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. 39310 of 22 October 2015)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 30—2015]

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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, to insert a provision;**
- **amend the Excise Duty Act, 1964, so as to insert certain provisions and to amend certain provisions;**
- **amend the Value-Added Tax Act, 1991, so as to amend certain provisions;**
- **amend the Skills Development Levies Act, 1999, so as to amend provisions;**
- **amend the Taxation Laws Second Amendment Act, 2008, so as to amend an effective date;**
- **amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to amend a penalty provision;**
- **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 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;**
- **amend the Tax Administration Laws Amendment Act, 2014, so as to effect technical corrections;**

and to provide for matters connected therewith.

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

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of 2008, section 2 of Act 61 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, section 2 of Act 39 of 2013 and section 2 of Act 44 of 2014

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

''(4) Any decision of the Commissioner under the following provisions of this Act is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act, namely—

(a) the definitions of **['benefit fund',]** 'pension fund', 'pension preservation fund', 'provident fund', 'provident preservation fund'**[,]** and 'retirement annuity fund' **[and 'spouse']** in section 1;

(b) **[section 8(5)*(b)* and *(b*A*)*,]** section 10(1)*(c*A*)***[,]** and *(e)*(i)*(cc)*, **[*(j)* and *(n*B*)*, section 10A(8),]** section 11*(e)*, **[*(f)*, *(g)*, *(g*A*)*,]** *(j)* and *(l)*, **[section 12B(6), section 12C, section 12E,]** section 12J(6), (6A) and (7), **[section 13,]** section 15, section 18A**[(5C)]** (5), (5A) and (5B), 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 37A, **[section 38(2)*(a)* and *(b)* and (4),]** section 44(13)*(a)*, section 47(6)*(c)*(i), section 62(1)*(c)*(iii) and *(d)* and (2)*(a)* and (4), section 80B and section 103(2);

(c) paragraphs 6, **[7, 9,]** 13, 13A**[, 14, 19]** and 20 of the First Schedule;

(d) paragraph 4 of the Second Schedule;

(e) paragraphs 5(2), 14(6), 21(2) and 24 of the Fourth Schedule;

(f) paragraphs 10(3)**[,]** and 11(2) **[and 13]** of the Sixth Schedule;

(g) paragraphs **[2*(h)*,]** 3, **[6(4)*(b)*,]** 7(6), **[(7) and (8),]** 11 and 12A(3) of the Seventh Schedule; and

(h) **[paragraphs]** paragraph *(bb)*(A) of the proviso to paragraph 12A(6)*(e)***[,]** and paragraphs 29(2A), 29(7), 31(2), 65(1)*(d)* and 66(1)*(e)* of the Eighth Schedule.''.

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

Amendment of section 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004 and amended by section 5 of Act 32 of 2005, section 59 of Act 24 of 2011 and section 271 of Act 28 of 2011 read with paragraph 43 of Schedule 1 to that Act

2. Section 35A of the Income Tax Act, 1962, is hereby amended by the addition to subsection (3) of the following paragraph, the existing subsection becoming paragraph *(a)*:

''*(b)* If the seller does not submit a return in respect of that year of assessment within 12 months after the end of that year of assessment, the payment of that amount is deemed to be a self-assessment in terms of section 95(3) of the Tax Administration Act.''.

Amendment of section 61 of Act 58 of 1962, as amended by section 25 of Act 90 of 1962, section 29 of Act 90 of 1988, section 57 of Act 45 of 2003, section 271 of Act 28 of 2011 read with paragraph 51 of Schedule 1 to that Act and section 13 of Act 21 of 2012

3. Section 61 of the Income Tax Act, 1962, is hereby amended by the deletion of paragaph *(g)*.

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, section 5 of Act 39 of 2013 and section 5 of Act 44 of 2014

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

''*(b)* received a dividend contemplated in paragraph *(a)* of the definition of 'dividend' in section 64D that is exempt or partially exempt from dividends tax in terms of section 64F or 64FA.''.

Amendment of Fourth Schedule to Act 58 of 1962, as inserted by section 19 of Act 6 of 1963 and amended by section 16 of Act 140 of 1993 and section 3 of Act 168 of 1993

5. The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

''AMOUNTS TO BE DEDUCTED OR WITHHELD BY EMPLOYERS AND PROVISIONAL PAYMENTS IN RESPECT OF NORMAL TAX **[AND PROVINCIAL TAXES]**

(Section **[*eighty-nine bis*]** 5 of this Act)''

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 44 of 2014

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

(a) by the deletion in the definition of ''employee'' of the word ''and'' at the end of paragraphs *(c)* and *(d)* and by the substitution for the word ''and'' at the end of paragraph *(e)* of the word ''or'';

(b) by the substitution in the definition of ''personal service provider'' for the words following paragraph *(c)* of the following words:

''except where such company or trust throughout the year of assessment employs three or more full-time employees who are on a full-time basis engaged in the business of such company or trust of rendering any such service, other than any employee who is a holder of a share in the company or **[member]** settlor or beneficiary of the trust or is a connected person in relation to such person;'';

(c) by the substitution for the definition of ''provisional tax'' of the following definition:

'' **'provisional tax'** means any payment in respect of liability for normal tax required to be made in terms of paragraph 17;'';

(d) by the substitution in the definition of ''provisional taxpayer'' for paragraphs *(dd)* and *(ee)* of the following paragraphs, respectively:

''*(dd)* **[a person exempt from payment of provisional tax in terms of paragraph 18]** any—

(A) person in respect of whose liability for normal tax for the relevant year of assessment payments are required to be made under section 33;

(B) natural person who does not derive any income from the carrying on of any business, if—

(AA) the taxable income of that person for the relevant year of assessment does not exceed the tax threshold; or

(BB) the taxable income of that person for the relevant year of assessment which is derived from interest, dividends, foreign dividends and rental from the letting of fixed property does not exceed R30 000; and

(ee) a small business funding entity**[.]**;";

(e) by the deletion in the definition of "provisional taxpayer" of the word "and" at the end of paragraph *(dd)*, addition of that word at the end of paragraph *(ee)* and the addition of the following paragraph:

"*(ff)* a deceased estate;";

(f) by the substitution in the definition of "remuneration" for paragraph *(a)* of the following paragraph:

"*(a)* any amount referred to in paragraph *(a)*, *(c)*, *(c*A*)*, *(c*B*)*, *(d)*, *(e)*, *(e*A*)* or *(f)* of the definition of 'gross income' in section 1 of this Act;"; and

(g) by the substitution in the definition of "remuneration" for paragraph *(e)* of the following paragraph:

"*(e)* any **[gain determined in terms of]** amount referred to in section 8C which is required to be included in the income of that person;".

(2) Paragraph *(e)* of subsection (1) comes into operation on 1 March 2016.

Amendment of paragraph 5 of Fourth Schedule to Act 58 of 1962, as amended by section 19 of Act 18 of 2009 and section 271 of Act 28 of 2011 read with paragraph 79 of Schedule 1 to that Act

7. (1) Paragraph 5 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (2) and (3) of the following subparagraphs, respectively:

"(2) Where the employer has failed to deduct or withhold employees' tax in terms of paragraph 2 and **[the Commissioner is satisfied that]** the failure was not due to an intent to postpone payment of the tax or to evade the employer's obligations under this Schedule, the Commissioner may, on application in the prescribed form and manner by the employer and if he or she is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from **[his]** the employer's liability under sub-paragraph (1) of this paragraph.

(3) An employer who has not been absolved from liability as provided in sub-paragraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of sub-paragraph (1) in respect of that employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to that employee, in such manner as the Commissioner **[may determine]** on application in the prescribed form and manner by the employer decides.".

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

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 46 of Act 28 of 1997, section 55 of Act 59 of 2000, section 21 of Act 19 of 2001, section 41 of Act 20 of 2006, section 56 of Act 8 of 2007, sections 66 and 116 of Act 35 of 2007, section 66 of Act 3 of 2008, section 68 of Act 60 of 2008, section 20 of Act 18 of 2009 and section 95 of Act 24 of 2011

8. Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (3) for item *(b)* of the following item:

"*(b)* **[Paragraph]** Item *(a)* does not apply to any amount required to be included in the gross income of any person in terms of paragraph *(e)* of the definition of 'gross income' and paragraph 2(1)*(b)*(iB) of the Second Schedule as a result of a transaction contemplated in section 14(1) of the Pension Funds Act**[, 1956 (Act No. 24 of 1956)]**, other than an amount that is transferred for the benefit of the person to any provident fund as defined in paragraph 1 of the Second Schedule from any pension fund or pension preservation fund as defined in that paragraph."; and

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

"(6) There must be deducted from the amount to be withheld or deducted by way of employees' tax as contemplated in paragraph 2 the amount—

(a) of the medical scheme fees tax credit that applies in respect of that employee in terms of section 6A; and

(b) where the employee is entitled to a rebate under section 6(2)*(b)*, of the additional medical expenses tax credit that applies in respect of that employee in terms of section 6B(3)*(a)*(i),

if—

[*(a)*] (i) the employer effects payment of the medical scheme fees as contemplated in section 6A(2)*(a)*; or

[*(b)*](ii) the employer does not effect payment of the medical scheme fees as contemplated in section 6A(2)*(a)*, at the option of the employer, if proof of payment of those fees has been furnished to the employer.".

Amendment of paragraph 11A of Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969 and amended by section 47 of Act 28 of 1997, section 19 of Act 34 of 2004, section 51 of Act 31 of 2005, section 67 of Act 35 of 2007 and section 19 of Act 8 of 2010

9. Paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item *(c)* and the words following it of the following item and words:

"*(c)* any **[gain made are a result of the vesting of any equity instrument as contemplated]** amount referred to in section 8C which is required to be included in the income of that employee,

the amount of that gain or that amount must for the purposes of this Schedule be deemed to be an amount of remuneration which is payable to that employee by the person by whom that right was granted or from whom that equity instrument or qualifying equity share was acquired, as the case may be.".

Repeal of paragraph 11B of Fourth Schedule to Act 58 of 1962

10. (1) Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) comes into operation on 1 March 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 11C of Fourth Schedule to Act 58 of 1962, as inserted by section 22 of Act 19 of 2001 and amended by section 85 of Act 45 of 2003, section 271 of Act 28 of 2011 read with paragraph 83 of Schedule 1 to that Act and section 10 of Act 39 of 2013

11. Paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in the proviso to subparagraph (1) of paragraph (i).

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, section 23 of Act 19 of 2001, section 21 of Act 4 of 2008 and section 11 of Act 39 of 2013

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

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

"(1) Subject to the provisions of 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]** the employer as provided in subparagraph (10).''; and

(b) by the substitution in subparagraph (2) for item *(c)* 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,''.

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 16 of Act 61 of 2008, section 21 of Act 18 of 2009, section 22 of Act 8 of 2010, section 271 of Act 28 of 2011 read with paragraph 85 of Schedule 1 to that Act and section 20 of Act 21 of 2012

13. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (5) of the following subparagraph:

"(5) Unless the Commissioner otherwise directs, 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.''.

Amendment of paragraph 17 of Fourth Schedule to Act 58 of 1962, as amended by section 27 of Act 90 of 1964, section 4 of Act 88 of 1971, section 33 of Act 103 of 1976, section 30 of Act 104 of 1980, section 51 of Act 101 of 1990, section 57 of Act 59 of 2000, section 271 of Act 28 of 2011 read with paragraph 88 of Schedule 1 to that Act and section 12 of Act 39 of 2013

14. Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (3) of the following subparagraph:

"(3) Where for the purpose of determining any amount of provisional tax required to be paid by any provisional taxpayer in respect of any year of assessment the liability of such taxpayer for normal tax is required to be estimated in respect of such year, such liability shall be deemed to be the amount of normal tax which, calculated at the relevant rate referred to in subparagraph (4), would be payable by the provisional taxpayer in respect of the amount of taxable income estimated by such taxpayer in terms of paragraph 19(1) during the period prescribed by this Schedule for the payment of the said amount of provisional tax**[, or any extension of such period granted in terms of paragraph 25(2),]** or if the amount so estimated has been increased by the Commissioner in terms of paragraph 19(3), the amount of normal tax which, calculated at the said

rate, would be payable by the provisional taxpayer in respect of the amount of taxable income as so increased, or if the Commissioner has estimated the provisional taxpayer's taxable income in terms of paragraph 19(2), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income so estimated.''; and

(b) by the deletion of subparagraph (8).

Repeal of paragraph 18 of Fourth Schedule to Act 58 of 1962

15. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed.

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, section 13 of Act 39 of 2013 and section 9 of Act 44 of 2014

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

(a) by the substitution in subparagraph (1) for items *(a)*, *(b)* and *(c)* of the following items, respectively:

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

(b) Every company which is a provisional taxpayer shall, during every period within which provisional tax is or may be payable by it as provided in this Part submit to the Commissioner (**[should]** unless the Commissioner **[so require]** directs otherwise) a return of an estimate of the total taxable income which will be derived by the company in respect of the year of assessment in respect of which provisional tax is or may be payable by the company.

(c) The amount of any estimate so submitted by a provisional taxpayer (other than a company) during the period referred to in paragraph 21(1)*(a)*, or by a company (as a provisional taxpayer) during the period referred to in paragraph 23*(a)*, shall**[, unless the Commissioner, having regard to the circumstances of the case, agrees to accept an estimate of a lower amount,]** not be less than the basic amount applicable to the estimate in question, as contemplated in item *(d)*, unless the circumstances of the case justify the submission of an estimate of a lower amount.'';

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

''(3) The Commissioner may call upon any provisional taxpayer to justify any estimate made by **[him or her]** the provisional taxpayer in terms of sub-paragraph (1), or to furnish particulars of **[his or her]** the provisional taxpayer's income and expenditure or any other particulars that may be required, and, if the Commissioner is dissatisfied with the said estimate, he or she may increase the amount thereof to such amount as he or she considers reasonable, which increase of the estimate is not subject to objection and appeal.''; and

(c) by the substitution for subparagraph (5) of the following subparagraph:

"(5) Any estimate or increase made by the Commissioner under the provisions of sub-paragraph (2) or (3) shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax in terms of this Part**[, or within any extension of such period granted in terms of sub-paragraph (2) of paragraph 25]**.".

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, section 23 of Act 21 of 2012 and section 10 of Act 44 of 2014

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

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

"*(b)* **[in any other case,]** R1 million or less and the estimate is 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), (2B) and **[(3)]**(2C), be liable to pay to the Commissioner, in addition to the normal tax 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 lesser of—

(aa) 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)]*(bb)* 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

(ii) **[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:"; and

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

"(2A) If, for the purposes of paragraph 19 and this paragraph, 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, on or before the last day of the period within which provisional tax is or may be payable by that provisional taxpayer as provided in this Part, the **[non-submission]** provisional taxpayer shall be deemed to **[be a nil submission]** have submitted an estimate of an amount of nil taxable income unless the estimate in respect of the relevant provisional payment is submitted prior to the date of the subsequent provisional payment under paragraph 21, 23 or 23A.".

Substitution of paragraph 29 of Fourth Schedule to Act 58 of 1962, as substituted by section 54 of Act 101 of 1990

18. (1) The following paragraph is hereby substituted for paragraph 29 of the Fourth Schedule to the Income Tax Act, 1962:

"29. No refund of any amount of **[employees]** employees' tax or provisional tax shall be made to the taxpayer concerned otherwise than as provided in paragraph **[11B or]** 28 or in such circumstances as may be determined by the Commissioner in any deduction tables prescribed by him or her under paragraph 9.".

(2) Subsection (1) comes into operation on 1 March 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 30 of Fourth Schedule to Act 58 of 1962, as amended by section 45 of Act 21 of 1995, section 44 of Act 53 of 1999 and section 271 of Act 28 of 2011 read with item 97 of Schedule 1 to that Act

19. Paragraph 30 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (1) of item *(h)*.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 32 of Act 60 of 1989, section 51 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 34 of Act 34 of 1997, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 66 of Act 32 of 2004, section 85 of Act 31 of 2005, section 7 of Act 21 of 2006, section 10 of Act 9 of 2007, section 4 of Act 36 of 2007, section 22 of Act 61 of 2008 and section 1 of Act 32 of 2014

20. (1) Section 1 of the Excise Duty Act, 1964, is hereby amended by the addition of the following subsections:

"(9) *(a)* A provision of this Act that contains a reference to a Schedule of this Act that existed before the effective date, or to a provision of such a Schedule, must, unless the context otherwise indicates, be read as referring to—

(i) the corresponding Schedule of the Excise Tariff or to the corresponding provision of that Schedule of the Excise Tariff; or

(ii) the corresponding Schedule of the Customs Tariff or to the corresponding provision of that Schedule of the Customs Tariff.

(b) In this subsection 'effective date' means the effective date contemplated in section 926 of the Customs Control Act.

(10) *(a)* When interpreting a provision of this Act that contains a reference to another provision of this Act that has been repealed by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), the reference in that provision to that repealed provision must be disregarded unless the context otherwise indicates.

(b) Paragraph *(a)* does not apply to references in this Act to the repealed section 10 and those references must be interpreted in accordance with subsection (6)*(c)*.

(11) *(a)* Any provision of this Act that has been enacted before the date of publication of the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), and for which a commencement date has not been proclaimed as at the effective date, must be regarded as not having been enacted.

(b) In this subsection 'effective date' means the effective date contemplated in section 926 of the Customs Control Act.".

(2) Subsection (1) takes effect immediately after the Customs and Excise Amendment Act, 2014, has taken effect in terms of section 88 of that Act.

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006, section 9 of Act 21 of 2006, section 5 of Act 36 of 2007, section 25 of Act 61 of 2008, section 24 of Act 8 of 2010, section 3 of Act 25 of 2011 and section 16 of Act 39 of 2013

21. Section 4 of the Customs and Excise Act, 1964, is hereby amended by the insertion after subsection (10) of the following subsection:

''(10A) *(a)* When conducting an external search of a person an officer may, subject to paragraph *(b)*, make use of—

(i) any mechanical, electrical, imaging or electronic equipment that can produce an indication that the person may be concealing any specific thing or substance on or in his or her body or in any goods that that person has with him or her;

(ii) sniffer dogs or other animals trained to use their senses for the detection of any specific thing or substance; or

(iii) any other search aid that may be prescribed by rule.

