

ANNEXURE D

REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

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

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

(MINISTER OF FINANCE)

[B – 2013]

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—

- amend the Income Tax Act, 1962, so as to effect textual and consequential amendments; to amend provisions; and to effect technical corrections;
- amend the Customs and Excise Act, 1964, so as to amend a provision; to make a new provision; and to amend provisions;
- amend the Skills Development Levies Act, 1999, so as to make a new provision; and to effect consequential amendments;
- amend the Unemployment Insurance Contributions Act, 2002, so as to make a new provision; and to effect consequential amendments;
- amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to effect a technical correction;
- amend the Tax Administration Act, 2011, so as to amend certain provisions; to effect technical corrections; and to effect textual and consequential amendments;

and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 2 of Act 61 of 2008, section 5 of Act 60 of 2008, section 14 of Act 8 of 2010 and section 271 read with paragraph 25 of Schedule 1 of Act 28 of 2011

1. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (h) of the following paragraph:

“(h) paragraphs **[12(5)(c)(i),]** 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(e) of the Eighth Schedule.”.

Amendment of section 6quin of Act 58 of 1962 as inserted by section 6 of Act 104 of 1979, repealed by section 6 of Act 94 of 1983, inserted by section 12 of Act 24 of 2011 and amended by section 4 of Act 21 of 2012

2. Section 6quin of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3A) of the following subsection:

“(3A) Where an amount of tax is levied and withheld as contemplated in subsection (1)(a), no rebate may be deducted in terms of this section if the resident contemplated in subsection (1) does not, within 60 days from the date on which that amount of tax is withheld, submit to the Commissioner a **[declaration in such form as may be required by the Commissioner]**return that the amount of tax was levied and withheld as contemplated in subsection (1)(a).”.

Amendment of section 64K of Act 58 of 1962 as inserted by section 56 of Act 60 of 2008, as amended by section 53 of Act 17 of 2009, section 84 of Act 24 of 2011, section 271 read with paragraph 55 of Schedule 1 of Act 28 of 2011 and section 14 of Act 21 of 2012

3. 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, in terms of this Part, a person has paid a dividend or received a dividend that is exempt in terms of section 64F, that person must submit a return to the Commissioner by the last day of the month following the month during which the dividend is paid or received.”.

Amendment of section 64N of Act 58 of 1962 as inserted by section 53 of Act 17 of 2009 and amended by section 17 of Act 21 of 2012.

4. Section 64N of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) 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]**dividends tax payable in terms of this section, in the form and manner prescribed by the Commissioner.”.

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962 as amended by section 41 of Act 90 of 1988, section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997, section 53 of Act 30 of 1998, section 56 of Act 59 of 2000, section 33 of Act 30 of 2002, section 56 of Act 74 of 2002, section 22 of Act 16 of 2004, section 43 of Act 20 of 2006, section 57 of Act 8 of 2007, section 44 of Act 3 of 2008, section 70 of Act 60 of 2008, section 20 of Act 8 of 2010 and section 271 read with paragraph 82 of Schedule 1 of Act 28 of 2011

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

“(6) For the purposes of determining the amount of Standard Income Tax on Employees required to be deducted or withheld from any net remuneration paid or payable by an employer to an employee, the employer shall not allow the deduction of the rebate contemplated in section 6(2)(b) unless **[he is in possession of a written declaration by]**the employer verifies that the employee **[that he]** would be over the age of 65 years on the last day of the year of assessment: **[Provided that—**

(a) where the employee has failed, or is deemed to have failed in terms of paragraph (b), to furnish such written declaration and in consequence of such failure the amount of Standard Income Tax on Employees determined by the employer is greater than the amount which would have been determined had the employee submitted such written declaration, the amount so determined by the employer shall for the purposes of this paragraph be deemed to have been correctly determined; and

(b) where an employee has not furnished such written declaration in sufficient time to enable the employer to take account thereof for the purpose of determining such amount of annual tax, the employee shall be deemed for the said purpose to have failed to render such written declaration]”.

Amendment of paragraph 11C of Fourth Schedule to Act 58 of 1962 as inserted by section 22 of Act 19 of 2001, amended by section 85 of Act 45 of 2003 and section 271 read with paragraph 83 of Schedule 1 of Act 28 of 2011

6. Paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (5).

Amendment of paragraph 13 of Fourth Schedule to Act 58 of 1962 as amended by section 24 of Act 72 of 1963, section 29 of Act 113 of 1977, section 21 of Act 4 of 2008, section 49 of Act 101 of 1990 and section 23 of Act 19 of 2001

7. Paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (7) of the following subparagraph:

“(7) It shall be sufficient compliance with the provisions of subparagraph (1) or (4) in regard to the delivery of any employee’s tax certificate to any employee or former employee if such certificate is delivered to the employees’ authorized agent or the representative taxpayer in respect of the remuneration show in such certificate or, where delivery cannot conveniently be effected by personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer **[by registered post]**.”.

Amendment of paragraph 11 of Sixth Schedule to Act 58 of 1962 as amended by section 271 read with paragraph 99 of Schedule 1 of Act 28 of 2011 and section 26 of Act 21 of 2012

8. (1) Paragraph 11 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by—

(a) the substitution for subparagraph (4A) of the following subparagraph:

“(4A) For the purposes of paragraph 2(1) of the Fourth Schedule **[and]**, section 89bis(2), section 6 of the Skills Development Levies Act, 1999, (Act No. 9 of 1999) and section 8 of the Unemployment

Insurance Contributions Act, 2002 (Act No. 4 of 2002), a registered micro business may elect to pay the amounts deducted or withheld in terms of that paragraph or **[section]sections** to the Commissioner—

- (i) with regard to amounts deducted or withheld during the first six calendar months from the first day of the year of assessment, **[by]within seven days after** the end of such period; and
- (ii) with regard to amounts deducted or withheld within the next six calendar months following the period in item (i), **[by the last day of the year of assessment]within seven days after the end of such period.**”; and

(b) by the insertion after subparagraph (4A) of the following subparagraph:

“(4A) If a registered micro business has made an election in terms of subparagraph (4A), the election must apply to all amounts deducted or withheld in terms of the applicable provisions as referred to in that subparagraph.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006, section 9 of Act 21 of 2006, section 5 of Act 36 of 2007 and section 25 of Act 61 of 2008, section 24 of Act 8 of 2010 and section 3 of Act 25 of 2011

9. Section 4 of the Customs and Excise Act, 1964, is hereby amended by—

(a) the substitution for subsection (4) of the following subsection:

“(4) (a) An officer may, for the purposes of this Act [—

(i) **without previous notice, at any time]** enter any premises **[whatsoever and make such examination and enquiry as he deems necessary;]** subject to the other provisions of this section.

