

REPUBLIC OF SOUTH AFRICA

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# TAXATION LAWS SECOND AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory memorandum  
published in Government Gazette No. 30870 of 14 March 2008)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

**[B 14—2008]**

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**GENERAL EXPLANATORY NOTE:**

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

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## **BILL**

To amend the—

- **Income Tax Act, 1962, so as to amend certain definitions; to delete certain obsolete provisions; to amend provisions relating to the submission of tax returns and reconciliations; to provide for the imposition of penalties; to effect textual and consequential amendments;**
  - **Value-Added Tax Act, 1991, so as to effect textual amendments;**
  - **Diamond Export Levy (Administration) Act, 2007, so as to clarify provisions relating to registration; and**
  - **Securities Transfer Tax Administration Act, 2007, so as to effect a textual correction;**
- and to provide for matters connected therewith.**

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

**Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007 and section 3 of Act 36 of 2007** 5

- 1.** Section 3 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (4) for paragraph (a) of the following 10 paragraph:
- “(a) the definitions of ‘benefit fund’, ‘pension fund’, ‘pension preservation fund’, ‘provident fund’, ‘provident preservation fund’, ‘retirement annuity fund’ and ‘spouse’ in section 1;”;
- (b) by the substitution in subsection (5)(a) for the words preceding subparagraph 15 (i) of the following words:
- “to approve a fund contemplated in the definition of a ‘pension fund’, ‘pension preservation fund’, ‘provident fund’, ‘provident preservation fund’ or ‘retirement fund’, subject to—”.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 2 of Act 9 of 2007 and section 16 of Act 35 of 2007

2. (1) Section 10 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph (a).

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

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of Act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993, section 11 of Act 46 of 1996, section 22 of Act 53 of 1999, section 20 of Act 59 of 2000, section 13 of Act 19 of 2001 and section 30 of Act 60 of 2001

3. (1) Section 13 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If in any year of assessment there falls to be included in a taxpayer’s income in terms of paragraph (a) of section 8(4) an amount which has been recovered or recouped in respect of any allowance made under subsection (1) or the corresponding provisions of any previous Income Tax Act in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer [to be notified by him in writing to the Commissioner when submitting his return of income for the year of assessment during which the recovery or recoupment occurred,] and provided [he] the taxpayer purchases or erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (1) apply, not be included in [his] the taxpayer’s income for [such] that year of assessment, but shall be set off against so much of the cost to [him] the taxpayer of [such] that further building purchased or erected by [him] the taxpayer as remains after the deduction of any portion of such cost in respect of which an allowance has been granted to the taxpayer under section 11(g), whether in the current or any previous year of assessment.”

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

**Amendment of section 13bis of Act 58 of 1962, as inserted by section 15 of Act 88 of 1965 and amended by section 18 of Act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986, section 13 of Act 90 of 1988, section 13 of Act 113 of 1993, section 12 of Act 21 of 1994 and section 21 of Act 59 of 2000**

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4. (1) Section 13bis of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) If in any year of assessment there falls to be included in a taxpayer’s income in terms of paragraph (a) of subsection (4) of section eight an amount which has been recovered or recouped in respect of any allowance made under the preceding provisions of this section or the provisions of subsection (1) of section thirteen, as applied by subsection (4) of that section, or the corresponding provisions of any previous Income Tax Act, in respect of any building or portion thereof or any improvements or portion thereof, so much of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer **[to be notified by him in writing to the Commissioner when submitting his return of income for the year of assessment during which the recovery or recoupment occurred,]** and provided **[he]** the taxpayer erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building in respect of the cost of which an allowance is made under the preceding provisions of this section, not be included in **[his]** the taxpayer’s income for **[such]** that year of assessment, but shall be set off against so much of the cost to **[him]** the taxpayer of such further building erected by **[him]** the taxpayer as remains after the deduction of any portion of **[such]** that cost in respect of which an allowance has been granted to the taxpayer under paragraph (g) of section eleven, whether in the current or any previous year of assessment.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act. 30

**Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005 and section 16 of Act 8 of 2007**

5. (1) Section 13quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 35

“No deduction shall be allowed under this section, unless the taxpayer has **[together with the tax return for the year of assessment in which the deduction is claimed under subsection (3)(a)(i) or (b)(i), provided to the Commissioner] obtained or determined the following for submission to the Commissioner in such form and within such time as may be prescribed by the Commissioner—**”.