(b) A search aid referred to in paragraph *(a)* may only be used by an officer trained to use such aid in the conduct of a search.''.

Repeal of section 4D of Act 91 of 1964

22. (1) Section 4D of the Excise Duty Act, 1964, is hereby repealed.

(2) Subsection (1) takes effect immediately after the Customs and Excise Amendment Act, 2014, has taken effect in terms of section 88 of that Act.

Amendment of section 27 of Act 91 of 1964, as amended by section 10 of Act 105 of 1969, section 7 of Act 84 of 1987, section 15 of Act 59 of 1990, section 18 of Act 45 of 1995 and section 18 of Act 32 of 2014

23. (1) Section 27 of the Excise Duty Act, 1964, is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words:

''Any dutiable goods brought into and intended for use in an excise manufacturing warehouse in the manufacture of goods liable to excise duty or fuel levy shall—

(a) if locally produced dutiable goods, be entered for home consumption; or

(b) if dutiable imported goods, be cleared for home use in terms of the Customs Control Act,

and any duty due thereon (including customs duty) shall be paid prior to such use:''.

(2) Subsection (1) takes effect immediately after the Customs and Excise Amendment Act, 2014, has taken effect in terms of section 88 of that Act.

Amendment of section 99 of Act 91 of 1964, as amended by section 15 of Act 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 of 1977, section 12 of Act 110 of 1979, section 24 of Act 86 of 1982, section 62 of Act 45 of 1995, section 71 of Act 30 of 1998, section 68 of Act 53 of 1999, section 138 of Act 60 of 2001, section 110 of Act 74 of 2002, section 31 of Act 34 of 2004 and section 74 of Act 32 of 2014

24. (1) Section 99 of the Excise Duty Act, 1964, is hereby amended by the substitution for subsection (5) of the following subsection:

''(5) Any liability in terms of subsection (1), (2) or (4)*(a)* shall cease after the expiration of a period of **[two]** three years from the date on which it was incurred in terms of any such subsection.''.

(2) Subsection (1) takes effect immediately after the Customs and Excise Amendment Act, 2014, has taken effect in terms of section 88 of that Act.

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, section 98 of Act 43 of 2014 and sections 25 and 26 of Act 44 of 2014

25. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended by the deletion in subsection (2) of the word ''or'' at the end of paragraph *(e)* and by the substitution in that subsection for paragraph *(f)* of the following paragraphs:

''*(f)* the vendor, in **[any other case, except as provided for in paragraphs *(a)* to *(e)*]** the case where an amount is deducted from the sum of the amounts of output tax which are attributable to that period in terms of subsection (3)*(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)*, *(i)*, *(j)*, *(k)*, *(l)*, *(m)* or *(n)*, is in possession of documentary proof, as is **[acceptable to]** prescribed by the Commissioner, substantiating the vendor's entitlement to the deduction at the time a return in respect of the deduction is furnished; or

(g) in the case where the vendor, under such circumstances prescribed by the Commissioner, is unable to obtain any document required in terms of paragraph *(a)*, *(b)*, *(c)*, *(d)*, *(e)* or *(f)*, the vendor is in possession of documentary proof, containing such information as is acceptable to the Commissioner, substantiating the vendor's entitlement to the deduction at the time a return in respect of the deduction is furnished:''.

(2) Subsection (1) comes into operation on 1 April 2016 and applies in respect of tax periods commencing on or after that date.

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009, section 30 of Act 8 of 2010, section 29 of Act 21 of 2012, section 176 of Act 31 of 2013 and section 99 of Act 43 of 2014

26. Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

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

''*(a)* The words 'tax invoice' **[in a prominent place]**, 'VAT invoice' or 'invoice';''; and

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

''*(a)* The words 'tax invoice' **[in a prominent place]**, 'VAT invoice' or 'invoice';''.

Amendment of section 21 of Act 89 of 1991, as amended by section 26 of Act 136 of 1992, section 34 of Act 97 of 1993, section 176 of Act 45 of 2003, section 48 of Act 16 of 2004, section 36 of Act 18 of 2009 and section 150 of Act 22 of 2012

27. Section 21 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (3)*(a)* for subparagraph (i) of the following subparagraph:

''(i) The words 'credit note' **[in a prominent place]**;''; and

(b) by the substitution in subsection (3)*(b)* for subparagraph (i) of the following subparagraph:

''(i) The words 'debit note' **[in a prominent place]**;''.

Amendment of section 41 of Act 89 of 1991, as amended by section 32 of Act 136 of 1992, section 36 of Act 97 of 1993, section 41 of Act 27 of 1997, section 98 of Act 30 of 1998, section 167 of Act 60 of 2001, section 40 of Act 32 of 2005, section 39 of Act 21 of 2006 and section 16 of Act 9 of 2007

28. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of paragraph *(d)*.

Amendment of section 1 of Act 9 of 1999, as amended by section 1 of Act 24 of 2010, section 271 of Act 28 of 2011 read with paragraph 148 of Schedule 1 to that Act

29. Section 1 of the Skills Development Levies Act, 1999, is hereby amended by the substitution in subsection (1) for the definition of "penalty" of the following definition:

" **'penalty'** means any penalty payable in terms of section 12 and a penalty contemplated in Chapter 16 of the Tax Administration Act;".

Amendment of section 6 of Act 9 of 1999, as amended by section 76 of Act 19 of 2001,section 43 of Act 18 of 2009, section 271 of Act 28 of 2011 read with paragraph 150 of Schedule 1 to that Act and section 23 of Act 39 of 2013

30. Section 6 of the Skills Development Levies Act, 1999, is hereby amended—

(a) by the deletion of subsection (3); and

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

"(4) If the Director-General has allocated in accordance with section 8 the full amount or any portion of **[the]** an amount **[referred to in subsection (3)]** refunded in terms of section 190 of the Tax Administration Act, the Director-General must, when necessary, withhold the amount so allocated from future payments due to the SETA or National Skills Fund, as the case may be, in terms of this Act.".

Amendment of section 21 of Act 4 of 2008

31. (1) Section 21 of the Taxation Laws Second Amendment Act, 2008, is hereby amended by the deletion in subsection (1) of paragraphs *(a)* and *(b)*.

(2) Subsection (1) is deemed to have come into operation on 3 July 2008.

Amendment of section 14 of Act 29 of 2008

32. Section 14 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—

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

"(1) If the royalty mentioned in section 6(1) in respect of a year of assessment exceeds the amount paid as mentioned in section 5 in respect of that year and that excess is greater than 20 per cent of the royalty mentioned in section 6(1), the Commissioner may impose a penalty, which is regarded as a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, that may not exceed 20 per cent of that excess."; and

(b) by the addition of the following subsection:

"(3) Where the Commissioner is satisfied that the estimates of the royalty payable and the amounts paid as mentioned in section 5 were seriously calculated with due regard to the factors having a bearing thereon and were not deliberately or negligently understated, or if the Commissioner is partly so satisfied, the Commissioner may remit the penalty mentioned in subsection (1) or a part thereof.".

Amendment of section 1 of Act 28 of 2011, as amended by section 36 of Act 21 of 2012, section 30 of Act 39 of 2013 and section 37 of Act 44 of 2014

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

(a) by the substitution for the definition of "Customs and Excise Act" of the following definition:

" **'customs and excise legislation'** means the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Customs Duty Act, 2014 (Act No. 30 of 2014), or the Customs Control Act, 2014 (Act No. 31 of 2014);";

(b) by the insertion after the definition of "international tax agreement" of the following definition:

" **'international tax standard'** means—

(a) the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters;

(b) the Country-by-Country Reporting Standard for Multinational Enterprises specified by the Minister; or

(c) any other international standard for the exchange of tax-related information between countries specified by the Minister,

subject to such changes as specified by the Minister in a regulation issued under section 257;"; and

(c) by the substitution for the definition of "tax Act" of the following definition:

" **'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)]** customs and excise legislation;".

Amendment of section 3 of Act 28 of 2011, as amended by section 37 of Act 21 of 2012, section 31 of Act 39 of 2013 and section 38 of Act 44 of 2014

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

(a) by the deletion in subsection (2) of the word "and" at the end of paragraph *(h)*, the substitution for the full stop at the end of paragraph *(i)* of the expression "; and" and the addition of the following paragraph:

"*(j)* give effect to an international tax standard."; and

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

"(3) If SARS, in accordance with—

(a) an international tax agreement—

[*(a)*] (i) received a request for, is obliged to exchange or wishes to spontaneously exchange information, SARS may disclose or obtain the information 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;

[*(b)*] (ii) 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)*](iii) 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; or

(b) an international tax standard, obtained information of a person, SARS may retain the information as if it were relevant material required for purposes of a tax Act and must treat the information obtained as taxpayer information.".

Amendment of section 6 of Act 28 of 2011, as amended by section 38 of Act 21 of 2012

35. Section 6 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) The execution of a task ancillary to a power or duty under subsection (2) or (3) may be done by a SARS official under the control of an official referred to in subsection (3)*(a)*, *(b)* or *(c)***[—**

(a) **a SARS official under the control of the Commissioner or a senior SARS official; or**

(b) **the incumbent of a specific post under the control of the Commissioner or a senior SARS official]**.".

Amendment of section 11 of Act 28 of 2011, as amended by section 40 of Act 21 of 2012 and section 33 of Act 39 of 2013

36. Section 11 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) No SARS official **[other than the Commissioner or a SARS official duly authorised by the Commissioner]** may institute or defend civil proceedings on behalf of the Commissioner unless authorised to do so under this Act or by the Commissioner or by the person delegated by the Commissioner under section 6(2).".

Amendment of section 22 of Act 28 of 2011

37. Section 22 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in subsection (2) for paragraphs *(b)* and *(c)* of the following paragraphs:

"*(b)* apply for registration for one or more taxes or under section 26(3) in the prescribed form and manner; and

(c) provide SARS with the further particulars and any documents as SARS may require for the purpose of registering the person for the tax or taxes or under section 26(3)."; and

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

"(5) Where a **[taxpayer]** person that is obliged to register with SARS under a tax Act fails to do so, SARS may register the **[taxpayer]** person for one or more tax types as is appropriate under the circumstances or for purposes of section 26(3).".

Amendment of section 26 of Act 28 of 2011, as amended by section 41 of Act 21 of 2012, section 35 of Act 39 of 2013 and section 39 of Act 44 of 2014

38. Section 26 of the Tax Administration Act, 2011, is hereby amended—

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

"*(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, an international tax standard or by the Commissioner in **[the]** a public notice consistent with **[an]** the international tax agreement or the international tax standard **[for exchange of information]**."; and

(b) by the addition of the following subsections:

"(3) The Commissioner may, by public notice, require a person to apply to register as a person required to submit a return under this section, an international tax agreement or an international tax standard.

(4) If, in order to submit a return under subsection (1) and to comply with the requirements of this section, a person requires information, a document or thing from another person, the other person must provide the information, document or thing so required within a reasonable time.".

Amendment of section 34 of Act 28 of 2011, as amended by section 45 of Act 21 of 2012, section 37 of Act 39 of 2013 and section 40 of Act 44 of 2014

39. Section 34 of the Tax Administration Act, 2011, is hereby amended 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 person who directly or indirectly will derive or assumes that the person will derive a 'tax benefit' or 'financial benefit' by virtue of an 'arrangement'; or

(c) any other person who is party to an 'arrangement' listed in a public notice referred to in section 35(2);".

Amendment of section 36 of Act 28 of 2011, as amended by section 46 of Act 21 of 2012 and section 42 of Act 44 of 2014

40. Section 36 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph *(c)* of the following paragraph:

''*(c)* a transaction undertaken through an exchange regulated in terms of the **[Securities Services Act, 2004 (Act No. 36 of 2004)]** Financial Markets Act, 2012 (Act No. 19 of 2012); or''.

Insertion of section 42A in Act 28 of 2011

41. The following section is hereby inserted in the Tax Administration Act, 2011, after section 42:

''**Procedure where legal professional privilege is asserted**

42A. (1) For purposes of Parts B, C and D, if a person alleges the existence of legal professional privilege in respect of relevant material required by SARS, during an inquiry or during the conduct of a search and seizure by SARS, the person must provide the following information to SARS and, if applicable, the presiding officer designated under section 51 or the attorney referred to in section 64:

(a) a description and purpose of each item of the material in respect of which the privilege is asserted;

(b) the author of the material and the capacity in which the author was acting;

(c) the name of the person for whom the author referred to in paragraph *(b)* was acting in providing the material;

(d) confirmation in writing that the person referred to in paragraph *(c)* is claiming privilege in respect of each item of the material;

(e) if the material is not in possession of the person referred to in paragraph *(d)*, from whom did the person asserting privilege obtain the material; and

(f) if the person asserting privilege is not the person referred to in paragraph *(d)*, under what circumstances and instructions regarding the privilege did the person obtain the material.

(2) A person must submit the information required under Part B to SARS at the place, in the format and within the time specified by SARS, unless SARS extends the period based on reasonable grounds submitted by the person.

(3) If SARS disputes the assertion of privilege upon receipt of the information—

(a) SARS must make arrangements with a practitioner from the panel appointed under section 111 to take receipt of the material;

(b) the person asserting privilege must seal and hand over the material in respect of which privilege is asserted to the practitioner;

(c) the practitioner must within 21 business days after being handed the material make a determination of whether the privilege applies and may do so in the manner the practitioner deems fit, including considering representations made by the parties;

(d) if a determination of whether the privilege applies is not made by the practitioner or a party is not satisfied with the determination, the practitioner must retain the relevant material pending final resolution of the dispute by the parties or an order of court; and

(e) any application to a High Court must be instituted within 30 days of the expiry of the period of 21 business days, failing which the material must be handed to the party in whose favour the determination, if any, was made.

(4) The appointed practitioner—

(a) is not regarded as acting on behalf of either party;

(b) must personally take responsibility for the safekeeping of the material;

(c) must give grounds for the determination under subsection (3)*(d)*; and

(d) must be compensated in the same manner as if acting as chairperson of the tax board.''.

Amendment of section 46 of Act 28 of 2011, as amended by section 50 of Act 21 of 2012, section 38 of Act 39 of 2013 and section 46 of Act 44 of 2014

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

(a) by the substitution for subsections (2), (3), (4) and (5) of the following subsections:

''(2) A senior SARS official may require relevant material in terms of subsection (1)—

(a) in respect of taxpayers in an objectively identifiable class of taxpayers; or

(b) held or kept by a connected person, as referred to in paragraph *(d)*(i) of the definition of 'connected person' in the Income Tax Act, in relation to the taxpayer, located outside the Republic.

(3) A request by SARS for relevant material from a person other than the taxpayer is limited to **[relevant information related to the records]** material maintained or kept or that should reasonably be maintained or kept by the person in **[relation to]** respect of the taxpayer.

(4) A person or taxpayer 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 person or taxpayer) and—

(a) within the time specified in the request; or

(b) if the material is held by a connected person referred to in subsection (2)*(b)*, within 90 days from the date of the request, which request must set out the consequences referred to in subsection (9) of failing to do so.

(5) If reasonable grounds for an extension are submitted by the person or taxpayer, SARS may extend the period within which the relevant material must be submitted.''; and

(b) by the addition of the following subsection:

''(9) If a taxpayer fails to provide material referred to in subsection (2)*(b)*, the material may not be produced by the taxpayer in any subsequent proceedings, unless a competent court directs otherwise on the basis of circumstances outside the control of the taxpayer and any connected person referred to in paragraph *(d)*(i) of the definition of 'connected person' in the Income Tax Act, in relation to the taxpayer.''.

Amendment of section 47 of Act 28 of 2011

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

''(1) A senior SARS official may, by notice, require a person, whether or not chargeable to tax, an employee of the person or a person who holds an office in the person to attend in person at the time and place designated in the notice for the purpose of being interviewed by a SARS official concerning the tax affairs of the person, if the interview—

(a) is intended to clarify issues of concern to SARS—

(i) to render further verification or audit unnecessary; or

(ii) to expedite a current verification or audit; and

(b) is not for purposes of a criminal investigation.''.

Amendment of section 49 of Act 28 of 2011, as amended by section 51 of Act 21 of 2012

44. Section 49 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

''*(b)* answering questions relating to the audit or investigation including, if so required, in the manner referred to in section 46(7); and''.

Amendment of section 51 of Act 28 of 2011

45. Section 51 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

''(1) A judge may grant the order referred to in section **[50(2)]** 50(1) if satisfied that there are reasonable grounds to believe that—

(a) a person has—

(i) failed to comply with an obligation imposed under a tax Act; **[or]**

(ii) committed a tax offence; **[and]** or

(iii) disposed of, removed or concealed assets which may fully or partly satisfy an outstanding tax debt; and

(b) relevant material is likely to be revealed during the inquiry which may provide proof of the failure to comply, **[or]** of the commission of the offence or of the disposal, removal or concealment of the assets.

(2) The order referred to in subsection (1) must—

(a) designate a presiding officer before whom the inquiry is to be held;

(b) identify the person referred to in subsection (1)*(a)*;

(c) refer to the alleged non-compliance, **[or]** the commission of the offence or the disposal, removal or concealment of assets to be inquired into;

(d) be reasonably specific as to the ambit of the inquiry; and

(e) be provided to the presiding officer.''.

Amendment of section 68 of Act 28 of 2011, as amended by section 40 of Act 39 of 2013

46. (1) Section 68 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph *(g)* of the following paragraph:

''*(g)* information, the disclosure of which could reasonably be expected to prejudice the economic interests or financial welfare of the Republic or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic, including a contemplated change or decision to change a tax or a duty, levy, penalty, interest and similar moneys imposed under a tax Act **[or the Customs and Excise Act]**;''.

(2) Subsection (1) takes effect immediately after the Customs Control Act, 2014, has taken effect in terms of section 944(1) of that Act.

Amendment of section 69 of Act 28 of 2011, as amended by section 41 of Act 36 of 2013 and section 48 of Act 44 of 2014

47. Section 69 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2)*(a)* for the words preceding subparagraph (i) of the following words:

''in the course of performance of duties under a tax Act or customs and excise legislation, **[including]** such as—''.

