the taxpayer, unless a competent court directs otherwise.”.

## **Amendment of section 79 of Act 28 of 2011**

**38.** Section 79 of the Tax Administration Act, 2011, is hereby amended—

(a) by the deletion of the word “and” after paragraph (l); and

(b) by the addition after paragraph (m) in subsection (4) of the following paragraphs:

“(n) a statement confirming that the ‘applicant’ complied with any registration requirements under a tax Act, with regard to any tax for which the ‘applicant’ is liable, unless the ‘application’ concerns a ruling to determine if the ‘applicant’ must register under a tax Act; and

(o) a statement confirming that all returns required to be rendered by that ‘applicant’ in terms of a tax Act have been rendered and any tax has been paid or arrangements acceptable to SARS have been made for the submission of any outstanding returns or for the payment of any outstanding tax.”.

## **Amendment of section 95 of Act 28 of 2011**

**39.** Section 95 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

“(5) If a tax Act requires a taxpayer to submit a return—

(a) the making of an assessment under subsection (4) does not detract from the obligation to submit a return; **[and]**

(b) the taxpayer in respect of whom the assessment has been issued may, within the period described in section 104(3), request SARS to issue a reduced assessment or additional assessment by submitting a complete and correct return[.];and

(c) an assessment under subsection (4) is not subject to objection or appeal unless the taxpayer submits the return and SARS does not issue a reduced or additional assessment.”; and

(b) by the addition after subsection (5) of the following subsections:

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“(6) A senior SARS official may extend the period referred to in subsection (5)(b) within which the return must be submitted, if satisfied that reasonable grounds exist for the delay in submitting the return.

(7) The provisions of subsection 104(5) apply, with the necessary changes, to an extension under subsection (6).”.

## **Amendment of section 99 of Act 28 of 2011**

**40.** Section 99 of the Tax Administration Act, 2011, is hereby amended by the substitution of item (*aa*) in subsection (1)(*d*)(i) of the following item:

“(aa) amount which should have been assessed to tax under the preceding assessment was, in accordance with the practice generally prevailing at the date of assessment of the preceding assessment, not assessed to tax; or”.

## **Amendment of section 135 of Act 28 of 2011**

**41.** Section 135 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If an intending appellant wishes to appeal against a decision of the tax court to the Supreme Court of Appeal, the ‘registrar’ must submit the notice of intention to appeal lodged under section 134(1) to the president of the tax court, who must make an order granting or refusing leave to appeal having regard to the grounds of the intended appeal as indicated in the notice.”.

## **Amendment of section 164 of Act 28 of 2011**

**42.** Section 164 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (*d*) in subsection (5) of the following paragraph:

“(d) there is a material change in any of the factors referred to in subsection (3), upon which the decision to suspend payment of the amount involved was based.”.

## **Amendment of section 187 of Act 28 of 2011**

**43.** Section 187 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (*d*) in subsection (3) of the following paragraph:

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“(d) a fixed amount penalty referred to in section 210, is the date **[for payment specified in the notice]** of assessment of the penalty, and in relation to an increment of the penalty under section 211(2), the date of the increment.”.

## **Amendment of section 198 of Act 28 of 2011**

**44.** Section 198 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A tax debt is not irrecoverable at law if SARS has not first explored action against or recovery from the personal ‘assets’ of the persons who may be liable for the debt under Part D of Chapter 11.”.

## **Amendment of section 211 of Act 28 of 2011**

**45.** Section 211 of the Tax Administration Act, 2011, is hereby amended by the substitution for in subsection (2) for paragraph (a) of the following paragraph:

“(a) the date of **[the delivery of the ‘penalty]**assessment~~]~~of the penalty, if SARS is in possession of the current address of the person and is able to deliver the assessment, but limited to 35 months after the date of **[delivery]**assessment; or”.

## **Amendment of section 217 of Act 28 of 2011**

**46.** Section 217 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution of paragraph (a) in subsection (1) of the following paragraph:

“(a) a ‘first incidence’ of the non-compliance **[described in section 210, 212 or 213]**; or”; and

(b) by the substitution for the words preceding paragraph (a) in subsection (3) of the following words:

“**[In the case of a penalty]**If a penalty has been imposed under section 213, SARS may remit the ‘penalty’ or a portion thereof, if SARS is satisfied that—”.

## **Amendment of section 221 of Act 28 of 2011**

**47.** Section 221 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of ‘**repeat case**’ of the following definition:

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“‘repeat case’ means a second or further case of any of the behaviours listed under items (i) to (v) of the ‘understatement’ penalty percentage table reflected in section 223 within five years of the previous case;”.

## **Amendment of section 223 of Act 28 of 2011**

**48.** Section 223 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3)(b) of the following subsection:

“(b) was in possession of an opinion by a registered tax practitioner[, **as defined in section 239,**] that—

- (i) was issued by no later than the date that the relevant return was due;
- (ii) **[took account of the specific facts and circumstances of the arrangement]**was based upon full disclosure of the specific facts and circumstances of the arrangement and, in the case of any opinion regarding the applicability of the substance over form doctrine or the anti-avoidance provisions of a tax Act, this requirement cannot be met unless the taxpayer is able to demonstrate that all of the steps in or parts of the arrangement were fully disclosed to the tax practitioner, whether or not the taxpayer was a direct party to the steps or parts in question; and
- (iii) confirmed that the taxpayer’s position is more likely than not to be upheld if the matter proceeds to court.”.

## **Amendment of section 224 of Act 28 of 2011**

**49.** The Tax Administration Act, 2011, is hereby amended by the substitution for section 224 of the following section:

“**224.** A decision by SARS not to remit an understatement penalty under section 223(3) is subject to objection and appeal under Chapter 9.”.