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

**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 and section 31 of act 35 of 2007**

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6. (1) Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2B) of the following subsection:

“(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must **[together with its annual return for a year of assessment submit to the Commissioner] obtain and retain** an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act. 55

**Amendment of section 27 of Act 58 of 1962, as amended by section 17 of Act 113 of 1977, section 11 of Act 101 of 1978, section 19 of Act 104 of 1980, section 21 of Act 96 of 1981, section 15 of Act 96 of 1985, section 18 of Act 85 of 1987, section 22 of Act 90 of 1988, section 28 of Act 129 of 1991, section 23 of Act 141 of 1992, section 23 of Act 113 of 1993, section 15 of Act 36 of 1996, section 34 of Act 59 of 2000 and section 29 of Act 74 of 2002** 5

7. (1) Section 27 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If in any year of assessment there falls to be included in an agricultural co-operative’s income in terms of paragraph (a) of section 8(4) an amount, which has been recovered or recouped, in respect of any allowance made under subsection (2)(b) in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of [such] that co-operative[, **to be notified by it in writing to the Commissioner when submitting its return of income for the year of assessment during which the recovery or recoupment occurred,**] and provided it erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (2)(b) apply, not be included in its income for [such] that year of assessment, but shall be set off against so much of the cost to it of [such] that further building erected by it as remains after the deduction of any portion of [such] that cost in respect of which an allowance has been granted to [such] that co-operative under section 11(g), whether in the current or any previous year of assessment.”. 10 15 20 25

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

**Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001, section 26 of Act 30 of 2002, section 38 of Act 74 of 2002, section 61 of Act 45 of 2003, section 18 of Act 16 of 2004, section 7 of Act 34 of 2004 and section 9 of Act 32 of 2005** 30

8. (1) Section 66 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (7A) of the following subsection: 35

“(7A) The Commissioner may, in the case of any return furnished by a taxpayer or a taxpayer’s authorised agent in electronic format, accept electronic or digital signatures as valid signatures **[for the purposes of subsection (7)].**”;

(b) by the substitution for subsection (13B) of the following subsection: 40

“(13B) For the purposes of subsections (13), (13A), (13C) and (14), the word ‘**income**’ must be construed as including any aggregate capital gain or aggregate capital loss.”; and

(c) by the insertion after section 13B of the following subsection: 45

“(13C) Where—

(a) a company does not close its accounts on the last day of its financial year, the Commissioner may accept accounts in respect of the taxpayer’s income drawn to a fixed day approved by the Commissioner, which day shall fall within 10 days before or after the last day of the financial year; 50

(b) such accounts are drawn to a date later than the last day of the year of assessment, no further regard shall be had to the income disclosed by those accounts for purposes of a subsequent year of assessment.”.

(2) Subsection (1) comes into operation on the date of promulgation of this Act. 55

**Amendment of section 69 of Act 58 of 1962, as amended by section 41 of Act 30 of 1998, section 39 of Act 74 of 2002 and section 10 of Act 34 of 2004**

9. Section 69 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(i) for the words preceding subparagraph (i) of the following words:

“in the case where that person is a pension fund, a pension preservation fund, a provident fund, a provident preservation fund or a retirement annuity fund—”.

**Amendment of section 70 of Act 58 of 1962, as amended by section 11 of act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974, section 24 of Act 69 of 1975, section 26 of Act 28 of 1997, section 37 of Act 53 of 1999, section 42 of Act 30 of 2000, section 44 of Act 59 of 2000 and section 63 of Act 45 of 2003**

10. (1) Section 70 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Every company which has after 31 December 1973 transferred from its reserves (excluding any share premium account) or unappropriated profits to its share capital or share premium account any amount which is in whole or part deemed by the first proviso to the definition of ‘dividend’ in section 1 to be a profit available for distribution to shareholders of the company[ **shall, when rendering the annual return of the company’s income,**] must furnish the Commissioner with a statement [**(which may be included in the accounts or statements accompanying such return)**] at such time as may be prescribed by the Commissioner showing the profits of a capital nature and those not of a capital nature so deemed to be available for distribution on the last day of the year of assessment in question.”.

