

REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 38106 of 17 October 2014)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 14—2014]

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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—

- amend the Income Tax Act, 1962, so as to effect consequential and textual amendments; to delete a provision; and to amend certain provisions;
 - amend the Customs and Excise Act, 1964, so as to effect consequential amendments; to amend certain provisions; to insert certain provisions; and to effect technical corrections;
 - amend the Value-Added Tax Act, 1991, so as to effect consequential amendments; and to amend certain provisions;
 - amend the South African Revenue Service Act, 1997, so as to amend a provision;
 - amend the Securities Transfer Tax Administration Act, 2007, so as to effect a consequential amendment;
 - amend the Tax Administration Act, 2011, so as to amend certain provisions; to effect technical corrections; and to effect textual and consequential amendments;
 - amend the Tax Administration Laws Amendment Act, 2012, so as to effect technical corrections;
 - amend the Tax Administration Laws Amendment Act, 2013, so as to postpone an effective date;
 - amend the Customs Duty Act, 2014, so as to effect technical corrections; to effect consequential amendments; and to insert a provision;
 - amend the Customs Control Act, 2014, so as to amend certain provisions; to effect consequential amendments; and to insert a provision,
- and to provide for matters connected therewith.

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

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, 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, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012 and section 4 of Act 31 of 2013

1. Section 1 of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “representative taxpayer” for paragraph (a) of the following paragraph: “(a) in respect of the income of a company, the public officer thereof, or in the event of such company being placed under business rescue in terms of Chapter 6 of the Companies Act, the business rescue practitioner;”.

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, section 271 of Act 28 of 2011, read with paragraph 25 of Schedule 1 to that Act, and section 2 of Act 39 of 2013

2. Section 3 of the Income Tax Act, 1962, is hereby amended—

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

“(b) section 8(5)(b) and (bA), section 10 (1)(cA), (e)(i)(cc), (j) and (nB), section 10A(8), section 11(e), (f), (g), (gA), (j) and (l), section 12B(6), section 12C, section 12E, [section 12G,] section 12J(6), (6A) and (7), section 13, [section 14,] section 15, section 18A(5C), section 22(1) and (3), section 23H(2), section 23K, section 24(2), section 24A(6), section 24C, section 24D, section 24I(1) and (7), section 24J(9), section 24P, section 25A, section 27, section 28(9), section 30, section 30A, section 30B, section 30C, section 31, [section 35(2),] section 37A, [section 37H,] section 38(2)(a) and (b) and (4), section 44(13)(a), section 47(6)(c)(i), [section 57(2),] section 62(1)(c)(iii) and (d) and (2)(a) and (4), section 80B and section 103(2);”;

(b) by the substitution in subsection (4) for paragraph (e) of the following paragraph:

“(e) paragraphs 5(2), 14(6), [18, 20(1)(a) and (2), 20A(1) and (2),] 21(2) and 24 [and 27] of the Fourth Schedule;”;

(c) by the substitution in subsection (4) for paragraph (f) of the following paragraph:

“(f) paragraphs 10(3) [and (4)], 11(2) [and (7), 12(1)] and 13 of the Sixth Schedule;”.

Amendment of section 18A of Act 58 of 1962, as substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 1 of Act 3 of 2008,

section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011, section 7 of Act 21 of 2012 and section 52 of Act 31 of 2013

3. Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The provisions of [subsections (9) and (10) of] section 30(10) shall apply *mutatis mutandis* in respect of any institution, board or body contemplated in subsection (1)(a).”.

Amendment of section 30 of Act 58 of 1962, as amended by section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008, section 41 of Act 60 of 2008, section 41 of Act 17 of 2009, section 53 of Act 7 of 2010 and section 8 of Act 21 of 2012

4. Section 30 of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (9).

Amendment of section 64K of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008 and amended by section 53 of Act 17 of 2009, section 84 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 55 of Schedule 1 to that Act, section 14 of Act 21 of 2012 and section 5 of Act 39 of 2013

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

- (a) by the deletion in subsection (1) of paragraph (d); and
- (b) by the insertion after subsection (1) of the following subsection:

“(1A) If, in terms of this Part a person has—

- (a) paid a dividend; or
- (b) received a dividend that is exempt or partially exempt from dividends tax in terms of section 64F or 64FA, that person must submit a return in respect of that dividend to the Commissioner by the last day of the month following the month during which the dividend is paid or received.”.

Insertion of section 64LA in Act 58 of 1962

6. The following section is hereby inserted in the Income Tax Act, 1962, after section 64L:

“Refund of tax in respect of dividends *in specie*

64LA. Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—

- (a) dividends tax is paid by a company in respect of a dividend that consists of a distribution of an asset *in specie* as a result of the company being unable to obtain the declaration and written undertaking contemplated in section 64FA(1)(a) or (2) by the date contemplated in that section; and
- (b) both the declaration and the written undertaking are submitted to the company within three years after the payment of the tax, so much of the amount of dividends tax paid as would not have been payable had that declaration and written undertaking been submitted by the date contemplated in section 64FA(1)(a) or (2) is refundable to the company by SARS if claimed within three years of the date of payment of the tax.”.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act

113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008, section 66 of Act 60 of 2008, section 17 of Act 18 of 2009, section 18 of Act 8 of 2010, section 93 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 77 of Schedule 1 to that Act, and section 7 of Act 39 of 2013

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

- (a) by the deletion in the definition of “provisional taxpayer” of the word “and” at the end of paragraph (bb) of the exclusion;
- (b) by the substitution in the definition of “provisional taxpayer” for the full stop at the end of paragraph (dd) of the exclusion of the expression “; and”;
- (c) by the addition in the definition of “provisional taxpayer” of the following paragraph to the exclusion:
 “(ee) a small business funding entity.”; and
- (d) by the substitution in the definition of “representative employer” for paragraph (a) of the following paragraph:
 “(a) in the case of any company, the public officer of that company, or, in the event of such company being placed under business rescue in terms of Chapter 6 of the Companies Act, in liquidation or under judicial management, the business rescue practitioner, liquidator or judicial manager, as the case may be.”.

(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 March 2015.

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 58 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 24 of Act 19 of 2001, section 34 of Act 30 of 2002, section 58 of Act 74 of 2002, section 24 of Act 16 of 2004, section 47 of Act 32 of 2004, section 53 of Act 31 of 2005, section 1 of Act 3 of 2008, section 22 of Act 18 of 2009, section 96 of Act 24 of 2011 and section 21 of Act 21 of 2012

8. (1) Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (c) of the following item:
 “(c) any natural person who **[on the last day of that year will be below the age of 65 years and who]** does not derive any income from the carrying on of any business, if—
 (i) the taxable income of that person for the relevant year of assessment will not exceed the tax threshold; or
 (ii) the taxable income of that person for the relevant year of assessment which is derived from interest, foreign dividends and rental from the letting of fixed property will not exceed **[R20 000] R30 000;**”;
- (b) by the deletion in subparagraph (1) of item (d).

(2) Subsection (1) comes into operation for years of assessment commencing on or after 1 March 2015.

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, section 271 of Act 28 of 2011, read with item 90 of Schedule 1 to that Act, section 22 of Act 21 of 2012 and section 13 of Act 39 of 2013

9. (1) Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1)(d)(i) for subsubitems (aa) and (bb) of the following subsubitems:
- “(aa) the amount of any taxable capital gain **[included therein in terms of]** contemplated in section 26A; [and]
- (bb) the taxable portion of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit[,], (other than any amount **[included under]** contemplated in paragraph (eA) of the definition of ‘gross income’ in section 1); and
- (bbA) any amount (other than a severance benefit) contemplated in paragraph (d) of the definition of ‘gross income’ in section 1, included in the taxpayer’s taxable income for that year of assessment;”;
- (b) by the substitution in subparagraph (1) for the proviso to item (d) of the following proviso:
- “: Provided that, if an estimate under item (a) or (b) must be made[—
- (a)] more than 18 months; and
- (b) **in respect of a period that ends more than one year,**] after the end of the latest preceding year of assessment in relation to such estimate, the basic amount determined in terms of **[subitem]** subitems (i) and (ii) shall be increased by an amount equal to eight per cent per annum of that amount, from the end of such year to the end of the year of assessment in respect of which the estimate is made.”; and
- (c) by the deletion in subparagraph (1)(e)(ii) of the proviso.
- (2) Subsection (1) comes into operation for years of assessment commencing on or after 1 March 2015.

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, section 271 of Act 28 of 2011, read with paragraph 91 of Schedule 1 to that Act, and section 23 of Act 21 of 2012

10. (1) Paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the heading of the following heading:
- “PENALTY FOR UNDERPAYMENT OF PROVISIONAL TAX AS A RESULT OF UNDERESTIMATION”;**
- (b) by the substitution in subparagraph (1) for items (a) and (b) of the following items, respectively:
- “(a) more than R1 million and such estimate is less than 80 per cent of the amount of the actual taxable income the Commissioner must impose, in addition to the normal tax **[chargeable]** payable 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—
- (i) the amount of normal tax, calculated[,], at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable, 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;
- (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]** payable 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 lesser of—

- (i) the amount of normal tax, calculated[,] at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable, 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 after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable,
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 in subparagraph (1) for the proviso of the following proviso:
“: Provided that any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit **[or any]**, severance benefit or any other amount contemplated in paragraph (d) of the definition of ‘gross income’ received by or accrued to or to be received by or accrue to the taxpayer during the relevant year of assessment shall not be taken into account for purposes of this subparagraph;”;
- (d) by the insertion after subparagraph (2) of the following subparagraphs:
“(2A) If the final or last estimate of his or her taxable income is not submitted in terms of paragraph 19(1)(a) by a provisional taxpayer other than a company, or the estimate of its taxable income in respect of the period contemplated in paragraph 23(b) is not submitted in terms of paragraph 19(1)(b) by a company which is a provisional taxpayer, in respect of any year of assessment, the non-submission shall be deemed to be a nil submission.
(2B) Any penalty imposed under subparagraph (1) in respect of a year of assessment must be reduced by any penalty imposed under paragraph 27(1) in respect of payment referred to in paragraph 21(1)(b) or 23(b).”;
- (e) by the insertion after subparagraph (2B) of the following subparagraph:
“(2C) The Commissioner may, if he or she is satisfied that the provisional taxpayer's failure to submit such an estimate timeously was not due to an intent to evade or postpone the payment of provisional tax or normal tax, remit the whole or any part of the penalty imposed under subparagraph (1).”; and
- (f) by the deletion of subparagraph (3).
- (2) Paragraphs (a), (b), (c), (d) and (f) of subsection (1) come into operation for years of assessment commencing on or after 1 March 2014.
- (3) Paragraph (e) of subsection (1) comes into operation for years of assessment commencing on or after 1 March 2015.

Repeal of paragraph 20A of Fourth Schedule to Act 58 of 1962

- 11. (1) Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed.
- (2) Subsection (1) comes into operation for years of assessment commencing on or after 1 March 2015.

Amendment of paragraph 24 of Fourth Schedule to Act 58 of 1962, as substituted by section 30 of Act 88 of 1965 and amended by section 54 of Act 85 of 1974 and section 52 of Act 94 of 1983

- 12. The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 24 of the following paragraph:
“24. The Commissioner may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of paragraph 21(1)(a)

[or paragraph 22] or paragraph 23(a), if [he] the Commissioner is satisfied that the taxable income which may be derived by such taxpayer for the year of assessment in question cannot be estimated on the facts available at the time when payment of the amount in question has to be made.”.

Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 81 of Act 60 of 2001, section 38 of Act 30 of 2002, section 76 of Act 74 of 2002, section 47 of Act 20 of 2006, section 61 of Act 8 of 2007 and section 96 of Act 7 of 2010

13. Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (5) for the words following item (c) of the following words:

“that person may only adopt the market value as the valuation date value of that asset if that person has furnished proof of that valuation to the Commissioner in the form as the Commissioner may prescribe, with the first return submitted by that person after the period contemplated in subparagraph (4) [or, if it was not submitted with that return, within such period as the Commissioner may allow if proof is submitted that the valuation was performed within the period prescribed].”;

and
- (b) by the substitution in subparagraph (6) for the words following item (b) of the following words:

“that person must [submit] retain proof of that valuation [in a form prescribed by the Commissioner with the return for the year of assessment during which that asset was disposed of].”.

Amendment of section 43 of Act 91 of 1964, as amended by section 6 of Act 105 of 1976, section 7 of Act 112 of 1977, section 6 of Act 86 of 1982, section 32 of Act 45 of 1995, section 34 of Act 34 of 1997, section 124 of Act 60 of 2001, section 45 of Act 30 of 2002, section 23 of Act 34 of 2004, section 8 of Act 36 of 2007 and section 92 of Act 60 of 2008

14. Section 43 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (7) for paragraph (d) of the following paragraph:

- “(d) [No] Except for the liability for duty in terms of the proviso to section 87(1), no duty shall be payable on any goods to which this subsection relates on disposal as contemplated in paragraph (b), but any duty paid on such goods shall not be refundable.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 9 of Act 98 of 1980, section 8 of Act 86 of 1982, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002, section 138 of Act 45 of 2003, section 3 of Act 10 of 2005, section 90 of Act 31 of 2005, section 11 of Act 36 of 2007 and section 94 of Act 60 of 2008

15. Section 47 of the Customs and Excise Act, 1964, is hereby amended by the addition to subsection (9)(a) of the following subparagraph after subparagraph (iii):

- “(iv) (aa) For the purposes of this subparagraph ‘alcoholic beverages’ means alcoholic beverages as contemplated in Chapter 22 of Part 1 of Schedule No. 1.
- (bb) Notwithstanding anything to the contrary contained in this Act, every manufacturer or importer of an alcoholic beverage shall, irrespective of any existing tariff determination at the time this subparagraph comes into operation, apply for a tariff determination of that beverage in terms of this paragraph.
- (cc) An application for a tariff determination shall be accompanied by—
- (A) detailed information of the brand name, process of manufacture, the ingredients used, the proportion in which they are used, the alcoholic strength and such other particulars as the Commissioner may specify; and

(B) if applicable, a letter from the administering officer referred to in section 3 of the Liquor Products Act, 1989 (Act No. 60 of 1989), confirming that the alcoholic beverage complies with that Act.

(dd) Notwithstanding subsection (3) of section 4, but subject, with the necessary changes, to the proviso to subsection (3) and subsections (3A), (3C) and (3D) of that section, the Commissioner may disclose any information provided in terms of item (cc) to the Director General of the Department of Agriculture, Forestry and Fisheries.

(ee) After the date this subparagraph comes into operation, application for a tariff determination shall be made for an alcoholic beverage—

(A) before release of a clearance for home consumption of the first importation; or
(B) before removal from the excise manufacturing warehouse for any purpose in terms of this Act,

as may be applicable in respect of that alcoholic beverage.

(ff) The Commissioner may, for the purposes of implementation of this subparagraph, by rule—

(A) specify a period after the date this subparagraph comes into operation within which and the order in which an application for a tariff determination in respect of any class or kind of alcoholic beverage manufactured or imported shall be submitted; and

(B) prescribe any other matter as contemplated in subsection (13).

(gg) If, for any alcoholic beverage, the brand name, process of manufacture, any ingredient or the proportion in which it is used, or the alcoholic strength changes, application for a new tariff determination shall be made before release of a clearance for home consumption or before removal from the excise manufacturing warehouse for any purpose in terms of this Act, as may be applicable in respect of that alcoholic beverage.