## **Amendment of section 229 of Act 28 of 2011**

**50.** Section 229 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) not pursue criminal prosecution for a **[statutory]tax offence [under a tax Act]** arising from the ‘default’ **[or a related common law offence]**.”.

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## Amendment of section 231 of Act 28 of 2011

51. Section 231 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (c) in subsection (1) of the following paragraph:

“(c) pursue criminal prosecution for a **[statutory]tax** offence **[under a tax Act or a related common law offence]**.”.

## Amendment of section 234 of Act 28 of 2011

52. Section 234 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph:

“(c) fails or neglects to register as a tax practitioner under section 240.”; and

(b) by the substitution for paragraph (g) of the following paragraph:

“(g) issues an erroneous, incomplete or false document required to be issued under a tax Act **[to be issued]** to another person.”.

## Amendment of section 235 of Act 28 of 2011

53. Section 235 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A senior SARS official may lay a complaint with the South African Policy Service or the National Prosecuting Authority regarding an offence **[contemplated in subsection (1)]**under this section.”.

## Amendment of section 237 of Act 28 of 2011

54. The Tax Administration Act, 2011, is hereby amended by the substitution for section 237 of the following section:

“**237.** A person who—

(a) submits a return or other document to SARS under a forged signature;

(b) uses an electronic or digital signature of another person in an electronic communication to SARS without the person’s consent and authority; or

(c) otherwise submits to SARS a communication on behalf of another person without the person’s consent and authority,

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[without the person’s consent and authority,] is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.”.

## **Amendment of heading of Chapter 18 of Act 28 of 2011**

55. Chapter 18 of the Tax Administration Act, 2011, is hereby amended by the substitution for the heading of the following heading:

**“REGISTRATION OF TAX PRACTITIONERS AND REPORTING OF UNPROFESSIONAL CONDUCT”.**

## **Amendment of section 239 of Act 28 of 2011**

56. Section 239 of the Tax Administration Act, 2011, is hereby amended—

(a) by the insertion of the following definition after the definition of ‘controlling body’:

**“recognised controlling body”** means a ‘controlling body’ recognised by the Commissioner under section 240A.”; and

(c) by the deletion of the following definition:

**“[‘registered tax practitioner’ means a practitioner registered under section 240].”.**

## **Amendment of section 240 of Act 28 of 2011**

57. Section 240 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for paragraph (b) in subsection (1) of the following paragraph:

**“(b) completes or assists in completing a [document to be submitted to SARS]return by another person [in terms of a tax Act],”;**

(b) by the substitution for the words following paragraph (b) in subsection (1) of the following words:

**“must register with—**

**(i) a ‘recognised controlling body’; and**

**(ii) with SARS as a tax practitioner[,], in [such]the prescribed form and manner[as the Commissioner may determine],**



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within [30]21 business days after the date on which that person for the first time provides the advice or completes or assists in completing [any such document]the return.”;

(c) by the substitution for paragraph (a) in subsection (2) of the following paragraph:

“(a) provides the advice or completes or assists in completing a [document]return solely for no consideration to that person or his or her employer or a connected person in relation to that employer or that person;”;

(d) by the substitution for paragraph (d) in subsection (2) of the following paragraph:

“(d) provides the advice or completes or assists in completing a [document]return solely—

(i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of [that]the employer and connected persons in relation to [that]the employer; or

(ii) under the direct supervision of a person who is a registered [as a]tax practitioner[in terms of subsection (1)].”; and

(e) by the substitution for paragraph (a) in subsection (3) of the following paragraph:

“(a) during the preceding five years has been removed from a related profession by a ‘controlling body’ for serious misconduct; [and]or”.

### Insertion of section 240A of Act 28 of 2011

58. The Tax Administration Act, 2011, is hereby amended by the insertion of the following section after section 240:

#### “Recognition of controlling bodies

240A. (1) The Commissioner must recognise as a ‘recognised controlling body’—

(a) the Independent Regulatory Board for Auditors established in terms of section 3 of the Auditing Professions Act, 2005 (Act No. 26 of 2005);

(b) the South African Legal Practice Council established in terms of section 4 of the Legal Practice Act, 201... (Act No. ... of 201...); and

(c) a statutory body that the Minister is satisfied is similar to the bodies in this subsection and the details of which are published in the *Gazette*.

(2) The Commissioner may recognise a ‘controlling body’ for natural persons providing advice with respect to the application of a tax Act or completing returns as a ‘recognised controlling body’ if the body—

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- (a) maintains relevant and effective—

  - (i) minimum qualification and experience requirements;
  - (ii) continuing professional education requirements;
  - (iii) codes of ethics and conduct; and
  - (iv) disciplinary code and procedures;
- (b) is approved in terms of section 30B of the Income Tax Act for purposes of section 10(1)(d)(iv) of the Act; and
- (c) has at least 1 000 members when applying for recognition or reasonable prospects of having 1 000 members within a year of applying.
- (3) The Minister may appoint a panel of retired judges or persons of similar stature and competence to decide, on behalf of a body recognised under subsection (2), complaints lodged under section 241.
- (4) The costs of the panel in deciding complaints will be borne equally by the body and SARS.
- (5) If a body recognised under subsection (2) no longer meets the listed requirements, the Commissioner must notify it that if it does not take corrective steps within the period specified in the notice, its recognition will be withdrawn at the end of the period.”