(aA) Premises may be entered by an officer in terms of paragraph (a) only on authority of a warrant issued by a magistrate or judge, provided that in the case of the following categories of premises an officer may enter the premises without a warrant—

(i) premises managed or operated by the State or a public entity within the meaning of the Public Finance Management Act as part of a port, airport, railway station or land border post and on which an activity to which this Act applies is carried out or allowed;

(ii) premises licensed or registered in terms of this Act;

(iii) premises occupied by a person licensed or registered in terms of this Act and used for purposes of the business for which that person is licensed or registered; and

(iv) premises entered by an officer with the consent of the owner or person in physical control of the premises after that owner or person was informed that there is no obligation to admit the officer in the absence of a warrant.

(aB) An officer may without a warrant enter any premises for which a warrant is required in terms of paragraph (aA) if the officer on reasonable grounds believes—

(i) that a warrant will be issued by a magistrate or judge if a warrant is applied for; and

(ii) that the delay in obtaining the warrant is likely to defeat the purpose for which the officer seeks to enter the premises.

(aC) An officer may for purposes of this Act—

(i) after having gained entry to any premises in terms of this subsection, conduct an inspection, examination, enquiry or a search;

(ii) while he is on the premises or at any other time require from any person the production then and there, or at a time and place fixed by the officer, of any book, document or thing which by this Act is required to be kept or exhibited or which relates to or which he has reasonable cause to suspect of relating to matters dealt with in this Act and which is or has been on the premises or in the possession or custody or under the control of any such person or his employee;

(iii) at any time and at any place require from any person who has or is believed to have the possession or custody or control of any book, document or thing relating to any matter dealt with in this Act, the production thereof then and there, or at a time and place fixed by the officer; and

(iv) examine and make extracts from and copies of any such book or document and may require from any person an explanation of any entry therein and may attach any such book, document or thing as in his opinion may afford evidence of any matter dealt with in this Act.

(b) An officer may take with him on to any premises an assistant or a member of the police force[.], provided that only those assistants and members of the police force whose presence, in the officer's reasonable opinion, is necessary for purposes of conducting the inspection,

examination, enquiry or search on the premises may enter the premises.

(c) When entering any premises in terms of paragraph (aB), the officer shall comply with the following requirements—

(i) The officer may enter the premises only during ordinary business hours unless in his reasonable opinion he considers that entry at any other time is necessary for purposes of the Act;

(ii) The officer shall, upon seeking admission to the premises, inform the person in charge of the premises of the purpose of the entry;

(iii) If the purpose of the entry is, or if the officer after having gained entry decides, to search the premises for goods, records or any other things in respect of which an offence in terms of this Act is suspected to have been committed or that may be used as evidence for the prosecution of such an offence—

(aa) the officer shall hand to the person in charge a written statement signed by him stating that a search of the premises is to be conducted unless, in the officer's reasonable opinion, there are circumstances of urgency which may result in the search being frustrated if its commencement is delayed until such a statement can be prepared;

(bb) the officer's actions shall be confined to such searching, inspection, enquiries and examination as are reasonably necessary for the purpose of the search;

(cc) the officer may, either before or after complying with subparagraph (aa), take such steps as he considers necessary to

prevent persons present on the premises from concealing, destroying or tampering with any documents, data or things located on the premises;

(dd) the person in charge shall have the right to be present, or to appoint a delegate to be present, during and to observe the search;

(ee) the officer shall compile an inventory of all items removed from the premises and shall, prior to leaving the premises, sign the inventory and hand a copy thereof to the person in charge: Provided that if it is not possible in the circumstances to compile, sign and hand such inventory to the person in charge before leaving the premises, the officer shall seal the items to be removed and as soon as possible after removal of the items from the premises, compile the inventory in the presence of the person in charge of the premises, if that person requested to be present, and sign and hand a copy of the inventory to that person;

(ff) the officer shall compile a schedule of all copies and extracts made in the course of the search and shall, prior to leaving the premises, sign and hand a copy thereof to the person in charge; and

(gg) the officer must conduct the search with strict regard for decency and order.

(d) A judge or magistrate may issue a warrant referred to in paragraph (aA) only on written application by an officer setting out under oath or affirmation the grounds why it is

necessary for an officer to gain access to the relevant premises.

(e) If the purpose of the entry is to conduct a search of the premises for goods, records or any other things in respect of which an offence in terms of this Act is suspected to have been committed or that may be used as evidence for the prosecution of such an offence, the magistrate or judge may issue such warrant if it appears from the information on oath that—

(i) there are reasonable grounds for suspecting that an offence in terms of the Act has been committed;

(ii) a search of the premises is likely to yield such goods, records or other things; and

(iii) the search is reasonably necessary for the purposes of the Act. ”; and

(b) by the substitution for subsection (6) of the following subsection:

“(6) (a) If an officer, after having declared his official capacity and his purpose and having demanded admission into any premises and having complied with any applicable requirements of subsection (4), is not immediately admitted, he and any person assisting him may at any time, but at night only in the presence of a member of the police force, break open any door or window or break through any wall on the premises for the purpose of entry and search.