(hh) This subparagraph may not be read as preventing any officer from performing any function contemplated in section 106.”.

Substitution of section 50 of Act 91 of 1964, as inserted by section 66 of Act 30 of 1998

16. The following section is hereby substituted for section 50 of the Customs and Excise Act, 1964:

“Provisions relating to the disclosure of information in terms of agreements [and conventions]

50. (1) Notwithstanding the provisions of section 4(3)[— (a)] or any other law relating to confidentiality or secrecy, but subject to section 101B, the Commissioner may, in accordance with—

[(i)](a) any international agreement [or convention] in respect of [customs co-operation to which the Republic is a party] mutual administrative assistance and cooperation or exchange of information in customs matters which is in force and binds the Republic in terms of section 231 of the Constitution of the Republic of South Africa, 1996, hereinafter referred to as the ‘Constitution’; or

[(ii)](b) any other international agreement [or convention to which the Republic is a party] which is in force and binds the Republic in terms of section 231 of the Constitution, and in circumstances where the Commissioner is on good cause shown, satisfied that the international or regional interest or national public interest in the disclosure of information outweighs any potential harm to the person, firm or business to whom or to which such information relates—

[(aa)] (i) disclose, or for the purpose of [subparagraph (i)] paragraph (a), in writing authorise any officer to disclose, any information relating to any person, firm or business acquired by an officer in carrying out any duty under this Act;

~~[(bb)]~~ (ii) render mutual and technical assistance in accordance with any **[convention or]** agreement contemplated in **[subparagraph (i)]** paragraph (a); and

~~[(cc)]~~ (iii) in writing authorise any officer to exercise any power under this Act which may be considered necessary for the **[purposes]** purpose of rendering such assistance or obtaining such information. 5

(2) (a) (i) If any agreement referred to in subsection (1)(a) provides for the automatic exchange of information of the cross-border movement of means of transport, goods and persons the Commissioner may determine the information, including the contents of any documents relating to clearance declarations for such movement, that will be allowed to be disclosed as contemplated in subsection(1)(b)(i). 10

(ii) Notwithstanding subsection (1) and subparagraph (i), the Commissioner may not disclose information in terms of this section where any of the grounds for refusal referred to in Chapter 4 of the Promotion of Access to Information Act, 2002 (Act No. 2 of 2002), applies except if disclosure is authorised for the purposes contemplated in section 46 of that Act. 15

(b) For the purposes of this subsection automatic exchange of information may include the systematic supply of clearance information in terms of the agreement by the customs authority of the sending party to the customs authority of the receiving party in an agreed electronic or other structured format in advance of the arrival of the persons, goods or means of transport in the territory of the receiving party. 20

(c) Any information automatically exchanged shall be treated as confidential by the receiving party and may only be used for the purposes of risk analysis by the customs authority of that party except if the party providing the information in writing authorises its use for other purposes or by other authorities in terms of the provisions of the agreement regulating the exchange of such information. 25

(d) The Commissioner may, in respect of the automatic exchange of information—

(i) authorise the use for other purposes or by other authorities of the information provided by the other party to the agreement as contemplated in paragraph (c); 35

(ii) specify conditions on which any information will be exchanged and on which it may be used for any other purpose or by any other authority;

(iii) refuse the exchange of information with a party to any agreement if the information will not be afforded in the territory of that party a level of protection that satisfies the requirements of this Act. 40

(e) For the purposes of this subsection any reference to the ‘Commissioner’ includes any officer contemplated in subsection (1)(b).

~~[(b) the]~~(3) The Commissioner may~~], in the circumstances contemplated in paragraph (a)]~~ for the purposes of subsection (1)(b)—

~~[(i)]~~(a) disclose~~], such]~~ information or ~~[as contemplated in paragraph~~ 45

~~(a)(i),]~~ authorise ~~[such]~~ disclosure to a person authorised to act on behalf of any international agency, institution or organisation with which an agreement has been entered into with the Republic; and

~~[(ii)]~~(b) specify the purpose for which such disclosure is authorised and the manner in which or the conditions under which such disclosure is to be made. 50

(4) The Commissioner may make rules in respect of any matter which the Commissioner reasonably considers to be necessary and useful to achieve the efficient and effective administration of this section.”.

Amendment of section 101B of Act 91 of 1964, as inserted by section 38 of Act 61 of 2008 55

17. Section 101B of the Customs and Excise Act, 1964, is hereby amended—

(a) by the insertion in subsection (1) of the following definition after the definition of “Advance Passenger Information”, “airline” and “operator”:

“ ‘**person**’ means a natural person and juristic person, unless the context otherwise requires;”;

- (b) by the substitution for the definition of “personal information” of the following definition:
 “**‘personal information’** means information relating to an identified or identifiable natural person and where it is applicable an identified or identifiable juristic person as determined by the Commissioner;”;
- (c) by the substitution in subsection (2) for paragraphs (a) and (c) of the following paragraphs:
 “(a) applies—
 (i) to the Commissioner, an officer, or any person acting under a delegation from or under control or direction of the Commissioner; and
 (ii) subject to section 4(3), (3A), (3B), (3C), (3D) and (3E), to any personal information in possession of or under the control of the Commissioner;
 (c) regulates the manner in which personal information must be processed and protected by the Commissioner.”;
- (d) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(a) The Commissioner or an officer may, subject to subsection (6), obtain and use personal information **[only]**, if—
 (i) Advance Passenger Information, for the purpose specified in section 7A(2);
 (ii) any other personal information obtained from any other source as contemplated in section 4(3), for the administration of any other provision of this Act, including any international agreement contemplated in section 50; or
 (iii) provided by a party to an international agreement, in accordance with the provisions of that agreement and section 50.”;
- (e) by the substitution in subsection (5)(a) for the words preceding subparagraph (i) of the following words:
 “**No records containing personal information which allows a [passenger] person to be identified shall be retained for longer than necessary for achieving the purpose of [Advance Passenger Information] personal information processing, unless—**”;
- (f) by the substitution in subsection (5)(a) for subparagraphs (i) and (v) of the following subparagraphs:
 “(i) the **[passenger] person** authorises such retention;
 (v) the personal information has been used to make a decision about a **[passenger] person** and the record must be retained for such a period as may be reasonably required for the **[passenger] person** to request access to the record.”;
- (g) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
 “Personal information may not be further processed in a manner that is not compatible with the purpose for which **[Advance Passenger Information]** that information is obtained and used as contemplated in subsection (3)(a) by the Commissioner, unless—”;
- (h) by the substitution in subsection (6) for paragraph (a) of the following paragraph:
 “(a) the **[passenger] person** authorises such further processing;”;
- (i) by the substitution in subsection (6)(b) for subparagraph (iii) of the following subparagraph:
 “(iii) to prevent an imminent and serious threat to public safety or the life or health of the **[passenger] person**; or”;
- (j) by the substitution in subsection (7) for paragraph (a) of the following paragraph:
 “(a) whether at the request of a **[passenger] person** or on own initiative, ensure that all records relating to personal information are complete, not misleading, up to date and accurate;”;
- (k) by the substitution in subsection (9)(a) for the words preceding subparagraph (i) of the following words:
 “Any **[passenger] person** is entitled to—”;

- (l) by the substitution in subsection (9) for paragraph (b) of the following paragraph:
 “(b) Where a **[passenger]** person makes a request contemplated in paragraph (a), the Commissioner must inform the **[passenger]** person that he or she may request the correction of any such information.”; 5
- (m) by the substitution in subsection (9)(c) for the words preceding subparagraph (i) of the following words:
 “Where the Commissioner receives a request for the correction of personal information from a **[passenger]** person, the Commissioner must—”; 10
- (n) by the substitution in subsection (9)(c) for subparagraph (ii) of the following paragraph:
 “(ii) in instances where the Commissioner decides on good cause not to correct the information, attach at the request of the **[passenger]** person a statement to the information concerning the correction sought but not made in such a manner that it will always be read together with the information;”; 15
- (o) by the substitution in subsection (9)(c)(iii) for item (bb) of the following item:
 “(bb) inform the **[passenger]** person of the actions taken as a result of the request for correction.”; 20
- (p) by the substitution in subsection (10) for paragraphs (a) and (b) of the following paragraphs:
 “(a) process personal information concerning a person’s religion or philosophy of life, race, political persuasion or health or sexual life, except where the **[passenger]** person has given his or her explicit consent to the processing of the information; 25
 (b) transfer any personal information about a **[passenger]** person to a foreign government other than in the manner contemplated in section 50: Provided that the Commissioner is satisfied that the recipient of that information is subject to a law which effectively upholds principles for fair handling of personal information that are substantially similar to the information protection principles set out in this section.”. 30

Continuation of amendments made under section 119A of Act 91 of 1964

18. Any rule made under section 119A of the Customs and Excise Act, 1964, or any amendment or withdrawal of or insertion in such rule during the period 1 September 2013 up to and including 30 September 2014 shall not lapse by virtue of section 119A(3) of that Act. 35

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, sections 81 and 108 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008, section 33 of Act 18 of 2009, section 119 of Act 7 of 2010, section 26 of Act 8 of 2010, section 129 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 196 of Schedule 1 to that Act, section 145 of Act 22 of 2012 and section 165 of Act 31 of 2013 40 45 50

19. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the deletion in subsection (1) of the definition of “Controller” and the definition of “Customs and Excise Act”; 55
- (b) by the insertion in subsection (1) of the following definitions before the definition of “customs controlled area”:
 “ ‘**customs authority**’ has the meaning assigned thereto in section 1 of the Customs Control Act; ”

- ‘Customs Control Act’** means the Customs Control Act, 2014 (Act No. 31 of 2014);”;
- (c) by the substitution in subsection (1) for the definition of “customs controlled area” of the following definition:
 “**‘customs controlled area’** has the meaning assigned thereto in section 21A(1A) or (1) of the Customs and Excise Control Act;”;
- (d) by the deletion in subsection (1) of the definition of “customs controlled area enterprise”;
- (e) by the insertion in subsection (1) after the definition of “customs controlled area” of the following definition:
 “**‘Customs Duty Act’** means the Customs Duty Act, 2014 (Act No. 30 of 2014);”;
- (f) by the insertion in subsection (1) of the following definition after the definition of “entertainment”:
 “**‘Excise Duty Act’** means the Excise Duty Act, 1964 (Act No. 91 of 1964);”;
- (g) by the insertion in subsection (1) of the following definition after the definition of “grant”:
 “**‘importation’**, in relation to goods, means when goods—
 (a) enter the Republic; or
 (b) are cleared for home use or a customs procedure before the arrival of the goods in the Republic,
 in terms of the Customs Control Act;”;
- (h) by the deletion in subsection (1) of the definition of “inbound duty and tax free shop”;
- (i) by the substitution in subsection (1) for the definition of “Industrial Development Zone (IDZ)” of the following definition:
 “**‘Industrial Development Zone (IDZ)’** has the meaning assigned thereto in section 21A(1A) or (1) of the Customs and Excise Act]
‘IDZ’ means an industrial development zone prescribed in an area designated as a Special Economic Zone in terms of section 23 or 24 of the Special Economic Zones Act;”;
- (j) by the substitution in subsection (1) for the definition of “Industrial Development Zone (IDZ) operator” of the following definition:
 “**‘Industrial Development Zone (IDZ) operator’** has the meaning assigned thereto in section 21A(1A) or (1) of the Customs and Excise Act] **‘IDZ operator’** means an operator defined in section 1 of the Special Economic Zones Act;”;
- (k) by the substitution in subsection (1) in paragraph (a) of the definition of “input tax” for subparagraph (ii) of the following subparagraph:
 “(ii) the vendor on the importation of goods by [him] that vendor; or”;
- (l) by the deletion in subsection (1) of the definition of “licensed customs and excise storage warehouse”;
- (m) by the insertion in subsection (1) of the following definitions after the definition of “services”:
 “**‘SEZ’** means an area designated as a Special Economic Zone in terms of the Special Economic Zones Act;
‘SEZ enterprise’ means an SEZ enterprise as defined in section 1 of the Customs Control Act to the extent to which it is carried on in a customs controlled area;”;
- (n) by the insertion in subsection (1) of the following definition after the definition of “South African Revenue Service”:
 “**‘Special Economic Zones Act’** means the Special Economic Zones Act, 2014 (Act No. 16 of 2014);”;
- (o) by the insertion in subsection (1) of the following definition after the definition of “Stamp Duties Act”:
 “**‘storage warehouse’** has the meaning assigned thereto in section 1 of the Customs Control Act;”;
- (p) by the insertion in subsection (1) of the following definition after the definition of “tax fraction”:
 “**‘tax free shop’** has the meaning assigned thereto in section 1 of the Customs Control Act;”.

(2) Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (l), (m), (n), (o) and (p) of subsection (1) come into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 7 of Act 89 of 1991, as amended by section 23 of Act 136 of 1991, section 14 of Act 136 of 1992, section 23 of Act 97 of 1993, section 33 of Act 37 of 1996, section 165 of Act 45 of 2003 and section 94 of Act 32 of 2004 5

20. (1) Section 7 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(b) on the importation of any goods **[into the Republic]** by any person 10
on or after the commencement date; and”;

(b) by the substitution in subsection (3) for paragraphs (a), (b) and (d) of the following paragraphs:

“(a) Where any goods manufactured in the Republic, being of a class 15
or kind subject to excise duty or environmental levy under Part 2 or 3 of
Schedule No. 1 to the **[Customs and]** Excise Duty Act, have been
supplied at a price which does not include such excise duty or
environmental levy and tax has become payable in respect of the supply
in terms of subsection (1)(a), value-added tax shall be levied and paid at
the rate of 14 per cent for the benefit of the National Revenue Fund on an 20
amount equal to the amount of such excise duty or environmental levy
which, subject to any rebate of such excise duty or environmental levy
under the said Act, is paid.

(b) The tax payable in terms of paragraph (a) shall be paid by the 25
person liable in terms of the **[Customs and]** Excise Duty Act for the
payment of the said excise duty or environmental levy.

(d) **[Subject to this Act, the provisions of the Customs and Excise 30
Act relating to the clearance of goods subject to excise duty or
environmental levy and the payment of that excise duty or
environmental levy shall *mutatis mutandis* have effect as if enacted in
this Act]** The tax on the clearance of goods subject to excise duty or
environmental levy shall be recovered or refunded in terms of the
relevant provisions of the Excise Duty Act, as if the tax were an excise
duty or environmental levy contemplated in that Act, whether or not the
said provisions apply for the purposes of any excise duty or environmen- 35
tal levy levied in terms of that Act.”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

**Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of 40
Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20
of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section
67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003,
section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of
2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 45
of 2007, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009, section 120 of Act
7 of 2010, section 131 of Act 24 of 2011, section 146 of Act 22 of 2012 and section 166
of Act 31 of 2013**

21. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (24) for the words preceding the further 50
proviso of the following words:

“For the purposes of this Act, a vendor, being **[a customs controlled 55
area]** an SEZ enterprise or an IDZ operator in a customs controlled area,
shall be deemed to supply goods in the course or furtherance of an
enterprise where movable goods are temporarily removed from a place in
a customs controlled area to a place outside the customs controlled area,
situated in the Republic, if those goods are not returned to the customs

controlled area within 30 days of its removal, or within a period approved in writing by the **[Controller]** customs authority: Provided that this subsection shall not apply where those movable goods are supplied by the **[customs controlled area]** SEZ enterprise or IDZ operator, prior to the expiry of the relevant prescribed time period.”; and

- (b) by the substitution in subsection (24) for paragraph (a) of the further proviso of the following paragraph:

“(a) goods that are **[deemed to have been imported under paragraph (i) of the proviso to section 13(1)]** cleared for home use in terms of the Customs Control Act; or”.