## **Amendment of section 241 of Act 28 of 2011**

**59.** The Tax Administration Act, 2011, is hereby amended by the substitution for section 241 of the following section:

### **“Complaint to controlling body [of tax practitioner]**

**241.(1)** A senior SARS official may lodge a complaint with a ‘controlling body’ if a [**‘registered tax practitioner’ or**] person who carries on a profession governed by the ‘controlling body’, did or omitted to do anything with respect to the affairs of a taxpayer, including that person’s affairs, that in the opinion of the official—

- (a) was intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer under a tax Act;
- (b) by reason of negligence on the part of the person resulted in the avoidance or undue postponement of the performance of an obligation imposed on the taxpayer under a tax Act; [**or**]

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- (c) constitutes a contravention of a rule or code of conduct for the profession which may result in disciplinary action being taken against the [**registered tax practitioner’ or]** person by the body[.];or
- (d) constitutes conduct under subsection (2) by a registered tax practitioner.
- (2) A senior SARS official may lodge a complaint with a ‘recognised controlling body’ if a registered tax practitioner has, in the opinion of the official—
- (a) without exercising due diligence prepared or assisted in the preparation, approval or submission of any return, affidavit or other document relating to matters affecting the application of any tax Act;
- (b) unreasonably delayed the finalisation of any matter before SARS;
- (c) given an opinion contrary to clear law, recklessly or through gross incompetence, with regard to any matter relating to a tax Act;
- (d) been grossly negligent with regard to any work performed as a registered tax practitioner;
- (e) knowingly given false or misleading information in connection with matters affecting the application of any tax Act or participated in such activity; or
- (f) directly or indirectly attempted to influence any person employed by SARS with regard to any matter relating to any tax Act by the use of threats, false accusations, duress, or coercion, or by offering gifts, favours, or any special inducements.”.

## **Amendment of section 244 of Act 28 of 2011**

**60.** Section 244 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (a) of subsection (3) of the following paragraph:

- “(a) reasonable grounds exist for the delay and the application is submitted within 21 business days of the deadline; or”.

## **Amendment of section 246 of Act 28 of 2011**

**61.** Section 246 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) A company [**covered by this section**] that has not appointed a public officer is subject to a tax Act[, **the same**] as if a tax Act did not require the public officer to be appointed.”.

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## **Amendment of section 250 of Act 28 of 2011**

62. Section 250 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2)(b) for the words preceding item (i) of the following words:

“the limitations on the **[jurisdiction]**mandate of the Tax Ombud, having regard to—”.

## **Amendment of section 252 of Act 28 of 2011**

63. Section 252 of the Tax Administration Act, 2011, is hereby amended by the substitution in subparagraph (a) for the words preceding subparagraph (b) of the following words:

“(a) **[delivered]**handed to the public officer of the company;”.

## **Amendment of section 256 of Act 28 of 2011**

64. The Tax Administration Act, 2011, is hereby amended by the substitution for subsection (6) of section 256 of the following subsection:

“(6) SARS may withdraw a certificate with effect from the **[date of the issue thereof, if the certificate]**—

(a) date of the issue thereof, if the certificate was issued in error or was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts; or

(b) **[was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts]**date that the taxpayer no longer complies with a requirement under subsection (3).”.

## **Amendment of section 257 of Act 28 of 2011**

65. The Tax Administration Act, 2011, is hereby amended by the substitution for section 257 of the following section:

### **“Regulations by Minister**

**257.** (1) The Minister may make regulations regarding—

(a) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act; and

(b) any matter which under this Act is required or permitted to be prescribed.

(2) The Minister may, after consultation with the Tax Ombud, make regulations regarding—

(a) the proceedings of the Tax Ombud; and

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- (b) the limitations on the jurisdiction of the Tax Ombud, having regard to—
  - (i) the factual or legal complexity of any complaint dealt with by the Tax Ombud;
  - (ii) the nature of the taxpayer whose complaint is dealt with by the Tax Ombud; and
  - (iii) the maximum amount involved in the dispute between the taxpayer and SARS.
- (3) For purposes of the issue of a tax clearance certificate under section 256, the Minister may make regulations regarding—
  - (a) the circumstances when a tax clearance certificate may be required from a person or be issued by SARS;
  - (b) the period of validity of a tax clearance certificate; or
  - (c) any procedure to further regulate the issue or withdrawal of a tax clearance certificate.
- ~~[(3)]~~(4) For purposes of the regulations referred to in paragraph (e) of the definition of “biometric information” in section 1, the Minister must publish the draft regulations in the *Gazette* for public comment and submit the draft regulations to Parliament for parliamentary scrutiny at least 30 days before the draft regulations are published.”.

## **Amendment of section 269 of Act 28 of 2011**

**66.** Section 269 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Rules and regulations issued under the provisions of a tax Act repealed by this Act that are in force immediately before the commencement date of this Act, remain in force as if they were issued under section 103, 255 or 257, respectively, to the extent consistent with this Act.”

## **Short title and commencement**

**67.** This Act is called the Tax Administration Amendment Act, 2012.

(2) Save in so far as is otherwise provided for in this Act, or the context otherwise indicates, the amendments effected by this Act come into operation on the date of promulgation of this Act.

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## MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION AMENDMENT BILL, 2012

### 1. PURPOSE OF BILL

The Bill provides for the enactment into law of an international agreement contemplated in terms of the Constitution of the Republic of South Africa, 1996, amends administrative provisions of the Estate Duty Act, 1955 (Act No. 45 of 1955), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008), the Taxation Laws Second Amendment Act, 2011 (Act No. 25 of 2011) and the Tax Administration Act, 2011 (Act No. 28 of 2011).