Amendment of section 70 of Act 28 of 2011, as amended by section 13 of Act 26 of 2013

48. Section 70 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (5) of the following subsection:

''(5) The information disclosed under subsection (1), (2) or (3) may only be disclosed by SARS or the persons or entities referred to in subsection (1), (2) or (3) to the extent that it is—

(a) necessary for the purpose of exercising a power or performing a regulatory function or duty under the legislation referred to in subsection (1), (2) or (3); and

(b) relevant and proportionate to what the disclosure is intended to achieve as determined under the legislation.''.

Amendment of section 93 of Act 28 of 2011, as amended by section 45 of Act 39 of 2013

49. Section 93(1) of the Tax Administration Act, 2011, is hereby amended by the deletion of the word "or" at the end of paragraph *(c)* and the substitution for paragraph *(d)* of the following paragraphs:

"*(d)* SARS is satisfied that there is **[an]** a readily apparent undisputed error in the assessment **[as a result of an undisputed error]** by—

(i) SARS; or

(ii) the taxpayer in a return; or

(e) a senior SARS official is satisfied that an assessment was based on—

(i) the failure to submit a return or submission of an incorrect return by a third party under section 26 or by an employer under a tax Act;

(ii) a processing error by SARS; or

(iii) a return fraudulently submitted by a person not authorised by the taxpayer.".

Amendment of section 98 of Act 28 of 2011, as amended by section 46 of Act 39 of 2013

50. Section 98(1) of the Tax Administration Act, 2011, is hereby amended by the addition of the word "or" at the end of paragraph *(b)*, the substitution for the expression "; or" at the end of paragraph *(c)* of a full stop and the deletion of paragraph *(d)*.

Amendment of section 99 of Act 28 of 2011, as amended by section 59 of Act 21 of 2012 and section 47 of Act 39 of 2013

51. Section 99 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:

"**[SARS may not make an]** An assessment may not be made in terms of this Chapter—";

(b) by the deletion in subsection (2) of the word "or" at the end of paragraph *(c)* and the substitution for paragraph *(d)* of the following paragraphs:

"*(d)* it is necessary to give effect to—

(i) the resolution of a dispute under Chapter 9;

(ii) a judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal; or

(iii) an assessment referred to in section **[98(2)]** 93(1)*(d)* if SARS becomes aware of the error referred to in that subsection before expiry of the period for the assessment under subsection (1); or

(e) SARS receives a request for a reduced assessment under section 93(1)*(e)*."; and

(c) by the addition of the following subsections:

"(3) The Commissioner may, by prior notice of at least 30 days to the taxpayer, extend a period under subsection (1) or an extended period under this section, before the expiry thereof, by a period approximate to a delay arising from:

(a) failure by a taxpayer to provide all the relevant material requested within the period under section 46(1) or the extended period under section 46(5); or

(b) resolving an information entitlement dispute, including legal proceedings.

(4) The Commissioner may, by prior notice of at least 60 days to the taxpayer, extend a period under subsection (1), before the expiry thereof, by three years in the case of an assessment by SARS or two years in the case of self-assessment, where an audit or investigation under Chapter 5 relates to—

(i) the application of the doctrine of substance over form;

(ii) the application of Part IIA of Chapter III of the Income Tax Act, section 73 of the Value-Added Tax Act or any other general anti-avoidance provision under a tax Act;

(iii) the taxation of hybrid entities or hybrid instruments; or
(iv) section 31 of the Income Tax Act.''.

Amendment of section 105 of Act 28 of 2011

52. Section 105 of the Tax Administration Act, 2011, is hereby substituted by the following section:

''**Forum for dispute of assesment or decision**

105. A taxpayer may **[not]** only dispute an assessment or 'decision' as described in section 104 **[in any court or other proceedings, except]** in proceedings under this Chapter **[or by application to the High Court for review]**, unless a High Court otherwise directs.''.

Amendment of section 111 of Act 28 of 2011

53. Section 111 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) The persons appointed under subsection (1)—
(a) hold office for five years from the date the notice of appointment is published in the public notice; **[and]**
(b) are eligible for re-appointment as the Minister thinks fit; and
(c) must be persons of good standing who have appropriate experience.''.

Amendment of section 135 of Act 28 of 2011, as amended by section 62 of Act 21 of 2012

54. Section 135 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

''(3) Subject to **[the right to petition the Chief Justice for]** leave to appeal to the Supreme Court of Appeal in terms of section **[21]** 17 of the **[Supreme Court Act, 1959 (Act No. 59 of 1959)]** Superior Courts Act, 2013 (Act No. 10 of 2013), an order made by the president of the tax court under subsection (1) is final.''.

Amendment of section 146 of Act 28 of 2011

55. Section 146 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph *(b)* of the following paragraph:

''*(b)* SARS' cost of litigation in comparison to the possible benefits with reference to**[—**
(i)] the prospects of success in court;
[(ii) the prospects of the collection of the amounts due; and
(iii) the costs associated with collection;]''.

Amendment of section 177 of Act 28 of 2011, as amended by section 65 of Act 39 of 2013

56. Section 177 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 **[institute]** authorise the institution of proceedings for the sequestration, liquidation or winding-up of a person for an outstanding tax debt.''.

Amendment of section 179 of Act 28 of 2011, as amended by section 66 of Act 39 of 2013

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

''(1) A senior SARS official may **[by]** authorise the issue of a notice to a person who holds or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer,

[require] requiring the person to pay the money to SARS in satisfaction of the taxpayer's outstanding tax debt.'';

(b) by the addition after subsection (4) of the following subsections:

''(5) SARS may only issue the notice referred to in subsection (1) after delivery to the tax debtor of a final demand for payment which must be delivered at the latest 10 business days before the issue of the notice, which demand must set out the recovery steps that SARS may take if the tax debt is not paid and the available debt relief mechanisms under this Act, including, in respect of recovery steps that may be taken under this section—

(a) if the tax debtor is a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS under subsection (1), based on the basic living expenses of the tax debtor and his or her dependants; and

(b) if the tax debtor is not a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS under subsection (1), based on serious financial hardship.

(6) SARS need not issue a final demand under subsection (5) if a senior SARS official is satisfied that to do so would prejudice the collection of the tax debt.''.

Amendment of section 185 of Act 28 of 2011

58. (1) Section 185 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

''*(a)* a request for conservancy of an amount alleged to be due by a person under the tax laws of the other country where there is a risk of dissipation or concealment of assets by the person, a senior SARS official may **[apply]** authorise an application for a preservation order under section 163 as if the amount were a tax payable by the person under a tax Act; or''.

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

Amendment of section 187 of Act 28 of 2011, as amended by section 52 of Act 44 of 2014

59. (1) Section 187 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:

''If a tax debt or refund payable by SARS is not paid in full by the effective date, interest accrues, and is payable, on the amount of the outstanding balance of the tax debt or refund—'';

(b) by the deletion in subsection (3) of the word ''and'' at the end of paragraph *(e)*, by the substitution for the full stop at the end of paragraph *(f)* of the expression ''; and'' and by the addition of the following paragraph:

''*(g)* an outstanding tax debt referred to in section 190(5), is the date of payment of a refund which is not properly payable under a tax Act.''; and

(c) by the addition of the following subsection:

''(8) SARS may not make a direction that interest is not payable under subsection (6) after the expiry of three years, in the case of an assessment by SARS, or five years, in the case of self-assessment, from the date of assessment of the tax in respect of which the interest accrued.''.

(2) Paragraph *(a)* of subsection (1) is deemed to have come into operation on 1 October 2012.

Amendment of section 190 of Act 28 of 2011, as amended by section 71 of Act 39 of 2013 and section 53 of Act 44 of 2014

60. (1) Section 190 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:

"**[A]** SARS must pay a refund if a person is entitled to a refund, including interest thereon under section 188(3)*(a)*, of—";

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

"(4) **[A person is entitled to a refund under subsection (1) only if the refund is claimed by the person]** An amount under subsection (1)*(b)* is regarded as a payment to the National Revenue Fund unless a refund is made in the case of—

(a) an assessment by SARS, within three years from the later of the date of the assessment or the erroneous payment; or

(b) self-assessment, within five years from the later of 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 or the erroneous payment was made.";

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

"(5) If SARS pays to a person by way of a refund any amount which is not properly payable to the person under a tax Act, the amount, including interest thereon under section 187(1), is regarded as an outstanding tax debt from the date on which it is paid to the person.";

(d) by the insertion after subsection (5) of the following subsection:

"(5A) If a person who carries on the 'business of a bank' as defined in the Banks Act, 1990 (Act No. 94 of 1990), holds an account on behalf of a client into which an amount referred to in subsection (5) is deposited, reasonably suspects that the payment of the amount is related to a tax offence, the person must immediately report the suspicion to SARS in the prescribed form and manner and, if so instructed by SARS, not proceed with the carrying out of any transaction in respect of the amount for a period not exceeding two business days unless—

(a) SARS or a High Court directs otherwise; or

(b) SARS issues a notice under section 179."; and

(e) by the substitution for subsection (6) of the following subsection: "

(6) A decision not to authorise a refund under **[this section]** subsection (1)*(b)* is subject to objection and appeal.".

(2) Paragraphs *(a)* and *(c)* of subsection (1) are deemed to have come into operation on 1 October 2012.

Amendment of section 191 of Act 28 of 2011, as amended by section 72 of Act 39 of 2013

61. Section 191 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If a taxpayer has an outstanding tax debt, an amount that is refundable under section 190, including interest thereon under section 188(3)*(a)*, must be treated as a payment by the taxpayer that is recorded in the taxpayer's account under section 165, to the extent of the amount outstanding, and any remaining amount must be **[setoff]** set off against any outstanding debt under **[the Customs and Excise Act]** customs and excise legislation.".

Amendment of section 212 of Act 28 of 2011

62. Section 212 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:

"A person referred to in paragraph *(a)* or *(b)* of the definition of 'participant' who fails to disclose the information in respect of a 'reportable arrangement' as required by section 37 is liable to a 'penalty', for each month that the failure continues (up to 12 months), in the amount of—"; and

(b) by the addition of the following subsection:

"(3) A person referred to in paragraph *(c)* of the definition of 'participant' who fails to disclose the information in respect of a 'reportable arrangement' as required by section 37 is liable to a 'penalty' in the amount of R50 000.".

Amendment of section 213 of Act 28 of 2011

63. (1) Section 213 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If SARS is satisfied that an amount of tax was not paid as and when required under a tax Act, SARS must, in addition to any other 'penalty' or interest for which a person may be liable **[under this Chapter]**, impose a 'penalty' equal to the percentage of the amount of unpaid tax as prescribed in the tax Act.".

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

Amendment of section 225 of Act 28 of 2011

64. Section 225 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of "default" of the following definition:

"**'default'** means the submission of inaccurate or incomplete information to SARS, or the failure to submit information or the adoption of a 'tax position', where such submission, non-submission, or adoption resulted in an understatement**[—**

(a) **the taxpayer not being assessed for the correct amount of tax;**

(b) **the correct amount of tax not being paid by the taxpayer; or**

(c) **an incorrect refund being made by SARS]**.".

Amendment of section 226 of Act 28 of 2011

65. Section 226 of the Tax Administration Act, 2011, is hereby amended by the substitution for the heading and subsections (1) and (2) of the following heading and subsections:

"**[Qualifying person for voluntary disclosure]** **Qualification of person subject to audit or investigation for voluntary disclosure**

(1) A person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief, unless that person is aware of—

(a) a pending audit or investigation into the affairs of the person seeking relief, which is related to the 'default' the person seeks to disclose; or

(b) an audit or investigation that has commenced, but has not yet been concluded, which is related to the 'default' the person seeks to disclose.

(2) A senior SARS official may direct that a person may apply for voluntary disclosure relief, despite the provisions of subsection (1), where the official is of the view, having regard to the circumstances and ambit of the audit or investigation, that—

(a) **[the 'default' in respect of which the person wishes to apply for voluntary disclosure relief would not otherwise have been detected during the audit or investigation]** the audit or investigation is related to the 'default' the person seeks to disclose; **[and]**

(b) **[the application would be in the interest of good management of the tax system and the best use of SARS' resources]** the 'default' in respect of which the person wishes to apply for voluntary disclosure relief would not otherwise have been detected during the audit or investigation; and

(c) the application would be in the interest of good management of the tax system and the best use of SARS' resources.".

Amendment of section 227 of Act 28 of 2011

66. Section 227 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraphs *(b)* and *(d)* of the following paragraphs:

"*(b)* involve a 'default' which has not **[previously been disclosed]** occurred within five years of the disclosure of a similar 'default' by the applicant or a person referred to in section 226(3);

(d) involve **[the potential imposition of an]** a behaviour referred to in column 2 of the understatement penalty **[in respect of the 'default']** percentage table in section 223;''.

Amendment of section 229 of Act 28 of 2011, as amended by section 75 of Act 21 of 2012

67. Section 229 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for the words preceding paragraph *(a)* of the following words:

''Despite the provisions of a tax Act, SARS must, pursuant to the making of a valid voluntary disclosure by the applicant and the **[conclusions]** conclusion of the voluntary disclosure agreement under section 230—''; and

(b) by the substitution for paragraph *(c)* of the following paragraph:

''*(c)* grant 100 per cent relief in respect of an administrative non-compliance penalty that was or may be imposed under Chapter 15 or a penalty imposed under a tax Act, excluding a penalty imposed under that Chapter or in terms of a tax Act for the late submission of a return **[or a late payment of tax]**.''.

Amendment of section 235 of Act 28 of 2011, as amended by section 78 of Act 21 of 2012, section 80 of Act 39 of 2013 and section 59 of Act 44 of 2014

68. Section 235 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) Any person who makes a statement in the manner referred to in subsection (1) **[must]** may, unless the person proves that there is a reasonable possibility that he or she was ignorant of the falsity of the statement and that the ignorance was not due to negligence on his or her part, be regarded as **[guilty of the offence referred to subsection (1)]** being aware of the falsity of the statement.''.

Amendment of section 236 of Act 28 of 2011

69. Section 236 of the Tax Administration Act, 2011, is hereby substituted by the following section:

''**Criminal offences relating to secrecy provisions**

236. A person who contravenes the provisions of section 67(2) **[or]**, (3) or (4), 68(2), 69(1) or (6) or 70(5) is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.''.

Amendment of section 251 of Act 28 of 2011

70. (1) Section 251 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph *(d)* of the following paragraph:

''*(d)* sent to the person's last known electronic address, which includes—

(i) the person's last known email address; **[or]**

(ii) the person's last known telefax number; or

(iii) the person's electronic address as defined in the rules issued under section 255(1).''.

(2) Subsection (1) is deemed to have come into operation on 25 August 2014.

Amendment of section 252 of Act 28 of 2011, as amended by section 87 of Act 21 of 2012

71. (1) Section 252 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph *(d)* of the following paragraph:

''*(d)* sent to the company or its public officer's last known electronic address, which includes the—

(i) last known email address; **[or]**

(ii) last known telefax number; or

(iii) electronic address as defined in the rules issued under section 255(1).''.

(2) Subsection (1) is deemed to have come into operation on 25 August 2014.

Amendment of section 256 of Act 28 of 2011, as substituted by section 64 of Act 44 of 2014

72. Section 256 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (5) for the words preceding paragraph *(a)* of the following words:

''Despite the provisions of Chapter 6, SARS may confirm the taxpayer's tax compliance status as at the date of **[a]** the request, or a previous date as prescribed by the Minister in a regulation under section 257(2A), by—''.

Amendment of section 257 of Act 28 of 2011, as amended by section 90 of Act 21 of 2012

73. Section 257 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2A) of the following subsection:

''(2A) For purposes of **[the issue of a tax clearance certificate]** a confirmation of tax compliance status of a taxpayer under section 256, the Minister may make regulations regarding—

(a) the circumstances when a **[tax clearance certificate]** confirmation or an update of or a change in the tax compliance status of a taxpayer may be required from a person or **[be issued by]** SARS;

(b) the period of validity of a **[tax clearance certificate]** confirmation of tax compliance status of a taxpayer; or

(c) any procedure to further regulate the issue or withdrawal of a **[tax clearance certificate]** confirmation of tax compliance status of a taxpayer.''.

Amendment of section 270 of Act 28 of 2011, as amended by section 86 of Act 39 of 2013 and section 65 of Act 44 of 2014

74. (1) Section 270 of the Tax Administration Act, 2011, is hereby amended by the insertion after subsection (6D) of the following subsections:

''(6E) Until the date on which the whole of Chapter 12 and of Schedule 1 to this Act come into operation—

(a) the accrual and payment of interest on an understatement penalty imposed under section 222 must be calculated in the manner that interest upon additional tax is calculated in terms of the interest provisions of the relevant tax Act; and

(b) the effective date referred to in section 187(3)*(f)* for tax understated before 1 October 2012 must be regarded as the commencement date of this Act.

(6F) From the date on which the whole of Chapter 12 and of Schedule 1 to this Act come into operation, the accrual and payment of interest on an understatement penalty imposed under section 222 must be calculated in the manner prescribed by Chapter 12 in respect of an understatement penalty imposed after such date.''.

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

Amendment of section 1 of Act 30 of 2014, as amended by section 69 of Act 44 of 2014

75. Section 1 of the Customs Duty Act, 2014, is hereby amended—

(a) by the substitution in subsection (1) for the definition of ''origin determination'' of the following definition:

''**'origin determination'**, in relation to goods, means a determination of the origin of goods by the customs authority in terms of section **[154(1)]** 153(1);''; and

(b) by the substitution in subsection (1) for the definition of ''origin re-determination'' of the following definition:

''**'origin re-determination'**, in relation to goods, means a re-determination of the origin of goods by the customs authority in terms of section **[157]** 154(1)*(a)* or *(b)*;''.

Amendment of section 24 of Act 30 of 2014

76. Section 24 of the Customs Duty Act, 2014, is hereby amended by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

"*(a)* may be granted only on application by—

(i) a specific person, as may be prescribed by rule, liable for the payment of duty on those goods; **[or]**

(ii) the customs broker acting on behalf of that person; or

(iii) a customs broker who intends to manage a deferment benefit for the payment of duty as contemplated in section 39(2)*(a)*; and".