- (2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007, section 29 of Act 36 of 2007, Government Notice R.1024 in *Government Gazette* 32664 of 30 October 2009, section 134 of Act 24 of 2011 and section 169 of Act 31 of 2013

- 22.** (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or by **[a customs controlled area]** an SEZ enterprise or an IDZ operator in a customs controlled area: Provided that this subsection shall not apply where a ‘motor car’ as defined in section 1 is supplied to **[a person located]** an SEZ enterprise or an IDZ operator in a customs controlled area;”;

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

“(h) the goods consist of fuel levy goods referred to in Fuel Item Levy numbers 195.10.03, 195.10.17, 195.20.01 and 195.20.03 in Part 5A of Schedule No. 1 to the **[Customs and]** Excise Duty Act; or”;

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

“(hA) the goods consist of petroleum oil and oils obtained from bituminous minerals, known as crude, referred to in Heading No. 27.09 in Chapter 27 of Schedule No. 1 to the Customs **[and Excise]** Duty Act when supplied for the purpose of being refined for the production of fuel levy goods as defined in section 1 of the **[Customs and]**Excise Duty Act; or”;

- (d) by the substitution in subsection (1) for paragraph (l) of the following paragraph:

“(l) the goods consist of illuminating kerosene (marked) intended for use as fuel for illuminating or heating, referred to in Fuel Item Levy number 195.10.13 in Part 5A of Schedule No. 1 to the **[Customs and]** Excise Duty Act and are not mixed or blended with another substance; or”;

- (e) by the substitution in subsection (1)(m) for the words preceding subparagraph (i) of the following words:

“a vendor supplies movable goods, (excluding any ‘motor car’ as defined in section 1), in terms of a sale or instalment credit agreement to **[a customs controlled area]** an SEZ enterprise or an IDZ operator in a customs controlled area and those goods are physically delivered to that

[customs controlled area] SEZ enterprise or IDZ operator in a customs controlled area either—”;

- (f) by the substitution in subsection (1) for paragraph (mA) of the following paragraph:
 “(mA) a vendor supplies fixed property situated in a customs controlled area to **[a customs controlled area]** an SEZ enterprise or an IDZ operator under any agreement of sale or letting or any other agreement under which the use or permission to use such fixed property is granted;”;
- (g) by the substitution in subsection (1) for paragraph (u) of the following paragraph:
 “(u) the supply of goods, other than the supply of goods by **[an inbound duty and]** a tax free shop, which have been imported and **[entered]** cleared for storage in a **[licensed Customs and Excise]** storage warehouse but have not been **[entered]** cleared for home **[consumption]** use; or”;
- (h) by the substitution in subsection (1) for paragraph (v) of the following paragraph:
 “(v) the supply of goods by **[an inbound duty and]** a tax free shop;”;
- (i) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
 “(e) the services comprise the transport of goods or any ancillary transport services supplied directly in connection with the exportation from the Republic or the importation **[into the Republic]** of goods or the movement of goods through the Republic from one export country to another export country, where such services are supplied directly to a person who is not a resident of the Republic and is not a vendor, otherwise than through an agent or other person; or”; and
- (j) by the substitution in subsection (2) for paragraph (k) of the following paragraph:
 “(k) the services are physically rendered elsewhere than in the Republic or to **[a customs controlled area]** an SEZ enterprise or an IDZ operator in a customs controlled area; or”.
- (2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 69 of Act 19 of 2001 section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006, section 82 of Act 20 of 2006, section 109 of Act 60 of 2008, section 147 of Act 22 of 2012 and section 170 of Act 31 of 2014

- 23.** (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (k) for the words preceding the proviso of the following words:
 “the supply of goods in the Republic by any person that is not a resident of the Republic and that is not a vendor, other than the supply of goods by **[an inbound duty and]** a tax free shop, which have not been **[entered]** cleared for home **[consumption]** use;”.
- (2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004, section 106 of Act 31 of 2005, section 110 of Act 60 of 2008, section 135 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 112 of Schedule 1 to that Act and section 171 of Act 31 of 2013

- 24.** Section 13 of the Value-Added Tax Act, 1991, is hereby amended—
 (a) by the substitution in subsection (1) for the words preceding the proviso of the following words:

“For the purposes of this Act the importation of goods shall be deemed to **[be imported into the Republic]** take place on the date **[on which the goods are]** contemplated in section 22 of the Customs Duty Act, regardless of whether or not customs duty is payable or a rebate of customs duty is granted in terms of the **[provisions of the]** Customs **[and Excise] Duty Act [deemed to be imported:]**.”; 5

(b) by the deletion in subsection (1) of the proviso;

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

“For the purposes of this Act the value to be placed on the importation of goods **[into the Republic]** shall be deemed to be—”;

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

“(a) **[where such goods are entered or are required to be entered for home consumption in terms of the Customs and Excise Act,]** the value **[thereof]** of such goods for customs duty purposes, in terms of the Customs Duty Act, plus any duty levied, in terms of the **[said]** Customs Duty Act in respect of the importation of such goods, plus 10 per cent of the said value; or”;

(e) by the substitution for subsection (2A) of the following subsection: 20

“(2A) The value to be placed on the importation of goods **[into the Republic]** which have been **[imported and entered]** cleared for storage in a **[licensed Customs and Excise]** storage warehouse but have not been **[entered]** cleared for home **[consumption]** use shall be deemed to be the greater of the value determined in terms of subsection (2)(a) or the value of acquisition determined under section 10(3) if those goods while stored in that storage warehouse are supplied to any person before being **[entered]** cleared for home **[consumption]** use.”;

(f) by the substitution in subsection (2B) for the words preceding paragraph (a) of the following words: 30

“Notwithstanding subsection (2), the value to be placed on the importation of goods **[into the Republic]** where—”;

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

“(a) for the collection (in such manner as the Commissioner may determine) by a SARS official, or the Managing Director of the South African Post Office Limited on behalf of the Commissioner, of the tax payable in terms of this Act in respect of the importation of any goods **[into the Republic]**; and”; and

(h) by the substitution for subsection (6) of the following subsection: 40

“(6) **[Subject to this Act, the provisions of the Customs and Excise Act relating to the importation, transit, coastwise carriage and clearance of goods and the payment and recovery of duty shall mutatis mutandis apply as if enacted in this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs and Excise Act.]** The tax on importation of goods shall be recovered or refunded in terms of the Customs Duty Act as if the tax were an import duty contemplated in section 18 of that Act, regardless of whether or not the said section applies for the purposes of any import duty levied in terms of that Act.”. 50

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011, section 148 of Act 22 of 2012 and section 173 of Act 31 of 2013 60

25. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (2) for paragraph (d) of the following paragraph:
- “(d) a bill of entry or other document prescribed in terms of the Customs and Excise Act together with the receipt for the payment of the tax in relation to the said importation have been delivered (including by means of an electronic delivery mechanism) in accordance with that Act and are held by the vendor making that deduction, **[or by his agent as contemplated in section 54(3)(b)]** at the time that any return in respect of that importation is furnished; or”;
- (b) by the insertion in subsection (2) after paragraph (d) of the following paragraph:
- “(dA) a bill of entry or other document prescribed in terms of the Customs and Excise Act as contemplated in section 54(2A) is held by the agent, and a statement as contemplated in section 54(3)(b) is held by the vendor at the time that any return in respect of that importation is furnished; or”;
- (c) by the substitution for the proviso to subsection (2) of the following proviso:
- “: Provided that where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this Act, or a bill of entry or other document has been delivered (including by means of an electronic delivery mechanism) in accordance with the Customs and Excise Act, as the case may be, the Commissioner may determine that no deduction for input tax in relation to that supply or importation shall be made unless that tax invoice or debit note or credit note or that bill of entry or other document is retained in accordance with the provisions of section 55 and Part A of Chapter 4 of the Tax Administration Act.”.

(2) Subsection (1) comes into operation on 1 April 2015.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011, section 148 of Act 22 of 2012, section 173 of Act 31 of 2013 and section 25 of this Act

- 26.** (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
- “No deduction of input tax in respect of a supply of goods or services, the importation of any goods **[into the Republic]** or any other deduction shall be made in terms of this Act, unless—”;
- (b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
- “(c) **[sufficient]** records are maintained as required by section 20(8) where the supply is a supply of second-hand goods or a supply of goods as contemplated in section 8(10) and in either case is a supply to which that section relates; or”;
- (c) by the substitution in subsection (2) for paragraphs (d) and (dA) of the following paragraphs:
- “(d) a **[bill of entry]** release notification or other document prescribed in terms of the Customs **[and Excise]** Control Act together with the receipt for the payment of the tax in relation to the said importation have been delivered (including by means of an electronic delivery mechanism) in accordance with that Act and are held by the vendor making that deduction, at the time that any return in respect of that importation is furnished; or
- (dA) a **[bill of entry]** release notification or other document prescribed in terms of the Customs **[and Excise]** Control Act as contemplated in section 54(2A) is held by the agent, and a statement as contemplated

in section 54(3)(b) is held by the vendor at the time that any return in respect of that importation is furnished; or”;

- (d) by the substitution for the proviso to subsection (2) of the following proviso: 5
 “: Provided that where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this Act, or a **[bill of entry] release notification** or other document has been delivered (including by means of an electronic delivery mechanism) in accordance with the Customs **[and Excise] Control** Act, as the case may be, the Commissioner may determine that no deduction for input tax in relation to that supply or importation shall be made unless that tax invoice or debit note or credit note or that **[bill of entry] release notification** or other document is retained in accordance with the provisions of section 55 and Part A of Chapter 4 of the Tax Administration Act.”; 10
- (e) by the substitution in subsection (3)(n) for subparagraphs (i) and (ii) of the following subparagraphs: 15
 “(i) those goods are returned to the **[customs controlled area] SEZ** enterprise or IDZ operator in a customs controlled area; or
 (ii) those goods are supplied by the **[customs controlled area] SEZ** enterprise or IDZ operator in a customs controlled area where those goods are supplied after the relevant prescribed time period contemplated in section 8(24);” and 20
- (f) by the substitution in paragraph (i) of the proviso to subsection (3) for subparagraph (bb) of the following subparagraph: 25
 “(bb) goods were **[entered]** cleared for home **[consumption]** use in terms of the Customs **[and Excise] Control** Act;”.

(2) Paragraphs (a), (c), (d), (e) and (f) of subsection (1) come into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005, section 49 of Act 9 of 2006, section 85 of Act 20 of 2006, section 112 of Act 60 of 2008, section 123 of Act 7 of 2010, section 138 of Act 24 of 2011 and section 149 of Act 22 of 2012 30

27. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (10) of the following subsection: 35

“(10) Where—

- (a) goods or services have been supplied by a vendor at the zero rate in terms of **[sections] section 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k)** to a vendor, that is **[a customs controlled area] an SEZ** enterprise or an IDZ operator in a customs controlled area; or 40
- (b) goods have been imported **[into the Republic]** by a vendor, being **[a customs controlled area] an SEZ** enterprise or an IDZ operator in a customs controlled area and those goods are exempt from tax in terms of section 13(3), 45
 and where a deduction of input tax would have been denied in terms of section 17(2), or to the extent that such goods or services are not wholly for consumption, use or supply within a customs controlled area in the course of making taxable supplies by that vendor, that is **[a customs controlled area] an SEZ** enterprise or an IDZ operator, those goods or services shall be deemed to be supplied by the vendor concerned, that is an SEZ enterprise or an IDZ operator, in the same tax period in which they were so acquired, in accordance with the formula: 50

$$A \times B$$

in which formula—

‘A’ represents the rate of tax levied in terms of section 7(1); and 55
 ‘B’ represents—

- (i) the cost to the vendor, that is an SEZ enterprise or an IDZ operator, of the acquisition of those goods or services which were supplied to him or her in terms of **[sections] section 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k);** 60
 or

- (ii) the value to be placed on the importation of goods **[into the Republic]** as determined in terms of section 13(2).”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 27 of Act 89 of 1991, as amended by section 34 of Act 136 of 1991, section 28 of Act 136 of 1992, section 78 of Act 30 of 2000, section 11 of Act 10 of 2005, section 50 of Act 9 of 2006, section 1 of Act 3 of 2008, section 25 of Act 4 of 2008, section 271 of Act 28 of 2011, read with paragraph 120 of Schedule 1 to that Act and section 22 of Act 39 of 2014

28. (1) Section 27 of the Value-Added Tax Act, 1991, is hereby amended— 10

- (a) by the deletion in subsection (1) of the definition of “Category F”;
 (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) Every vendor, not being a vendor who falls within Category C, D[,], or E [or F] as contemplated in subsection (3), (4)[,], or (4A) [or (4B)], shall fall within Category A or Category B.”; 15

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

“and the Commissioner has directed that, with effect from the commencement date or such later date as may be appropriate, the vendor shall fall within Category C: Provided that a vendor falling within Category C shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if the vendor has applied in writing to be placed within Category A, B, D[,], or E [or F] and the Commissioner is satisfied that by reason of a change in the vendor’s circumstances he satisfies the requirements of this section for placing within Category A, B, D[,], or E [or F].”; 20 25

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

“and the Commissioner has directed that, with effect from the commencement date or such later date as may be appropriate, the vendor shall fall within Category D: Provided that a vendor falling within Category D shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if written application is made by the person who made the application referred to in subparagraph (v) for the vendor to be placed within Category A, B, C[,], or E [or F] or the Commissioner is satisfied that by reason of a change in circumstances that vendor should be placed within Category A, B, C[,], or E [or F].”; 30 35

- (e) by the substitution in subsection (4A) for paragraph (ii) of the proviso of the following paragraph: 40

“(ii) the Commissioner is satisfied that by reason of a change in circumstances, that vendor should be placed in Category A, B, C[,], or D [or F]; or”; and 45

- (f) by the deletion of subsection (4B).

(2) Subsection (1) comes into operation on 1 July 2015 and applies in respect of tax periods commencing on or after that date.

Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 2000, section 180 of Act 45 of 2003, section 41 of Act 34 of 2004, section 38 of Act 32 of 2005, section 87 of Act 20 of 2006 and section 271 of Act 28 of 2011, read with paragraph 124 of Schedule 1 to that Act 50

29. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) any person who holds himself or herself out as a person entitled to a refund or who produces, furnishes, authorises, or makes use of any tax invoice or document or debit note and has obtained any undue tax benefit or refund under the provisions of **[an export incentive scheme]** any regulation referred to in paragraph (d) of the definition of ‘exported’ in section 1, to which such person is not entitled.”. 55

Amendment of section 39 of Act 89 of 1991, as amended by section 136 of 1991, section 30 of Act 136 of 1992, section 6 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997, sections 165 and 166 of Act 60 of 2001, section 184 of Act 45 of 2003, section 50 of Act 16 of 2004, section 105 of Act 32 of 2004, section 22 of Act 9 of 2005, section 39 of Act 32 of 2005, section 114 of Act 60 of 2008, section 39 of Act 18 of 2009 and section 271 of Act 28 of 2011, read with paragraph 128 of Schedule 1 to that Act

30. (1) Section 39 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(4) Where any importer of goods which are required to be **[entered]** ~~cleared~~ under the Customs **[and Excise]** ~~Control~~ Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date **[on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later]** contemplated in section 13(1), the Commissioner must, in accordance with Chapter 15 of the Tax Administration Act, impose on that importer a penalty equal to 10 per cent of the said amount of tax.”; and

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

“(5) Where any person who is liable for the payment of tax fails to pay any amount of such tax on the date on which in terms of the **[Customs and]** ~~Excise Duty~~ Act, liability arises for the payment of the excise duty or environmental levy referred to in section 7(3)(a), the Commissioner must, in accordance with Chapter 15 of the Tax Administration Act, impose on that person a penalty equal to 10 per cent of the said amount of tax.”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001, section 88 of Act 20 of 2006, section 36 of Act 36 of 2007, section 43 of Act 61 of 2008, section 271 of Act 28 of 2011, read with item 133 of Schedule 1 to that Act and section 180 of Act 31 of 2013

31. Section 44 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (9) of the following subsection:

“(9) The Commissioner may make or authorise a refund of any amount of tax which has become refundable to any person under the provisions of **[an export incentive scheme]** ~~any regulation~~ referred to in paragraph (d) of the definition of ‘exported’ in section 1.”.