(b) An officer or any person assisting him may at any time break up any ground or flooring on any premises for the purpose of a search if the officer in his reasonable opinion considers such breaking up to be necessary for the purposes of the Act; and if any room, place, safe, chest, box or package is locked and the keys thereof are not produced on demand, may open such room, place, safe, chest, box or package in any manner.”.

Insertion of section 4D in Act 91 of 1964

10. The Customs and Excise Act, 1964, is hereby amended by the addition of the following section:

“Officers’ powers relating to criminal prosecutions

4D. An officer may—

- (a) investigate for purposes of a criminal prosecution whether an offence in terms of this Act has been committed;
- (b) lay criminal charges for the prosecution of any such offence; and
- (c) provide such assistance as may be required by the prosecuting authority for the prosecution of any such offence.”.

Amendment of section 21A of the Customs and Excise Act, 1964, as inserted by section 121 of Act 60 of 2001, amended by section 2 of Act 10 of 2005, section 18 of Act 21 of 2006 and section 7 of Act 36 of 2007

11. Section 21A of the Customs and Excise Act, 1964, is hereby amended by—

(a) the substitution for the section heading of the following heading:

“Provision for the administration of customs controlled areas within industrial development zones and Special Economic Zones”; and

(b) the renumbering of subsection (1) as subsection (1A) and the insertion of the following subsection:

- “(1) (a) Notwithstanding anything to the contrary in this section or any other provision of this Act, for the purposes of the Special Economic Zones Act, 2013, the Commissioner may by rule—
- (i) after consultation with any person or authority administering any activity in a special economic zone, designate a special economic zone or any

part of a special economic zone as a customs controlled area;

- (ii) regulate the customs and excise administration of the customs controlled area, including but not limited to the control of the movement of goods and persons into, within or from the customs controlled area, goods produced or manufactured or produced or consumed and any other activity therein to which this Act relates;
- (iii) prescribe requirements in all respects to ensure the security of the customs controlled area; and
- (iv) provide for any other matter that may be necessary and useful for the effective and efficient administration of a customs controlled area.

(b) Except as may be otherwise provided in any Schedule or rule, the provisions of this section regarding a CCA shall apply, with the necessary changes, to a customs controlled area designated in terms of paragraph (a).

(c) This subsection shall come into operation on the date the Special Economic Zones Act, 2013, comes into operation."

Amendment of section 64E of Act 91 of 1964, as inserted by section 48 of Act 19 of 2001 and amended by section 50 of Act 30 of 2002 and section 36 of Act 61 of 2008

12. Section 64E of the Customs and Excise Act, 1964, is hereby amended by—

- (a) the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

"Every applicant for accredited client status shall apply for a specific level thereof and, in addition to the criteria prescribed for that level by rule or that may be determined by the Commissioner, prove, as may be applicable, the following:";

- (b) the substitution in subsection (1)(b) for item (ii) of the following subparagraph:
- “(ii) that the accounting records and other documents kept for providing evidence of compliance with customs and excise procedures utilise information prepared in a manner consistent with general accounting principles appropriate to the procedure concerned;”;
- (c) the substitution in subsection (1)(b) for item (iv) of the following subparagraph:
- “(iv) that the person who will administer the accredited client requirements has sufficient knowledge of customs and excise laws and procedures to implement and maintain an efficient and effective accredited client compliance system.”; and
- (d) the addition after subsection (1)(b) of the following paragraph:
- “(c) The Commissioner may determine separate criteria for accredited client status in respect of customs or excise clients as may be prescribed by rule.”.

Amendment of section 72 of Act 91 of 1964, as amended by section 11 of Act 105 of 1976, section 11 of Act 98 of 1980 and section 26 of Act 34 of 2004

13. (1) Section 72 of the Customs and Excise Act, 1964, is hereby amended by the addition of the following paragraph—

“(d) If any payment made or to be made in connection with goods or any other amount taken or to be taken into account in determining the value of goods exported is expressed in a foreign currency, that payment or other amount must be converted into South African Rand in accordance with section 73.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of section 73 of Act 91 of 1964

14. (1) The Customs and Excise Act, 1964, is hereby amended by the substitution for section 73 of the following section:

73. Currency conversion

- (1) Despite section 65(3), for the purposes of this section, a reference to customs value must be regarded as referring, according to the context, to the value of imported goods and the value of goods exported, or the value of imported goods or the value of goods exported as respectively contemplated in section 65(3) and section 72.
- (2) For the purposes of calculating the customs value of goods, any payment or amount expressed in a foreign currency as contemplated in subsection (4) must be converted into South African Rand in accordance with this section.
- (3) The Commissioner must for the purposes of subsection (2) publish on the SARS website in respect of each Wednesday the selling and buying rates of each of the major currencies for conversion into South African Rand, as provided to the Commissioner by the South African Reserve Bank for that Wednesday.
- (4) If any payment made or to be made in connection with goods or any amount taken or to be taken into account in determining any customs value is expressed in a foreign currency published in terms of subsection (3), that payment or other amount must be converted into South African Rand by using the conversion rate applicable for that currency in terms of subsection (5).
- (5) The conversion rate for a foreign currency as published in respect of that currency for a Wednesday in terms of subsection (3) must be used as the rate for converting the relevant currency into South African Rand if the applicable date fall within any of the following periods—

 - (a) the week commencing the following Wednesday;
 - (b) if that following Wednesday is a public holiday, the two week period commencing that Wednesday; or
 - (c) if that following Wednesday is a public holiday and also the last Wednesday of a calendar year, the three week period commencing that Wednesday.