Amendment of section 25 of Act 30 of 2014

77. Section 25 of the Customs Duty Act, 2014, is hereby amended by—

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

"(1) The customs authority must—

(a) withdraw a duty deferment benefit granted to a person if that person—

[*(a)*] (i) acquired the benefit under false pretences;

[*(b)*] (ii) is no longer engaged in the import or export of goods or related activities; or

[*(c)*](iii) is sequestrated or liquidated; or

(b) if a person to whom a duty deferment benefit has been granted, failed to pay within three working days after payment became due any deferred duty or other tax or amount payable by that person to the Commissioner in terms of this Act, another tax levying Act or the Customs Control Act, suspend that deferment benefit pending payment of the amount payable.";

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

"(1A) The suspension of a duty deferment benefit in terms of subsection (1)*(b)* is a ground for withdrawal of the benefit.";

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

"*(a)* that person**[—**

(i)] has in a material respect breached a condition applicable to the benefit in terms of section 24(2); or

[(ii) failed to pay within three working days after payment became due any deferred duty or other tax or amount payable by that person to the Commissioner in terms of this Act, another tax levying Act or the Customs Control Act; or]";

(d) the substitution in subsection (5) for the words preceding paragraph *(a)* of the following words:

"If the customs authority intends to suspend or withdraw a deferment benefit in terms of subsection (1)*(a)* or (2), it must first—";

(e) the substitution for subsection (6) of the following subsection:

"(6) *(a)* Despite subsection (5), the customs authority may in terms of subsection (2) suspend a deferment benefit with immediate effect if circumstances so demand, and in such a case the person to whom the deferment benefit was granted is entitled to submit to the customs authority representations on the suspension within three working days after the deferment benefit has been suspended, read with section 908 of the Customs Control Act.

(b) A person's right in terms of paragraph *(a)* to submit representations also applies if a person's deferment benefit has been suspended in terms of subsection (1)*(b)*.

(c) The customs authority must consider any representations in terms of paragraph *(a)* or *(b)* and either confirm or revoke the suspension."; and

(f) the substitution in subsection (7) for the words preceding paragraph *(a)* of the following words:

"If the customs authority decides to suspend or withdraw a deferment benefit in terms of subsection (2) or (1)*(a)*, the customs authority must—".

Amendment of section 39 of Act 30 of 2014

78. Section 39 of the Customs Duty Act, 2014, is hereby amended by—

(a) the deletion in subsection (2) of the word ''or'' at the end of paragraph *(b)*;

(b) the substitution in subsection (2) for the full stop at the end of paragraph *(c)* of the expression ''; or''; and

(c) the addition to subsection (2) of the following paragraph:

''*(d)* the customs broker is not in possession of a clearance instruction of the principal on whose behalf the declaration was submitted.''.

Amendment of section 67 of Act 30 of 2014

79. Section 67 of the Customs Duty Act, 2014, is hereby substituted by the following section:

''**Application for refund and drawback**

67. The customs authority may, subject to section 72, refund a duty, administrative penalty or interest or grant a drawback of an import duty only on application by—

(a) the person who paid the duty, penalty or interest**[, or]**;

(b) that person's duly appointed representative; or

(c) any other person authorised by the Commissioner.''.

Amendment of section 182 of Act 30 of 2014

80. Section 182 of the Customs Duty Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) **[Rules made in terms of subsection (1) may make applicable provisions of]** Chapter 28 of the Customs Control Act, with any modifications necessary for the enforcement or implementation of an international trade agreement **[for regulating]** as may be made by rule in terms of subsection (1), applies to the registration of persons referred to in that subsection.''.

Amendment of section 185 of Act 30 of 2014

81. Section 185 of the Customs Duty Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) **[Rules made in terms of subsection (1) may make applicable provisions of]** Chapter 28 of the Customs Control Act, with any modifications necessary for the enforcement or implementation of a non-reciprocal generalised system of preferences, **[for regulating]** as may be made by rule in terms of subsection (1), applies to the registration of persons referred to in that subsection.''.

Amendment of section 202 of Act 30 of 2014, as amended by section 72 of Act 44 of 2014

82. 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]** non-prosecutable breach of this Act listed in terms of section 201**[(2)]**(1) 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.''.

Amendment of section 1 of Act 31 of 2014

83. Section 1 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the definition of ''customs code'' of the following paragraph:

''*(a)* in terms of section **[612(1)*(c)*]** 612*(c)* to a registered person;''.

Amendment of section 21 of Act 31 of 2014

84. Section 21 of the Customs Control Act, 2014, is hereby amended—

(a) by the renumbering of the existing provision as subsection (1) and the substitution for the words preceding paragraph *(a)* of the following words:

"No SARS official, customs officer or person referred to in section 12(3)*(a)*, and no person who was such an official, officer or person, may disclose any information acquired by him or her in the exercise of powers or duties in terms of this Act, the Customs Duty Act or the Excise Duty Act concerning the confidential matters of SARS or the private or confidential matters of any person, except—"; and

(b) by the addition of the following subsection:

"(2) For purposes of this section, information concerning the confidential matters of SARS means—

(a) any SARS internal policy document, internal guide or internal standard operating procedure document or memorandum; or

(b) an opinion, advice, report, recommendation or an account of a consultation, discussion or deliberation that has occurred, if—

(i) the information was given, obtained or prepared by or for SARS for the purpose of assisting to formulate a policy or take a decision in the exercise of a power or performance of a duty conferred or imposed by law; and

(ii) the disclosure of the information could reasonably be expected to frustrate the deliberative process in SARS or between SARS and other organs of state by—

(aa) inhibiting the candid communication of an opinion, advice, report or recommendation or conduct of a consultation, discussion or deliberation; or

(bb) frustrating the success of a policy or contemplated policy by the premature disclosure thereof;

(c) information about research being, or to be, carried out by or on behalf of SARS, the disclosure of which would be likely to prejudice the outcome of the research;

(d) information, the disclosure of which could reasonably be expected to prejudice the economic interests or financial welfare of the Republic or the ability of the government to manage the economy of the Republic effectively in the best interests of the Republic, including a contemplated change or decision to change a tax or a duty, levy, penalty, interest and similar moneys imposed under a tax levying Act;

(e) information supplied in confidence by or on behalf of another state or an international organisation to SARS;

(f) a computer program, as defined in section 1(1) of the Copyright Act, 1978 (Act No. 98 of 1978), owned by SARS;

(g) information relating to the security of SARS buildings, property, structures or systems; and

(h) information relating to the verification or audit selection procedure or method used by SARS, the disclosure of which could reasonably be expected to jeopardise the effectiveness thereof.".

Amendment of section 49 of Act 31 of 2014

85. Section 49 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (3) for paragraph *(c)* of the following paragraph:

"*(c)* A carrier commits a Category 1 offence if goods in respect of which a warning has been issued in terms of paragraph *(a)*(i) **[is]** are on board the vessel when it enters the Republic.".

Amendment of section 65 of Act 31 of 2014

86. Section 65 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) The on-board operator of a bus entering the Republic must, upon arrival at the land border-post where the bus enters the Republic, **[submit]** report to the customs authority at that border-post **[an]** the arrival **[report in respect]** of the bus and of all travellers and crew on board the bus, in a manner as may be prescribed by rule.''.

Amendment of section 67 of Act 31 of 2014

87. Section 67 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) The on-board operator of a bus leaving the Republic must, **[upon arrival]** at the land border-post where the bus will leave the Republic **[submit]** , report to the customs authority at that land border-post **[a]** the departure **[report in respect]** of the bus and of all travellers and crew on board the bus, in a manner as may be prescribed by rule.''.

Amendment of section 69 of Act 31 of 2014

88. Section 69 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) The on-board operator of a truck entering the Republic must, upon arrival at the land border-post where the truck enters the Republic **[submit]** , report to the customs authority at that land border-post, in a manner as may be prescribed by rule—

(a) **[an]** the arrival **[report in respect]** of the truck and crew; and

(b) **[a manifest of]** all cargo on board the truck.''.

Amendment of section 71 of Act 31 of 2014

89. Section 71 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) The on-board operator of a truck due to leave the Republic with cargo on board must, **[upon arrival]** at the land border-post where the truck will leave the Republic **[submit]**, report to the customs authority at that land border-post, in a manner as may be prescribed by rule—

(a) **[a]** the departure **[report in respect]** of the truck and crew; and

(b) **[a manifest of]** all cargo on board the truck.''.

Amendment of section 110 of Act 31 of 2014

90. Section 110 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (3) of the following subsection:

''(3) Imported goods may not remain under consecutive customs procedures for longer than three years from the date of **[import]** clearance for the first procedure or for longer than an extension of that period in terms of section 908.''.

Amendment of section 112 of Act 31 of 2014

91. Section 112 of the Customs Control Act, 2014, is hereby amended by the substitution for the heading of the following heading:

''**Tax consequences for imported goods under customs procedures in event of non-compliance or other happenings**''.

Amendment of section 113 of Act 31 of 2014

92. Section 113 of the Customs Control Act, 2014, is hereby amended by the substitution for the heading of the following heading:

''**Tax consequences for former free circulation goods under customs procedures in event of non-compliance or other happenings**''.

Amendment of section 115 of Act 31 of 2014

93. Section 115 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(d)* of the following paragraph:

''*(d)* seizing the goods in terms of Chapter **[35]** 34;''.

Amendment of section 171 of Act 31 of 2014

94. Section 171 of the Customs Control Act, 2014, is hereby amended—

(a) by the addition to subsection (1) of the word ''and'' at the end of paragraph *(b)*;

(b) by the substitution in subsection (1) for the expression ''; and'' at the end of paragraph *(c)* of a full stop; and

(c) by the deletion in subsection (1) of paragraph *(d)*.

Amendment of section 205 of Act 31 of 2014

95. Section 205 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

''*(a)* the licensed premises at the customs seaport or airport where the goods were off-loaded from the foreign-going vessel or aircraft on board of which the goods were imported into the Republic;''.

Amendment of section 211 of Act 31 of 2014

96. Section 211 of the Customs Control Act, 2014, is hereby amended by the substitution in paragraph *(b)* for the words preceding subparagraph (i) of the following words:

''**[endorse]** include in that carrier's transport document or road manifest **[with]**—''.

Repeal of section 214 of Act 31 of 2014

97. Section 214 of the Customs Control Act, 2014, is hereby repealed.

Amendment of section 233 of Act 31 of 2014

98. Section 233 of the Customs Control Act, 2014, is hereby amended by the substitution in paragraph *(b)* for the words preceding subparagraph (i) of the following words:

''**[endorse]** include in that carrier's transport document or road manifest **[with]**—''.

Repeal of section 235 of Act 31 of 2014

99. Section 235 of the Customs Control Act, 2014, is hereby repealed.

Amendment of section 259 of Act 31 of 2014

100. Section 259 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words:

''If transhipment goods **[loaded on board the vessel or aircraft that will transport the goods out of the Republic,]** are not exported from the Republic within a timeframe from commencement of the transhipment operation as may be prescribed by rule read with sections 908 and 909, the person clearing the goods for transhipment must—''.

Amendment of section 299 of Act 31 of 2014

101. Section 299 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (3)*(d)* for subparagraph (ii) of the following subparagraph:

''(ii) has advised the customs authority electronically in accordance with section 913, or in another manner as may be prescribed by rule of such permission.''.

Amendment of section 313 of Act 31 of 2014

102. Section 313 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(f)* of the following paragraph:

''*(f)* for purposes of section 122*(c)*, any persons, other than carriers, permitted to transport goods **[to a warehouse]** under the warehousing procedure and the requirements and conditions for such transport; and''.

Amendment of section 332 of Act 31 of 2014

103. Section 332 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(b)* of the following paragraph:

''*(b)* for purposes of section 122*(c)*, any persons, other than carriers, permitted to transport goods not in free circulation to a tax free shop under the tax free shop procedure and the requirements and conditions for such transport;''.

Amendment of section 350 of Act 31 of 2014

104. Section 350 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1)*(b)* for subparagraph (iv) of the following subparagraph:

''(iv) another purpose as may be prescribed by rule or approved by the customs authority in a specific case.''.

Amendment of section 359 of Act 31 of 2014

105. Section 359 of the Customs Control Act, 2014, is hereby amended by the substitution in paragraph *(e)* for subparagraph (i) of the following subparagraph:

''(i) for purposes of section 122*(c)*, any persons, other than carriers, permitted to transport goods not in free circulation to a vessel, aircraft or train under the stores procedure and the requirements and conditions for such transport; and''.

Amendment of section 368 of Act 31 of 2014

106. Section 368 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1)—

(a) for the words preceding paragraph *(a)* of the following words:

''To enable the customs authority to carry out any necessary inspections of goods cleared for export in terms of the export procedure, the goods must, timeously or within such timeframes as may be prescribed by rule, be delivered to—''; and

(b) for the words in paragraph *(c)* preceding subparagraph (i) of the following words:

''the terminal where the goods will be loaded on board a foreign-going vessel, foreign-going aircraft or cross-border railway carriage in which the goods are to be exported, in the case of **[those and]** all other goods, including goods—''.

Amendment of section 372 of Act 31 of 2014

107. Section 372 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(b)* of the following paragraph:

''*(b)* for purposes of section 122*(c)*, any persons, other than carriers, permitted to transport goods not in free circulation to a place of exit under the export procedure and the requirements and conditions for such transport;''.

Amendment of section 373 of Act 31 of 2014

108. Section 373 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

''*(a)* section 368(1) by failing to deliver goods within the timeframe applicable to the goods, if a timeframe has been prescribed; or''.

Repeal of section 396 of Act 31 of 2014

109. Section 396 of the Customs Control Act, 2014, is hereby repealed.

Amendment of section 412 of Act 31 of 2014

110. Section 412 of the Customs Control Act, 2014, is hereby amended—

(a) by the substitution for paragraphs *(d)* and *(e)* of the following paragraphs, respectively:

''*(d)* the licensee of those premises who is to carry out the inward processing of the goods**[—**

(i) undertakes to comply with the requirements applicable to the inward processing of such goods, including any requirements and conditions as may be—

***(aa)* prescribed by rule;**

***(bb)* specified in a tax levying Act referred to in paragraph *(a)*; or**

***(cc)* determined in terms of any other applicable legislation; and**

(ii)] has granted permission for the inward processing of the goods on those premises and has advised the customs authority electronically in accordance with section 913 of such permission, if that licensee is not the person who cleared the goods for inward processing; and

(e) any import tax that may become payable on the goods is covered by security**[; and]**.''; and

(b) by the deletion of paragraph *(f)*.

Amendment of section 418 of Act 31 of 2014

111. Section 418 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

''*(b)* if no period is in terms of paragraph *(a)* determined for the relevant class or kind of imported goods, within two years from the date of **[import]** clearance for inward processing of the first constituent goods from which the compensating products were obtained.''.

Substitution of section 421 of Act 31 of 2014

112. The following section is hereby substituted for section 421 of the Customs Control Act, 2014:

''**Contents of export clearance declarations for inward processed compensating products**

421. A clearance declaration submitted in terms of Part 2 of Chapter 16 for the export of goods as inward processed compensating products must, in addition to the information required in terms of sections 167 and 367, state**[—**

***(a)*]** that the goods are exported as inward processed compensating products**[; and**

***(b)* the reference number and date of the inward processing clearance declaration submitted in respect of the imported goods from which those compensating products were obtained]**.''.

Amendment of section 432 of Act 31 of 2014

113. Section 432 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(f)* of the following paragraph:

''*(f)* prescribing for purposes of section 122*(c)*, any persons, other than carriers, permitted to transport under the inward processing procedure imported goods or compensating products, by-products or waste obtained from the imported goods and the requirements and conditions for such transport; and''.

Amendment of section 439 of Act 31 of 2014

114. Section 439 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(d)* of the following paragraph:

''*(d)* the licensee of those premises who is to carry out the home use processing of the goods**[—**

(i) undertakes to comply with the requirements applicable to the home use processing of such goods, including—

***(aa)* any conditions subject to which the goods may be released for that procedure in terms of section 442; and**

***(bb)* any requirements and conditions as may be prescribed by rule, specified in the Customs Tariff or determined in terms of the Customs Duty Act or other applicable legislation; and**

(ii)] has granted permission for the home use processing of the goods on those premises and has advised the customs authority electronically in accordance with section 913 of such permission, if that licensee is not the person who cleared the goods for home use processing; and''.

Amendment of section 444 of Act 31 of 2014

115. Section 444 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

''*(b)* if not determined in the Customs Tariff, within two years from the date of **[import]** clearance for home use processing of the first constituent goods from which the compensating products were obtained.''.

Amendment of section 451 of Act 31 of 2014

116. Section 451 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(d)* of the following paragraph:

''*(d)* prescribing for purposes of section 122*(c)*, any persons, other than carriers, permitted to transport under the home use processing procedure imported goods or products obtained from the imported goods before those products become goods in free circulation and the requirements and conditions for such transport; and''.

Amendment of section 458 of Act 31 of 2014

117. Section 458 of the Customs Control Act, 2014, is hereby amended—

(a) by the addition of the word ''and'' at the end of paragraph *(b)*:

(b) by the substitution for paragraph *(c)* of the following paragraph:

''*(c)* the person who clears the goods for outward processing**[—**

(i) undertakes to comply with the requirements applicable to the outward processing of goods and the importation of outward processed compensating products obtained from those goods, including requirements and conditions as may be prescribed by rule, specified in a tax levying Act referred to in paragraph *(a)* or determined in terms of any other applicable legislation; and

(ii)] gives security for the payment of any export tax that may become payable on the goods**[; and]**.''; and

(c) by the deletion of paragraph *(d)*.

Amendment of section 460 of Act 31 of 2014

118. Section 460 of the Customs Control Act, 2014, is hereby amended—

(a) by the addition of the word ''and'' at the end of paragraph *(c)*; and

(b) by the deletion of paragraph *(d)*.

Amendment of section 580 of Act 31 of 2014

119. Section 580 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (6) for the words preceding paragraph *(a)* of the following words:

''When goods are delivered to licensed premises in compliance with a direction or authorisation issued in terms of subsection (1)*(b)*—''.

Amendment of section 581 of Act 31 of 2014

120. Section 581 of the Customs Control Act, 2014, is hereby amended—

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

''**Submission of removal and retention notices**'';

(b) by the renumbering of the existing provision as subsection (1); and

(c) by the addition of the following subsection:

''(2) When goods are in terms of a direction or authorisation issued in terms of section 580(1)*(a)* retained on any licensed premises, the licensee of those premises must submit a notice of retention of the goods containing such information as may be prescribed by rule, to the customs officer in charge of the state warehouse determined in terms of section 580(3), together with all supporting documents concerning those goods which are in the possession of that licensee.''.