Amendment of section 45 of Act 89 of 1991, as substituted by section 271 of Act 28 of 2011, read with paragraph 134 of Schedule 1 to that Act

32. Section 45 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Despite the provisions of Chapter 12 of the Tax Administration Act, if a person fails to[—

(a) **without just cause submit relevant material, requested by SARS for purposes of verification, inspection or audit of a refund in accordance with Chapter 5 of the Tax Administration Act; or**

(b)] furnish SARS in writing with particulars of the account required in terms of section 44(3)(d) to enable SARS to transfer a refund to that account,

no interest accrues on the amount refundable for the period from the date that[—

(i) **in respect of subparagraph (a), the relevant material was required to be submitted; or**

(ii) **in respect of subparagraph (b),**] the refund is authorised, until the date that the person submits the **[relevant material or]** bank account particulars.”.

Amendment of section 46 of Act 89 of 1991, as amended by section 185 of Act 45 of 2003, section 41 of Act 32 of 2005, section 15 of Act 10 of 2006 and section 271 of Act 28 of 2011, read with paragraph 136 of Schedule 1 to that Act

33. Section 46 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) on any company shall be the public officer thereof or, in the case of any company which is placed under business rescue in terms of Chapter 6 of the Companies Act, 2008 (Act No. 71 of 2008), or in liquidation, the business rescue practitioner or the liquidator thereof.”.

Amendment of section 54 of Act 89 of 1991, as amended by section 40 of Act 136 of 1991, section 34 of Act 136 of 1992, section 25 of Act 20 of 1994, section 46 of Act 27 of 1997, section 100 of Act 53 of 1999 and section 51 of Act 16 of 2004

34. (1) Section 54 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (2A)(a) for the proviso of the following proviso:

“: Provided that a **[bill of entry]** release notification or other document prescribed in terms of the Customs **[and Excise]** Control Act in relation to that importation may nevertheless be held by such agent”;

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

“(b) a **[bill of entry]** release notification or other document prescribed in terms of the Customs **[and Excise]** Control Act in relation to the importation of goods is held by an agent as contemplated in subsection (2A),”;

(c) by the substitution in subsection (6)(b) for subparagraph (i) of the following subparagraph:

“(i) the supply is directly in connection with either the exportation, or the arranging of the exportation, of goods from the Republic to any country or place outside the Republic, or the importation, or the arranging of the importation, of goods **[to the Republic]** from any country or place outside the Republic, including, in either case, the transportation of those goods within the Republic as part of such exportation or importation, as the case may be; or”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 30 of Act 34 of 1997

35. Section 30 of the South African Revenue Service Act, 1997, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person may **[apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between the company, body, firm, business or undertaking and SARS]**—

(a) use the name or abbreviated name of SARS in an unlawful manner;

(b) use any logo or design of SARS without its authorisation;

(c) falsely represent any material or substance as emanating from SARS;

(d) use any name or description which implies some association or connection between the person or any corporate entity, body, firm, business or undertaking and SARS; or

(e) register or use a domain name which incorporates the name or description South African Revenue Service or SARS or the name or description of any of its subsidiaries.”.

Insertion of section 6A in Act 26 of 2007

36. The Securities Transfer Tax Administration Act, 2007, is hereby amended by the insertion of the following section:

“Penalty on default

6A. If any tax remains unpaid after the relevant date for payment referred to in section 3 the Commissioner must, under Chapter 15 of the Tax Administration Act, 2011, impose a penalty of 10 per cent of the unpaid tax but the Commissioner may remit the penalty or any portion thereof in accordance with the provisions of Chapter 15 of the Tax Administration Act, 2011.”. 5

Amendment of section 1 of Act 28 of 2011, as amended by section 36 of Act 21 of 2012 and section 30 of Act 39 of 2013

37. Section 1 of the Tax Administration Act, 2011, is hereby amended— 10

(a) by the substitution for the definition of “international tax agreement” of the following definition:

“**‘international tax agreement’** means—

(a) an agreement entered into with the government of another country in accordance with a tax Act; or 15

(b) any other agreement entered into between the competent authority of the Republic and the competent authority of another country relating to the automatic exchange of information under an agreement referred to in paragraph (a);”;

(b) by the substitution for the definition of “relevant material” of the following definition: 20

“**‘relevant material’** means any information, document or thing that in the opinion of SARS is [forseeably] foreseeably relevant for the administration of a tax Act as referred to in section 3;”;

(c) by the substitution for the definition of “return” of the following definition: 25

“**‘return’** means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment [or], is a basis on which an assessment is to be made by SARS or incorporates relevant material required under section 25, 26 or 27 or a provision under a tax Act requiring the submission of a return;”;

(d) by the substitution for the definition of “tax Act” of the following definition: 30

“**‘tax Act’** means this Act or an Act, or portion of an Act, referred to in section 4 of the SARS Act, excluding the Customs and Excise Act, the Customs Control Act, 2014 (Act No. 31 of 2014), and the Customs Duty Act, 2014 (Act No. 30 of 2014);”;

(e) by the substitution for the definition of “tax offence” of the following definition: 35

“**‘tax offence’** means an offence in terms of a tax Act or any other offence involving—

(a) fraud on SARS or on a SARS official relating to the administration of a tax Act; or 40

(b) theft of moneys due or paid to SARS for the benefit of the National Revenue Fund;”.

Amendment of section 3 of Act 28 of 2011, as amended by section 37 of Act 21 of 2012 and section 31 of Act 39 of 2013 45

38. Section 3 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) and paragraphs (a), (b) and (c) of the following words and paragraphs:

“If SARS [has], in accordance with an international agreement[, **received a request for**]— 50

(a) received a request for, is obliged to exchange or wishes to spontaneously exchange information, SARS may disclose or obtain the information [requested] for transmission to the competent authority of the other country as if it were relevant material required for purposes of a tax Act and must treat the information obtained as taxpayer information; 55

(b) received a request for the conservancy or the collection of an amount alleged to be due by a person under the tax laws of the requesting country, SARS may deal with the request under the provisions of section 185; or

- (c) received a request for the service of a document which emanates from the requesting country, SARS may effect service of the document as if it were a notice, document or other communication required under a tax Act to be issued, given, sent or served by SARS.”

Amendment of section 26 of Act 28 of 2011, as amended by section 41 of Act 21 of 2012 and section 35 of Act 39 of 2013

39. Section 26 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) A person required under subsection (1) to submit a return must do so in the prescribed form and manner and the return must—
- (a) contain the information prescribed by the Commissioner; **[and]**
 - (b) **[must]** be a full and true return; and
 - (c) for purposes of providing the information required in the return, comply with the due diligence requirements as may be prescribed in a tax Act, an international tax agreement or by the Commissioner in the public notice consistent with an international standard for exchange of information.”.

Amendment of section 34 of Act 28 of 2011, as amended by section 45 of Act 21 of 2012 and section 37 of Act 39 of 2013

40. (1) Section 34 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution for the definition of “participant” of the following definition:

“**‘participant’**, in relation to an ‘arrangement’, means—

 - (a) a ‘promoter’; or
 - (b) a **[company or trust which]** person who directly or indirectly **[derives]** will derive or assumes that **[it]** the person **[derives]** will derive a ‘tax benefit’ or ‘financial benefit’ by virtue of an ‘arrangement’;”;
 - (b) 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’;”;
 - (c) by the insertion after the definition of “promotor” of the following definition:

“**‘reportable arrangement’** means an ‘arrangement’ referred to in section 35(1) or 35(2) that is not an excluded ‘arrangement’ referred to in section 36;”;
 - (d) by the substitution for the definition of “tax benefit” of the following definition:

“**‘tax benefit’** **[includes]** means the avoidance, postponement **[or]**, reduction or evasion of a liability for tax.”.
- (2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 35 of Act 28 of 2011

41. (1) Section 35 of the Tax Administration Act, 2011, is hereby amended—

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

“An ‘arrangement’ is a ‘reportable arrangement’ **[if it is listed in terms of subsection (2) or]** if a **‘tax benefit’ is or will be derived or is assumed to be derived by any** person is a ‘participant’ **[by virtue of]** in the ‘arrangement’ and the ‘arrangement’—”;
 - (b) by the substitution for subsection (2) of the following subsection:

“(2) An ‘arrangement’ is a ‘reportable arrangement’ if the Commissioner has listed the ‘arrangement’ in a public notice.”; and
 - (c) by the deletion of subsection (3).
- (2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 36 of Act 28 of 2011, as amended by section 46 of Act 21 of 2012

42. (1) Section 36 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The Commissioner may determine an ‘arrangement’ to be an excluded ‘arrangement’ by public notice[, **if satisfied that the ‘arrangement’ is not likely to lead to an undue ‘tax benefit’.**]”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 37 of Act 28 of 2011, as amended by section 47 of Act 21 of 2012

43. (1) Section 37 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for subsections (1), (2) and (3) of the following subsections respectively:

“(1) The [**‘promoter’ must disclose the**] information referred to in section 38 in respect of a ‘reportable arrangement’ must be disclosed by a person who—

- (a) is a ‘participant’ in an ‘arrangement’ on the date on which it qualifies as a ‘reportable arrangement’, within 45 business days after that date; or
- (b) becomes a ‘participant’ in an ‘arrangement’ after the date on which it qualifies as a ‘reportable arrangement’, within 45 business days after becoming a ‘participant’.

[(2) If there is no ‘promoter’ in relation to the ‘arrangement’ or if the ‘promoter’ is not a resident, all other ‘participants’ must disclose the information.]

(3) A ‘participant’ need not disclose the information if the ‘participant’ obtains a written statement from[—

- (a) **the ‘promoter’ that the ‘promoter’ has disclosed the ‘arrangement’; or**
- (b)] any other ‘participant’[, **if subsection (2) applies,**] that the other ‘participant’ has disclosed the ‘reportable arrangement’.”; and

(b) by the deletion of subsection (4).

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 38 of Act 28 of 2011

44. (1) Section 38 of the Tax Administration Act, 2011, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The [**‘promoter’ or ‘participant’ must submit,**] following information in relation to a ‘reportable arrangement’, must be submitted in the prescribed form and manner and by the date specified[—]:”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 39 of Act 28 of 2011

45. (1) The Tax Administration Act, 2011, is hereby amended by the substitution for section 39 of the following section:

“Reportable arrangement reference number

39. SARS must, after receipt of the information contemplated in section 38, issue a ‘reportable arrangement’ reference number to each ‘participant’ for administrative purposes only.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 46 of Act 28 of 2011, as amended by section 50 of Act 21 of 2012 and section 38 of Act 39 of 2013

46. Section 46 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) A person receiving from SARS a request for relevant material under this section must submit the relevant material to SARS at the place, in the format (which must be reasonably accessible to the taxpayer) and within the time specified in the request.”.

Amendment of section 50 of Act 28 of 2011

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

“(1) A judge may, on application made *ex parte* and authorised by a senior SARS official grant an order in terms of which a person described in section 51(3) is designated to act as presiding officer at the inquiry referred to in this section.”. 10

Amendment of section 69 of Act 28 of 2011 as amended by section 41 of Act 36 of 2013

48. Section 69 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) The Commissioner may, despite the provisions of this section, **[publish]** 15
disclose—
(a) the name and taxpayer reference number of a taxpayer;
(b) a list of approved public benefit organisations for the purposes of the provisions of sections 18A and 30 of the Income Tax Act; **[and]**
(c) the name and tax practitioner registration number of a registered tax 20
practitioner; and
(d) taxpayer information in an anonymised form.”.

Amendment of section 162 of Act 28 of 2011

49. Section 162 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively: 25

“(1) Tax must be paid by the day and at the place notified by SARS, the Commissioner by public notice or as specified in a tax Act, and must be paid as a single amount or in terms of an instalment payment agreement under section 167.

(2) **[SARS]** The Commissioner may by public notice prescribe the method of payment of tax, including electronically.”. 30

Amendment of section 164 of Act 28 of 2011, as amended by section 58 of Act 39 of 2013

50. (1) Section 164 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 suspend payment of the disputed tax or a 35
portion thereof having regard to relevant factors, including—
(a) whether the recovery of the disputed tax will be in jeopardy or there will be a risk of dissipation of assets;
(b) the compliance history of the taxpayer with SARS;
(c) whether fraud is *prima facie* involved in the origin of the dispute; 40
(d) whether payment will result in irreparable hardship to the taxpayer not justified by the prejudice to SARS or the *fiscus* if the disputed tax is not paid or recovered; or
(e) whether the taxpayer has tendered adequate security for the payment of the 45
disputed tax and accepting it is in the interest of SARS or the *fiscus*.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Substitution of section 184 of Act 28 of 2011

51. (1) The following section is hereby substituted for section 184 of the Tax Administration Act, 2011:

“Recovery of tax debts from [responsible third parties] other persons 50

184. (1) SARS has the same powers of recovery against the assets of a person **[referred to in]** who is personally liable under section 155, 157 or

this Part as SARS has against the assets of the taxpayer and the person has the same rights and remedies as the taxpayer has against such powers of recovery.