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

**Amendment of section 70B of Act 58 of 1962, as inserted by section 21 of Act 5 of 2001 and amended by section 50 of Act 60 of 2001 and section 64 of Act 45 of 2003**

11. Section 70B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; or”.

**Amendment of section 72 of Act 58 of 1962, as amended by section 45 of Act 59 of 2000**

12. (1) Section 72 of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Every person who makes a return of his own income or in a representative capacity makes a return of the income of some other person, **[shall attach to such return] must furnish [a statement in such form as] such return as may be prescribed by the Commissioner [may require]**, showing fully—”.

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

**Amendment of section 72A of Act 58 of 1962, as substituted by section 65 of Act 45 of 2003 and amended by section 11 of Act 32 of 2005**

13. (1) Section 72A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every resident who on the last day of the foreign tax year of a controlled foreign company or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissioner **[together with the return contemplated in section 66 in respect of that year of assessment a] such return [containing such information] as may be** prescribed by the Commissioner.”.

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

### Amendment of section 73 of Act 58 of 1962

14. (1) Section 73 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) If **[any person submits in support of]** any return furnished by **[him]** a person under this Act is supported by any balance sheet, statement of assets and liabilities or account prepared by any other person, **[he]** that person shall, if the Commissioner so requires, submit a certificate or statement by **[such]** that other person recording the extent of the examination by **[such]** that other person of the books of account and of the documents from which the books of account were written up, and recording in so far as may be ascertained by **[such]** the examination, whether or not the entries in **[such]** those books and documents disclose the true nature of any transaction, receipt, accrual, payment or debit.”
- (2) Subsection (1) comes into operation on the date of promulgation of this Act.

### Insertion of section 75B in Act 58 of 1962

15. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 75A:

#### “Administrative penalty in respect of non-compliance

**75B.** (1) To ensure the widest possible compliance with the provisions of this Act and to achieve the effective administration of the tax system, the Commissioner may impose administrative penalties prescribed in terms of subsection (3) in respect of non-compliance with any procedural or administrative action or duty imposed or requested in terms of this Act.

(2) In imposing administrative penalties the Commissioner must ensure that administrative penalties for non-compliance with tax obligations are imposed impartially, consistently and proportionately to the seriousness of the non-compliance.

(3) The Minister may make regulations prescribing—

- (a) the administrative penalties that the Commissioner may impose;
- (b) the procedures to be followed by the Commissioner in imposing an administrative penalty;
- (c) what procedures are available to any person in respect of whom an administrative penalty has been imposed to obtain any relief thereof;
- (d) under what circumstances the Commissioner may remit any administrative penalty imposed; and
- (e) any ancillary or incidental administrative or procedural matter which it is necessary to prescribe in order to achieve an effective administrative penalty regime.

(4) In prescribing the administrative penalties, the Minister may have regard to one or more of the following:

- (a) The nature and seriousness of the non-compliance;
- (b) the period of non-compliance; and
- (c) the incidence of any recurrence or repeat thereof.

(5) In prescribing the circumstances under which the Commissioner may remit the administrative penalty, the Minister must as far as possible limit the circumstances to exceptional circumstances.

(6) Before the regulations contemplated in this section are published, the Minister must publish the draft regulations in the *Gazette* for public comment and submit the draft regulations to Parliament for parliamentary scrutiny at least 30 days before any regulations contemplated in this section are published.”

(2) Subsection (1) comes into effect on a date determined by the President by proclamation in the *Gazette*.

**Amendment of section 76 of Act 58 of 1962, as amended by section 24 of Act 5 of 2001**

16. (1) Section 76 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of paragraph (a).