Amendment of section 590 of Act 31 of 2014

121. Section 590 of the Customs Control Act, 2014, is hereby amended—

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

''A person entitled to goods in or accounted for in a state warehouse to which this Part applies may, within a timeframe as may be prescribed by rule **[from the date of publication of the list reflecting those goods]**, read with sections 908 and 909, reclaim those goods—'';

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

''(1A) If any goods reclaimed in terms of subsection (1) are goods that have been detained, the detention of the goods must be regarded to have been terminated if the customs authority in terms of that subsection releases the goods for home use or a customs procedure or otherwise approves the reclaim.''; and

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

''(2) Subsection (1) does not apply in respect of goods that—

(a) are or have been dealt with in terms of section 593;

(b) have been abandoned to the Commissioner;

(c) have been seized or confiscated and the seizure or confiscation has not been terminated; or

(d) **[that]** are to be destroyed.''.

Amendment of section 600 of Act 31 of 2014

122. Section 600 of the Customs Control Act, 2014, is hereby amended—

(a) by the deletion of the word ''and'' at the end of paragraph *(a)*;

(b) by the substitution for the full stop at the end of paragraph *(b)* of the expression ''; and''; and

(c) by the addition of the following paragraph:

''*(c)* measures to regulate the removal of goods from a state warehouse or premises where the goods are kept, including goods other than goods referred to in section 591, 596(4) or 598.''.

Amendment of section 626 of Act 31 of 2014

123. Section 626 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(c)* of the following paragraph:

''*(c)* prescribing simplified registration processes for casual importers or exporters importing or exporting goods below a prescribed value, or other categories of persons;''.

Amendment of section 627 of Act 31 of 2014

124. Section 627 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph *(c)* of the following paragraph:

''*(c)* contravenes section 604 **[or]**, 622 or 624(1); or''.

Amendment of section 695 of Act 31 of 2014

125. Section 695 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

''*(a)* The following debt payable to the Commissioner in terms of this Act is debt payable to the Commissioner for credit of SARS:

(i) Costs or expenses referred to in section 694*(b)* that were paid from SARS' own funds;

(ii) any state warehouse rent and additional charges payable to the Commissioner in terms of section 575(2)*(b)*(i);

(iii) any fees or charges for services rendered by the customs authority;

(iv) any other debt not collected for a revenue fund as contemplated in section 12(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or

(v) any interest charged on debt referred to in subparagraphs (i) to (iv).''.

Amendment of section 761 of Act 31 of 2014

126. Section 761 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

''*(b)* the need for the further detention of the goods **[have]** has fallen away, including where security is given in the case of goods detained by reason of a risk to collect tax or other debt that may be payable or become payable on the goods;''.

Amendment of section 762 of Act 31 of 2014

127. Section 762 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

''The customs authority may seize any goods to which this Chapter applies, including goods detained in terms of section **[734(1)]** 754(1) or (2)—''.

Amendment of section 780 of Act 31 of 2014

128. Section 780 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (3) of the following subsection:

''(3) The customs authority may grant an application in terms of subsection (2) only if the **[applicant submits written proof to the customs authority]** application is supported by written proof that the administering authority has no objection to the application.''.

Amendment of section 789 of Act 31 of 2014

129. Section 789 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (3) of the following subsection:

''(3) The customs authority may grant an application in terms of subsection (2) only if the **[applicant submits written proof to the customs authority]** application is supported by written proof that the administering authority has no objection to the application.''.

Amendment of section 823 of Act 31 of 2014

130. Section 823 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(a)* of the following paragraph:

''*(a)* who is the right-holder in respect of goods is guilty of an offence if that person contravenes or fails to comply with section 812(2), 813(2) or 815(1)**[*(a)*]** or (2); or''.

Amendment of section 825 of Act 31 of 2014

131. Section 825 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph *(b)* of the following paragraph:

''*(b)* the **[settling]** resolution of disputes arising from the implementation, enforcement or interpretation of this Act, the Customs Duty Act or the Excise Duty Act.''.

Amendment of section 832 of Act 31 of 2014

132. Section 832 of the Customs Control Act, 2014, is hereby amended by the renumbering of the existing provision as subsection (1) and the addition of the following subsection:

''(2) A customs officer or a SARS official may not exercise any of the powers referred to in subsection (1)*(a)* or *(b)* without the approval of the Commissioner or of the supervisor of that officer or official.''.

Amendment of section 877 of Act 31 of 2014

133. Section 877 of the Customs Control 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 876(2)]** non-prosecutable breach of this Act listed in terms of section 876(1) 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.''.

Amendment of section 896 of Act 31 of 2014

134. Section 896 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph *(b)* of the following paragraph:

''*(b)* the name and **[place of residence]** physical address of the person who is to institute the proceedings; and''.

Amendment of section 913 of Act 31 of 2014

135. Section 913 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (4) for paragraph *(a)* of the following paragraph:

''*(a)* the customs authority must, in the event of a communications breakdown—

(i) extend the deadline for submission of the document or communication by the time lost because of the breakdown and allow that person to submit the document or communication within the extended timeframe electronically or through that electronic system as soon as the breakdown has been resolved, if that document or communication falls within a category of documents or communications as may be prescribed by rule; or

(ii) allow that person to submit the document or communication in paper format within such period and at such place as the customs authority may determine or as may be prescribed by rule, if that document or communication does not fall within a category of documents or communications referred to in subparagraph (i); or''.

Amendment of section 32 of Act 44 of 2014

136. (1) Section 32 of the Tax Administration Laws Amendment Act, 2014, is hereby amended by the renumbering of the current provision as subsection (1) and the addition of the following subsection:

"(2) Subsection (1) comes into operation on the date on which paragraph 134 of Schedule 1 to the Tax Administration Act, 2011, comes into operation.".

(2) Subsection (1) is deemed to have come into operation on 20 January 2015.

Amendment of section 52 of Act 44 of 2014

137. (1) Section 52 of the Tax Administration Laws Amendment Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Subsection (1) comes into operation on **[a date determined by the Minister of Finance by notice in the *Gazette*]** the date on which section 187(2) of the Tax Administration Act, 2011, comes into operation.".

(2) Subsection (1) is deemed to have come into operation on 20 January 2015.

Short title and commencement

138. (1) This Act is called the Tax Administration Laws Amendment Act, 2015.

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

(3) The amendments to the Customs Duty Act, 2014, take effect immediately after the Customs Duty Act, 2014, has taken effect in terms of section 229 of that Act.

(4) The amendments to the Customs Control Act, 2014, take effect immediately after the Customs Control Act, 2014, has taken effect in terms of section 944(1) of that Act.

MEMORANDUM ON THE OBJECTS OF TAX ADMINISTRATION LAWS AMENDMENT BILL, 2015

1. PURPOSE OF BILL

The Bill proposes to amend the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Excise Duty Act, 1964, the Value-Added Tax Act, 1991, the Skills Development Levies Act, 1999, the Taxation Laws Second Amendment Act, 2008, the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, the Tax Administration Act, 2011, the Customs Duty Act, 2014, the Customs Control Act, 2014 and the Tax Administration Laws Amendment Act, 2014.

2. OBJECTS OF BILL

2.1 *Income Tax Act, 1962: Amendment of section 3*

2.1.1 International research done as part of the study on the transition to income tax self-assessment, confirms that the international trend is to move away from administrative income tax assessment towards self-assessment and voluntary compliance. According to the 2015 OECD comparative information series, just over half of the 56 revenue bodies surveyed, confirmed that their PIT system is designed and based on self-assessment principles. Various developed countries (e.g. Australia, New Zealand, Canada, UK and USA) and developing countries (e.g. Brazil and Chile) have already successfully implemented an income tax system based on self-assessment and voluntary compliance. Some African countries that have adopted self-assessment systems are Zambia, Nigeria, Kenia and Malawi.

2.1.2 The countries that have replaced administrative assessment procedures with self-assessment systems have done so with the objective of improving revenue performance through better compliance and more efficient administration. The added benefit of a move to self-assessment is the reduction of compliance costs to help promote business sector growth.

2.1.3 Various developments in the South African tax administration system have already taken place which effectively brought South Africa to the point where it, in practice, has a system of self-assessment. Examples of these reforms are the automatic processing of tax returns submitted by taxpayers, the introduction of a system of advance tax rulings, a new dispute resolution process and a revised penalty regime for administrative non-compliance. Hence, to a great extent the South African income tax assessment system may already be regarded as a self-assessment system based upon voluntary compliance.

2.1.4 However, it has also become clear that the legislative framework of South Africa's income tax self-assessment system still contains remnants of administrative assessment. These remnants include the various discretionary powers to be exercised by the Commissioner in the context of assessment contained in the Income Tax Act. To formalise income tax self-assessment in South Africa, thereby complying with international best practice, the remnants of administrative assessment must be removed.

2.2 *Income Tax Act, 1962: Amendment of section 35A*

2.2.1 This amendment seeks to resolve an impasse under the current wording of section 35A where the non-resident does not submit a return. For example:

> Mr. X (non-resident seller) sells his property in Hermanus in July 2015. SARS determines that R50 000 ''advance'' payment must be made in terms of section 35A, which Mr. X then pays into

SARS's bank account. The payment is allocated to the *provisional account* of Mr. X. The legislation requires that the amount withheld from any payment to the seller, Mr. X, is *an advance* in respect of his liability for normal tax for the year of assessment during which that property is disposed of by him. However, Mr. X does not submit a return for that year. Accordingly, the amount stays in the provisional account as section 35A is silent on what happens to this amount if no return is submitted.

2.2.2 In practice, this apparently happens in the majority of such transactions. Accordingly, amendments are proposed to provide that if the seller does not submit a return within 12 months after the end of the year of assessment, the payment of that amount is deemed to be a self-assessment in terms of section 95(3) of the Tax Administration Act, 2011.

2.3 ***Income Tax Act, 1962: Amendment of section 61***

Section 61 provides that, for the purposes of donations tax, the reference in section 96(2) to the taxable income of any deceased person shall be deemed to include a reference to the value of property disposed of by such person under any donation. Section 96(2) has been repealed and incorporated in the provisions of section 160(1) of the Tax Administration Act, 2011, hence this section is now redundant.

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

The proposed amendment to section 64K(1A)*(b)* provides that recipients of foreign dividends, paid by foreign companies, that are exempt from dividends tax need not submit a return.

2.5 ***Income Tax Act, 1962: Amendment of heading of Fourth Schedule***

The Fourth Schedule only applies to withholding in respect of normal tax and the wording of the heading should reflect that. Section 89*bis* was repealed by paragraph 6 of Schedule 1 to the Tax Administration Act, 2011, and thus the reference to it is redundant. The Fourth Schedule is directly connected to section 5, which imposes normal tax.

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

Ad para (a): This is a technical correction to clarify the meaning of the definition of ''employee'' for purposes of the Fourth Schedule.

Ad para (b): The proposed amendment changes the reference to a ''member'' of a trust to that of a ''settlor or beneficiary'' as a matter of style consistency.

Ad para (c): The additional reference to ''liability for normal tax'' in the definition of ''provisional tax'' is a clarification as to which payment is referred to.

Ad para (d): Paragraph 18 presently deals with exemptions from provisional tax, whereas the definition of ''provisional taxpayer'' also contains exceptions. It is proposed to consolidate the two, with the substance of paragraph 18 being added to the exclusion in the definition, and the consequential repeal of paragraph 18.

Ad para (e): The deceased estate of a person who dies on or after 1 March 2016 will, in terms of a proposal in the Taxation Laws Amendment Bill, 2015, be taxable in respect of all income and capital gains and losses realised in the estate with no attribution to heirs or legatees. The deceased estate will, with some

exceptions, be taxed as a natural person. Various issues arise regarding the application, to a deceased estate, of the provisions governing the payment of provisional tax. A deceased estate exists for a relatively short period. The imposition of a liability for the payment of provisional tax will impose an additional administrative burden on executors. A deceased estate would also be exposed to the risk of underestimation penalties, e.g. if an income-producing asset comes to light at a later stage of the winding up process. It is therefore proposed that a deceased estate be exempted from the payment of provisional tax. The effective date of this amendment is 1 March 2016.

Ad para (f): The proposed amendment is of a consequential nature. The Taxation Laws Amendment Act, 2014, amended paragraph (c*A)* of the definition of ''gross income'', by deleting references to restraint payments derived by natural persons. Restraint payments to natural persons were then inserted in paragraph (c*B)* of that definition. This amendment should have flowed through to paragraph *(a)* of the definition of ''remuneration'' in the Fourth Schedule by the insertion after the term (c*A)* of the term (c*B)*.

Ad para (g): Amounts referred to in section 8C(1A) are returns of capital ''received or accrued'', and not ''amounts included in income upon vesting of an equity instrument'' as is the case with the rest of section 8C. The Fourth Schedule general ''remuneration'' definition is not wide enough to include returns of capital. Paragraph *(e)* of the special inclusions in remuneration only includes a ''gain'' determined under 8C, and not a return of capital. Paragraph 11A refers back to the special inclusion contained in paragraph *(e)* and also refers to a ''gain from the vesting of an equity instrument'' and not a return of capital. There is thus no pay-as-you-earn (PAYE) withholding obligation on returns of capital, even though these are ''profits'' relating to the instruments acquired due to employment. As there is no good reason why these amounts should be excluded from the PAYE net it is proposed that paragraph *(e)* of the definition of ''remuneration'' and paragraph 11A both be widened to include amounts received or accrued as contemplated in section 8C(1A). Also see page 142 of the Budget Review under employee share schemes which states that *''the employees' tax provision related to the return of capital, will be reviewed to remove anomalies*''.

2.7 ***Income Tax Act, 1962: Amendment of paragraph 5 of Fourth Schedule***

See the entry for the amendment to section 3 in paragraph 2.1.

2.8 ***Income Tax Act, 1962: Amendment of paragraph 9 of Fourth Schedule***

Ad para (a): The proposed amendment is of a consequential nature. The definition of ''Pension Funds Act, 1956'' was amended to make full citations unnecessary and this amendment removes the redundant citation.

Ad para (b): During the 2015 Budget Review the Minister of Finance indicated that *''[e]mployees over 65 are experiencing a decrease in their take-home pay as a result of the move to medical tax credits, although they may claim back some of these amounts on assessment after the end of the tax year. To alleviate this burden, it [was] proposed that medical tax credits related to medical scheme contributions be taken into account for both PAYE and provisional tax purposes.''*

Under section 6B(3)*(a)*(i) of the Income Tax Act over 65s are entitled to an additional tax credit for medical scheme fees in excess of three times the ordinary medical scheme fees tax credit. The intention of the Budget announcement was to allow the additional tax credit to be taken into account for PAYE purposes.

No legislative change is required for provisional tax, as ''tax liability'' in paragraph 21 of the Fourth Schedule already takes account of the medical tax credits, i.e. they are included by implication. The IRP6 forms also make provision for the medical tax credits.

To effect this change as regards PAYE, a reference to the amount of additional medical expenses tax credit in section 6B(3)*(a)*(i) needs to be added to paragraph 9(6) of the Fourth Schedule.

2.9 ***Income Tax Act, 1962: Amendment of paragraph 11A of Fourth Schedule***

See the entry for the amendment to paragraph *(e)* of the definition of ''remuneration'' in paragraph 2.6.

2.10 ***Income Tax Act, 1962: Repeal of paragraph 11B of Fourth Schedule***

The discontinuation of the standard income tax on employees (SITE) was announced in the 2010 Budget Review and was implemented in a phased approach from 1 March 2011. The final year of assessment during which this was applied has been reached and the provision for SITE in paragraph 11B is therefore repealed.

2.11 ***Income Tax Act, 1962: Amendment of paragraph 11C of Fourth Schedule***

When paragraph 11C was inserted with effect from 1 March 2002, paragraph (i) of the proviso to subparagraph (1) provided for a transitional rule for years of assessment that ended on or before 28 February 2002. This provision is now obsolete and is accordingly being deleted.

2.12 ***Income Tax Act, 1962: Amendment of paragraph 13 of Fourth Schedule***

Ad para (a): Subparagraph (5) of paragraph 11C was deleted by section 10 of the Tax Administration Laws Amendment Act, 2013, and the reference to it is therefore obsolete and must be deleted.

Furthermore, a subparagraph (5) was added to paragraph 14 by section 22(1)*(b)* of the Taxation Laws Second Amendment Act, 2008 (substituted by section 16(1)*(a)* of the Revenue Laws Second Amendment Act, 2008, as from 29 August 2008). The addition of a reference to this subparagraph in the wording of paragraph 13(1) (embodied in section 21(1)*(a)* of Taxation Laws Second Amendment Act, 2008) was, however, tied to the original effective date in the Taxation Laws Second Amendment Act, 2008, and has not yet come into effect. The present amendment proposes to insert the reference as from the date of promulgation of the Tax Administration Laws Amendment Bill, 2015, and to repeal the pending provision in section 21(1)*(a)* of the Taxation Laws Second Amendment Act, 2008.

Ad para (b): The extension of a time period from seven to 14 days was similarly envisaged in section 21(1)*(b)* of the Taxation Laws Second Amendment Act, 2008, with effect from a date to be announced. It is now proposed to effect this amendment as from the date of promulgation of the Tax Administration Laws Amendment Bill, 2015, and to accordingly delete the pending

amendment in section 21(1)*(b)* of the Taxation Laws Second Amendment Act, 2008.

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

The whole of subparagraph (3) deals with returns, while paragraphs *(a)* and *(b)* refer to different times for submission of returns. This is a minor correction to make the wording more accurate.

2.14 ***Income Tax Act, 1962: Amendment of paragraph 17 of Fourth Schedule***

Ad para (a): Subparagraph (2) of paragraph 25 was deleted by paragraph 94 of Schedule 1 to the Tax Administration Act, 2011. The reference to it is accordingly deleted.