(2) SARS must provide a **[responsible third party]** person referred to in subsection (1) with an opportunity to make representations— 5

- (a) before the **[responsible third party]** person is held liable for the tax debt of the taxpayer in terms of section 155, 157, 179, 180, 181, 182 or 183, if this will not place the collection of tax in jeopardy; or
- (b) as soon as practical after the **[responsible third party]** person is held liable for the tax debt of the taxpayer in terms of section 155, 157, 179, 180, 181, 182 or 183.”. 10

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 187 of Act 28 of 2011

52. (1) Section 187 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection: 15

“(2) Interest payable under a tax Act is calculated on—

- (a) the daily balance owing; or
- (b) the daily balance owing and compounded monthly, which method of determining interest will apply to a tax type from the date the Commissioner prescribes it by public notice.”. 20

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

Amendment of section 190 of Act 28 of 2011, as amended by section 71 of Act 39 of 2013

53. Section 190 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection: 25

“(4) A person is entitled to a refund under subsection (1) only if the refund is claimed by the person in the case of—

- (a) an assessment by SARS, within three years from the date of the assessment; or
- (b) self-assessment, within five years from the date the return had to be submitted or, if no return is required, payment had to be made in terms of the relevant tax Act.”. 30

Substitution of section 194 of Act 28 of 2011

54. The following section is hereby substituted for section 194 of the Tax Administration Act, 2011: 35

“Application of Chapter

194. Parts C and D of this Chapter apply only in respect of a tax debt owed by a ‘debtor’ if the liability to pay the tax debt is not disputed by the ‘debtor’.”. 40

Amendment of section 195 of Act 28 of 2011

55. Section 195 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 decide to temporarily ‘write off’ an amount of tax debt— 45

- (a) if satisfied that the tax debt is uneconomical to pursue as described in section 196 at that time; or
- (b) for the duration of the period that the ‘debtor’ is subject to business rescue proceedings under Chapter 6 of the ‘Companies Act’, as referred to in section 132 of that Act.”. 50

Amendment of section 207 of Act 28 of 2011

56. Section 207 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs, respectively:

- “(b) be submitted **[by the end of the month]** within 60 business days following the end of the fiscal year; and 5
- (c) contain details of the number of tax debts ‘written off’ or ‘compromised’[,]
and the amount of revenue forgone, [and the estimated amount of savings in costs of recovery,] which must be reflected in respect of main classes of taxpayers or sections of the public.”. 10

Amendment of section 208 of Act 28 of 2011

57. Section 208 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of “ ‘administrative non-compliance penalty’ or ‘penalty’ ” of the following definition:

- “ ‘**administrative non-compliance penalty**’ or ‘**penalty**’ means a “penalty” 15
imposed by SARS in accordance with this Chapter or a tax Act other than this Act,
and excludes an understatement penalty referred to in Chapter 16;”.

Amendment of section 215 of Act 28 of 2011

58. Section 215 of the Tax Administration Act, 2011, is hereby amended by the addition of the following subsection: 20

- “(5) If a tax Act other than this Act provides for remittance grounds for a ‘penalty’, SARS may despite the provisions of section 216, 217 or 218 remit the ‘penalty’ or a portion thereof under such grounds.”.

Amendment of section 235 of Act 28 of 2011

59. Section 235 of the Tax Administration Act, 2011, is hereby amended by the substitution for the heading of the following heading: 25

- “**[Criminal offences relating to evasion] Evasion of tax and obtaining undue refunds by fraud or theft**”.

Amendment of section 240 of Act 28 of 2011, as amended by section 82 of Act 21 of 2012 and section 81 of Act 39 of 2013 30

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

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 - “A person may not register as a tax practitioner under subsection (1) or SARS may deregister a registered tax practitioner if the person or the registered tax practitioner, as the case may be—”; 35
- (b) by the deletion in subsection (3) of the word “or” at the end of paragraph (a), insertion of that word at the end of paragraph (b) and addition of the following paragraph:
 - “(c) during the preceding five years has been convicted of a serious tax offence.”; and 40
- (c) by the addition of the following subsection:
 - “(4) If prosecution for a serious tax offence has been instituted but not finalised against a person or registered tax practitioner and if the person or registered tax practitioner continues with the commission of a serious tax offence after the criminal proceedings have been instituted, a senior SARS official may— 45
 - (a) not register the person as a registered tax practitioner; or
 - (b) suspend the registration of the registered tax practitioner, for the duration of the criminal proceedings commencing on the date that prosecution is instituted and ending on the date that the person or registered tax practitioner is finally acquitted.”. 50

Amendment of section 240A of Act 28 of 2011, as amended by section 83 of Act 21 of 2002 and section 82 of Act 39 of 2013

61. (1) Section 240A of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A body must within the prescribed time period and in the prescribed form and manner, if recognised under—

- (a) subsection (1), submit a list of its members to whom the provisions under section 240(1) apply; and
- (b) subsection (2), submit a report on its members and compliance with this Chapter.”.

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

Amendment of section 248 of Act 28 of 2011

62. (1) Section 248 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution for the heading of the following heading:

“**Public officer in event of liquidation [or], winding-up or business rescue**”; and

- (b) by the addition of the following subsection:

“(2) In the event of a company referred to in section 246(1) being subject to a business rescue plan referred to in Part D of Chapter 6 of the ‘Companies Act’, the business rescue practitioner as defined in that Chapter is required to exercise, in respect of the company, all the functions and assume all the responsibilities of a public officer under a tax Act for the period that the company is subject to the business rescue plan.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 255 of Act 28 of 2011, as amended by section 88 of Act 21 of 2012

63. Section 255 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) SARS may, in the case of a return or other document submitted in electronic format, accept an electronic or digital signature of a person as a valid signature for purposes of a tax Act if a signature is required.”.

Substitution of section 256 of Act 28 of 2011, as substituted by section 89 of Act 21 of 2012

64. (1) The following section is hereby substituted for section 256 of the Tax Administration Act, 2011:

“Tax compliance status

256. (1) A taxpayer may apply, in the prescribed form and manner, to SARS for a confirmation of the taxpayer’s tax compliance status.

(2) SARS must issue or decline to issue the confirmation of the taxpayer’s tax compliance status within 21 business days from the date the application is submitted or such longer period as may reasonably be required if a senior SARS official is satisfied that the confirmation of the taxpayer’s tax compliance status may prejudice the efficient and effective collection of revenue.

(3) A senior SARS official may provide a taxpayer with confirmation of the taxpayer’s tax compliance status as compliant only if satisfied that the taxpayer is registered for tax and does not have any—

- (a) outstanding tax debt, 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
- (b) outstanding return unless an arrangement acceptable to the SARS official has been made for the submission of the return.

- (4) A confirmation of tax compliance status must be in the prescribed format and include at least—
- (a) the original date of issue of the tax compliance status confirmation to the taxpayer;
 - (b) the name, taxpayer reference number and identity number or company registration number of the taxpayer;
 - (c) the date of the confirmation of the tax compliance status of the taxpayer to an organ of state or a person referred to in subsection (5); and
 - (d) a confirmation of the tax compliance status of the taxpayer as at the date referred to in paragraph (c).
- (5) Despite the provisions of Chapter 6, SARS may confirm the taxpayer's tax compliance status as at the date of a request by—
- (a) an organ of state; or
 - (b) a person to whom the taxpayer has presented the tax compliance status confirmation.
- (6) SARS may alter the taxpayer's tax compliance status to non-compliant if the confirmation—
- (a) was issued in error; or
 - (b) was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts,
- and SARS has given the taxpayer prior notice and an opportunity to respond to the allegations of at least 14 days prior to the alteration.
- (7) A taxpayer's tax compliance status will be indicated as non-compliant by SARS for the period commencing on the date that the taxpayer no longer complies with a requirement under subsection (3) and ending on the date that the taxpayer remedies the non-compliance.”.
- (2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 270 of Act 28 of 2011, as amended by section 86 of Act 39 of 2013

- 65.** Section 270 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the substitution in subsection (6D) for paragraphs (a) and (b) of the following paragraphs, respectively:
 - “(a) the Income Tax Act, excluding returns required under the Fourth Schedule to that Act, a senior SARS official must, in considering the objection, reduce the penalty in whole or in part if satisfied that there were extenuating circumstances; or
 - (b) the Value-Added Tax Act or the Fourth Schedule to the Income Tax Act, a senior SARS official must reduce the penalty in whole if the penalty was imposed under circumstances other than the circumstances referred to in item (v) of the understatement penalty table in section 223(1).”; and
 - (b) by the deletion of subsection (8).

Repeal of section 11 of Act 21 of 2012

- 66.** (1) Section 11 of the Tax Administration Laws Amendment Act, 2012, is hereby repealed.
- (2) Subsection (1) is deemed to have come into operation on 30 June 2013.

Amendment of section 26 of Act 21 of 2012

- 67.** Section 26 of the Tax Administration Laws Amendment Act, 2012, is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) Subsection [(1)](1)(a) is deemed to have come into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.”.

Amendment of section 8 of Act 39 of 2013

68. Section 8 of the Tax Administration Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Paragraph (a) of subsection (1) comes into operation on 1 March [2015] 2016 and applies in respect of amounts contributed on or after that date.”.

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Amendment of section 1 of Act 30 of 2014

69. Section 1 of the Customs Duty Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “port or place of export” of the following paragraph:

“(a) where the goods are [packed into containers, or if not containerised,] 10 loaded on board a vessel, aircraft, railway carriage or vehicle[,] in which the goods will be transported across the border of that country to the Republic;”.

Amendment of section 88 of Act 30 of 2014

70. Section 88 of the Customs Duty Act, 2014, is hereby amended by the substitution in subsection (1)(a) for subparagraph (iii) of the following subparagraph: 15

“(iii) an origin determination or origin re-determination referred to in section 156(2); or”.

Amendment of section 201 of Act 30 of 2014

71. Section 201 of the Customs Duty Act, 2014, is hereby amended by—

(a) the substitution in subsection (2) for the Table of the following Table: 20

“FIXED AMOUNT PENALTIES

Category of breach	Amount of penalty
Category A	Maximum of R2 500
Category B	R5 000
Category C	R7 500
Category D	R10 000”

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; and

(b) the addition of the following subsection:

“(4) No fixed amount penalty may be imposed in terms of this section 30 for a breach consisting of a failure to submit to the customs authority full or accurate information, other than information that may result in revenue prejudice, if the breach was committed inadvertently and in good faith.”.

Amendment of section 202 of Act 30 of 2014

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72. Section 202 of the Customs Duty Act, 2014, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The customs authority may for a Category A breach referred to in the Table in section 201(2) consisting of a failure to submit to the customs authority full or accurate information other than information that may result in revenue prejudice, impose in terms of subsection (1) a fixed amount penalty for the breach only after it has issued a warning for the same or a similar type of breach to the person who committed the breach.”. 40

Substitution of section 221 of Act 30 of 2014

73. The following section is hereby substituted for section 221 of the Customs Duty Act, 2014: 45

“Admissibility of certain statements in documents

221. In any criminal or civil proceedings arising from the [application] implementation or enforcement of this Act, any statement in any record,

letter or other document submitted, kept or received by or on behalf of any person to the effect that goods of a particular price, value (including any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate or other information which relates to such goods and has a bearing on such price or value), quantity, quality, nature, strength or other characteristic have been produced, imported, exported, ordered, supplied, purchased, sold, dealt with, processed, traded in or held in stock by that person, is admissible as evidence that that person has produced, imported, exported, ordered, supplied, purchased, sold, dealt with, processed, traded in or held in stock goods of that price, value, quantity, quality, nature, strength or other characteristic.”.

Amendment of section 177 of Act 31 of 2014

74. Section 177 of the Customs Control Act, 2014, is hereby amended by the addition of the following subsection:

“(5) Subsection (4) only applies if a change referred to in paragraph (a) of that subsection, or any refund, amount, discount, commission, credit or debit referred to in paragraph (b) of that subsection, affects any information included in the clearance declaration submitted in respect of the goods to which the invoice relates.”.

Amendment of section 178 of Act 31 of 2014

75. Section 178 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) notify the customs authority of—
 (i) any amendment to an invoice that affects any information included in the clearance declaration submitted in respect of the goods to which the invoice relates; or
 (ii) the receipt of such an amended invoice or a debit or credit note; and”.

Amendment of section 241 of Act 31 of 2014

76. Section 241 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsections:

“(2) This Chapter applies to the transfer of imported goods **[at a customs seaport or airport]**—
 (a) from one foreign-going vessel or aircraft to another foreign-going vessel or aircraft at the same customs seaport or airport; or
 (b) from one foreign-going vessel at a customs seaport to another foreign-going vessel at another customs seaport served by the same Customs Office.
 (3) Any reference in this Act to a customs seaport where a transshipment operation is carried out must, where subsection (2)(b) applies, be read as referring to both customs seaports as contemplated in that subsection.”.

Amendment of section 242 of Act 31 of 2014

77. Section 242 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) to be transferred **[at a customs seaport or airport]**—
 (i) from the foreign-going vessel **[or aircraft]** on which those goods were imported to another foreign-going vessel **[or aircraft at that seaport or airport]** on which those goods are to be exported from the Republic, whether the exporting vessel is docked at the same customs seaport as the importing vessel or at another customs seaport served by the same Customs Office; or
 (ii) at the same customs airport from the foreign-going aircraft on which those goods were imported to another foreign-going aircraft on which those goods are to be exported from the Republic; and”.

Amendment of section 634 of Act 31 of 2014

78. Section 634 of the Customs Control Act, 2014, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) Subsection (2) does not apply to—

- | | |
|--|---|
| <ul style="list-style-type: none"> (a) the licensee of inward or home use processing premises importing goods for inward or home use processing on those premises; or (b) the licensee of inward processing premises exporting inward processed compensating products obtained from the inward processing of goods on <u>those premises</u>.”. | 5 |
|--|---|

Short title and commencement

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79. (1) This Act is called the Tax Administration Laws Amendment Act, 2014.

(2) Save in so far as is otherwise provided for in this Act, amendments to the Tax Administration Act, 2011 (Act No. 28 of 2011), are deemed to have come into operation on 1 October 2012.

(3) The amendments to the Customs Duty Act, 2014, and the Customs Control Act, 2014, come into operation on the date on which the Customs Control Act, 2014, takes effect.

(4) Subject to subsections (2) and (3), 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.

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MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2014

1. PURPOSE OF BILL

The Bill proposes to amend administrative provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007), the Tax Administration Act, 2011 (Act No. 28 of 2011), the Tax Administration Laws Amendment Act, 2012 (Act No. 21 of 2012), the Tax Administration Laws Amendment Act, 2013 (Act No. 39 of 2013), the Customs Duty Act, 2014 (Act No. 30 of 2014) and the Customs Control Act, 2014 (Act No. 31 of 2014).

2. OBJECTS OF BILL

2.1 Income Tax Act, 1962: Amendment of section 1

The proposed amendment amends the definition of “representative taxpayer” to cater for a company under business rescue management in terms of Chapter 6 of the Companies Act, 2008, and whose affairs are handled by a business rescue practitioner. The business rescue practitioner is, accordingly, responsible for all acts, matters, or things that the taxpayer must do under a tax Act, and in case of default, may be subject to penalties for the taxpayer’s defaults.

2.2 Income Tax Act, 1962: Amendment of section 3

Decisions made under certain provisions of the Income Tax Act are subject to objection and appeal under section 3 of the Act. The proposed amendment adds a reference to new sections containing decisions that should also be subject to objection and appeal, i.e. section 18A(5C) and section 30C, inserted by the draft Taxation Laws Amendment Bill, 2014, and paragraph 5(2) of the Fourth Schedule to the Act.

Furthermore, the proposed amendment removes references to deleted sections or sections which no longer include a decision.

The deletion of paragraphs 20(1)(a) and (2), 20A(1) and (2) and 27 of the Fourth Schedule to the Income Tax Act is part of making the generic provisions of the Tax Administration Act, specifically Chapter 15, applicable to administrative non-compliance penalties imposed under any of the tax Acts. Section 220 of the Tax Administration Act, provides that a decision by SARS not to remit a penalty in whole or in part is subject to objection and appeal under Chapter 9 of that Act. Thus, a decision not to remit a penalty under paragraph 20(2) of the Fourth Schedule to the Income Tax Act is subject to objection and appeal under section 220 of the Tax Administration Act. See the further amendments to Chapter 15 of that Act proposed in this regard.

2.3 Income Tax Act, 1962: Amendment of section 18A

The proposed amendment is consequential to the deletion of section 30(9) of the Income Tax Act. See paragraph 2.4.