### 2. OBJECTS OF BILL

#### *2.1. Enactment into law of an international agreement contemplated in section 231 of the Constitution of the Republic of South Africa, 1996*

The Republic of South Africa and the Republic of Mozambique have entered into an agreement on combined border control posts on the Mozambique-South African Border. The aim of the agreement is to provide for the implementation of one-stop border posts between South Africa and Mozambique, which as defined in the agreement, means “the joint control and management of border crossing activities by officers of the Parties, using shared facilities.” The agreement provides for the adoption of annexes as necessary to facilitate implementation of the agreement. Presently, three annexes have been adopted. These annexes enter into force after approval by the Parties in accordance with their constitutional requirements and form an integral part of the agreement. The South African Revenue Service and other organs of state must implement and administer the agreement and it is accordingly necessary that the agreement should be enacted into law. The proposed amendment comes into operation on a date published in the *Gazette*.

#### *2.2. Estate Duty Act: Amendment of section 10*

The payment of interest across all tax types is now regulated by Chapter 12 of the Tax Administration Act, 2011. The proposed amendment aligns interest due in terms of the Estate Duty Act, 1955, with Chapter 12 of the Tax Administration Act, 2011.

#### *2.3. Income Tax Act, 1962: Amendment of section 1*

The proposed amendment is of a textual nature.

#### *2.4. Income Tax Act, 1962: Amendment of section 61*

The proposed amendment is of a textual nature consequential to the amendment of the definition of ‘representative taxpayer’ in paragraph 3 above.

#### *2.5. Income Tax Act, 1962: Amendment of section 64FA*

There currently exists a problem in that something other than a change of the beneficial ownership could affect whether the beneficial owner remains exempt from the dividends tax. For example, a

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PBO, a pension fund or a micro business could lose their status as such, or a non-resident could become a resident (section 64F(j)), and hence lose their exempt status without a change in beneficial ownership.

A similar problem arises under the reduced rate scenario as the applicable rate could change without a change in beneficial ownership. For example, a change of residency of the beneficial owner (becomes a resident in another state with a different maximum rate applicable – for example moves from the UK (5%) to the Netherlands (15%)), or the beneficial owner reduces its holding in the SA company and no longer qualifies for a reduced rate in terms of the DTA.

All the foregoing examples do not involve a change in ownership but still affects either the exemption or the rate applicable.

The above issue would arise in the following sections:

Exempt	Reduced rate
64FA(1)(a)(ii)	64FA(2)(b)
64G(2)(a)(bb)	64G(3)(ii)
64H(2)(a)(bb)	64H(3)(ii)

It is therefore proposed that the listed sections be amended to also refer to a change in the circumstances of the beneficial owner in addition to a change in beneficial ownership.

## ***2.6. Income Tax Act, 1962: Amendment of section 64G***

See the notes on paragraph 2.5 above.

## ***2.7. Income Tax Act, 1962: Amendment of section 64H***

See the notes on paragraph 2.5 above.

## ***2.8. Income Tax Act, 1962: Amendment of section 64K***

The submission of returns is linked to payments of dividends tax to the Commissioner only. Where no payment of tax is required, but a payment of a dividend occurred, there is no requirement to submit a return.

The above can be illustrated by the following examples:

*Example 1:* A listed company declares and pays a dividend, and transfers the administration to a “regulated intermediary” and hence the liability to withhold dividends tax is also transferred to the latter. The company has no obligation to submit a return to this effect to the Commissioner.

*Example 2:* A regulated intermediary facilitates the payment of a dividend on behalf of a listed company, and withholds the correct amount due, but due to claims for refunds on earlier dividends facilitated on behalf of other companies (see section 64K(1)(c)), there is nothing left and it need not make payment to the Commissioner, and hence need not submit a return to this effect to the Commissioner.

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As can be seen from the above examples it will be impossible to properly administer the tax as a complete picture of the dividend flows through the chain (from the originating company through various levels of regulated intermediaries to the eventual beneficial owner) will not be available.

It is proposed that the submission of a return be linked to the payment of a dividend instead of to the payment of tax, by amending section 64K(1)(d) accordingly.

## ***2.9. Income Tax Act, 1962: Amendment of section 64L***

### *Paragraph (a):*

Section 64L (refunds by companies) make provision for refunds only where a late declaration is submitted (i.e. no withholding or reduced rate withholding). Assume that a rebate is not allowed for some reason and the full dividends tax is withheld and later proof is submitted that a qualifying foreign tax was withheld and should have reduced the dividend tax it cannot be claimed in terms of section 64L. The proposed amendments provide that a late rebate can be claimed if claimed within three years from the payment of the relevant dividend.

### *Paragraph (b):*

In order for a company or regulated intermediary to withhold either nothing or at a reduced rate, the beneficial owner has to submit both a declaration and a written undertaking. If he fails to do so at the required time and more is withheld he only needs to submit the declaration in order to get a refund (see sections 64L(1)(c)). In other words less strict requirements apply when the taxpayer is delinquent than when the taxpayer is compliant.

This written undertaking is a document between the taxpayer and the collections agent, and SARS is not directly involved, and it may be argued that it is not important. However, if SARS requires the undertaking in the normal course of business SARS would also require it when the taxpayer is in default (especially since it could lead to a recovery claim from SARS under a section 64L scenario).

It is proposed that section 64L(1)(c) be amended to require submission of both the declaration and the written undertaking.

### *Paragraph (c):*

The proposed amendments are consequential to the insertion of the new subsection (1A).