Ad para (b): Subparagraph (8) provided that every person who is a provisional taxpayer must apply to SARS for registration as a provisional taxpayer. This registration requirement is no longer required as paragraph 19 of the Fourth Schedule imposes an obligation to submit a return of an estimate for each year of assessment and section 25 of the Tax Administration Act, 2011, specifies that the return must be in the prescribed form and manner. The subparagraph can therefore be deleted.

2.15 ***Income Tax Act, 1962: Repeal of paragraph 18 of Fourth Schedule***

As the exempt entities that were listed in paragraph 18 are now listed as exclusions in the definition of ''provisional taxpayer'', paragraph 18 has become redundant and is therefore repealed.

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

Ad para (a): SARS no longer informs taxpayers individually that they should submit returns and the obligation to submit returns in paragraph 19 applies to all provisional taxpayers except if the Commissioner directs otherwise (i.e. specifically excludes certain classes of taxpayers, e.g. dormant companies, from this obligation).

The proposed amendment furthermore removes the requirement that the Commissioner must agree to accept an estimate lower than the basic amount i.e. the provisional taxpayer may submit an estimate of a lower amount than the basic amount if justified by the circumstances of the case.

Ad para (b): As part of the consequential amendments effected by Schedule 1 to the Tax Administration Act, 2011, paragraph 19(3) was amended by removing the words *"and the estimate as increased shall be final and conclusive"*. The reason for this was the concern that the words might be regarded as excluding the constitutional right of access to court, for example a review application under the Promotion of Administrative Justice Act, 2000, of the Commissioner's decision to adjust the estimate.

However, as a result of this amendment, it became arguable that increasing the estimate may be regarded as an ''assessment'' as defined in the Tax Administration Act, 2011, and consequently subject to objection under section 104(1) of that Act.

This was never the intention, as a provisional payment is not a final payment of the normal tax due for the relevant year of assessment. In the event of an overpayment resulting from an increased estimate, this will be taken into account in the annual assessment. In addition, interest from the effective date is

payable on overpayments by the taxpayer under the Income Tax Act. If one or more provisional payments, whether adjusted or not, are objected to and potentially suspended during the year of assessment for purposes of which these provisional payments are made, it would summarily defeat the objective of the provisional tax scheme given the time frames for lodging and dealing with objections and appeals.

If the taxpayer is dissatisfied with the estimate by SARS, there is an internal remedy available to the taxpayer under section 9 of the Tax Administration Act, 2011, to request a review of the decision by SARS. Furthermore, if liquidity concerns arise, the instalment payment provisions under that Act are also available to the taxpayer.

Ad para (c): The proposed amendment clarifies that both an estimate and an increase made by SARS under subparagraph (2) or (3) shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax. Furthermore, subparagraph (2) of paragraph 25 was deleted by paragraph 94 of Schedule 1 to the Tax Administration Act, 2011. The reference to it is accordingly deleted.

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

Ad para (a): The amendment proposes a clarification of the existing subparagraph (1) by adjusting the format and the wording.

The penalty envisaged in subparagraph (1)*(b)* is made subject to the reduction and remittance envisaged in subparagraphs (2B) and (2C), inserted by section 10(1)*(d)* and *(e)* of the Tax Administration Laws Amendment Act, 2014.

The reference to subparagraph (3) is deleted because that subparagraph was deleted by section 10(1)*(f)* of the Tax Administration Laws Amendment Act, 2014.

Ad para (b): The liability to pay provisional tax (the ''charging provision'') is contained in paragraph 17. Liability to pay under paragraph 17 is premised on the amount of taxable income estimated by such taxpayer in terms of paragraph 19(1). Paragraph 19(1)*(a)* and *(b)* are the paragraphs that dictate that provisional taxpayers must submit estimates of taxable income. These estimates are therefore a pre-requisite before liability to pay under paragraph 17 can arise. Liability to pay provisional tax is thus premised on a taxpayer first submitting to SARS an estimate of taxable income.

The recently promulgated paragraph 20(2A) deems a provisional taxpayer who has failed to submit a second provisional tax estimate to have submitted a NIL estimate. This paragraph is silent as to the extent of its operation (it does not limit its operation to paragraph 20 only) and therefore the NIL submission must be considered to be a NIL submission for all purposes that estimates are submitted under the Fourth Schedule. The proposed amendment clarifies that this paragraph will apply for purposes of paragraphs 19 and 20.

Paragraph 27 (the penalty for late payment of provisional tax) may only be levied when a provisional taxpayer fails to pay an amount of provisional tax for which he or she is liable. Thus, in order for the late payment penalty to be capable of being levied, there must be a liability to pay provisional tax. The liability to pay provisional tax is premised on the estimate. If the taxpayer

submits the estimate late, that estimate is deemed to be a NIL estimate. As the estimate is NIL, there is no resulting liability to pay provisional tax. Consequently, if there is no liability to pay, there can be no failure to pay on time, and thus no late payment penalty can be charged. The proposed amendment addresses this situation by replacing the words ''nil submission'' with ''an estimate of an amount of nil taxable income''.

This provision has, furthermore, also been amended to insert a time period to indicate by when a taxpayer will be considered as having submitted an estimate of an amount of nil taxable income i.e. where the estimate in respect of the relevant provisional payment is submitted prior to the date of the subsequent provisional payment under paragraph 21, 23 or 23A, the deeming provision in terms of this paragraph will not apply.

2.18 ***Income Tax Act, 1962: Amendment of paragraph 29 of Fourth Schedule***

The proposed amendment removes the reference to paragraph 11B as this paragraph is being deleted. Furthermore, the spelling of employees' tax is corrected.

2.19 ***Income Tax Act, 1962: Amendment of paragraph 30 of Fourth Schedule***

Paragraph 30(1)*(h)* is applicable to a condition prescribed under paragraph 13(12). Subparagraph (12) was deleted by section 11(1)*(b)* of the Tax Administration Laws Amendment Act, 2013, and the whole of paragraph *(h)* is accordingly deleted.

2.20 ***Excise Duty Act, 1964: Amendment of section 1***

The proposed amendment expands on the interpretation provisions inserted into the Customs and Excise Act, 1964, by the Customs and Excise Amendment Act, 2014. The aim is to provide general provisions to aid in the interpretation of the Excise Duty Act, 1964, which obviate the need to effect many consequential changes to the text. Because the existing Schedules to the Customs and Excise Act have been split into a ''Customs Tariff'' and an ''Excise Tariff'' to be added to the relevant legislation at a later stage, references in the Excise Duty Act to existing Schedule numbers will all change.

The Tariffs have not been finalised and therefore exact references cannot be inserted. The proposed amendment deals with the interpretation of such references. There are also many references in the Act to sections that have been repealed. The proposed amendment provides that these ''dead wood'' provisions must be disregarded unless the context otherwise indicates. Lastly provision is made for a number of existing provisions that were inserted in the 1964 Act before the 2014 Amendment Act and that have not yet come into effect by the effective date to be regarded as not having been enacted.

2.21 ***Customs and Excise Act, 1964: Amendment of section 4***

The proposed amendment aims to clarify that search aids such as mechanical, electrical, imaging or electronic equipment as well as sniffer dogs may be used by customs officers when conducting external searches of persons. It also provides that search aids may only be used by officers trained in the use of that particular aid and authorises the Commissioner to prescribe other search aids by means of rule.

2.22 ***Excise Duty Act, 1964: Repeal of section 4D***

The provision is repealed as the content is covered in section 749 of the Customs Control Act, 2014, which applies across the board to customs and excise matters.

2.23 ***Excise Duty Act, 1964: Amendment of section 27***

The proposed amendment aims to differentiate, in respect of goods brought into an excise manufacturing warehouse for use in such a warehouse, between locally produced goods which are dutiable under the Excise Duty Act, which must be entered for home consumption under the Excise Duty Act, and imported dutiable goods, which must be cleared for home use in terms of the Customs Control Act, 2014.

2.24 ***Excise Duty Act, 1964: Amendment of section 99***

The proposed amendment aligns the prescription period for liability in the circumstances prescribed in subsections (1), (2) and (4)*(a)* of section 99 to the general prescription period of three years.

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

The proposed amendment clarifies the policy as set out in Interpretation Note 49, that the purpose of section 16(2)*(f)* is to substantiate the entitlement to the deduction referred to in section 16(3)*(c)* to *(n)*. Section 16(2)*(g)* provides relief to recipient vendors when they are unable to obtain the correct information or documentation from supplying vendors.

2.26 ***Value-Added Tax Act, 1991: Amendment of section 20***

The proposed amendment relaxes the particulars required for a tax invoice without compromising the audit trail or policy intent for the requirements of the section.

2.27 ***Value-Added Tax Act, 1991: Amendment of section 21***

The proposed amendment relaxes the particulars required for a credit note and debit note in accordance with the proposed amendment in paragraph 2.26.

2.28 ***Value-Added Tax Act, 1991: Amendment of section 41***

Section 99 of the Tax Administration Act, 2011, specifies the limited time periods within which the Commissioner may make an additional assessment in terms of Chapter 8 of that Act. Furthermore, section 99(2) of that Act prescribes the circumstances when the prescription periods will not apply e.g. fraud, misrepresentation or non-disclosure of material facts. Paragraphs *(aa)* to *(cc)* of section 41*(d)* are in essence covered by the provisions of section 99(2), and it is proposed that these paragraphs be deleted to avoid any duplication. The proposed amendment effects this change and hence only the provisions of section 99(2) will apply in future.

2.29 ***Skills Development Levy Act, 1999: Amendment of section 1***

Section 1(1) defines a ''penalty'' as any penalty payable in terms of section 12. Section 6(5) requires the Commissioner to report penalties collected to the Director-General. Section 12(1) refers to late payment penalties. Additional penalties were previously levied under sections 12(3) and (4) on an employer who failed to pay an amount of levy with the intent to evade that employer's obligation under the Act.

However, with the inception of the Tax Administration Act, 2011, the additional penalty provisions under section 12(3) and (4) were deleted from the Act and are now dealt with under the understatement penalty regime in Chapter 16 of the Tax Administration Act, 2011. The only penalty therefore remaining in section 12 is the late payment penalty. The effect of the amendment is that the Commissioner's reporting obligation in section 6(5) is limited to penalties as specifically defined in section 12 which refers to late payment penalties only.

Consequently the Commissioner's reporting obligation in section 6(5) is limited to penalties as referred to in section 12 (i.e. late payment penalties). In order for the Commissioner to be able to report on all penalties levied in terms of the Skills Development Levies Act, a specific reference to the understatement penalty regime in the Tax Administration Act, 2011, needs to be made.

It is therefore proposed that the definition of a ''penalty'' in section 1(1) of the Skills Development Levies Act be amended so as to include an understatement penalty under Chapter 16 of the Tax Administration Act, 2011.

2.30 ***Skills Development Levy Act, 1999: Amendment of section 6***

Ad para (a): As refunds are now dealt with in terms of section 190 of the Tax Administration Act, 2011, this provision can be deleted.

Ad para (b): The proposed amendment is consequential to the above.

2.31 ***Taxation Laws Second Amendment Act, 2008: Amendment of section 21***

The amendment of section 21 of the Taxation Laws Second Amendment Act, 2008, is consequential to the amendments to paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, as explained in paragraph 2.12 above.

2.32 ***Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 14***

The proposed amendment inserts a reference to the Tax Administration Act, 2011, and grounds for the remittance of the penalty. Although the imposition of the underestimation penalty referred to in section 14 will be regulated by Chapter 15 of the Tax Administration Act, 2011, the grounds for remittance are unique to the tax type under the Mineral and Petroleum Resources Royalty Act. This is, for example, similar to the manner that the underestimation penalty for provisional tax under paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, is regulated.

2.33 ***Tax Administration Act, 2011: Amendment of section 1***

Ad para (a): This amendment proposes a common term including all customs and excise legislation to avoid having to refer to each Act separately.

Ad para (b): Greater transparency and the automatic exchange of information between tax administrations are important steps in countering cross border tax evasion, aggressive tax avoidance and base erosion and profit shifting (BEPS) through, for example, inappropriate transfer pricing arrangements.

Paragraph *(a)* of the proposed new definition is required to implement a scheme under which SARS may require South African financial institutions to collect information under an international tax standard, such as the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, which encompasses the Common Reporting Standard (CRS), that was endorsed by G20 Finance Ministers in 2014. In order to implement the standard on a consistent and efficient basis, certain financial institutions must report on all account holders and controlling persons, irrespective of whether South Africa has an international tax agreement with their jurisdiction of residence or whether the jurisdiction is currently a CRS participating jurisdiction. This will substantially ease the compliance burden on reporting financial institutions as they would otherwise have to effect system changes and collect historical information each time a jurisdiction is added to the CRS or South Africa concludes a new international tax

agreement. The reporting financial institutions will, pursuant to this amendment, be obliged by statute to obtain the information and provide it to SARS.

Paragraph *(b)* of the proposed new definition of ''international tax standard'' includes the country-by-country reporting standard for multinational enterprises. This originates from a report in September 2014 by the countries involved in the OECD/G20 BEPS Project titled ''Guidance on Transfer Pricing Documentation and Country-by-Country Reporting''. This report described a three-tiered standardised approach to transfer pricing documentation that consists of a master file, a local file and a country-by-country (CbC) Report. Its inclusion is part of establishing the framework for obtaining CbC Reports, irrespective of whether South Africa has international tax agreements with all the jurisdictions in which a group does business or whether the jurisdictions are currently CbC participating jurisdictions.

This amendment will come into operation on the date of promulgation of this Act.

Ad para (c): The definition of ''tax Act'' is amended to include the new definition ''customs and excise legislation''.

2.34 ***Tax Administration Act, 2011: Amendment of section 3***

Ad para (a): See the note on paragraph 2.33 above.

Ad para (b): The proposed amendment is a technical correction to align the current provision with the definition of ''international tax agreement'' in section 1. See also the note on paragraph 2.33 above.

2.35 ***Tax Administration Act, 2011: Amendment of section 6***

The proposed amendment is a technical correction to clarify that a SARS official may execute a task authorised by a SARS official in section 6(3).

2.36 ***Tax Administration Act, 2011: Amendment of section 11***

Section 11(1) was essentially intended to deal with civil proceedings where the authority to institute the proceedings is not otherwise prescribed in the specific sections of the Tax Administration Act, as well as other matters such as review applications under the Promotion of Administrative Justice Act, 2002 (''PAJA'').

Recent arguments surfaced that each SARS deponent in litigation must have a section 11(1) authorisation from the Commissioner, even if the deponent is otherwise authorised to institute or defend legal proceedings under the Act. Examples of the latter include section 163 (application for preservation order), section 172 (obtaining a civil judgment), section 177 (institution of proceedings for liquidation) and section 186 (application for compulsory repatriation of foreign assets of taxpayer). These sections specifically prescribe who may institute the proceedings, for example a senior SARS official in the case of a section 163 application. An additional authorisation under section 11 is not required for proceedings under these sections. This is given express effect by the words *''unless authorised to do so under this Act''* included in the proposed amendment.

2.37 ***Tax Administration Act, 2011: Amendment of section 22***

See paragraph 2.38.

2.38 ***Tax Administration Act, 2011: Amendment of section 26***

In order to ensure that the relevant financial institutions comply with international tax standards, such as the CRS, the proposed amendment will require them to register with SARS for this purpose. This registration will assist SARS in the administration and enforcement of international tax standards. A public notice will be published indicating the classes of persons to register and submit a return. This will be in line with the registration process that currently exists for purposes of the inter-governmental agreement concluded with the United States of America and the associated Foreign Account Tax Compliance Act (FATCA).

2.39 ***Tax Administration Act, 2011: Amendment of section 34***

The proposed amendment aims to include any person who is a party to an arrangement listed in a public notice by the Commissioner in terms of section 35(2) in the definition of a participant thereby imposing a reporting obligation on such persons.

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

The proposed amendment is a technical correction. This section still refers to the Securities Services Act, 2004 (Act No. 36 of 2004), that was repealed with effect from 3 June 2013 and replaced by the Financial Markets Act, 2012 (Act No. 19 of 2012).

2.41 ***Tax Administration Act, 2011: Insertion of section 42A***

In the context of information requests, interviews and field audits, legal professional privilege is often asserted in respect of information required by SARS. This section seeks to clarify the requirements that must be met for such assertion and provides for a procedure for matters where SARS does not accept the assertion of legal professional privilege. The first objective of section 42A is to resolve the matter between SARS and the taxpayer as opposed to starting with an adjudicative and generally more protracted process. This approach is followed elsewhere in the Act, for example section 66 which provides that a taxpayer subjected to a search and seizure and who intends to bring an application for the return of the seized relevant material or costs of damages, must first request this from SARS and only if SARS refuses, bring a High Court application.

Applying this approach to assertions of legal professional privilege regarding relevant material required by SARS means there will be a process to handle the volumes of such matters. The proposed amendment ensures that SARS will have a basic set of information to enable it to determine whether a document is subject to legal professional privilege. In the absence of this information SARS has no basis for determining whether it agrees or not with the taxpayer's assertion of privilege or a decision in this regard by an independent legal practitioner or court. The courts have warned against overreliance on a ''judicial peek'' to decide matters of confidentiality in decisions of the High Court in the case of privilege in a tax matter and the Constitutional Court in the case of promotion of access to information.

If SARS and the taxpayer agree that the material is privileged, alternative methods such as redaction of the privileged part and providing SARS with the remainder can be pursued. This will substantially reduce the number of cases that require adjudication by an independent legal practitioner or the High Court.

2.42 ***Tax Administration Act, 2011: Amendment of section 46***

This amendment deals with foreign information requests. During the course of an audit of a South African member of a multinational group it may be

necessary to obtain relevant material that is held by other members of the group located outside South Africa. While the South African members of some groups are willing to obtain and furnish such material to SARS, others assert that they are not in a position to do so. In Practice Note 6 of 1999 SARS noted that *"taxpayers may face difficulties obtaining information from foreign connected persons*". Such difficulties would not be encountered if taxpayers were required to produce only their own documents. However, due to the relationship between the parties the Commissioner considers it reasonable to expect taxpayers to obtain such information where necessary. An amendment is proposed to ensure that taxpayers do not assert that they are unable to obtain and provide relevant material, only to provide it at a later stage, for tactical reasons. A minimum period for requesting relevant material held by a group member that is not in South Africa is proposed (i.e. 90 days from the date of the request unless reasonable grounds for an extension are submitted), together with a prohibition of a taxpayer's subsequent production of that material if it was not produced when requested. If SARS is able to obtain the information under an international tax agreement or standard, which is a more protracted process, both parties may use it subject to the conditions of confidentiality imposed under the treaty.