2.4 Income Tax Act, 1962: Amendment of section 30

Books of account, records or other documents relating to any approved public benefit organisation (PBO) must be retained and carefully preserved for a period of four years after the date of the last entry in any book or, if kept in electronic or any other form, for a period of four years after completion of the transactions, act or operations to which they relate. The duty to keep records under section 29 of the Tax Administration Act, is a period of five years from the date of the submission of an income tax return. The amendment proposes

to align the record-keeping requirements relating to PBOs in the Income Tax Act with the requirements of the Tax Administration Act.

2.5 *Income Tax Act, 1962: Amendment of section 64K*

The Tax Administration Laws Amendment Act, 2013, inserted a return obligation for persons receiving exempt dividends. Section 64K(1)(d) of the Income Tax Act presently requires returns when a section 64F exempt dividend is paid in cash. The amendment proposes to extend the return obligation where *in specie* dividends, exempt in terms of section 64FA of the Act, are paid or received. The provision once amended accordingly imposes a reporting obligation on a person paying a dividend or a person that receives a dividend that is exempt in terms of section 64F or section 64FA.

2.6 *Income Tax Act, 1962: Insertion of section 64LA*

- 2.6.1 The amendment enables a company to claim a refund of dividends tax paid to SARS where the company had to pay the tax in respect of the distribution of dividends *in specie* as a result of being unable to obtain the declaration and written undertaking contemplated in section 64FA(1)(a) or (2) of the Income Tax Act.
- 2.6.2 For example, a listed South African corporation undertakes an unbundling exercise in terms of which the unbundled shares are distributed as assets *in specie* to its shareholders. The company is liable for the dividends tax unless the shareholder has, by the date of the distribution of the asset *in specie* submitted to the company a declaration that the dividends are exempt or that a reduced dividends tax rate can be applied. The listed corporation is not able to obtain the relevant declarations as it does not have the detailed shareholder information at hand and hence could not obtain the information by the time the transaction took place etc. As such, the listed corporation is liable for dividends tax on the asset *in specie* and, as a result of the limited application of section 64L, is not able to claim a refund of any dividends tax which would not have been payable had the corporation been in possession of the declarations. In cases where only a portion of dividends tax is not subject to tax, only a portion of the tax paid is refundable. With the introduction of the proposed new section 64LA this position is rectified, and the company will be able to claim a refund.

2.7 *Income Tax Act, 1962: Amendment of paragraph 1 of Fourth Schedule*

- 2.7.1 *Paragraph (a) and (b)*: The proposed amendments are consequential to the proposed amendment in paragraph (c).
- 2.7.2 *Paragraph (c)*: In order to exempt small business funding entities from the payment of provisional tax in terms of the Fourth Schedule they need to be excluded from the definition of provisional taxpayer. The proposed amendment is consequential to the insertion of section 30C in the Income Tax Act by the Taxation Laws Amendment Bill, 2014.
- 2.7.3 *Paragraph (d)*: The proposed amendment amends the definition of “representative employer” to cater for an employer under business rescue management in terms of Chapter 6 of the Companies Act, 2008, and whose affairs are handled by a business rescue practitioner.

2.8 *Income Tax Act, 1962: Amendment of paragraph 18 of Fourth Schedule*

- 2.8.1 The amendment proposes to align the exemptions from payment of provisional tax for people 65 years or older with those of people under 65.

- 2.8.2 The exemption for persons over the age of 65 has been overtaken by developments in recent years. The current provision provides that the taxable income of a taxpayer who is 65 and above should not exceed R120 000. The proposed amendment provides that it should not exceed the applicable tax threshold. The tax threshold with effect from 1 March 2014 is R110 200 for a person who is 65 and above and R123 350 for a person who is 75 and above. The threshold for taxable income derived from interest, foreign dividends and fixed property rentals is also raised from R20 000 (previously only applicable to under 65s) to R30 000 for all natural persons. The effective date for this amendment is 1 March 2015 and applies to years of assessment commencing on or after that date.

2.9 *Income Tax Act, 1962: Amendment of paragraph 19 of Fourth Schedule*

- 2.9.1 *Paragraph (a)*: The proposed amendment provides that amounts contained in paragraph (d) of “gross income” (other than severance benefits) must be excluded from the basic amount due to the irregular and once-off nature of these amounts. The amendments to subsubitems (aa) and (bb) are consequential to the insertion of subsubitem (bbA) in paragraph 19(1)(d)(i).
- 2.9.2 *Paragraph (b)*: Paragraph (b) of the proviso to paragraph 19(1)(d) of the Fourth Schedule serves no purpose due to the more important 18 month test in paragraph (a). It is proposed that the proviso be merged as suggested in the Bill.
- 2.9.3 *Paragraph (c)*: The proviso to paragraph 19(1)(e)(ii) is in conflict with the 14 day rule for the use of the most recent assessment for determining a basic amount. Taxpayers accessing the provisional tax function on e-Filing long before the final date of payment of provisional tax can use the basic amount generated by the system at that stage and then argue that the 14 day rule cannot be applied. In the context of e-Filing a single 14 day rule is appropriate.

2.10 *Income Tax Act, 1962: Amendment of paragraph 20 of Fourth Schedule*

- 2.10.1 *Paragraph (a)*: The heading is amended to clarify the type of penalty. See further paragraph 2.11 below.
- 2.10.2 *Paragraph (b)*: Paragraph 20 refers to normal tax and not *net* normal tax. In the case of an underestimation the penalty may be levied on the tax determined before deducting rebates. This needs to be rectified. The proposed amendment will have the effect that where the calculation of normal tax is to be done, tax rebates are also to be deducted.
- 2.10.3 *Paragraph (c)*: The proposed amendment provides that irregular and once-off payments included in “gross income” under paragraph (d) of the definition in section 1 are added to the exclusions in the proviso to paragraph 20(1).
- 2.10.4 *Paragraph (d)*: It has been argued that if the provisional taxpayer does not submit his or her second estimate, then the provisions of paragraph 20 do not apply. The rationale behind this argument is that paragraph 20 is based on the submitted estimate and there is no provision that provides that non-submission of the estimate would be deemed to be a nil submission. The proposed amendment aims to clarify SARS’s position that where a person does not submit his or her estimate as required then that estimate is deemed to be a nil estimate. A person who does not submit the estimate at all cannot be better off than a person who did submit the estimate but underestimated his or her taxable income.

- 2.10.5 The insertion of subparagraph (2B) allows for the reduction of a penalty imposed under paragraph 20(1) by the amount of a penalty imposed under paragraph 27 in respect of the same provisional tax period.
- 2.10.6 *Paragraph (e)*: The insertion of subparagraph (2C), originally in paragraph 20A(2), allows the Commissioner to remit the whole or any part of the penalty imposed under paragraph 20(1), if the Commissioner is satisfied that the provisional taxpayer's failure to submit such an estimate timeously was not due to an intent to evade or postpone the payment of provisional tax or normal tax.
- 2.10.7 *Paragraph (f)*: Currently the penalty for underpayment of provisional tax as a result of underestimation of provisional tax does not apply in relation to any final or last estimate referred to in paragraph 20(1), if the Commissioner has under the provisions of paragraph 19(3) increased such final or last estimate. The proposed amendment deletes this exception and hence the penalty will now also apply where the Commissioner has increased such final or last estimate in terms of paragraph 19(3). This amendment will not require the re-opening of any assessments. The effective date for this amendment will be for years of assessment commencing on or after 1 March 2014.

2.11 Income Tax Act, 1962: Repeal of paragraph 20A of Fourth Schedule

An underestimation contemplated in paragraph 20 of the Fourth Schedule may result in a penalty under both paragraphs 20(1) and 20A(1) for the same action and may be regarded as too onerous. Also, paragraph 20 has been amended to allow a reduction of a penalty under paragraph 20(1) by the amount of any penalty under paragraph 27 for the late payment of provisional tax. This approach is thus aligned with the Tax Administration Act, 2011, scheme under which a default may not be subjected to both an administrative non-compliance penalty and an understatement penalty.

2.12 Income Tax Act, 1962: Amendment of paragraph 24 of Fourth Schedule

Paragraph 22 of the Fourth Schedule was repealed. The proposed amendment deletes an obsolete reference to this paragraph and effects a textual correction.

2.13 Income Tax Act, 1962: Amendment of paragraph 29 of Eighth Schedule

- 2.13.1 *Paragraph (a)*: The provisions of this paragraph dealt with a transitional rule as far as the valuation date (1 October 2001) value of valued assets is concerned. It is partially obsolete as it is not the intention that the Commissioner will extend the date of the submission of proof of valuation to a date after the date of the first return submitted after 30 September 2004. It is proposed that the following words be deleted: "or, if it was not submitted with that return, within such period as the Commissioner may allow if proof is submitted that the valuation was performed within the period prescribed".
- 2.13.2 *Paragraph (b)*: SARS no longer requires taxpayers to submit supporting documents with their tax returns as these will be specifically requested by SARS if the taxpayer is selected for a verification of audit. The proposed amendment brings paragraph 29(6) in line with this practice. Taxpayers must, however, retain proof of valuation of assets should they wish to adopt the market value basis for determining the valuation date value of a pre-valuation date asset.

2.14 Customs and Excise Act, 1964: Amendment of section 43

- 2.14.1 Section 43(7) of the Customs and Excise Act provides for the disposal of various goods. Paragraph (d) provides that no duty is payable on any goods to which the subsection relates on disposal as contemplated in paragraph (b) of the subsection, but any duty paid is not refundable. Section 87(1) provides for the circumstances in which goods are liable to forfeiture. In terms of a proviso to the section forfeiture does not affect liability to any other penalty or punishment which has been incurred under the Act or any other law, or liability for any unpaid duty or charge in respect of the goods.
- 2.14.2 The proposed amendment to paragraph (d) is intended to clarify that the liability for duty in terms of the proviso to section 87(1) is not included in the exemption in paragraph (d) for payment of duty on the goods disposed in terms of the subsection.

2.15 Customs and Excise Act, 1964: Amendment of section 47

Tariff determinations may currently be requested to obtain certainty on the appropriate tariff classification and excise duty rate applicable to products. Tariff determination applications for alcoholic beverages are now made compulsory to ensure the accurate and consistent tariff treatment of these products. All alcoholic beverages, whether existing, new or altered in terms of production process, ingredients or proportion thereof, alcoholic strength or brand name, will require tariff determinations before release for home consumption or manufacture commences. Substantiating information will have to be submitted together with evidence of compliance where applicable with the Liquor Products Act, 1989 (Act No. 60 of 1989). These compulsory tariff determinations will be phased in to ease administration and facilitate industry compliance. Current tariff determinations will remain valid until their eventual reconsideration as indicated in the subsequent rules for implementation. In cases where a re-determination gives rise to a tariff re-classification with a different excise duty tax implication, the new determination will only be applied going forward. This is provided the present determination was fully complied with and the beverage concerned did not alter in any substantive way after the determination was originally granted.

2.16 Customs and Excise Act, 1964: Amendment of section 50

- 2.16.1 Section 50 of the Customs and Excise Act provides for the exchange of information in terms of international agreements. The amendment proposes provisions for the exchange of information as well as the automatic exchange of information, which include the systematic supply of clearance information in terms of the agreement by the customs authority of the sending party to the customs authority of the receiving party in an agreed electronic or other structured format in advance of the arrival of the persons, goods or means of transport in the territory of the receiving party.
- 2.16.2 It now provides that any information automatically exchanged must be treated as confidential by the receiving party and may only be used for the purposes of risk analysis by the customs authority of that party except if the Commissioner in writing authorises its use for other purposes or by other authorities in terms of the provisions of the agreement regulating the exchange of such information. The disclosure of information is made subject to section 101B in which provision is made for the protection of personal information.
- 2.16.3 The proposed amendment also empowers the Commissioner, in respect of the automatic exchange of information, to specify conditions on which any information will be exchanged and on which it may be used for any other purpose or by any other authority and refuse the

exchange of information with a party to any agreement if the information will be afforded in the territory of that party a level of protection that does not satisfy the requirements of this Act.

2.17 Customs and Excise Act, 1964: Amendment of section 101B

- 2.17.1 Section 101B of the Customs and Excise Act presently provides for the processing and protection of personal information of a passenger transmitted to the Commissioner as Advance Personal Information in terms of section 7A. The amendments are related to the amendments to section 50 for the exchange and automatic exchange of information in terms of international agreements.
- 2.17.2 *Paragraph (a)*: The amendments propose that the provisions for “passenger” in the section should be substituted by a provision for “person”, which is defined as meaning a natural and juristic person, unless the context otherwise requires.
- 2.17.3 *Paragraph (b)*: Personal information is also defined as meaning information relating to an identified or identifiable natural person and where it is applicable an identified or identifiable juristic person.
- 2.17.4 *Paragraph (c)*: In terms of amendments to subsection (2), the section applies (subject to section 4(3) and other subsections of section 4, which relate to the disclosure of information) to any personal information in possession or under the control of the Commissioner.
- 2.17.5 *Paragraph (d)*: The amendments to subsection (3) include proposals that the Commissioner may obtain and use personal information for the administration of any other provision of the Act including any international agreement contemplated in section 50. If the personal information is provided by a party to an international agreement the Commissioner may obtain and use the information in accordance with the provisions of that agreement and section 50.
- 2.17.6 *Paragraph (e) to (p)*: See notes to paragraphs (a) and (b).
- 2.17.7 Subsection (10)(b) provides that the Commissioner may not transfer any information to a foreign government other than in a manner contemplated in section 50, provided that the Commissioner is satisfied that the recipient of that information is subject to a law which effectively upholds principles of fair handling of personal information that are substantially similar to the information protection principles set out in the section.

2.18 Continuation of amendments made under section 119A of Act 91 of 1964

The proposed amendment provides, as contemplated in section 119A(3) of the Act, for the continuation of any rule made under section 119A or any amendment or withdrawal of or insertion in such rule during the period 1 September 2013 up to and including 30 September 2014.

2.19 Value-Added Tax Act, 1991: Amendment of section 1

The Value-Added Tax Act relies to a large extent on certain provisions and procedures performed in the current Customs and Excise Act, 1964, relating to the export and import of goods. This is to ensure that the correct VAT rate or exemption is applied to exports and imports whilst aligning the rules pertaining to the time and value of exports and imports. The new Customs Control Act, 2014, and the Customs Duty Act, 2014, are to replace the existing Customs and Excise Act, 1964. This required a review and alignment of the Value-Added Tax Act, 1991, and the two new Acts. The proposed amendments in this paragraph as well as paragraphs 2.20 to 2.24, 2.26, 2.27, 2.30 and

2.34 hereunder flow from the process of review and alignment with the aforementioned Acts.

2.20 Value-Added Tax Act, 1991: Amendment of section 7

See paragraph 2.19 above.

2.21 Value-Added Tax Act, 1991: Amendment of section 8

See paragraph 2.19 above.

2.22 Value-Added Tax Act, 1991: Amendment of section 11

See paragraph 2.19 above.

2.23 Value-Added Tax Act, 1991: Amendment of section 12

See paragraph 2.19 above.

2.24 Value-Added Tax Act, 1991: Amendment of section 13

See paragraph 2.19 above.

2.25 Value-Added Tax Act, 1991: Amendment of section 16

2.25.1 *Paragraph (a) to (c)*: Under current VAT legislation, input tax is allowed where a bill of entry or other documents, as prescribed in terms of the Customs Act, 1964, together with proof of payment of the tax in relation to the said importation, are held by the vendor or his agent at the time any return in respect of that importation is furnished.