## ***Clause 2.10. Income Tax Act, 1962: Amendment of section 64M***

### *Paragraph (a):*

Section 64M (refunds by regulated intermediaries) make provision for refunds only where a late declaration is submitted (i.e. no withholding or reduced rate withholding). Assume that a rebate is not allowed for some reason and the full dividends tax is withheld and later proof is submitted that a qualifying foreign tax was withheld and should have reduced the dividend tax it cannot be claimed in terms of section 64M. The proposed amendments provide that a late rebate can be claimed if claimed within three years from the payment of the relevant dividend.

### *Paragraph (b):*

In order for a regulated intermediary to withhold either nothing or at a reduced rate, the beneficial owner has to submit both a declaration and a written undertaking. If he fails to do so at the required time and more is withheld he only needs to submit the declaration in order to get a refund (see



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section 64M(1)(c)). In other words less strict requirements apply when the taxpayer is delinquent than when the taxpayer is compliant.

This written undertaking is a document between the taxpayer and the collections agent, and SARS is not directly involved, and it may be argued that it is not important. However, if SARS requires the undertaking in the normal course of business SARS would also require it when the taxpayer is in default (especially since it could lead to a recovery claim from SARS under a section 64M scenario).

It is proposed that section 64M(1)(c) be amended to require submission of both the declaration and the written undertaking.

*Paragraph (c):*

The proposed amendments are consequential to the insertion of the new subsection (1A).

***Clause 2.11. Income Tax Act, 1962: Amendment of section 64N***

The proposed amendment, amends section 64N(5) in order to require a company or regulated intermediary to obtain proof of the foreign tax paid and deducted from dividends tax payable in the prescribed form and manner, to enable SARS to verify it.

***Clause 2.12. Income Tax Act, 1962: Amendment of paragraph 2 of Fourth Schedule***

*Paragraph (a):*

A new section 7B is proposed to be inserted in the Income Tax Act, 1962, by means of the Taxation Laws Amendment Bill, 2012. The new section provides for the date of accrual of “variable remuneration” to be the date on which the remuneration is paid to the relevant employee. The proposed amendment in this Bill stipulates that deduction or withholding of employees’ tax by the employer should take place on the same date.

*Paragraphs (b) and (c):*

A proposed amendment in the Taxation Laws Amendment Bill, 2012, will remove persons of 65 years and older from the current provisions of section 18 of the Income Tax Act, 1962, and place them under the provisions of section 6A of that Act. From 1 March 2014 they will also become entitled to a medical scheme fees tax credit and the additional medical expenses tax credit proposed to be inserted in section 6B of that Act. Paragraph 2(4)(d) of the Fourth Schedule to the Income Tax Act, which allows the deduction of contributions to medical schemes when determining the amount of employees’ tax will, therefore, no longer apply from that date and its deletion is proposed. A consequential correction of a reference in paragraph 2(4)(f) is required.

***2.13. Income Tax Act, 1962: Amendment of paragraph 14 of Fourth Schedule***

The proposed amendment aligns the relevant provisions of the Income Tax Act, 1962, with that of the Tax Administration Act, 2011, and provides clarity that the imposition of a penalty under paragraph 14(6) of the Fourth Schedule must be in accordance with the procedures referred to in Chapter 15 of the Tax Administration Act, 2011.

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## ***2.14. Income Tax Act, 1962: Amendment of paragraph 19 of Fourth Schedule***

### *Paragraph (a):*

Paragraph 19(1)(a) of the Fourth Schedule to the Income Tax Act, 1962, provides that a taxpayer (other than a company) should submit an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment for purposes of determining provisional tax liability. “Taxable income” is defined as the amount remaining after deducting from the “income” of any person the deductions allowable under the Act. Income includes a retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit (benefits).

Based on the above, the taxpayer must include these benefits in the total taxable income estimates for purposes of provisional tax, even though these amounts are taxed using separate tax tables and the tax deducted using these tables is final.

It is proposed to exclude these benefits from the estimate of total taxable income, as these benefits are separately taxed.

### *Paragraph (b):*

Paragraph 19(1)(d)(i)(aa) of the Fourth Schedule to the Income Tax Act, 1962, specifically excludes the taxable portion of any lump sum contemplated in section 7A(4A) of the Act and paragraph (d) of the definition of gross income from the basic amount applicable to any estimate submitted by a provisional taxpayer under this paragraph. However, section 7A(4A) of the Act was deleted with effect from 1 March 2011. It is proposed that the reference to section 7A(4A) be deleted. A severance benefit is covered by paragraph (d) of the definition of gross income.

## ***2.15. Income Tax Act, 1962: Amendment of paragraph 20 of Fourth Schedule***

The proposed amendment aligns the relevant provisions of the Income Tax Act, 1962, with that of the Tax Administration Act, 2011, and provides clarity that the imposition of a penalty under paragraph 20 of the Fourth Schedule must be in accordance with the procedures referred to in Chapter 15 of the Tax Administration Act, 2011.

Further, paragraph 20(1) of the Fourth Schedule to the Income Tax Act, 1962, does not provide relief if the actual tax paid is higher than the tax on estimated taxable income. Currently, a penalty may be imposed in some instances where actual tax paid exceeds the tax on the required estimated amount for provisional tax purposes. The reason for this unintended outcome is that payment of employees’ tax and provisional tax paid before the end of the relevant tax year is not properly taken into account in determining the penalty.

Accordingly, a change in the determination of the penalty on the underestimation of provisional tax is proposed. The amendment to the provisional tax understatement penalty rules has the effect that a penalty will be imposed only where the full amount of the tax on the required estimated taxable income is not paid by the end of the tax year. The proposal will eliminate the possibility that an underestimation penalty may be levied if the required provisional tax has been paid.