(2) Subsection (1) comes into effect on a date determined by the President by proclamation in the *Gazette*. 5

**Amendment of section 88 of Act 58 of 1962, substituted by section 40 of Act 113 of 1993 and amended by section 14 of Act 140 of 1993, section 60 of Act 60 of 2001 and section 14 of Act 32 of 2005**

17. (1) Section 88 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) The—

(a) obligation to pay any tax chargeable under this Act shall not; and

(b) the right to receive and recover any tax chargeable under this Act, shall not, unless the Commissioner so directs, 15

be suspended by any appeal or pending the decision of a court of law under section 86A, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or [such] that court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate, [such] the interest being calculated from the date proved to the satisfaction of the Commissioner to be the date on which [such] that excess was received and amounts short-paid being recoverable with interest calculated as provided in section 89.”. 20

(2) Subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of years of assessment ending on or after that date. 25

**Amendment of section 89quat of Act 58 of 1962, as substituted by section 22 of Act 65 of 1986 and amended by section 18 of Act 70 of 1989, section 42 of Act 113 of 1993, section 15 of Act 140 of 1993, section 33 of Act 21 of 1995, section 24 of Act 36 of 1996, section 50 of Act 59 of 2000, section 29 of Act 5 of 2001, section 49 of Act 74 of 2002, section 17 of Act 34 of 2004 and section 43 of Act 8 of 2007** 30

18. (1) Section 89quat of the Income Tax Act, 1962, is hereby amended—

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

“**Interest on underpayments and overpayments of [provisional] tax**”; 35

(b) by the substitution in subsection (1) for the expression “provisional taxpayer” of the word “taxpayer” wherever it occurs;

(c) by the substitution in subsection (1) for paragraph (b) of the definition of “effective date” of the following paragraph:

“(b) in any other case, the date falling six months after the last day of [such] that year [as applicable for the purposes of the provisions of paragraph 21 or 23 of the Fourth Schedule];”; 40

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

“(2) If the normal tax payable by any taxpayer in respect of that taxpayer’s taxable income for a year of assessment exceeds the credit amount in relation to that year of assessment, interest shall, subject to subsection (3), be payable by the taxpayer at the prescribed rate on the amount by which that normal tax exceeds the credit amount, that interest being calculated from the effective date in relation to the said year until the date of assessment of that normal tax.”; 45

(e) by the substitution for subsection (3A) of the following subsection: 50

“(3A) Where any natural person has, in respect of the year of assessment during which [he] that person for the first time became a [provisional] taxpayer, become liable for the payment of interest under subsection (2), the Commissioner may, subject to the provisions of section 103(6), if he or she is satisfied that the circumstances warrant such action, direct that interest shall not be paid by [such] that person in respect of [such] that year of assessment.”; and 55



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

“(4) If in the case of any taxpayer the credit amount in relation to any year of assessment exceeds the normal tax payable in respect of that taxpayer’s taxable income as finally determined for that year, interest shall be payable to the taxpayer at the prescribed rate on the difference between the credit amount and that normal tax, that interest being calculated from the effective date in relation to the said year until the date on which that difference is refunded to the taxpayer: Provided that where any interest is payable to the taxpayer on any amount in respect of any period in terms of section 88, no interest shall be payable to the taxpayer in terms of the provisions of this subsection in respect of the said amount and period.”.

(2) Subsection (1) comes into operation on a date to be announced by the Minister in the *Gazette* and applies in respect of any year of assessment for which the effective date falls on or after the date announced.

**Amendment of paragraph 13A of First Schedule to Act 58 of 1962, as inserted by section 44 of Act 94 of 1983 and amended by section 24 of Act 85 of 1987 and section 46 of Act 113 of 1993**

19. (1) Paragraph 13A of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

“(2) Every farmer who desires that the proceeds derived by him or her from the disposal of livestock **[shall]** be dealt with under the provisions of this paragraph shall **[with his return of income for the year of assessment during which such livestock was disposed of, or within such period as the Commissioner may allow,]** notify the Commissioner **[accordingly and submit a certificate containing such information in connection with the disposal as]** in such form and within such time as may be prescribed by the Commissioner **[may require]**.”.