2.25.2 However, the Customs Modernisation Programme was implemented which addressed a number of critical issues, such as paper-based systems and processes. The main change was the introduction of an automated workflow driven system, which allowed Customs and taxpayers to complete all clearance processes end-to-end without having to perform manual functions. Accordingly, paper-based documents are no longer generated and issued to taxpayers.

2.25.3 The customs modernisation programme has eliminated the need for paper-based documents to be generated and issued to taxpayers. Therefore, documents that are legally required will be aligned with the modernised customs processes and procedures.

2.25.4 The documentary requirements contained in this section need to be aligned to the modernised Customs processes and procedures. The proposed amendment will come into operation on 1 April 2015.

2.26 Value-Added Tax Act, 1991: Amendment of section 16

2.26.1 *Paragraphs (a), (c), (d), (e) and (f)*: See paragraph 2.19 above.

2.26.2 *Paragraph (b)*: The entitlement to deduct input tax is, *inter alia*, dependant on the vendor obtaining and retaining documentary evidence in support of the amount that is deducted. In this regard the deduction of input tax in respect of the acquisition of second-hand goods is dependent on the vendor obtaining and retaining the records stipulated in section 20(8) of the Value-Added Tax Act. The amendment clarifies that the records to be obtained and retained are the declaration as well as the details stipulated in paragraphs (a) to (f) of section 20(8).

2.27 Value-Added Tax Act, 1991: Amendment of section 18

See paragraph 2.19 above.

2.28 Value-Added Tax Act, 1991: Amendment of section 27

The fourth-monthly VAT category for vendors was introduced in 2005 to assist small retailers. Vendors qualify if taxable supplies constitute R1.5 million or less during a 12-month period. Less than 1 000 vendors, with only R44 million output tax and R23 million input tax, were registered for this provision in 2012/13. Government proposes to eliminate this category and to bring registered vendors into the bimonthly category. The proposed amendment gives effect to Government's proposal and will come into effect on 1 July 2015 and applies in respect of tax periods commencing on or after that date.

2.29 Value-Added Tax Act, 1991: Amendment of section 31

The amendment proposes to adjust the wording to refer to a regulation rather than an export incentive scheme. The definition of "exported" was amended by section 165(1)(f) of the Taxation Laws Amendment Act, 2013, to refer to regulations in terms of the Value-Added Tax Act and the new regulation No. 316, published in *Government Gazette* 37580, came into effect on May 2014.

2.30 Value-Added Tax Act, 1991: Amendment of section 39

See paragraph 2.19 above.

2.31 Value-Added Tax Act, 1991: Amendment of section 44

See paragraph 2.29 above.

2.32 Value-Added Tax Act, 1991: Amendment of section 45

The proposed amendment deletes the suspension of interest in instances where SARS requested relevant material for purposes of auditing the refund, the provision of which was delayed without just cause. In practice, it has also proven factually difficult and impractical to apply. The existing requirement that the vendor must furnish SARS in writing with particulars of the vendor's bank account details so as to enable SARS to transfer a refund to that account will still apply. SARS should not be liable for interest on a refund that it cannot make because a vendor fails to provide banking details.

2.33 Value-Added Tax Act, 1991: Amendment of section 46

The proposed amendment provides that the business rescue practitioner appointed to handle the affairs of any company under business rescue management in terms of Chapter 6 of the Companies Act, 2008, will be the person responsible for the duties imposed on that company under the Value-Added Tax Act. The business rescue practitioner is, accordingly, responsible for all acts, matters, or things that the taxpayer must do under a tax Act, and in case of default, may be subject to penalties for the taxpayer's non-compliance.

2.34 Value-Added Tax Act, 1991: Amendment of section 54

See paragraph 2.19 above.

2.35 South African Revenue Service Act, 1997: Amendment of section 30

Section 30 of the South African Revenue Service Act was found to be not restrictive enough in its prohibition in preventing the unlawful use of SARS's

names, trademarks and logos. Fraudulent use of SARS's names, trademarks and logos by for example bogus tax practitioners has become prevalent and has been aggravated by improper and unauthorised use in domain names, the internet and social media. The purpose of the proposed amendment is to broaden SARS's protection against unlawful use of its intellectual property and to protect the broad public from fraudulent schemes and misrepresentations of SARS's names and logos on the internet, in various media as false advertising and on goods.

2.36 Securities Transfer Tax Administration Act, 2007: Insertion of section 6A

The proposed insertion aligns the late payment penalty provisions of the Securities Transfer Tax Administration Act with those of the Tax Administration Act and other tax Acts imposing late payment penalties. The specific provision imposing a penalty for the unpaid tax is retained in the relevant tax Act, whereas the remittance of that penalty as well as other general procedural matters relating to that penalty (which is an administrative non-compliance penalty) must be dealt with in accordance with the procedures in Chapter 15 of the Tax Administration Act. This is also the legislative scheme applied in other tax Acts that impose late payment penalties.

2.37 Tax Administration Act, 2011: Amendment of section 1

2.37.1 *Paragraph (a): "international tax agreement"* This amendment ensures that the definition of an international tax agreement includes all agreements entered into between the competent authority of the Republic of South Africa and the competent authority of another country, flowing from the main agreement (e.g. concluded under section 108 of the Income Tax Act, 1962) under which SARS exchanges information with that country.

2.37.2 *Paragraph (b): "relevant material"* SARS's information gathering powers were extended in the Tax Administration Act to prevent protracted disputes around entitlement to information and the consequent waste of resources. Concepts such as "relevant material" and "reasonable specificity" were introduced at the time to give guidance on requests for information. The proposed amendment aims to clarify that the statutory duty to determine the relevance of any information, document or thing for purposes of e.g. a verification or audit, is that of SARS and the term foreseeable relevance does not imply that taxpayers may unilaterally decide relevance and refuse to provide access thereto, which is what is happening in practice.

2.37.2.1 According to the literature, the test of what is foreseeably relevant for domestic tax application would have a low threshold, and the application of what is "foreseeably relevant" follows the following broad grounds:

- whether at the time of the request there is a reasonable possibility that the material is relevant to the purpose sought;
- whether the required material, once provided, actually proves to be relevant is immaterial;
- an information request may not be declined in cases where a definite determination of relevance of the material to an ongoing audit or investigation can only be made following receipt of the material;
- there need not be a clear and certain connection between the material and the purpose, but a rational possibility that the material will be relevant to the purpose; and
- the approach is to order production first and allow a definite determination to occur later.

Taxpayers have the protection that taxpayer information held by SARS is secret and may only be disclosed under narrowly defined circumstances.

- 2.37.2.2 One of the comments to this amendment is that SARS should provide reasons in every request for information as to why the relevant material requested is considered relevant. Besides the sheer impracticality of auditing in this manner, such an approach has also been rejected in international case law, e.g. in the *Australia and New Zealand Banking Group Limited v Konza* ([2012] FCA 196) case where it was held:

“It is . . . for the recipient to decide for himself, difficult though the task may be, which of the documents answer the description. If his decision is wrong he exposes himself to prosecution and penalty. The existence of this hazard is not a sufficient basis for the conclusion that the section requires the Commissioner to give a notice in such terms as would enable the recipient on reading it and on examining the documents in his custody or control to determine whether they fall within the ambit of the Commissioner’s powers. To so hold would be to impose an impossible burden on the Commissioner. In many, if not most, cases he will be unaware of the contents of the documents of which he seeks production.” (emphasis added).

- 2.37.2.3 The fact that SARS determines what relevant material is required for purposes of the administration of a tax Act does not mean that the taxpayer has no remedies during, for example, the audit process. It is submitted that a taxpayer would have the following remedies:

- Request SARS to withdraw or amend decision to request material — section 9 of the Tax Administration Act, 2011,
- Pursue the internal administrative complaints resolution process of SARS,
- Approach the Tax Ombud,
- Approach the Public Protector.

- 2.37.2.4 Remaining with Australia as an example of the international approach in this regard, the ATO Taxpayer’s Charter — *Explanatory Booklet — Part 11 Fair use of our access and information gathering powers*, the following is stated:

“If you are dissatisfied with the way in which access and information gathering action is being conducted, you should raise your concerns with the tax officer with whom you are dealing. If the issue cannot be resolved, it may be appropriate to contact that officer’s manager or the Problem Resolution Service . . . You also have the right to complain to the Commonwealth Ombudsman . . .”.

- 2.37.2.5 It must be recognised that information is the lifeblood of a revenue authority’s taxpayer audit activity, and the whole rationale of taxation would break down and the whole burden of taxation would fall only on diligent and honest taxpayers if a revenue authority had no effective powers to obtain confidential information about taxpayers who may be negligent or dishonest. Inadequate investigation of tax evaders, or taxpayers who through aggressive tax planning only purport to comply with tax laws, is unfair to taxpayers who complied with the law. If such problems were allowed to persist, they

would undermine public confidence in the tax system, and would reduce voluntary compliance by the majority of taxpayers, such compliance being an integral feature of an effective tax system.

2.37.3 *Paragraph (c)*: This amendment clarifies that a return is also an information gathering mechanism to obtain for example (a), third party information which may not necessarily constitute a basis of an assessment but is simply used by SARS to verify the correctness of taxpayer returns or (b), information required for purposes of meeting SARS's exchange of information obligations under international tax agreements. It does not always follow that an assessment will be based on such information as referred to in the first part of the definition. The amendment will link the definition of a return more closely to the provisions in the Tax Administration Act and other tax Acts dealing with returns, as the intention is not that all relevant material required by SARS is included under the definition, for example that obtained during audit.

2.37.4 *Paragraph (d)*: "Tax Act" the Tax Administration Act does not apply to customs and excise legislation, which includes the new Customs Control Act, 2014 and the Customs Duty Act, 2014.

2.37.5 *Paragraph (e)*: "tax offence" This amendment ensures that the theft of amounts due or paid to SARS for the benefit of the National Revenue Fund constitutes a 'tax offence' which may be investigated by SARS under the Tax Administration Act. Although such offences will normally be effected by fraudulent means, all the elements of fraud may not necessarily be present. In other cases, amounts are simply stolen.

2.38 Tax Administration Act, 2011: Amendment of section 3

This amendment ensures that the subsection not only caters for requests for information under an international tax agreement but also spontaneous and automatic exchange of information. The term "spontaneous" is commonly understood in South African tax treaties and international law in the context of exchange of information. For example, the *IBFD International Tax Glossary*, 5th ed, refers under the term "exchange of information" to the three ways to effect this, i.e.:

- On request
- Automatically (i.e. under a pre-agreed procedure)
- Spontaneously. See further the *OECD Model Tax Convention Condensed Version*, 2014, which at 421 refers to spontaneous exchange of information "of interest" to a treaty partner.

2.39 Tax Administration Act, 2011: Amendment of section 26

International tax agreements and exchange of information standards may require due diligence from third parties submitting information in returns for exchange of information purposes. This amendment provides that a tax Act and an international tax agreement may prescribe due diligence obligations in respect of an information return. The Commissioner may also prescribe such obligations in the public notice calling for the return where they are consistent with an international standard for exchange of information.

2.40 Tax Administration Act, 2011: Amendment of section 34

2.40.1 *Paragraph (a)*: The proposed amendment widens the definition of a participant to include persons other than companies and trusts and

clarifies that the definition only applies to participants who will derive or assume they will derive a tax benefit or financial benefit by virtue of an arrangement.

2.40.2 *Paragraph (b)*: The proposed amendment corrects the reference to an arrangement, rather than a reportable arrangement.

2.40.3 *Paragraph (c)*: The proposed amendment inserts a definition of reportable arrangement for clarification purposes.

2.40.4 *Paragraph (d)*: It is proposed that the definition of tax benefit be made more specific and to include tax evasion as a tax benefit for purposes of the reportable arrangement legislative scheme.

2.41 *Tax Administration Act, 2011: Amendment of section 35*

2.41.1 *Paragraph (a)*: The proposed changes are textual in order to make a clear distinction between subsections (1) and (2) and to correct the references to defined terms.

2.41.2 *Paragraph (b)*: There has been some uncertainty about when a tax benefit is an 'undue tax benefit'. The deletion of this term is therefore proposed.

2.41.3 *Paragraph (c)*: The deletion is consequential to the above amendments.

2.42 *Tax Administration Act, 2011: Amendment of section 36*

There has been some uncertainty about when a tax benefit is 'undue'. This amendment is proposed in order to provide that the Commissioner may simply list by public notice an arrangement in respect of which no reporting obligation exists to ensure clarity.

2.43 *Tax Administration Act, 2011: Amendment of section 37*

2.43.1 *Paragraph (a)*: The proposed change clarifies the reporting obligation of the promoter of an arrangement and all of the participants. Because participant is defined to include a promoter it is unnecessary to define separate reporting obligations for each. The amendment specifically aims to make all participants in the arrangement primarily responsible for reporting. The proposed change also clarifies that all participants to a reportable arrangement are responsible for reporting that arrangement and when the reporting obligation arises. The arrangement is reportable within 45 business days of becoming a reportable arrangement, or within 45 days of a person becoming a participant in an existing reportable arrangement. A participant need not report the arrangement if that participant has a written statement from any other participant that the arrangement has been reported.

2.43.2 *Paragraph (b)*: The deletion of subsection (4) is consequential to the amendments to subsection (1).

2.44 *Tax Administration Act, 2011: Amendment of section 38*

This amendment is consequential to the amendments to section 37 clarifying the reporting obligation of participants.

2.45 Tax Administration Act, 2011: Amendment of section 39

The proposed amendment is consequential to the insertion of a definition of “reportable arrangement” in section 34.

2.46 Tax Administration Act, 2011: Amendment of section 46

It has happened that taxpayers refused to provide information in a certain format, particularly electronic format even if this is the “original” source of the information, and are only prepared to hand over print-outs. Although this is implicit from the ambit of section 46 read with section 30 of the Tax Administration Act, the proposed amendment will clarify the fact that a person receiving a request for relevant material from SARS, under this section, must submit the relevant material in the format required by SARS if reasonably accessible to the person.

2.47 Tax Administration Act, 2011: Amendment of section 50

The proposed amendment clarifies that the senior SARS official need not personally bring the intended application but must only authorise the bringing of the application by SARS. This scheme of the Tax Administration Act is reflected in section 6(4) of the Act which provides that the execution of a task ancillary to a power or duty assigned to a senior SARS official may be done by a SARS official under the control of the senior SARS official.

2.48 Tax Administration Act, 2011: Amendment of section 69

The proposed amendment aims to enable the Commissioner to disclose ‘taxpayer information’ in an anonymised form despite the secrecy provisions of Chapter 6 of the Tax Administration Act. The information will be anonymised to such an extent that the identity of the taxpayers concerned cannot be determined even by inference.

2.49 Tax Administration Act, 2011: Amendment of section 162

The proposed amendment specifies that the method of payment of tax may be prescribed by the Commissioner by public notice.

2.50 Tax Administration Act, 2011: Amendment of section 164

The proposed amendment seeks to simplify the criteria that SARS may, in considering a request for suspension of disputed tax, consider and that these are in addition to having regard to relevant factors. Although the initial proposal was to include the merits of the matter, this was recognised to be in error as the purpose of the pay now argue later rule is precisely to separate the adjudication of the merits of the matter, which happens before the tax court, and the payment and recovery of the tax debt. A further review of this provision will be conducted during the 2015 legislative cycle.