## ***2.16. Income Tax Act, 1962: Amendment of paragraph 20A of Fourth Schedule***

The proposed amendment aligns the relevant provisions of the Income Tax Act, 1962, with that of the Tax Administration Act, 2011, and provides clarity that the imposition of a penalty under

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paragraph 20A of the Fourth Schedule must be in accordance with the procedures referred to in Chapter 15 of the Tax Administration Act, 2011.

## ***2.17. Income Tax Act, 1962: Amendment of paragraph 27 of Fourth Schedule***

In some instances, the total estimated provisional tax due may be lower than the actual liability upon assessment due to certain deviations between both sets of rules. Under current law, however, a provisional tax penalty may apply solely due to this deviation even if no provisional tax is due. The proposed amendment eliminates this penalty because this deviation does not represent an attempt to undermine the provisional tax.

## ***2.18. Income Tax Act, 1962: Amendment of paragraph 11 of Sixth Schedule***

The proposed amendment aligns the relevant provisions of the Income Tax Act, 1962, with that of the Tax Administration Act, 2011, and provides clarity that the imposition of a penalty under paragraph 11 of the Sixth Schedule must be in accordance with the procedures referred to in Chapter 15 of the Tax Administration Act, 2011.

## ***2.19. Customs and Excise Act, 1964: Amendment of section 3***

Section 3(1) provides for the delegation of any duty imposed or power conferred on the Commissioner to an officer or any other person. In terms of subsection (2)(a), any decision made and any notice or communication signed or issued by such officer or person may be withdrawn or amended by the Commissioner or by the officer or the person concerned. It is arguable that if, for instance, the officer or person is no longer in service, the Commissioner must personally withdraw or amend the decision, notice or communication.

The proposed amendment provides that the decision, notice or communication may also be withdrawn or amended by the officer or person in charge of Customs Operations or Excise Operations.

## ***2.20. Unemployment Insurance Contributions Act, 2002: Amendment of section 10***

The reason for the amendment is that employee information to be submitted by employers in terms of section 10(3) is submitted by all employers directly to the Unemployment Insurance Commissioner and not to the Commissioner for SARS. It was agreed with the Unemployment Insurance Commissioner that the relevant database facilitating the employment detail of employees and the calculation of benefits, would be established and maintained by the UIF. The UIF utilises the employee information to establish and maintain an employment record for each registered employee which facilitates the validation and calculation of employee benefits immediately when benefits are claimed. This proposed amendment will align the Unemployment Contributions Act, 2002, with what is done in practice.

## ***2.21. Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 19***

*Paragraph (a):*

In terms of section 19(1), an extractor is duly obliged to submit certain information to the Minister of Finance in the form and manner that the Minister may prescribe, on an annual basis, in respect of

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a year of assessment. The Minister may in turn disclose any information disclosed under this section to the Commissioner (who carries out the administration of the Mineral and Petroleum Resources Royalty Administration Act).

*Paragraph (b):*

An extractor will now be required to submit the following additional information to the Minister on an annual basis, in respect of a year of assessment:

- The amounts of the royalty imposed, in terms of the Royalty Act, in respect of refined and unrefined minerals;
- The quantum of earnings before interest and tax calculated per the Royalty Act;
- The amount of the royalty that would have been payable if the gross sales of that extractor (in respect of all mineral resources) does not exceed R10 million during that year;
- The royalty (in respect of all mineral resources) imposed on an extractor if the extractor was not subject to the R100 000 exemption per year of assessment;
- The amount of the royalty that would have been payable if the rollover relief for transfers between extractors, did not apply.

## ***2.22. Taxation Laws Second Amendment Act, 2011: Amendment of section 1***

The proposed amendment defers the effective date for the new research and development provisions from 1 April 2012 to 1 October 2012.

## ***2.23. Tax Administration Act, 2011: Amendment of section 1***

*Paragraph (a):*

The proposed definition is inserted in the general definitions as it is also used in other Chapters of the Tax Administration Act, 2011.

*Paragraph (b):*

The proposed amendment aims to include, within the ambit of the definition of a ‘SARS official’, persons from other organs of state whose services are obtained by SARS, for example under section 5(1)(c) of the SARS Act, but with whom no commercial contracts are concluded.

## ***2.24. Tax Administration Act, 2011: Amendment of section 3***

*Paragraph (a):*

The proposed amendment is a technical correction in order to apply the defined term “tax offence” for purposes of the Tax Administration Act, 2011.

*Paragraph (b):*

The proposed amendment is a technical correction in order to remove unnecessary words.

## ***2.25. Tax Administration Act, 2011: Amendment of section 6***

The proposed amendment aims to include within the ambit of the definition of a ‘SARS official’ persons from other organs of state whose services are obtained by SARS, for example under section 5(1)(c) of the SARS Act, but with whom no commercial contracts are concluded.

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## ***2.26. Tax Administration Act, 2011: Amendment of section 11***

The proposed amendment deletes section 11(3) which is a duplication of section 235(3) of the Tax Administration Act, 2011.

## ***2.27. Tax Administration Act, 2011: Amendment of section 14***

The proposed amendment is a technical correction to give effect to the general approach in the Tax Administration Act, 2011, that business days are used in the context of time periods other than time periods for payment.

## ***2.28. Tax Administration Act, 2011: Amendment of section 25***

The proposed amendment is a technical correction to enhance clarity regarding the source of policy criteria.