The prohibition against producing the documents at a later stage may be relaxed by a competent court on the basis of circumstances outside the control of the taxpayer and any connected person in relation to the taxpayer.

Furthermore, the proposed amendment clarifies that a request by SARS for relevant material from third parties is limited to information maintained or kept or that should reasonably be maintained or kept by the person in relation to the taxpayer.

2.43 ***Tax Administration Act, 2011: Amendment of section 47***

The proposed amendment aims to clarify which persons may be interviewed or requested to submit relevant material where the person whose tax affairs is under verification or audit is a company or other legal entity. A legal entity comprises of people and if they have knowledge of the tax affairs of the legal entity that employs them, they are the people that SARS must interview for purposes of the verification or audit. It is the function of SARS auditors to evaluate the various sources of information which are placed before them to ascertain the correct tax liability. SARS auditors are regularly confronted by discrepancies between documents, statements and other information available to them which they must reconcile in order to clarify issues of concern regarding the tax liability of the taxpayer. Hence, the proposed amendment provides that a senior SARS official may require—

- a current employee of the entity; or
- a person who holds an office in that entity,

to attend in person at a time and place designated in the notice for the purpose of being interviewed by a SARS official concerning the tax affairs of the relevant taxpayer, where the interview is intended to clarify issues of concern to SARS to render further verification or audit unnecessary or to expedite the completion of a current audit or verification. The person so interviewed may also be required to submit relevant material under his or her control.

2.44 ***Tax Administration Act, 2011: Amendment of section 49***

This amendment allows SARS to request a person being questioned during a field audit to provide information under oath or solemn declaration, similar to SARS's power to do so under section 46(7). The obtaining and use of information under oath or solemn declaration is common practice in most civil and criminal investigations, including in comparable jurisdictions (see, for example, the Australian Tax Office's audit manual which provides for obtaining information in this manner). Providing information under oath or solemn declaration also protects a person by adding evidentiary value to what was said and protects the person from allegations that he or she provided

different information. In the context of criminal matters, the person is protected under section 44, which obliges SARS to conduct the investigation with due recognition of the taxpayer's constitutional rights as a suspect in a criminal investigation.

2.45 ***Tax Administration Act, 2011: Amendment of section 51***

The proposed amendments will allow SARS to use inquiry proceedings under Part C of the Tax Administration Act to trace assets that may be executed against to satisfy an outstanding tax debt without having to first sequestrate or liquidate a taxpayer and then follow the insolvency enquiry route, which generally takes a very long time to conclude and is not under the control of SARS. The amendment furthermore corrects an incorrect cross-reference.

2.46 ***Tax Administration Act, 2011: Amendment of section 68***

Section 21 of the Customs Control Act, 2014, is broadened to include a similar provision to that of section 68(1)*(g)*, hence the reference to the ''Customs and Excise Act'' in section 68 can be deleted.

2.47 ***Tax Administration Act, 2011: Amendment of section 69***

The proposed amendment provides that taxpayer information obtained by a current or former SARS official in the course of performance of duties under a tax Act may be disclosed by that official for purposes of the administration of customs legislation. See also paragraph 2.33 ad para *(a)*.

2.48 ***Tax Administration Act, 2011: Amendment of section 70***

The proposed amendment is a technical correction.

2.49 ***Tax Administration Act, 2011: Amendment of section 93***

Section 93(1)*(d)* of the Tax Administration Act was inserted to allow taxpayers a less formal mechanism to request corrections to their returns and so reduced assessments, without having to follow the objection and appeal route to do so. However, taxpayers have attempted to use these requests for correction to raise substantive issues that would more properly be the subject of an objection under section 104, so as to bypass the timeframes and procedures for an objection. Furthermore, taxpayers and unregistered tax practitioners have also attempted to use the requests for correction to obtain fraudulent refunds for multiple years. For these reasons, the wording has been amended to provide that SARS must be satisfied that there is a ''readily apparent'' error to clarify the nature of the errors anticipated here.

The purpose of section 98 was a prescription override remedy for the taxpayer in specified circumstances—see full discussion in paragraph 2.50. However, the outcome of exercising the remedy will not necessarily result in a withdrawal of the assessment but rather the issue of a reduced assessment. Hence this remedy should not have been included in section 98 but in the section that provides for reduced assessments i.e. section 93. The remedy provided under section 98(1)*(d)* has now been included under the taxpayer's actual remedy in the case of readily apparent errors i.e. to request a reduced assessment (see the proposed new section 93(1)*(e)*). In addition, section 99(2) was amended to allow for the circumstances in the new section 93(1)*(e)* to constitute an exception to prescription, hence prescription does not apply. In addition section 99(2)*(d)*(iii) was also amended to cater for the circumstances where SARS becomes aware of the problem but is unable to issue the reduced assessment before expiry of the period for the issue of reduced assessments under section 99(1).

2.50 ***Tax Administration Act, 2011: Amendment of section 98***

Finality in a tax assessment is important for both taxpayers and SARS, which is why there is a period within which a SARS may revise an assessment to the benefit or otherwise of a taxpayer. This period, which is commonly known as the prescription period, is either three years for taxes assessed by SARS or five years for taxes that are self-assessed by taxpayers. Limited exceptions to prescription apply where fraud, misrepresentation or material non-disclosure exists in a tax return, in order to give effect to the outcome of a dispute resolution process—such as an objection or appeal to a court.

The original purpose of the insertion of section 98(1)*(d)* was to address problems with erroneous assessments which are often only discovered after all prescription periods and remedies have expired and it becomes apparent that it would be inequitable to recover the tax due under such assessments. An example would be that of a retiree who was assessed in error based on incorrect information supplied by an employer or a retirement fund, who fell below the tax threshold after retirement and thus ceased to submit returns to SARS and was only traced some years later in order to recover the outstanding tax debt as a result of the incorrect assessment. The insertion of the new paragraph aimed to address this problem by allowing for the withdrawal of assessments in specified narrow circumstances, which were the following:

- The assessment must be based on a readily apparent factual error by the taxpayer in a return; a processing error by SARS; or a return fraudulently submitted by a person not authorised by the taxpayer;

- The assessment imposes an unintended tax debt in respect of an amount that the taxpayer should not have been taxed on;

- The recovery of the tax debt under the assessment would produce an anomalous or inequitable result;

- There is no other remedy available to the taxpayer; and

- It is in the interest of the good management of the tax system.

However, it immediately became apparent that taxpayers interpreted the section as a general mechanism to address their ''old mistakes'' in assessments that were final, where the taxpayer could no longer request a reduced assessment or where the objection process as well as appeals to the tax and higher courts had been exhausted. In respect of most of these matters there was no unintended tax debt the recovery of which would be inequitable. In actual fact, if most of the assessments sought to be withdrawn were given effect to, SARS would have had to pay refunds. The insertion of section 98(1)(*d*) was not intended as a substitute to the above procedures nor as a ''post-appeal appeal'' remedy, including in one memorable case an attempt to reverse an adverse judgment by the Supreme Court of Appeal. The true intention was to address adverse assessments resulting from factors beyond the control of the taxpayer, for example the failure to submit a return or submission of an incorrect return by a third party under section 26 or by an employer under a tax Act, where the right of the taxpayer to object or seek an extension within the period referred to in section 104(3) has expired. This happens where a taxpayer only becomes aware of the problem after three years and can no longer object against the assessment, which has become final.

Accordingly, it is proposed that section 98(1)(*d*) be deleted in order to avoid the problems discussed and moved to a new section 93(1)*(e)*, in an amended form. See the notes on paragraph 2.49 for a discussion in this regard.

2.51 ***Tax Administration Act, 2011: Amendment of section 99***

Too many of SARS's resources are currently spent on information entitlement disputes, as opposed to conducting the audit within the period that additional assessments, if required, may be issued. This results in insufficient time to ensure SARS has all relevant information at its disposal to make correct assessment. In some cases, taxpayers, particularly large corporates, take more than six months to provide information required by SARS by simply failing to do so, disputing SARS's right to obtain the information, attempting to impose conditions on access to the information and attempting to require specific mechanisms for accessing the information. Information entitlement disputes, particularly if pursued in the High Court, can take more than one year to resolve. These failures to provide information or information entitlement disputes are often tactical or even vexatious, given the fact that taxpayers are very much aware of the period within which SARS must finalise the audit and issue additional assessments, if required.

Information entitlement disputes based on often convoluted or strained interpretations of the relevant provisions of the Tax Administration Act, have led to legislative changes over the past few years. As an example last year the Tax Administration Laws Amendment Act, 2014, had to clarify that a taxpayer cannot unilaterally decide the relevance of ''relevant material'' and refuse to even show it to SARS.

Additionally, some matters subject to audit may be so complex that it is impossible to meet the prescription deadline, particularly in the context of audits requiring SARS to consider the application of a general anti-avoidance rule (GAAR), or transfer pricing audits. Transfer pricing audits are fundamental to counteracting the erosion of the South African tax base and the shifting of profits to other jurisdictions—generally referred to as BEPS. It is, therefore proposed that prescription be extended, by prior notice of at least 30 days to the taxpayer, by a period appropriate to a delay arising from:

- failure by a taxpayer to provide all the relevant material requested within the period under section 46(1) or the extended period under section 46(5);

- resolving information entitlement disputes, including all legal proceedings.

Furthermore, the Commissioner may also, by prior notice of at least 60 days to the taxpayer, extend prescription by three years in the case of assessment by SARS and two years in the case of self-assessment where the audit or investigation relates to:

- the application of the doctrine of substance over form;

- the application of the GAAR (Part IIA of Chapter III of the Income Tax Act, 1962, section 73 of the Value-Added Tax Act, 1991, or any other general anti-avoidance provision under a tax Act);

- the taxation of hybrid entities or instruments;

- transfer pricing matters (section 31 of the Income Tax Act, 1962).

The extension must take place before the existing prescription period has come to an end. The requirement of prior notice before extension of prescription is to allow the taxpayer to make representations why it should not be extended. The grounds for the extension will be included to demonstrate that the jurisdictional requirements for the extension have been met.

2.52 ***Tax Administration Act, 2011: Amendment of section 105***

The current wording of section 105 creates the impression that a dispute arising under Chapter 9 may either be heard by the tax court *or* a High Court

for review. This section is intended to ensure that internal remedies, such as the objection and appeal process and the resolution thereof by means of alternative dispute resolution or before the tax board or the tax court, be exhausted before a higher court is approached and that the tax court deal with the dispute as court of first instance on a trial basis. This is in line with both domestic and international case law. The proposed amendment makes the intention clear but preserves the right of a High Court to direct otherwise should the specific circumstances of a case require it.

2.53 ***Tax Administration Act, 2011: Amendment of section 111***

The proposed amendment aligns this provision with similar requirements for members of the tax court under section 120(2). There is no apparent rationale for the differentiation between the members of the tax court under section 120(2) and persons appointed as chairpersons of the tax board.

2.54 ***Tax Administration Act, 2011: Amendment of section 135***

The Supreme Court Act, 1959 (Act No. 59 of 1959), was repealed by the Superior Courts Act, 2013 (Act No. 10 of 2013). Section 135(3) refers to section 21 of the repealed Supreme Court Act. The right to appeal is now regulated by section 17 of the Superior Courts Act, 2013, and the proposed amendment inserts the correct reference.

2.55 ***Tax Administration Act, 2011: Amendment of section 146***

It is proposed that section 146*(b)*(ii) and (iii) be deleted in the context of settlement as the recoverability of the tax debt constitutes unnecessary criteria to determine if a settlement should be concluded. Under the pay-now-argue-later principle, the recovery of the disputed tax is separated from the pursuance of the objection and appeal. The proposed amendment follows this approach. The recoverability of the tax debt rather relates to debt write-off.

2.56 ***Tax Administration Act, 2011: Amendment of section 177***

The proposed amendment aligns section 177 with the institution of other High Court proceedings and impactful recovery proceedings e.g. sections 163, 179, 185 and 186, which proceedings require the authorisation of senior SARS officials.

2.57 ***Tax Administration Act, 2011: Amendment of section 179***

Ad para (a): Section 179 provides that SARS may by notice to a person who holds or owes (or will hold or owe) money for or to a taxpayer, require that person to pay the money to SARS in satisfaction of the taxpayer's tax debt. The current wording requires a senior SARS official to issue notices of third party appointments (Form AA88). In line with other amendments proposed in this Bill, it is proposed that the senior SARS official approve the issue of the notices. In view of SARS's substantial debt book, the issue of these notices may be automated. The proposed amendment will make it clear that if a senior SARS official has approved the system criteria for issuing the notices their issue may be automated. This only occurs under prescribed circumstances, in particular where there is an outstanding tax debt and letters of demand have been issued.

Ad para (b): The proposed amendment provides that SARS may only issue the notice after delivery to the tax debtor of:

- A final demand for payment which must be delivered at the latest 10 business days before the issue of the notice. The letter of demand must set out all the recovery steps that SARS

may take if the tax debt is not paid and the available debt relief mechanisms under the Act; and

- Where the recovery steps relate to section 179 the notice must in addition also set out the following:

  o if the tax debtor is a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS based on the basic living expenses of the tax debtor and his or her dependants; and

  o if the tax debtor is not a natural person, that the tax debtor may within five business days of receiving the demand apply to SARS for a reduction of the amount to be paid to SARS based on serious financial hardship.

SARS need not issue a demand in terms of this section if a senior SARS official is satisfied that to do so would prejudice the collection of the tax debt.

2.58 ***Tax Administration Act, 2011: Amendment of section 185***

This proposed amendment clarifies that the senior SARS official referred to in section 185 only needs to authorise the application while the execution thereof can be done by a person referred to in section 6(4) of the Tax Administration Act.

2.59 ***Tax Administration Act, 2011: Amendment of section 187***

Ad para (a): The proposed amendment is a technical correction to clarify that interest accrues and is also payable.

Ad para (b): Under section 190(5) a refund paid by SARS which was not properly payable, for example as a result of fraud, is regarded as an outstanding tax debt summarily recoverable by SARS. As with any other tax debt, interest must also accrue and be payable on this amount in respect of the time taken to recover the amount of the refund not properly payable. This requires an effective date under section 187(3) from which date the interest will accrue.

Ad para (c): The right to request interest remittance cannot be open ended or finality will never be achieved. This limitation did apply in terms of repealed provisions of some of the tax Acts other than the Tax Administration Act.

2.60 ***Tax Administration Act, 2011: Amendment of section 190***

Ad para (a): The proposed amendment clarifies that a taxpayer is entitled to a refund and interest thereon as provided for in a tax Act.

Ad para (b): The current wording of section 190(4) leads to the perception that a taxpayer must, in addition, also *claim* an assessed refund, and that the taxpayer then only has 3 years for an administrative assessment or 5 years for self-assessment, within which to claim the refund. Paragraph *(b)* of subsection (1) was incorrectly deleted as the limitation periods only apply where an erroneous overpayment of tax was made. A refund properly refundable and payable under a tax Act in terms of section 190(1)*(a)* must be paid by SARS and there is no limitation period for such payment.

The wording is further amended to provide where a refund of an amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment, is not paid within this period, it is regarded as a payment to the National Revenue Fund, as is the case with any other claim that has prescribed and may be regarded as a final payment. The requirement to ''claim'' the refund in terms of the previous wording is thus removed.

The proposed amendment further provides that the refund must be made within three years (assessments by SARS) or five years (self-assessment) from the later of the date of the assessment or the erroneous payment so as to not prejudice taxpayers aiming to claim a refund of an amount where the payment made in respect of an assessment is made before the date of such assessment.

Ad para (c): The proposed amendment clarifies that interest accrues and is payable on the amount of a refund that was not properly payable from the date of such payment.

Ad para (d): SARS and banks have an arrangement whereby banks report suspicious refunds to SARS. This is pursuant to a bank's common law duty to report suspected fraud through the use of bank accounts. Under this arrangement, the banks agreed to hold the funds for a short period to allow SARS to investigate the circumstances around the refund. If the refund is false, SARS recovers the refund directly from the bank by appointing the bank as a responsible third party under section 179 as the amount under section 190(5) is regarded as an outstanding tax debt from the date of payment thereof.

In view of the high incidence of refund fraud, in particular the payment of refunds of relatively small amounts that fall under SARS's ''stopper'' threshold *as well as* VAT refunds generated by fictitious transactions or inflated input tax claims, there is a clear and pressing need to preserve the arrangement between the banks and SARS. The preservation of the account is of particular importance in view of the practice to dissipate or transfer the amounts to various other accounts or the withdrawal thereof as soon as or shortly after the fraudulent refunds are deposited.

As a result of the possibility that the Protection of Personal Information Act, 2013 (POPI), now supersedes or limits the common law reporting duty of banks, the potential exposure by banks to claims by clients for damages resulting from the temporary ''freezing'' of accounts and the disclosure of personal information to SARS potentially contrary to POPI, this amendment will ensure that such preservation will be lawful and the reporting by banks to SARS will remain lawful and not subject to criminal sanctions under POPI. Although it is not absolutely clear that POPI supersedes or limits the common law reporting duty of banks, it is submitted that the proposed amendment is necessary to ensure certainty in this regard. The Financial Intelligence Centre Act, 2001 (FICA), imposes a reporting duty on banks of certain suspicious transactions to the FIC. Currently, section 29(1)*(b)*(i) of FICA imposes a reporting duty in respect of a transaction that ''may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service''. It is not clear that these provisions cover the reporting of fraudulent tax refunds and it is similarly submitted that the proposed amend-

ment is necessary to ensure certainty in this regard. Hence the proposed amendment provides that where the Bank reasonably suspects that the payment of an amount is related to a tax offence, which includes fraudulent tax refunds by definition, the Bank must immediately report the suspicion to SARS and if so instructed by SARS not proceed to carry out any transaction in respect of the amount for a period not exceeding two business days, unless SARS or a High Court directs otherwise or SARS issues a notice under section 179.