- (6) (a) The applicable date for a currency conversion in respect of goods imported into or exported from the Republic is the date of entry of the goods for any purpose in terms of this Act;
- (b) If goods have not been entered, the applicable date for currency conversion in respect of such goods shall be—
- (i) the date on which—
- (aa) the applicable period for submission of a bill of entry specified in section 38(1) for imported goods has expired; or
- (bb) the goods were exported as contemplated in section 38(3); or
- (ii) if for any reason the date cannot be determined, a date determined by the Commissioner.
- (7) (a) If any payment made or to be made in connection with any specific goods, or any amount taken or to be taken into account in determining the customs value for those goods, is expressed in a foreign currency not published in terms of subsection (3), the Commissioner must for purpose of valuing those goods, and on request by a person submitting a bill of entry in respect of the goods, determine the conversion rate of that foreign currency into the South African Rand for the date applicable to those goods, taking into account the average selling and buying rates of that foreign currency quoted for the applicable date by at least two major banks operating in the Republic;
- (b) The applicable date for a currency conversion referred to in paragraph (a) in respect of goods imported into or exported from the Republic is the date of the last day prior to the day on which the goods were cleared for any purpose in terms of this Act.
- (8) Where an importer has negotiated a fixed conversion rate with a financial institution and a forward exchange contract has been

issued, this rate will apply to all transactions which fall within the negotiated time period, provided that the invoice reflects the number and date of the contract as well as the rate used.

(9) The conversions of foreign currency into South African Rand, at fixed rates of exchange, negotiated between sellers and buyers related within the meaning of section 66(2) may not be accepted unless it is proved that the relationship did not affect the rate so fixed in terms of the contract.

(10) When the amendment to this section comes into operation, the Commissioner may, despite that amendment continue to publish selling rates as contemplated in substituted subsection (1), until the first Tuesday after the first Wednesday for which buying and selling rates are published in terms of subsection (3)."

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of section 6 of Act 9 of 1999

15. (1) Section 6 of the Skills Development Levies Act, 1999, is hereby amended by—

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

"(1A) Notwithstanding the provisions of subsection (1), if an employer, is a micro business that is registered in terms of the Sixth Schedule to the Income Tax Act, the employer may pay the levy to the Commissioner within the periods as prescribed in paragraph 11(4A) of the Sixth Schedule to that Act."; and

(b) the substitution for subsection (2) of the following subsection:

"(2) An employer must together with payment of the levy in terms of subsection (1) or (1A), submit a return."

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment to section 8 of Act 4 of 2002

16. (1) Section 8 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by—

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

“(1A) Notwithstanding the provisions of subsection (1), if an employer, is a micro business that is registered in terms of the Sixth Schedule to the Income Tax Act, the employer may pay the amount as described in subsection (1), to the Commissioner within the periods as prescribed in paragraph 11(4A) of the Sixth Schedule to that Act.”; and

(b) the substitution for subsection (2) of the following subsection:

“(2) An employer must, together with the payment referred to in subsection (1) or (1A), submit a return reflecting the amount of the payment and such other particulars as the Minister may prescribe.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment to section 13 of Act 4 of 2002

17. Section 13 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If any contribution remains unpaid after the last day for payment thereof as contemplated in section 8(1), 8(1A) or 9(1), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty of 10 per cent of the unpaid amount but the Commissioner or the Unemployment Insurance Commissioner, as the case may be, may remit the penalty or any portion thereof in accordance with the provisions of Chapter 15 of the Tax Administration Act.”.

Amendment of section 6 of Act 29 of 2008

18. Section 6 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A registered person must submit a return **[(as) to the Commissioner [may prescribe]]** for the royalty payable in respect of a year of assessment—

(a) in the case of a company as defined in section 1 of the Income Tax Act, within **[six]twelve** months from the date on which its financial year ends; or

(b) in the case of any other person, within twelve months after the last day of that year.”.

Amendment of Arrangement of Sections of Act 28 of 2011

19. The Arrangement of Sections of the Tax Administration Act, 2011, is hereby amended by the substitution for item 11 of the following item:

“11. Legal proceedings **[on behalf of]**involving Commissioner”.

Amendment of Arrangement of Sections of Act 28 of 2011

20. The Arrangement of Sections of the Tax Administration Act, 2011, is hereby amended by the substitution for item 224 of the following item:

“224. Objection and appeal against **[decision not to remit]**imposition of understatement penalty.”.

Amendment of section 1 of Act 28 of 2011 as amended by section 36 of Act 21 of 2012

21. Section 1 of the Tax Administration Act, 2011, is hereby amended by—
(a) the insertion of the following definition after the definition of “original assessment”:

“outstanding tax debt” means a tax debt not paid by the day referred to in section 162”;

(b) the substitution for the definition of “return” of the following definition:

“return” means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is **[the]a** basis on which an assessment is to be made by SARS;” and

(c) the substitution for the definition of “tax debt” of the following definition:

“tax debt” means an amount **[of tax due by a person in terms of a tax Act]**referred to in section 169(1)”.

Amendment of section 3 of Act 28 of 2011 as amended by section 37 of Act 21 of 2012

22. Section 3 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (e) of the following paragraph:

“(e) collect tax debts and refund tax overpaid;”.

Amendment of section 10 of Act 28 of 2011

23. Section 10 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) to a specific individual, becomes effective only when signed by the person to whom the delegation is made;”.

Amendment of section 11 of Act 28 of 2011 as amended by section 40 of Act 21 of 2012

24. Section 11 of the Tax Administration Act, 2011, is hereby amended by—
(a) the substitution for the heading of the following heading:

“11. Legal proceedings [on behalf of]involving Commissioner”;

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

“(3) A cost order in favour of SARS resulting from any civil proceedings under this Act constitutes funds of SARS within the

meaning of section 24 of the SARS Act and must be paid to SARS despite any law to the contrary.”; and

(c) by the addition after subsection (3) of the following subsections:

- “(4) Unless the court otherwise directs, no legal proceedings may be instituted in the High Court against the Commissioner unless the applicant has given the Commissioner written notice of at least 72 hours of the applicant’s intention to institute the legal proceedings.
- (5) The notice or any process by which the legal proceedings referred to in subsection (4) are instituted, must be served at the address specified by the Commissioner by public notice.”.

Amendment of section 25 of Act 28 of 2011

25. Section 25 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“A person required under a tax Act or by the Commissioner to submit or who voluntarily submits a return must do so—”.