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

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

20. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (4) for items (d) and (e) of the following items, respectively:

“(d) **[at the option of the employer,]** any contribution by the employee to a medical scheme as contemplated in section 18(1)(a) —  
 (i) if the employer effects payment of the contribution to the medical scheme; or  
 (ii) at the option of the employer, if the employer does not effect payment of the contribution to the medical scheme, in respect of which proof of payment has been furnished to the employer,  
 if the employee is entitled to a rebate under section 6(2)(b); and  
 (e) **[at the option of the employer,]** so much of any contribution made by the employee (other than an employee contemplated in paragraph (d)) to a medical scheme as contemplated in section 18(1)(a) as does not exceed the amount contemplated in section 18(2)(c)(i) **[and]** —  
 (i) if the employer effects payment of the contribution to the medical scheme; or  
 (ii) at the option of the employer, if the employer does not effect payment of the contribution to the medical scheme, in respect of which proof of payment has been furnished to the employer.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2008 and applies in respect of years of assessment commencing on or after that date.

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

21. (1) Paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 5

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

“(1) Subject to the provisions of paragraphs 5, 11C(5), 14(5) and 28, every employer who during any period contemplated in subparagraph (1A) deducts or withholds any amount by way of employees’ tax as required by paragraph 2 shall within the time allowed by subparagraph (2) of this paragraph deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such employer, an employees’ tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees’ tax deducted or withheld by such employer from such remuneration during the said period, excluding any amount of remuneration or employees’ tax included in any other employees’ tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in subparagraph (10).”;

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

“(c) if the said employer has ceased to be an employer within **[seven]** 14 days of the date on which **[he]** the employer has so ceased.”; and 25

(c) by the deletion of subparagraph (6).

(2) Paragraphs (a) and (b) of subsection (1) come into operation on a date to be announced by the Minister in the *Gazette*.

(3) Paragraph (c) of subsection (1) comes into operation on the date of promulgation of this Act. 30

**Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990 and section 57 of Act 74 of 2002**

22. (1) Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 35

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

“(2) Every employer shall when making any payment of employees’ tax submit to the Commissioner **[a]** such declaration **[in such form]** as the Commissioner may prescribe. 40

(3) Every employer shall—

(a) within 60 days after the end of each period contemplated in paragraph 13 (1A); and

(b) if during any such period he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay remuneration to any employee or otherwise ceases to be an employer, within 14 days after the date on which he has so ceased to carry on **[such]** that business or undertaking or to be an employer, as the case may be, 45

or within such longer time as the Commissioner may approve, render to the Commissioner **[a]** such return **[in such form]** as the Commissioner may prescribe **[showing the names and addresses of all the persons who during such period were employees in relation to such employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees tax deducted or withheld from the remuneration of each such employee during such period]**.”; and 50 55

(b) by the addition of the following subparagraph:

“(5) No employees’ tax certificate as contemplated in paragraph 13(2)(a) or (c) shall be delivered by the employer until such time as the return contemplated in subparagraph (3)(a) or (b), as the case may be, has been rendered to the Commissioner.

(6) If an employer fails to render to the Commissioner a return referred to in subparagraph (3) within the period prescribed in that subparagraph, that employer shall be required to pay a penalty equal to 10 per cent of the total amount of employees’ tax deducted or withheld from the remuneration of employees during the period described in that subparagraph: Provided that the Commissioner may remit that penalty or portion thereof if he or she is satisfied that the circumstances warrant it.”

(2) Subsection (1)(a) is deemed to have come into operation on 1 January 2008 and applies in respect of years of assessment ending on or after that date.

(3) Subsection (1)(b) comes into operation on a date to be announced by the Minister in the *Gazette*.

**Amendment of paragraph 23A of Fourth Schedule to Act 58 of 1962, as inserted by section 42 of Act 121 of 1984 and substituted by section 28 of Act 65 of 1986**

23. (1) Paragraph 23A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Any [provisional] taxpayer may for the purpose of avoiding or reducing [his] liability for any interest which may become payable [by him] in respect of any year of assessment under section 89quat, elect to make [an additional] a payment of [provisional] tax in respect of [such] that year, which payment must be treated as an additional payment of provisional tax.”