2.51 Tax Administration Act, 2011: Amendment of section 184

2.51.1 Currently, although it is evident that SARS must have *prima facie* grounds to believe and bears the onus to prove that a representative taxpayer or withholding agent is personally liable under section 155 or 157 of the Tax Administration Act, as the case may be, the Act does not provide for a process to recover the tax from such persons, as section 184 does not apply to them and currently only applies to sections 179 to 183.

2.51.2 Section 179 is also excluded from section 184(2), which subsection provides for prior notice by SARS before recovery steps may be taken against a third party that is regarded as personally liable. This appears to be an oversight.

2.51.3 Personal liability for the tax debt of another person under section 155 or 157 does not constitute a tax liability of the representative taxpayer or withholding agent and thus cannot be a basis for issuing an assessment against them under the Tax Administration Act. The proposed amendment seeks to enable SARS to, as authorised under section 184, use the same powers of recovery it has under the Act against the assets of a personally liable representative taxpayer, withholding agent or person referred to in Part D, as well as providing them with the protection afforded under section 184.

2.51.4 Although the proposed amendment does no more than regulate the recovery of a liability that already exists under current law, bringing it into effect on the date of promulgation of the Bill as opposed to the date of commencement of the Tax Administration Act is a pragmatic approach.

2.52 Tax Administration Act, 2011: Amendment of section 187

This amendment clarifies that simple interest applies to a given tax type until such time that the Commissioner issues a public notice to the effect that compounded interest will apply to that tax type.

2.53 Tax Administration Act, 2011: Amendment of section 190

The proposed amendment aims to clarify that a refund in the case of self-assessment where a return is required e.g. VAT, must be made within five years from the date the return has to be submitted or if no return was submitted, the date that payment had to be made.

2.54 Tax Administration Act, 2011: Amendment of section 194

The proposed amendment will enable SARS to temporarily write-off a tax debt where it is evident that the tax debt is uneconomical to pursue and is thus akin to a “doubtful debt”, despite the fact that the tax debt may still be disputed by the debtor. Debts that are temporarily written off may be reinstated once they become economical to pursue.

2.55 Tax Administration Act, 2011: Amendment of section 195

2.55.1 A tax debt can be written off temporarily if it is “uneconomical to pursue”. “Uneconomical to pursue” means that the total cost of recovery of that tax debt is likely to exceed the anticipated amount to be recovered. In order to determine whether the cost of recovery is likely to exceed the anticipated amount to be recovered a senior SARS official must have regard to factors such as the steps that have been taken to date to recover the tax debt and the costs involved in those steps, the likely cost of continuing action to recover the tax debt and the anticipated return from that action, the financial position of the debtor, including the debtor’s assets and liabilities, cash flow and possible future income streams.

2.55.2 Where a taxpayer is engaged in business rescue proceedings SARS’s recovery efforts are suspended *ex lege* until the business rescue proceedings are over. Consequently a tax debt tied up in this procedure cannot easily meet the test of “uneconomical to pursue” as laid out above.

2.55.3 The intention of the amendment is to allow SARS to temporarily write off the tax debt during business rescue to recognise this suspension.

2.56 Tax Administration Act, 2011: Amendment of section 207

The proposed amendment allows SARS more time to submit its report on tax debts which were written off or compromised. It furthermore removes the onerous and impractical requirement to calculate an estimate of the amount of savings in costs of recovery, as it will not in all cases be the reason for the write off or compromise or be quantifiable. A tax debt may on another basis be written off or compromised where in the best interest of the state and these records as a result of strict corporate governance procedures are available for inspection by the Auditor-General.

2.57 Tax Administration Act, 2011: Amendment of section 208

This amendment further ensures the alignment between administrative penalties triggered under a tax Act and the procedure thereof under Chapter 15.

2.58 Tax Administration Act, 2011: Amendment of section 215

Although the remittance of penalties are mostly regulated under Chapter 15 of the Act, some remittance discretions remained in the tax Act and this amendment ensures that these remittance discretions apply and not those under Chapter 15.

2.59 Tax Administration Act, 2011: Amendment of section 235

The amendment proposes a better alignment between the heading and the content of the provision, as obtaining undue tax refunds does not necessarily constitute tax evasion.

2.60 Tax Administration Act, 2011: Amendment of section 240

- 2.60.1 *Paragraph (a)*: The proposed amendment clarifies that if qualifying criminal convictions of a registered tax practitioner are discovered subsequent to registration SARS may deregister the practitioner.
- 2.60.2 *Paragraph (b)*: The proposed amendment enables SARS to prevent the registration of a person as a tax practitioner or to deregister a registered tax practitioner where that person or registered tax practitioner was convicted of a serious tax offence in the preceding five years.
- 2.60.3 *Paragraph (c)*: The proposed amendment addresses the practical problem that a registered tax practitioner may continue to practice as such, and even continue with unlawful practices, despite the fact that prosecution for a serious tax offence has been instituted. In view of the fact that the prosecution may take a substantial amount of time to finalise, this amendment enables SARS to refuse to register a person as a tax practitioner or suspend the registered tax practitioner as a temporary measure to protect itself as well as taxpayers. This suspension may only be effected once prosecution by the National Prosecuting Authority is instituted indicating that there is a *prima facie* case with reasonable prospect of success and the person or registered tax practitioner continues with the commission of a serious tax offence after the criminal proceedings have been instituted. If finally acquitted, the person will be allowed to register or the suspension will be lifted.

2.61 Tax Administration Act, 2011: Amendment of section 240A

The proposed amendment provides that each of the statutory recognised controlling bodies referred to in section 240A(1) of the Tax Administration Act must submit a list of its members, to whom the provisions of section 240(1) apply, to SARS. SARS can use this information to verify if these members are duly registered as tax practitioners. This amendment does not extend the scope of who is liable to register as tax practitioner in section 240. If a person does not perform the functions listed in section 240(1) or is excluded under section 240(2), neither of which is being amended, such person is not obliged to register.

2.62 Tax Administration Act, 2011: Amendment of section 248

The proposed amendment provides that where a company is subject to a business rescue plan in terms of Chapter 6 of the Companies Act, 2008, the business rescue practitioner is required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under a tax Act for the duration of the period that the company is subject to the business rescue plan.

2.63 Tax Administration Act, 2011: Amendment of section 255

Section 255(2) of the Tax Administration Act permits the use of electronic or digital signatures for returns or other documents submitted in electronic format. Subsection (2) permits the use of an electronic or digital signature for a return or other document. Subsection (3) deals with the question of whether an electronic or digital signature has been used with the authority of the person whose signature has been used. A cross-reference to “the person” has been inserted in subsection (2) to clarify which person is referred to for purposes of subsection (3).

2.64 Tax Administration Act, 2011: Amendment of section 256

2.64.1 A new tax clearance system has been operationalised by SARS in order to modernise and improve the functionality by SARS of issuing tax clearance certificates for purposes of e.g. government tenders for both taxpayers and third parties that have to award the tender. The wording of section 256 of the Tax Administration Act is amended significantly to align the section with the new modernised confirmation of tax compliance status system and to deal with certain practical implications encountered in the implementation thereof. The current “TCC process” will be replaced by the new tax compliance status (TCS) process. The requirement of no outstanding requests for information is removed as a requirement for TCS, but further review on the inclusion of such non-compliance will be conducted during the 2015 legislative cycle. The TCC process whereby a tax clearance certificate is valid for a year no longer applies, which approach is in line with the purpose of the new system, i.e. taxpayers must remain compliant for the duration of the contract and they are responsible for checking and ensuring that they remain compliant. The system will, however, cater for sending alerts to taxpayers when their status changes from compliant to non-compliant to enable the taxpayers to immediately remedy their non-compliant status.

2.64.2 The new TCS process does not replace the certificate of good standing and the tender clearance certificate. Taxpayers will still be able to request their overall tax compliance status in respect of tender, good standing, foreign investment account (FIA) or emigration. When the request is successful, SARS will issue the taxpayer with a PIN for the specific request. When the PIN is used by another person that person will see the real-time compliance of the taxpayer on the date that the PIN is used.

- 2.64.3 The TCS process will also enable taxpayers to print a TCC (in old format) from the new system for the phasing in period of the new real-time TCS system with PIN etc.

2.65 Tax Administration Act, 2011: Amendment of section 270

- 2.65.1 *Paragraph (a)*: In the Tax Administration Laws Amendment Act, 2013, section 270(6D) was amended to accommodate the difference in the additional tax scheme under the Value-Added Tax Act, 1991, and the understatement penalty scheme in the Tax Administration Act in the sense that an understatement made in a value-added tax (VAT) return submitted before the commencement date of the Act will only result in additional tax if there was intent to evade tax. Under the understatement penalty scheme, a penalty may also be imposed if reasonable care was not taken, no reasonable tax position existed or gross negligence existed. In other words, the Act removes the intent requirement as the basis for the imposition of additional tax under the Value-Added Tax Act, 1991.
- 2.65.2 While removing the intent requirement may create penalties that did not previously exist, it will not establish duties that, properly understood, the Value-Added Tax Act, 1991, did not already impose such as the obligation to submit true and correct returns. The amendment at the time provided that a senior SARS official who considers an objection by the taxpayer against an understatement penalty imposed as a result of an understatement in a VAT return submitted before the commencement of the Act, must reduce the penalty in whole if the penalty was imposed under circumstances other than the circumstances referred to in item (v) of the understatement penalty table i.e. an intent to evade tax.
- 2.65.3 As a similar basis i.e. intent to evade, was applied for the imposition of additional tax in terms of paragraph 6(2A) of the Fourth Schedule to the Income Tax Act, 1962, prior to its repeal by the Act, it is proposed that PAYE must be treated the same as VAT for purposes of section 270(6D), as both required an intention to evade tax prior to the imposition of additional tax.
- 2.65.4 *Paragraph (b)*: This amendment is consequential to the amendment of section 187(2).

2.66 Tax Administration Laws Amendment Act, 2012: Repeal of section 11

- 2.66.1 The earlier (2012) version of the withholding tax on interest was inserted by section 69 of the Taxation Laws Amendment Act, 2012 (Act No. 22 of 2012) (money Bill provisions), and by section 11 of the Tax Administration Laws Amendment Act, 2012 (administrative provisions). Section 69 of the first mentioned Act was repealed by section 199 of the Taxation Laws Amendment Act, 2013 (Act No. 31 of 2013), when revised withholding tax on interest provisions was introduced. The effective date for this was 30 June 2013.
- 2.66.2 To complete the exercise, section 11 of the Tax Administration Laws Amendment Act, 2012, must also be repealed, as from the same date. The proposed repeal must take place in the Tax Administration Laws Amendment Bill, 2014, as the amendment deals with administrative provisions.

2.67 Tax Administration Laws Amendment Act, 2012: Amendment of section 26

The effective date of 1 March 2014 should apply only to the amendment contained in section 26(1)(a). The other amendments contained in that section are deemed to have come into operation on the date of the promulgation of the Act, i.e. 20 December 2012.

2.68 Tax Administration Laws Amendment Act, 2013: Amendment of section 8

The effective date for the new section 11(k) as inserted by section 27(1)(k) of the Taxation Laws Amendment Act, 2013, will now be postponed from 1 March 2015 to 1 March 2016. The changes to paragraph 2(4)(a), (b) and (bA) of the Fourth Schedule, effected by section 8 of the Tax Administration Laws Amendment Act, 2013, are linked to the new section 11(k) and hence must also be postponed to that date.

2.69 Customs Duty Act, 2014: Amendment of section 1

The proposed amendment to the definition of “port or place of export” is a consequential amendment which was inadvertently omitted when an amendment was previously effected to the clause which is now section 131 of the Customs Duty Act, 2014.

2.70 Customs Duty Act, 2014: Amendment of section 88

The proposed amendment is a technical correction to insert a word inadvertently omitted.

2.71 Customs Duty Act, 2014: Amendment of section 201

2.71.1 *Paragraph (a)*: The proposed substitution of the Table in subsection (2) is aimed at the alignment of section 201 with section 876 of the Customs Control Act, 2014, and in particular aligns the penalty amounts for the different categories of breaches with the penalty amounts in the Customs Control Act, 2014.

2.71.2 *Paragraph (b)*: The proposed amendment is aimed at the alignment of section 201 of the Customs Duty Act, 2014, with section 876 of the Customs Control Act, 2014, by the addition to section 201 of subsection (4) providing that a fixed amount penalty may not be imposed for a breach consisting of a failure to submit full or accurate information other than information that may result in revenue prejudice, if the breach was committed inadvertently and in good faith.

2.72 Customs Duty Act, 2014: Amendment of section 202

The proposed substitution of subsection (3) is aimed at the alignment of section 202 of the Customs Duty Act, 2014, with section 877 of the Customs Control Act, 2014, and provides for the customs authority to impose a fixed amount penalty for a Category A breach referred to in the Table in section 201(2) of the Customs Duty Act, 2014, consisting of a failure to submit full or accurate information other than information that may result in revenue prejudice, only after it has issued a warning for the same or a similar type of breach.

2.73 Customs Duty Act, 2014: Amendment of section 221

The proposed amendment of section 221 of the Customs Duty Act, 2014, contains an amendment of a technical nature and also corrects an error in respect of a word inadvertently omitted.

2.74 Customs Control Act, 2014: Amendment of section 177

The proposed amendment adds a new subsection (5) limiting the application of subsection (4) which provides for a person clearing goods to notify the customs authority of any change in the particulars on an invoice or other circumstances described in the subsection. The effect of the proposed subsection (5) is that a notification is only required if the change referred to in subsection (4) affects any of the information included in the clearance declaration submitted in respect of the goods to which the invoice relates.

2.75 Customs Control Act, 2014: Amendment of section 178

The proposed amendment is related to the amendment in section 177 of the Customs Control Act, 2014, and qualifies section 178(5)(a)(i) by providing that notification in terms of section 178(5)(a)(i) must only take place if an amendment to an invoice affects any of the information included in the clearance declaration submitted in respect of the goods to which the invoice relates.

2.76 Customs Control Act, 2014: Amendment of section 241

The proposed amendment is aimed at widening the application of Chapter 11 of the Customs Control Act, 2014, in order to also include the transfer of goods from one foreign-going vessel at a customs seaport to another foreign-going vessel at another customs seaport which is served by the same Customs Office. This is to make provision for the transfer of goods between the customs seaports Port Elizabeth and Port of Ngqura.

2.77 Customs Control Act, 2014: Amendment of section 242

The proposed amendment is consequential to the amendment of section 241 of the Customs Control Act, 2014.

2.78 Customs Control Act, 2014: Amendment of section 634

The proposed amendment is aimed at avoiding a double licensing requirement in respect of licensees of inward or home use processing premises. In terms of section 634(2) of the Customs Control Act, 2014, no person may import goods for inward processing or home use processing unless that person is licensed as an importer for inward or home use processing. Similarly no person may export goods as inward processed compensating products unless that person is licensed as an exporter of inward processed compensating products. Section 630 of the Act however also requires inward processing premises or home use processing premises to be licensed. The proposed subsection (2A) provides that subsection (2) does not apply in the case where the premises are licensed as required in terms of section 630 of the said Act.

2.79 Short title and commencement

Clause 79 provides for the name of the proposed Act. Different provisions of the Act may come into operation on different dates.

3. CONSULTATION

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

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2014 Budget Review, tabled in Parliament on 26 February 2014.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the 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.