Amendment of section 27 of Act 28 of 2011 as amended by section 42 of Act 21 of 2012

26. Section 27 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

- “(1) A senior SARS official may require a person to submit further or more detailed returns regarding any matter for which a return under section 25 or 26 is required or prescribed by a tax Act.
- (2) A person required under subsection (1) to submit a return must do so in the prescribed form and manner and the return must contain the information prescribed by **[SARS]**the official and must be a full and true return.”.

Amendment of section 34 of Act 28 of 2011

27. Section 34 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of “financial reporting standards” of the following definition:

“**“financial reporting standards”** means, in the case of a company required to submit financial statements in terms of the Companies Act, 2008 (Act No. 71 of 2008), financial reporting standards prescribed by that Act, or, in any other case, the **[Generally Accepted Accounting Practice]** International Financial Reporting Standards or appropriate financial reporting standards that provide a fair presentation of the financial results and position of the taxpayer;”.

Amendment of section 46 of Act 28 of 2011 as amended by section 50 of Act 21 of 2012

28. Section 46 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) A senior SARS official may direct that relevant material—
(a) be provided under oath or solemn declaration; or
(b) required for purposes of a criminal investigation, be provided under oath or solemn declaration and, if necessary, in accordance with the requirements of section 212 or 236 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).”.

Amendment of section 54 of Act 28 of 2011

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

“54. Powers of presiding officer

The presiding officer has the same powers regarding witnesses at the inquiry as are vested in a **[President]**president of the tax court under sections 127 and 128.”.

Amendment of section 68 of Act 28 of 2011

30. Section 68 of the Tax Administration Act, 2011, is hereby amended by—

- (a) the deletion in subsection (1) of the word “and” after paragraph (i);
- (b) the insertion in subsection (1) of the phrase “; and” after paragraph (j); and
- (c) by the addition in subsection (1) of the following paragraph:

“(k) information relating to the examining or auditing procedure or method used by SARS, the disclosure of which could reasonably be expected to jeopardise the effectiveness thereof.”.

Amendment of section 73 of Act 28 of 2011

31. Section 73 of the Tax Administration Act, 2011, is hereby amended by—

- (a) the deletion in subsection (1) of the word “and” after paragraph (b);
- (b) the substitution in subsection (1) for paragraph (c) of the following paragraph:

“**[other information relating to the tax affairs of the taxpayer]**information, other than SARS confidential information, on which the taxpayer’s assessment is based; and”;

- (c) the insertion in subsection (1) after paragraph (c) of the following paragraph:

“(d) other information relating to the tax affairs of the taxpayer.”;

- (d) the substitution for subsection (2) of the following subsection:

“(2) A request for information under subsection (1)~~[(c)]~~(d) must be made under the Promotion of Access to Information Act.”; and

- (e) the substitution for subsection (3) of the following subsection:

“The person requesting information under subsection (1)(b) or (c) may be required to pay for the costs of copies in accordance with the fees prescribed in section 92(1)(b) of the Promotion of Access to Information Act.”.

Amendment of section 79 of Act 28 of 2011 as amended by section 56 of Act 21 of 2012

32. Section 79 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (4) for paragraph (o) of the following paragraph:

- “(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 debt.”.

Amendment of section 93 of Act 28 of 2011

33. Section 93 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

- “(b) necessary to give effect to a settlement under [section 149] Part F of Chapter 9.”.

Amendment of section 99 of Act 28 of 2011 as amended by section 59 of Act 21 of 2012

34. Section 99 of the Tax Administration Act, 2011, is hereby amended by—

- (a) the deletion in subsection (2) of the word “or” after paragraph (c);
- (b) the deletion in subsection (2) of the word “or” after paragraph (d)(i);
- (c) the insertion in subsection (2) for the phrase “; or” after paragraph (d)(ii);
- (d) by the insertion in subsection (2) of the following item after paragraph (d)(ii):
- “(iii) the correction of an error by the taxpayer in a reduced assessment under section 93(1)(d) requested by the taxpayer within the relevant period under subsection (1).”; and
- (e) by the addition of the following subsection:
- “(3) The periods referred to in subsection (2) are extended for the period that a taxpayer without just cause fails to submit relevant material requested by SARS for purposes of verification, inspection or audit under Chapter 5, commencing on the day that

the relevant material was required to be submitted and ending on the day that the taxpayer submits the relevant material.”.

Amendment of section 103 of Act 28 of 2011

35. Section 103 of the Tax Administration Act, 2011, is hereby amended by the addition of the following subsection:

“(3) The Commissioner may prescribe the form of a document required to be completed and delivered under the ‘rules’.”.

Amendment of section 110 of Act 28 of 2011

36. Section 110 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Sections 122, 123, 124, 126, 127 **[and]**, 128 and 129 apply, with the necessary changes, and under procedures determined in the ‘rules’, to the tax board and the chairperson.”.

Amendment of section 117 of Act 28 of 2011

37. Section 117 of the Tax Administration Act, 2011, is hereby amended by—
(a) the substitution for subsection (3) of the following subsection:

“(3) The court may hear and decide an interlocutory application or an application in a procedural matter relating to **[an objection or appeal and may decide on a procedural matter]** a dispute under this Chapter as provided for in the ‘rules’.”; and

(b) by the addition of the following subsection:

“(4) To the extent that the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), applies to a decision taken by a SARS official not subject to objection or appeal under section 104 and related to a dispute under Chapter 9, the tax court is vested with all of the powers conferred by that Act on the High Court and the rules for proceedings for judicial review issued under section 7 of that Act apply *mutatis mutandis* in the tax court.”.

Amendment of section 118 of Act 28 of 2011

- 38.** Section 118 of the Tax Administration Act, 2011, is hereby amended by—
- (a) the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “If the **[President]**president of the tax court, a senior SARS official or the ‘appellant’ so requests, the representative of the commercial community referred to in subsection (1)(c) must—”;
- (b) the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(a) if the appeal relates to the business of mining, be a registered **[mining]** engineer with experience in that field; or”;
- (c) the substitution for subsection (3) of the following subsection:
- “(3) If an appeal to the tax court involves a matter of law only or is **[an application for condonation or]** an interlocutory application or application in a procedural matter under the ‘rules’, the president of the court sitting alone must decide the appeal.”.