## ***2.29. Tax Administration Act, 2011: Amendment of section 29***

The Tax Administration Act, 2011, imposes a general record keeping requirement and some tax Acts, in addition, specify what records must be kept. The proposed amendment is to enable the Commissioner to specify, in certain circumstances, what records are specifically required to be kept.

## ***2.30. Tax Administration Act, 2011: Amendment of section 32***

The proposed amendment is a technical correction in order to confirm that records relevant to the investigation by SARS must also be retained by a person until the audit is concluded or the assessment becomes final.

## ***2.31. Tax Administration Act, 2011: Amendment of section 34***

The proposed amendment is a technical correction in order to insert the defined term 'arrangement' in single quotation marks.

## ***2.32. Tax Administration Act, 2011: Amendment of section 46***

The proposed amendment is a technical correction in order to effect consistency regarding the basis of the exercise of a discretion by SARS for an extension of a time period under the Tax Administration Act, 2011.

## ***2.33. Tax Administration Act, 2011: Amendment of section 49***

### *Paragraph (a):*

The proposed amendment is a technical correction to enhance clarity regarding which persons may be questioned by SARS during a field audit or investigation.

### *Paragraph (b):*

The proposed amendment is a technical correction to ensure photocopying costs may also be claimed by a person where SARS uses the photocopying facilities of that person during a criminal investigation.

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## ***2.34. Tax Administration Act, 2011: Amendment of section 61***

The proposed amendment gives effect to the notice requirement where the owner or person in control of the premises is not present during a search and seizure by SARS.

## ***2.35. Tax Administration Act, 2011: Amendment of section 63***

The proposed amendment gives effect to the notice requirement where the owner or person in control of the premises is not present during a search and seizure by SARS.

## ***2.36. Tax Administration Act, 2011: Amendment of section 71***

The proposed amendment is a technical correction in order to use a more appropriate term.

## ***2.37. Tax Administration Act, 2011: Amendment of section 72***

The proposed amendment is a technical correction in order to apply the defined term “tax offence” for purposes of the Tax Administration Act, 2011.

## ***2.38. Tax Administration Act, 2011: Amendment of section 79***

The proposed amendment is a technical correction in order to include the requirements for an application for a ruling effected by section 15(a) of Act No. 8 of 2010, but omitted in the Tax Administration Act, 2011.

## ***2.39. Tax Administration Act, 2011: Amendment of section 95***

The proposed amendment is a technical correction in order to provide clarity that a taxpayer may only dispute an assessment based on an estimation as a result of the failure to submit a return, after the relevant return is submitted and a reduced or additional assessment is not issued by SARS.

## ***2.40. Tax Administration Act, 2011: Amendment of section 99***

The proposed amendment is a technical correction in order to enhance clarity regarding the particular assessment in issue.

## ***2.41. Tax Administration Act, 2011: Amendment of section 135***

The proposed amendment is a technical correction in order to clarify that this section only applies to appeals against tax court judgments to the Supreme Court of Appeal.

## ***2.42. Tax Administration Act, 2011: Amendment of section 164***

The proposed amendment is a technical correction in order to enhance clarity.

## ***2.43. Tax Administration Act, 2011: Amendment of section 187***

The proposed amendment is a technical correction to ensure the correct application of the interest regime under the Tax Administration Act, 2011, i.e. if a penalty is not paid by the payment date

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specified in the penalty assessment interest runs from the liability date which is the date of assessment.

## ***2.44. Tax Administration Act, 2011: Amendment of section 198***

The proposed amendment is a technical correction in order to enhance clarity.

## ***2.45. Tax Administration Act, 2011: Amendment of section 211***

The proposed amendment is a technical correction to effect a consistent period before each increment of an administrative non-compliance penalty.

## ***2.46. Tax Administration Act, 2011: Amendment of section 217***

### *Paragraph (a):*

The proposed amendment is a technical correction in order to remove unnecessary cross-references.

### *Paragraph (b):*

The proposed amendment is a technical correction in order to enhance clarity.

## ***2.47. Tax Administration Act, 2011: Amendment of section 221***

The proposed amendment is a technical correction in order to insert the defined term ‘understatement’ in single quotes.

## ***2.48. Tax Administration Act, 2011: Amendment of section 223***

The proposed amendment aims to make it clear that a taxpayer cannot rely upon an opinion regarding the GAAR or the substance over form doctrine unless there has been full disclosure of all steps in or parts of the arrangements (whether or not the taxpayer is a direct party to those steps and arrangements), as well as any other material facts.

## ***2.49. Tax Administration Act, 2011: Amendment of section 224***

The proposed amendment is a technical correction in order to clarify the application of a remedy.

## ***2.50. Tax Administration Act, 2011: Amendment of section 229***

The proposed amendment is a technical correction in order to apply the defined term “tax offence” for purposes of the Tax Administration Act, 2011.

## ***2.51. Tax Administration Act, 2011: Amendment of section 231***

The proposed amendment is a technical correction in order to apply the defined term “tax offence” for purposes of the Tax Administration Act, 2011.

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## **2.52. Tax Administration Act, 2011: Amendment of section 234**

### *Paragraph (a):*

See the notes on paragraph 2.55 below. The proposed amendment is a consequential amendment in order to give effect to the first phase of the regulation of tax practitioners.

### *Paragraph (b):*

The proposed amendment is a technical correction in order to clarify an offence.

## **2.53. Tax Administration Act, 2011: Amendment of section 235**

The proposed amendment is a technical correction.

## **2.54. Tax Administration Act, 2011: Amendment of section 237**

The proposed amendment is a technical correction in order to clarify that a forged signature cannot be used with the consent and authority of the person whose signature is forged.