(2) Subsection (1) comes into operation on a date to be announced by the Minister in the *Gazette* and applies in respect of any year of assessment for which the effective date, as defined in section 89quat of the Income Tax Act, 1962, falls on or after the date announced.

**Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005 and section 14 of Act 10 of 2006**

24. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in the proviso to subsection (1) for the words preceding item (i) of the following words:

“: Provided that the total value of the taxable supplies of the vendor within the period of 12 months referred to in [subparagraph] paragraph (a) or the period of 12 months referred to in [subparagraph] paragraph (b) shall not be deemed to have exceeded or be likely to exceed the amount [of R300 000] contemplated in paragraph (a), where the Commissioner is satisfied that the said total value will exceed or is likely to exceed such amount solely as a consequence of—”

**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 and section 50 of Act 9 of 2006**

25. (1) Section 27 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (5)(b) for the words preceding subparagraph (i) of the following words:

“the total value of the taxable supplies of a vendor within any period of 12 months referred to in subsection (3)(a) or (4)(c) shall not be deemed to have exceeded or be likely to exceed the amount [of R30 million] referred to in subsection (3)(a) or the amount [of R1,2 million] referred to in subsection (4)(c), as the case may be, where that total value exceeds or is likely to exceed that amount, as the case may be, solely as a consequence of—”

(2) Subsection (1) comes into operation on 1 March 2008 and applies in respect of a tax period commencing on or after that date.

**Amendment of section 5 of Act 14 of 2007**

26. Section 5 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Notwithstanding subsection (1), the Commissioner may require—

- (a) a registered person; or
- (b) a person that qualifies for registration under section 2, that is not ordinarily resident in the Republic or does not regularly and substantially engage in processes that are directly related to unpolished diamond beneficiation, production or sales in the Republic to submit payment of the levy in the form, manner (including electronically) and place determined by the Commissioner.”.

**Amendment of section 3 of Act 26 of 2007**

27. Section 3 of the Securities Transfer Tax Administration Act, 2007, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) section 6 of the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), which becomes payable during a month in respect of [**the**] any transfer of an unlisted security, must be paid by the company, which issued [**the unlisted**] that security, to the Commissioner within two months from the [**date of the transfer**] end of that month.”.

**Short title and commencement**

28. (1) This Act is called the Taxation Laws Second Amendment Act, 2008.

(2) Save in so far as is otherwise provided for in this Act or the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, by this Act are deemed for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.

**MEMORANDUM ON THE OBJECTS OF THE TAXATION LAWS  
SECOND AMENDMENT BILL, 2008**

**1. PURPOSE OF BILL**

1.1 The Bill seeks to amend administrative provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Diamond Export Levy (Administration) Act, 2007 (Act No. 14 of 2007), and the Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007).

**2. OBJECTS OF BILL**

***2.1: Income Tax Act, 1962: Amendment of sections 3, 69 and 70B***

The proposed amendments in clauses 1, 9 and 11 of the Bill include pension preservation funds and provident preservation funds with pension funds, provident funds and retirement annuity funds.

***2.2: Income Tax Act, 1962: Amendment of sections 10, 13, 13bis, 13quat, 18A, 27, 70, 72, 72A and 73, paragraph 13A of the First Schedule and paragraph 13 of the Fourth Schedule***

The tax return filing requirements no longer provide for documents to be attached to a tax return. The proposed amendments in clauses 2, 3, 4, 5, 6, 7, 10, 12, 13, 14, 19 and 21 of the Bill remove the requirement for supporting documents to be attached to the tax return.

***2.3: Income Tax Act, 1962: Amendment of section 66***

*Clause 8(a):* The proposed amendment deletes a cross reference.

*Clause 8(b) and (c):* The proposed amendments allow taxpayers to align reporting for tax purposes with the period ending on the day on which the accounts of the taxpayer are closed.

***2.4: Income Tax Act, 1962: Insertion of section 75B***

The current penalty tax regime relating to the imposition and remittance of additional tax and other penalties in the Tax Acts differs from one Act to another, and does not appropriately cater for less serious procedural and administrative non-compliance. It is proposed that the administrative penalty regime be revamped and that a more objective penalty system be introduced which would be administered in accordance with a defined set of criteria. This would create more certainty for taxpayers. Clause 15 of the Bill proposes a new section to provide for this.