Amendment of section 129 of Act 28 of 2011

- 39.** Section 129 of the Tax Administration Act, 2011, is hereby amended by—
- (a) the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “In the case of an assessment or ‘decision’ under appeal or an application in a procedural matter referred to in section 117(3), the tax court may—”;
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) In the case of an appeal against an understatement penalty imposed by SARS under a tax Act, the tax court must decide the matter on the basis that the burden of proof is upon SARS and may reduce, confirm or increase the understatement penalty **[so imposed]**.”; and
- (c) by the addition of the following subsection:
- “(5) A decision by the tax court in a test case designated under section 106(6) is determinative of the issues in an objection or

appeal stayed by reason of the test case under section 106(6)(b) to the extent determined under the 'rules'."

Amendment of section 130 of Act 28 of 2011 as deleted by section 61 of Act 21 of 2012

40. Section 130 of the Tax Administration Act, 2011, is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

“(2) The costs **[referred to in subsection (1)]**awarded by the tax court under this section must be determined in accordance with the fees prescribed by the rules of the High Court.”; and

(b) the insertion of subsection (3):

“(3) The tax court may make an order as to costs as provided for in the 'rules' in—

(a) a test case designated under section 106(5); or

(b) an interlocutory application or an application in a procedural matter referred to in section 117(3).”.

Amendment of section 133 of Act 28 of 2011

41. Section 133 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (b)(i) of the following item:

“(i) the president of the tax court has granted leave under **[the 'rules']**section 135; or”.

Amendment of section 160 of Act 28 of 2011

42. Section 160 of the Tax Administration Act, 2011, is hereby amended by—

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

“A representative taxpayer, withholding agent or responsible third party who, as such, pays a tax or an amount under section 179 is entitled—”; and

(b) the substitution for subsection (2) of the following subsection:

- “(2) Unless otherwise provided for in a tax Act, a taxpayer **[on whose behalf an amount deducted or withheld]**in respect of whom an amount has been paid to SARS by a withholding agent under a tax Act or by a responsible third party under section 179, is not entitled to recover from the withholding agent or responsible third party the amount so **[deducted or withheld]**paid.”.

Amendment of section 161 of Act 28 of 2011

43. Section 161 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

- “(a) be collected as if it were **[a]**an outstanding tax debt of the taxpayer recoverable under this Act; or”.

Amendment of section 163 of Act 28 of 2011

44. Section 163 of the Tax Administration Act, 2011, is hereby amended by—
(a) the substitution for subsection (1) of the following subsection:

- “(1) A senior SARS official may, in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax that is or may be due or payable, authorise an *ex parte* application to the High Court for an order for the preservation of any assets of a taxpayer, or other person who may be personally liable under this Act for the tax, prohibiting any person, subject to the conditions and exceptions as may be specified in the preservation order, from dealing in any manner with the assets to which the order relates.”;

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

- “(a) SARS may, in anticipation of the application under subsection (1) **[and in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax due,]** seize the assets pending the outcome of an application for a preservation order, which

application must commence within 24 hours from the time of seizure of the assets or the further period that SARS and the taxpayer or other person may agree on.”;

- (c) the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“A preservation order may be made if required to secure the collection of the tax and in respect of—”; and

- (d) the substitution in subsection (7) for paragraph (c) of the following paragraph:

“(c) realising the assets in satisfaction of the outstanding tax debt;”.

Amendment of section 164 of Act 28 of 2011 as amended by section 64 of Act 21 of 2012

45. Section 164 of the Tax Administration Act, 2011, is hereby amended by—

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

“A senior SARS official may suspend payment of the disputed tax or a portion thereof having regard to—”;

- (b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“If **[the]** payment of tax **[which the taxpayer intended to dispute]** was suspended under subsection (3) and subsequently—”; and

- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“A senior SARS official may deny a request in terms of subsection (2) or revoke a decision to suspend payment in terms of **[that]** subsection **(3)** with immediate effect if satisfied that—”.

Amendment of section 165 of Act 28 of 2011

46. Section 165 of the Tax Administration Act, 2011, is hereby amended by—

- (a) the substitution for subsection (2) of the following subsection:

“(2) The taxpayer account must reflect the tax **[due]**liability in respect of each tax type included in the account.”;

- (b) the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(a) the tax **[owed]** liability.”; and
- (c) the substitution in subsection (3) for paragraphs (c) and (d) of the following paragraphs:
 “(c) the interest payable on outstanding **[amounts due]** tax debts;
 (d) **[any other amount owed]**the tax liability for any other tax type.”.

Amendment of section 166 of Act 28 of 2011 as amended by section 65 of Act 21 of 2012

47. Section 166 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Despite anything to the contrary contained in a tax Act, SARS may allocate payment made in terms of a tax Act against an amount of penalty or interest or the oldest amount of an outstanding tax debt at the time of the payment, other than amounts—”.

Amendment of section 169 of Act 28 of 2011

48. Section 169 of the Tax Administration Act, 2011, is hereby amended by—
 (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“A tax debt **[due to SARS]** is recoverable by SARS under this Chapter, and is recoverable from—”; and

(b) by the substitution for subsections (3) and (4) of the following subsections:

“(3) SARS is regarded as the creditor for the purposes of **[an amount referred to in subsection (1) as well as any other amount if SARS has entered into an agreement under section 4(1)(a)(ii) of the SARS Act in terms of which SARS is the creditor for the State or the organ of state or institution concerned]**any recovery proceedings related to a tax debt.

(4) SARS need not recover **[an amount]**a tax debt under this Chapter if the amount thereof is less than R100 or any other

amount that the Commissioner may determine by public notice, but the amount must be carried forward in the relevant taxpayer account.”.