## **2.55. Tax Administration Act, 2011: Amendment of heading of Chapter 18**

It is proposed that the regulation of tax practitioners be divided into two phases. The first phase will be the compulsory registration of tax practitioners with a recognised controlling body, which is discussed in more detail below. The second phase will be the establishment of an independent regulatory board for tax practitioners. The second phase will begin with a review of the success or otherwise of the first phase eighteen months after its implementation.

The proposed recognised controlling body model is a middle way between a lack of regulation and a statutory regulator, which will leverage existing bodies. It is intended to provide a framework to ensure that tax practitioners are appropriately qualified and that a mechanism is available, both to taxpayers and SARS, to ensure that misconduct is addressed.

This proposal hinges on two requirements. The first is the existing requirement that tax practitioners register with SARS, which was brought into force in 2005. The Tax Administration Act, 2011, already modifies this requirement to provide that a tax practitioner may not be registered if he or she has been removed from a professional body or convicted for a crime involving dishonesty in the preceding five years. The second is a new requirement for all tax practitioners to belong to a recognised tax practitioners' association or fall under the authority of a directly relevant statutory regulator, such as the Independent Regulatory Board for Auditors (IRBA).

SARS would review the minimum qualifications and experience requirements, continuing professional education requirements, codes of ethics and conduct and disciplinary procedures of a professional association seeking recognition. It would ensure that members are required to have knowledge of tax that is kept up to date, are subject to codes of ethics and conduct that are relevant to the tax field and require members to act ethically and professionally and that an effective disciplinary mechanism exists to deal with members who contravene the codes of ethics and conduct.

To ensure sustainability and credibility, associations should have a minimum of 1 000 members upon either application or within a year to cater for new associations. To cater for associations that lack the capacity or willingness to deal with SARS's complaints of members' misconduct



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adequately, it is proposed that the Minister be empowered to appoint a panel of retired judges or persons of similar stature and competence to hear these complaints on an association's behalf. The costs of the appointment will be borne equally by the association and SARS. A process for revoking an association's recognition if it does not follow through on its commitments is also proposed.

In order to recognise the status of statutory regulators, recognition of the relevant bodies would be automatic.

Finally, the range of misconduct that may be reported by SARS to a professional association or statutory regulator in terms of section 241 of the Tax Administration Act, 2011, the successor to section 105A of the Income Tax Act, 1962, is expanded to cover additional tax specific misconduct.

## ***2.56. Tax Administration Act, 2011: Amendment of section 239***

### *Paragraph (a):*

See the notes on paragraph 2.55 above.

### *Paragraph (b):*

The definition of "registered tax practitioner" is used in other Chapters of the Tax Administration Act, 2011, and thus serves as a global definition that should be included in section 1 of the Act.

## ***2.57. Tax Administration Act, 2011: Amendment of section 240***

### *Paragraphs (a), (c) and (d):*

The proposed amendments are technical corrections in order to clarify what 'document' is referred to namely a return as defined in the Tax Administration Act, 2011.

### *Paragraphs (b):*

See the notes on paragraph 2.55 above. The proposed amendments are consequential amendments in order to give effect to the first phase of the regulation of tax practitioners.

### *Paragraph (e):*

The proposed amendments clarify that removal from a professional association only bars a person from registering as a tax practitioner if the removal is for serious misconduct and corrects the conjunction between paragraphs (a) and (b).

## ***2.58. Tax Administration Act, 2011: Insertion of section 240A***

See the notes on paragraph 2.55 above.

## ***2.59. Tax Administration Act, 2011: Amendment of section 241***

See the notes on paragraph 2.55 above.

## ***2.60. Tax Administration Act, 2011: Amendment of section 244***

The proposed amendment is a technical correction to give effect to the general approach in the Tax Administration Act, 2011, that business days are used in the context of time periods other than time periods for payment.

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## ***2.61. Tax Administration Act, 2011: Amendment of section 246***

The proposed amendment is a technical correction in order to enhance clarity.

## ***2.62. Tax Administration Act, 2011: Amendment of section 250***

The proposed amendment is a technical correction in order to effect the use of the correct term.

## ***2.63. Tax Administration Act, 2011: Amendment of section 252***

The proposed amendment is a technical correction in order to align section 252(a) with section 251(a) of the Tax Administration Bill, 2011.

## ***2.64. Tax Administration Act, 2011: Amendment of section 256***

The proposed amendment enables SARS to withdraw a tax clearance certificate from the date that a taxpayer becomes tax non-compliant during the period of validity of the certificate.

## ***2.65. Tax Administration Act, 2011: Amendment of section 257***

The proposed amendment enables the Minister to determine by regulation the circumstances when a tax clearance certificate may be required from a person for governmental purposes, for example when tendering for procurement contracts with an organ of state, or issued by SARS, and to prescribe additional procedural requirements for the issue and withdrawal of tax clearance certificates.

## ***2.66. Tax Administration Act, 2011: Amendment of section 269***

The proposed amendment is a technical correction in order to apply the transitional rule to electronic communication rules and regulations issued under provisions of the tax Acts repealed by the Tax Administration Act, 2011.

## ***2.67. Short title and commencement***

Clause 67 provides for the name and commencement of the proposed Act.

## **3. CONSULTATION**

The amendments proposed by this Bill were published on the websites of National Treasury and SARS for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large were consulted in preparing the Bill.

## **4. FINANCIAL IMPLICATIONS FOR STATE**

An account of the financial implications for the State was given in the 2012 Budget Review.

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## **5. PARLIAMENTARY PROCEDURE**

- 5.1.** The State Law Advisers, South African Revenue Service and National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2.** The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act. No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.