***2.5: Income Tax Act, 1962: Amendment of section 76***

The proposed amendment in clause 16 of the Bill effects a change consequential to the insertion of section 75B.

***2.6: Income Tax Act, 1962: Amendment of section 88***

In clause 17 an amendment is proposed to make it clear that the exercise of the discretion by the Commissioner to not receive and recover any taxes chargeable does not affect the obligation of a taxpayer to pay any tax chargeable and the imposition of interest on the unpaid tax.

***2.7: Income Tax Act, 1962: Amendment of section 89quat***

Interest on the late payment of income tax in respect of taxpayers that are not provisional taxpayers is currently charged only subsequent to the taxpayer's assessment. Equally unjust, the current interest dispensation does not permit for the payment of interest where such a taxpayer overpaid employees' tax during the tax year. The

proposed amendment in clause 18 seeks to charge interest where the total taxes paid by a taxpayer as at a particular date (typically 30 September each year in the case of individuals) in respect of his or her taxable income is insufficient. At the same time, the proposed amendment makes provision for the payment of interest to a taxpayer who overpaid tax during the same period.

A taxpayer can avoid paying interest by making an additional tax payment to SARS on or before the date from which interest is charged.

***2.8: Income Tax Act, 1962: Amendment of paragraph 2 of the Fourth Schedule***

Currently, an employer can choose whether to take medical scheme contributions into account for employees' tax purposes. Where these contributions are not taken into account an employee who would otherwise not be required to submit a tax return is forced to submit a tax return in order to claim the expense as a tax deduction. The proposed amendment in clause 20 of the Bill seeks to make it compulsory for an employer to take these expenses into account where the employer effects payment of contributions to medical schemes. An employer has the option to take these expenses into account where an employer does not effect payment to a medical scheme but the employee submitted the necessary proof of payment to the employer.

***2.9: Income Tax Act, 1962: Amendment of paragraphs 13 and 14 of the Fourth Schedule***

The information that is currently prescribed by the Fourth Schedule for employees' tax reconciliation purposes is insufficient. Added to this, many employers fail in their duty to reconcile properly and to submit their reconciliations to SARS on time. Without a proper reconciliation submitted on time it is not possible to accurately verify a taxpayer's employee's tax credit on assessment. The proposed amendments in clauses 21 and 22 of the Bill prohibit the delivery of employees' tax certificates until the relevant employees' tax reconciliation has been submitted to SARS. The amendments also seek to permit the Commissioner to prescribe the information that an employer is required to submit for reconciliation purposes, and to penalise an employer that fails to submit a reconciliation on time to SARS.

***2.10: Income Tax Act, 1962: Amendment of paragraph 23A of the Fourth Schedule***

In support of the proposed amendment to section 89<sup>quat</sup> to pay or charge interest from the effective date for all taxpayers, in clause 23 of the Bill it is proposed that all taxpayers are afforded the opportunity to make a voluntary payment of tax by the effective date in order to avoid paying interest from that date. The effective date for individuals is 30 September (i.e. 7 months after the end of a tax year).

***2.11: Value-Added Tax Act, 1991: Amendment of section 23***

The proposed amendment in clause 24 of the Bill effects a textual change.

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

The proposed amendment in clause 25 of the Bill effects a textual change.

***2.13: Diamond Export Levy (Administration) Act, 2007: Amendment of section 5***

The proposed consequential amendment in clause 26 of the Bill addresses concerns regarding persons that are not ordinarily resident or do not have a diamond business nexus in South Africa.

***2.14: Securities Transfer Tax Administration Act, 2007: Amendment of section 3***

The proposed amendment in clause 27 of the Bill effects a textual change.

***2.15: Short title and commencement***

Clause 28 provides for the name and commencement of the Bill.

### **3. CONSULTATION**

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

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

An account of the financial implications for the State was given in the 2008 Budget Review.

### **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.