Amendment of section 172 of Act 28 of 2011

49. Section 172 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

- “(1) If a person **[fails to pay tax when it is payable]**has an outstanding tax debt, SARS may, after giving the person at least 10 business days’ notice, file with the clerk or registrar of a competent court a certified statement setting out the amount of tax payable and certified by SARS as correct.
- (2) SARS may file the statement irrespective of whether or not the **[amount of]** tax debt is subject to an objection or appeal under Chapter 9, unless the period referred to in section 164(6) has not expired or the obligation to pay the **[amount]**tax debt has been suspended under section 164.”.

Amendment of section 175 of Act 28 of 2011

50. Section 175 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) SARS may amend the amount of the tax **[due]**debt specified in the statement filed under section 172 if, in the opinion of SARS, the amount in the statement is incorrect.”.

Amendment of section 176 of Act 28 of 2011

51. Section 176 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) SARS may file a new statement under section 172 setting out an amount of the tax debt included in a withdrawn statement.”.

Amendment of section 177 of Act 28 of 2011

52. Section 177 of the Tax Administration Act, 2011, is hereby amended by—
(a) the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“SARS may institute proceedings for the sequestration, liquidation or winding-up of a person for **[a]an outstanding** tax debt.”; and

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

“(3) If the tax debt is subject to an objection or appeal under Chapter 9 or a further appeal against a decision by the tax court under section 129 for which no suspension under section 164 exists, the proceedings may only be **[instituted]pursued** with leave of the court before which the sequestration, liquidation or winding-up proceedings are brought.”.

Amendment of section 179 of Act 28 of 2011

53. Section 179 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A senior SARS official may by notice to a person who holds or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer, require the person to pay the money to SARS in satisfaction of the taxpayer’s outstanding tax debt.”.

Amendment of section 180 of Act 28 of 2011

54. Section 180 of the Tax Administration Act, 2011, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“A person is personally liable for any outstanding tax debt of the taxpayer to the extent that the person’s negligence or fraud resulted in the failure to pay the tax debt if—”.

Amendment of section 181 of Act 28 of 2011

- 55.** Section 181 of the Tax Administration Act, 2011, is hereby amended by—
- (a) the substitution for subsection (1) of the following subsection:
- “(1) This section applies where a company is wound up other than by means of an involuntary liquidation without having satisfied its outstanding tax debt, including its liability as a responsible third party, withholding agent, or a representative taxpayer, employer or vendor.”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “The persons who are shareholders of the company within one year prior to its winding up are jointly and severally liable to pay the **[unpaid]** tax debt to the extent that—”; and
- (c) by the substitution for subsection (4) of the following subsection:
- “(4) Persons who are liable for the tax debt of a company under this section may avail themselves of any rights against SARS as would have been available to the company.”.

Amendment of section 182 of Act 28 of 2011

- 56.** Section 182 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) A person (referred to as a transferee) who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for consideration below the fair market value of the asset is liable for the outstanding tax debt of the taxpayer.”.

Amendment of section 186 of Act 28 of 2011

57. Section 186 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“To collect **[a]**an outstanding tax debt, a senior SARS official may apply for an order referred to in subsection (2), if—”.

Amendment of section 190 of Act 28 of 2011

58. Section 190 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If SARS pays to a person by way of a refund any amount which is not properly payable to the person under a tax Act, the amount is regarded as an outstanding tax debt **[that is payable by the person to SARS]** from the date on which it is paid to the person.”.

Amendment of section 191 of Act 28 of 2011

59. Section 191 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) **[that is disputed under Chapter 9 and]** for which the period referred to in section 164(6) has not expired or suspension of payment under section 164 exists; or”.

Amendment of section 192 of Act 28 of 2011 as amended by section 68 of Act 21 of 2012

60. Section 192 of the Tax Administration Act, 2011, is hereby amended by—
(a) the substitution in the definition of “compromise” for the words preceding paragraph (a) of the following words:

“‘**compromise**’ means an agreement entered into between SARS and a ‘debtor’ in respect of an outstanding tax debt in terms of which—”;

(b) the substitution for the definition of “debtor” of the following definition:

“**debtor**’ means a taxpayer with **[an outstanding]** a tax debt; and”;

(c) the substitution for the definition of “write off” of the following definition:

“**write off**’ means to reverse **[a]an outstanding** tax debt either in whole or in part.”.

Amendment of section 221 of Act 28 of 2011

61. Section 221 of the Tax Administration Act, 2011, is hereby amended by the substitution in the definition of “understatement penalty” for the words preceding paragraph (a) of the following words:

“**understatement**’ means any prejudice to SARS or the *fiscus* **[in respect of a tax period]** as a result of—”.

Amendment of section 222 of Act 28 of 2011

62. Section 222 of the Tax Administration Act, 2011, is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) In the event of an ‘understatement’ by a taxpayer, the taxpayer must pay, in addition to the ‘tax’ payable for the relevant tax period, the understatement penalty determined under subsection (2) unless the ‘understatement’ results from a bona fide inadvertent error.”;

(b) the substitution for subsection (2) of the following subsection:

“(2) The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table in section 223 to **[the] each** shortfall determined under subsections (3) and (4).”;

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

“(a) the difference between the amount of ‘tax’ properly chargeable for the tax period and the amount of ‘tax’ that would have been chargeable for the tax period if the ‘understatement’ were accepted;”;

(d) the substitution for subsections (4) and (5) of the following subsections:

- “(4) If **[an ‘understatement’ results in]** there is a difference under both paragraphs (a) and (b) of subsection (3), the shortfall must be reduced by the amount of any duplication between the paragraphs.
- (5) The tax rate applicable to the shortfall determined under subsections (3) and (4) is the maximum tax rate applicable to the taxpayer, ignoring an assessed loss or any other benefit brought forward from a preceding tax period to the tax period.”.

Amendment of section 223 of Act 28 of 2011 as amended by section 73 of Act 21 of 2012

63. Section 223 of the Tax Administration Act, 2011, is hereby amended by—

- (a) the substitution for subsection (1) of the following subsection:

“(1) The understatement penalty percentage table is as follows—

1 Item	2 Behaviour	3 Standard case	4 If obstructive, or if it is a ‘repeat case’	5 Voluntary disclosure after notification of audit	6 Voluntary disclosure before notification of audit
(i)	‘Substantial understatement’	[25] 10%	[50] 20%	5%	0%
(ii)	Reasonable care not taken in completing return	[50] 25%	[75] 50%	[25] 15%	0%
(iii)	No reasonable grounds for ‘tax position’ taken	[75] 50%	[100] 75%	[35] 25%	0%
(iv)	Gross negligence	100%	125%	50%	5%
(v)	Intentional tax	150%	200%	75%	10%

	evasion				
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(b) the substitution in subsection (3)(b) for the words preceding item (i) of the following words:

“was in possession of an opinion by **[a]**an independent registered tax practitioner that—”.

Amendment of section 224 of Act 28 of 2011 as amended by section 74 of Act 21 of 2012

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

“Objection and appeal against [decision not to permit] imposition of understatement penalty”

“224. [A]The imposition of an understatement penalty under section 222 and 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 230 of Act 28 of 2011

65. Section 230 of Act 28 of 2011 is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The approval by a senior SARS official of a voluntary disclosure application and relief granted under section 229, must be evidenced by a written agreement between SARS and the qualifying person who is liable for the outstanding tax debt in the prescribed format and must include details on—”.

Amendment of section 231 of Act 28 of 2011 as amended by section 76 of Act 21 of 2012

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

“(b) regard an amount paid in terms of the voluntary disclosure agreement to constitute part payment of any further outstanding tax debt in respect of the relevant ‘default’; and”.

Amendment of section 235 of Act 28 of 2011 as amended by section 78 of Act 21 of 2012

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

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

Amendment of section 240 of Act 28 of 2011 as amended by section 82 of Act 21 of 2012

68. (1) Section 240 of the Tax Administration Act, 2011, is hereby amended by—

(a) the substitution for subsection (2) of the following subsection:

“(2) The provisions of this section do not apply in respect of a person who only—

- (a) provides the advice or completes or assists in completing a 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;
- (b) provides the advice **[solely]** in anticipation of or in the course of any litigation to which the Commissioner is a party or where the Commissioner is a complainant;

- (c) provides the advice **[solely]** as an incidental or subordinate part of providing goods or other services to another person; or
 - (d) provides the advice or completes or assists in completing a 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 the employer and connected persons in relation to the employer; or
 - (ii) under the **[direct]** supervision of a **[person who is a]** registered tax practitioner who has accepted accountability for the actions of the person.”; and
- (b) the insertion after subsection (2) of the following subsection:
- “(2A) A tax practitioner who accepts accountability for a person under subsection 2(d)(ii) is regarded as accountable for the actions of the person for purposes of a complaint to a recognised controlling body under section 241(2).”.

(2) Subsection (1) is deemed to have come into operation on 20 December 2012.

Amendment of section 240A of Act 28 of 2011 as inserted by section 83 of Act 21 of 2012

69. (1) Section 240A of the Tax Administration Act, 2011, is hereby amended by—

- (a) the substitution in subsection (2)(a) for the words preceding item (i) of the following words:

“in respect of such persons, maintains relevant and effective—”; and

- (b) the substitution for subsection (2) of the following subsection:

“(3) A body recognised under subsection (2) must submit a report on its members and compliance with this Chapter within the time period and in the prescribed form and manner **[as prescribed by the Commissioner].**”

(2) Subsection (1) is deemed to have come into operation on 20 December 2012.

Amendment of section 246 of Act 28 of 2011

70. Section 246 of the Tax Administration Act, 2011, is hereby amended by—

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

“(a) approved by SARS and is—

(i) a person who is a senior official of the company; or

(ii) if no senior official resides in the Republic, another person

[and is approved by SARS];” and

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

“(3) If a public officer is not appointed as required under this section, the public officer is the **[managing director,]** director, company secretary or other officer of the company that SARS designates for that purpose.”.

Amendment of section 256 of Act 28 of 2011 as amended by section 89 of Act 21 of 2012

71. Section 256 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) outstanding tax debt **[outstanding]**, excluding a tax debt contemplated in section 167 or 204 or a tax debt that has been suspended under section 164 or does not exceed the amount referred to in section 169(4); or”.

Amendment of section 270 of Act 28 of 2011

72. Section 270 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“(6) **[Additional]**To the extent that an understatement penalty, administrative non-compliance penalty or interest under this Act

cannot be imposed, levied, assessed or recovered in respect of an understatement, non-compliance or failure to pay that occurred before the commencement date of this Act, additional tax, penalty or interest which but for the repeal of the legislation in Schedule 1 would have been capable of being imposed, levied, assessed or recovered by the commencement date of this Act, and which has not been imposed, levied, assessed or recovered by the commencement date of this Act, may be—”;

(b) by the insertion after subsection (6) of the following subsection:

“(6A) If a return was due by the commencement date of this Act, the requirement under section 223(3)(b)(i) is regarded as met for purposes of remittance of a substantial understatement penalty.”;

(c) by the substitution in subsection (7) for paragraph (b) of the following paragraph:

“(b) regarded as interest [due]payable under this Act from the commencement date of the comparable provisions of this Act.”;

(d) by the substitution in subsection (8) for paragraph (b) of the following paragraph:

“(b) regarded as interest [due]payable under this Act.”; and

(e) by the addition of the following subsection:

“(9) If request by a person for a reduced assessment under the provisions of a tax Act repealed by this Act was made but not dealt with by SARS before expiry of the period within which reduced assessment may be issued under the repealed provisions, the request must be continued and concluded by SARS under the comparable provisions of this Act as if the request was made on the commencement date of this Act.”.

Short title and commencement

73. (1) This Act is called the Tax Administration Laws Amendment Act, 2013.

(2) Save in so far as is otherwise provided for in this Act, amendments to the Tax Administration Act, 2011, will be deemed to have come into operation on 1 October 2012.

(3) Subject to subsection (2), and 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.