Ad para (e): The refusal of a refund under an assessment referred to in section 1*(a)* involves many factors, calculations and other aspects of determining the amount of tax or a refund. Accordingly, the whole of such assessment must be disputed under the general objection provision in section 104, and not just the decision not to authorise a refund. The amendment clarifies that the remedy under subsection (6) only applies to a decision not to refund an amount erroneously paid in respect of an assessment.

2.61 ***Tax Administration Act, 2011: Amendment of section 191***

The proposed amendment is a technical correction to correct the spelling of ''write off''. Furthermore, the proposed amendment inserts a new defined term ''customs and excise legislation''.

2.62 ***Tax Administration Act, 2011: Amendment of section 212***

A proposed amendment to section 34 aims to include any person who is a party to an arrangement listed in a public notice by the Commissioner in terms of section 35(2) in the definition of a participant thereby imposing a reporting obligation on such persons. As this is a third party reporting obligation, i.e. these persons do not directly or indirectly derive or are assumed to derive a tax benefit or a financial benefit by virtue of an arrangement, it would be unreasonable to subject them to the stricter reportable arrangement penalties contained in section 212(1) and (2). Hence the new subsection (3) inserts a separate penalty provision for this category of persons.

2.63 ***Tax Administration Act, 2011: Amendment of section 213***

The proposed amendment is a technical correction to cater for a non-compliance penalty imposable under a tax Act other than the Tax Administration Act.

2.64 ***Tax Administration Act, 2011: Amendment of section 225***

The amendment proposes an amendment to the definition of ''default'', by linking it to the definition of ''understatement'' that in essence covers the current criteria in the definition of ''default''.

2.65 ***Tax Administration Act, 2011: Amendment of section 226***

The proposed amendment provides that an audit, unrelated to the default being disclosed by an applicant, will not disqualify an applicant for full voluntary disclosure relief. As an example, an audit of a taxpayer related to a PAYE issue is in progress. The same taxpayer may wish to submit a disclosure for an amount of VAT. There may be no correlation between these two tax issues and, as such, the enforcement action on the PAYE issue may not be a cause to restrict the relief in respect of the VAT disclosure. The proposed amendment provides that the audit or investigation must be related to the default the person seeks to disclose.

2.66 ***Tax Administration Act, 2011: Amendment of section 227***

Currently one of the requirements for a valid voluntary disclosure is that the disclosure must involve a ''default'' which has not previously been disclosed by the applicant. The proposed amendment now requires that the ''default'' must not be a default that occurred within five years of the disclosure of a similar ''default'' by the applicant, thereby widening the scope of the voluntary disclosure regime. Furthermore, the potential imposition of an understatement penalty as a requirement for a valid voluntary disclosure has been interpreted by SARS as meaning that in the absence of voluntary disclosure relief, an understatement penalty would be leviable. On this interpretation, a *bona fide* inadvertent error as contemplated in section 222(1) does not qualify for voluntary disclosure relief. A default that does not constitute a substantial understatement and where the other behaviours contemplated in section 223 are also not present would also not qualify for voluntary disclosure relief, notwithstanding that SARS may take a contrary view with regard to the assessment of the relevant behaviour. The proposed amendment aims to resolve this issue by amending the requirement to rather refer to the behaviour in Column 2 of the understatement penalty percentage table in section 223, as opposed to involving the potential imposition of an understatement penalty in respect of the ''default''.

2.67 ***Tax Administration Act, 2011: Amendment of section 229***

The proposed amendment is of a textual nature and furthermore broadens the voluntary disclosure relief to include 100% relief in respect of administrative non-compliance penalties imposed under Chapter 15 of the Tax Administration Act or another tax Act for the late payment of a tax.

2.68 ***Tax Administration Act, 2011: Amendment of section 235***

The purpose of section 235(2) is to assist the prosecution in proving tax offences such as tax evasion, which is necessary given the fact that if the State is unable to effectively prosecute those who defraud it of revenue which rightly belongs in the public coffers, the tax system will be undermined and significantly weakened. The provision assists the prosecution where it can show that a person has made a false statement but cannot conclusively show that the person was aware of the falsity of the statement, i.e. proving the absence of reasonable cause for making the statement. Almost invariably the information relevant to the determination of reasonable cause was peculiarly within the knowledge of the accused. In terms of the provision, although potentially an incursion into the right to silence, the person does not have a ''reverse onus'' (which was the case under previous tax laws) to factually prove his or her innocence, but will only have an ''evidentiary burden'' to prove that there is a reasonable possibility that the he or she was ignorant of the falsity of the fraudulent statement and that such ignorance was not due to negligence. This is aligned with the approach taken by the Constitutional Court in the cases of *S v Manamela and Another (Director-General of Justice Intervening)* 2000 (3) SA 1 (CC) and *S v Singo* 2002 (4) SA 858 (CC). In these cases the Constitutional Court, that has consistently struck down reverse onuses which place a burden on an accused person to prove any facts in his or her defence on a balance of probabilities, has exercised its remedial powers under section 172(1) of the Constitution, to strike down the reverse onuses, but to replace them by reading in evidentiary burdens in their place.

However, based on further legal review there is a risk that on a literal interpretation of the provision, particularly the use of wording such as ''must'' and ''be regarded as guilty of the offence'', a court may find that it still gives rise to a reverse onus rather than an evidentiary burden. To ensure certainty that the provision can only constitute an evidentiary burden, the amendment is proposed.

2.69 ***Tax Administration Act, 2011: Amendment of section 236***

The proposed amendment is a technical correction.

2.70 ***Tax Administration Act, 2011: Amendment of section 251***

The proposed amendment aims to clarify that a delivery may also be made to a registered user's electronic filing page. A registered user is a person who has registered for a SARS electronic filing service such as eFiling, esyFile, a third party data submission channel or such like and their electronic filing page is akin to a web based e-mail used exclusively by SARS and the person to whom the page belongs. The proposed amendment will come into effect on the date that the electronic communication rules issued under section 255 were published, i.e. 25 August 2014.

2.71 ***Tax Administration Act, 2011: Amendment of section 252***

See paragraph 2.70.

2.72 ***Tax Administration Act, 2011: Amendment of section 256***

SARS is often approached to verify the Tax Compliance Status of an entity for periods before the current date of the request. The proposed amendment enables SARS to provide the tax compliance status of a taxpayer irrespective of the period to which the request relates in order to assist in the review of past transactions by the taxpayer's auditors and regulatory authorities.

2.73 ***Tax Administration Act, 2011: Amendment of section 257***

The proposed amendment aims to align this provision with the amended wording of section 256 and furthermore enables the Minister of Finance to prescribe by regulation when SARS must report updates of or a change in the tax compliance status of certain taxpayers, for example taxpayers with government contracts.

2.74 ***Tax Administration Act, 2011: Amendment of section 270***

The proposed amendment aims to further alleviate unintended consequences of the retrospective application of an understatement penalty. Section 187(3)*(f)* provides that the effective date for purposes of the calculation of interest in relation to an understatement penalty, is the effective date for the tax understated. As Chapter 12 (together with the accompanying amendments to the interest provisions of the various tax Acts as contained in Schedule 1 to this Act) will only come into effect upon a date to be determined by the President by proclamation, the payment of interest on an understatement penalty under section 222 would have to be calculated in the manner that interest on additional tax (the predecessor to understatement penalties) was calculated under the relevant interest provisions of the specific tax Act. The proposed amendment inserts a transitional provision to this effect with a specific effective date, i.e. the effective date as referred to in section 187(3)*(f)*, for tax understated before the implementation date of the Tax Administration Act, will be regarded as the commencement date of the Act, i.e. 1 October 2012. Once Chapter 12 (together with the accompanying amendments to the interest provisions of the various tax Acts as contained in Schedule 1 to this Act) has been promulgated, the accrual and payment of interest on an understatement penalty will be calculated in the manner prescribed by Chapter 12 in respect of an understatement penalty imposed after such date.

2.75 ***Customs Duty Act, 2014: Amendment of section 1***

The proposed amendments correct incorrect references.

2.76 ***Customs Duty Act, 2014: Amendment of section 24***

As not all persons liable for the payment of duty should be allowed to apply for a deferment benefit, the proposed amendment aims to empower the Commissioner to determine the persons that may apply for a deferment benefit by rule. The proposed amendment is also intended to provide clarity by expressly stating that a customs broker who manages his or her own deferment benefit for purposes of section 39(2)*(a)* may apply for a deferment benefit.

2.77 ***Customs Duty Act, 2014: Amendment of section 25***

The proposed amendments in paragraphs *(a)* to *(f)* are required to provide for a compulsory suspension of a duty deferment benefit in the event of non-payment of deferred duty or other tax or amount payable within a three working day grace period, pending payment of the amount payable. Immediate suspension of the benefit is required to protect the *fiscus* against any further imminent risk. In order to comply with the constitutional requirement of fairness, provision is made for *ex post facto* consideration of representations regarding the reasons for the failure to pay. To provide flexibility, provision is also made for compulsory suspension of a duty deferment benefit as described in the proposed amendment to constitute a ground for withdrawal of the benefit.

2.78 ***Customs Duty Act, 2014: Amendment of section 39***

The proposed amendment broadens the circumstances in which a customs broker will not be relieved of liability for payment of a duty. A customs broker may only act on authority of a clearance instruction of his or her principal containing the customs broker's mandate, and should not be relieved of liability in terms of section 39(1) of the Customs Duty Act if that customs broker was not in possession of such a clearance instruction.

2.79 ***Customs Duty Act, 2014: Amendment of section 67***

The current Note 7 to Schedule 5 to the Customs and Excise Act, 1964, has a broader application than section 67 of the Customs Duty Act and the proposed amendment is aimed at broadening the provision to bring it in line with Note 7. The proposed amendment provides flexibility to enable the Commissioner to authorise payments of refunds or drawbacks to persons other than the person who made the payment or that person's representative. Such an authorisation can in terms of section 918 of the Customs Control Act, 2014, be granted subject to conditions.

2.80 ***Customs Duty Act, 2014: Amendment of section 182***

The proposed amendment enables the registration of importers, exporters, producers and suppliers for purposes of international trade agreements to be done directly in terms of Chapter 28 of the Customs Control Act, 2014, rather than to replicate that Chapter by means of rules under the Customs Duty Act as currently envisaged by section 182.

2.81 ***Customs Duty Act, 2014: Amendment of section 185***

The proposed amendment enables the registration of exporters, producers and suppliers for purposes of non-reciprocal generalised systems of preferences to be done directly in terms of Chapter 28 of the Customs Control Act, 2014, rather than to replicate that Chapter by means of rules under the Customs Duty Act as currently envisaged by section 185.

2.82 ***Customs Duty Act, 2014: Amendment of section 202***

The proposed amendment aligns this section with the proposed amendment to section 877(3) of the Customs Control Act, 2014. See paragraph 2.133.

2.83 ***Customs Control Act, 2014: Amendment of section 1***

The proposed amendment corrects an incorrect cross-reference.

2.84 ***Customs Control Act, 2014: Amendment of section 21***

The proposed amendment broadens the scope of the confidentiality provision and aligns these provisions with the confidentiality provisions in the Tax Administration Act, 2011.

2.85 ***Customs Control Act, 2014: Amendment of section 49***

The proposed amendment is a grammatical correction.

2.86 ***Customs Control Act, 2014: Amendment of section 65***

The proposed amendment aims to provide more flexibility in relation to the reporting requirements for on-board operators in respect of the arrival of buses.

2.87 ***Customs Control Act, 2014: Amendment of section 67***

Proposed amendment aims to provide more flexibility in relation to the reporting requirements for on-board operators in respect of the departure of buses.

2.88 ***Customs Control Act, 2014: Amendment of section 69***

The proposed amendment aims to provide more flexibility in relation to the reporting requirements for on-board operators in respect of the arrival of trucks.

2.89 ***Customs Control Act, 2014: Amendment of section 71***

The proposed amendment aims to provide more flexibility in relation to the reporting requirements for on-board operators in respect of the departure of trucks.

2.90 ***Customs Control Act, 2014: Amendment of section 110***

The proposed amendment is required to align this provision with other similar provisions in the Act in relation to measuring of time limits, e.g. sections 465(1) and 305.

2.91 ***Customs Control Act, 2014: Amendment of section 112***

The proposed amendment broadens the heading to reflect the full effect of the text in this section.

2.92 ***Customs Control Act, 2014: Amendment of section 113***

The proposed amendment broadens the heading to reflect the full effect of the text in this section.

2.93 ***Customs Control Act, 2014: Amendment of section 115***

The proposed amendment corrects an incorrect cross-reference.

2.94 ***Customs Control Act, 2014: Amendment of section 171***

The proposed amendment deletes the acceptance validation criterion which is part of the next tier of validation of a clearance declaration.

2.95 ***Customs Control Act, 2014: Amendment of section 205***

The proposed amendment clarifies that the transit operation must start at licensed premises at the seaport or airport and ensures consistency with subsection (3) of this section.

2.96 ***Customs Control Act, 2014: Amendment of section 211***

The proposed amendment ensures that the provision covers electronic inclusion of information in transport documents or road manifests.

2.97 ***Customs Control Act, 2014: Repeal of section 214***

The proposed amendment deletes an unnecessary requirement.

2.98 ***Customs Control Act, 2014: Amendment of section 233***

The proposed amendment ensures that the provision covers electronic inclusion of information in transport documents or road manifests.

2.99 ***Customs Control Act, 2014: Repeal of section 235***

The proposed amendment deletes an unnecessary requirement.

2.100 ***Customs Control Act, 2014: Amendment of section 259***

The proposed amendment ensures that this section will apply whether the transhipment goods are loaded or not.

2.101 ***Customs Control Act, 2014: Amendment of section 299***

The proposed amendment provides more flexibility concerning the manner in which the customs authority may be advised of contractual relationships between customs clients.

2.102 ***Customs Control Act, 2014: Amendment of section 313***

The proposed amendment aims to ensure that all transports under the warehousing procedure and not only those to a warehouse are covered. The proposed amendment also broadens the provision to enable the Commissioner to prescribe requirements and conditions for such transport.

2.103 ***Customs Control Act, 2014: Amendment of section 332***

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of goods under the tax free shop procedure by persons other than carriers.

2.104 ***Customs Control Act, 2014: Amendment of section 350***

The proposed amendment aims to ensure consistency with a similar provision in section 328(1)*(f)* of the Act.

2.105 ***Customs Control Act, 2014: Amendment of section 359***

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of goods under the stores procedure by persons other than carriers.

2.106 ***Customs Control Act, 2014: Amendment of section 368***

The proposed amendment in paragraph *(a)* aims to provide more flexibility with respect to the timeframe for delivery of goods cleared for export to depots and terminals because it is not always practical to prescribe a fixed timeframe for all categories of goods. The proposed amendment in paragraph *(b)* is intended to clarify that inspections of the same goods would not take place at the depot as well as at the terminal where the goods are loaded.

2.107 ***Customs Control Act, 2014: Amendment of section 372***

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of goods under the export procedure by persons other than carriers.

2.108 ***Customs Control Act, 2014: Amendment of section 373***

The proposed amendment is of a consequential nature following a proposed amendment to section 368. See paragraph 2.106.

2.109 ***Customs Control Act, 2014: Repeal of section 396***

The proposed section is repealed as section 396 does not give effect to the Convention on Temporary Admission.

2.110 ***Customs Control Act, 2014: Amendment of section 412***

The proposed amendment deletes unnecessary requirements.

2.111 ***Customs Control Act, 2014: Amendment of section 418***

The proposed amendment aims to align this provision with other provisions in the Act in relation to measuring of time limits, e.g. sections 465(1) and 305.

2.112 ***Customs Control Act, 2014: Amendment of section 421***

The proposed amendment aims to avoid systems difficulties in relation to the development of multiple data fields due to the fact that multiple inward processing clearance declarations could be involved. Paragraph *(b)* which requires the reference number of each clearance declaration is deleted.

2.113 ***Customs Control Act, 2014: Amendment of section 432***

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of imported goods under the inward processing procedure or products, by-products or waste obtained from such products by persons other than carriers.

2.114 ***Customs Control Act, 2014: Amendment of section 439***

The proposed amendment deletes an unnecessary requirement.

2.115 ***Customs Control Act, 2014: Amendment of section 444***

The proposed amendment aims to align this provision with other provisions in the Act in relation to measuring of time limits, e.g. sections 465(1) and 305.

2.116 ***Customs Control Act, 2014: Amendment of section 451***

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of imported goods under the home use processing procedure or products obtained from such goods before such goods become free circulation goods, by persons other than carriers.

2.117 ***Customs Control Act, 2014: Amendment of section 458***

The proposed amendment deletes unnecessary requirements.

2.118 ***Customs Control Act, 2014: Amendment of section 460***

The proposed amendment deletes unnecessary requirements.

2.119 ***Customs Control Act, 2014: Amendment of section 580***

The proposed amendment is a technical correction.

2.120 ***Customs Control Act, 2014: Amendment of section 581***

The proposed amendment provides for the submission of retention notices to the state warehouse where goods are to be accounted for in situations where goods are not physically delivered to the state warehouse but retained on licensed premises as if secured in a state warehouse.

2.121 ***Customs Control Act, 2014: Amendment of section 590***

Paragraph (a): The words of the proposed deletion suggest that the goods must first be published in the state warehouse list before they can be reclaimed, which is unnecessary in the case of goods that can be reclaimed upon compliance with outstanding clearance and other technical requirements. The amendment will not affect the listing of goods that are sold or otherwise disposed of.

Paragraph (b): The proposed amendment aims to streamline the termination of a detention where goods are successfully reclaimed by complying with outstanding clearance and other technical requirements.

Paragraph (c): The proposed amendment ensures that the reclaim process also applies to seized or confiscated goods in cases where the seizure or confiscation has been terminated.

2.122 ***Customs Control Act, 2014: Amendment of section 600***

The proposed amendment aims to broaden the rule enabling provision to authorise the issuing of rules for the different situations in which goods are removed from a state warehouse, including from other licensed premises where goods are kept as if the goods are in a state warehouse.

2.123 ***Customs Control Act, 2014: Amendment of section 626***

The proposed amendment broadens the scope of paragraph *(c)* to permit simplified registration procedures in respect of additional categories of persons as may be prescribed by rule.

2.124 ***Customs Control Act, 2014: Amendment of section 627***

The proposed amendment provides for contraventions of section 624(1) of the Act to be an offence.

2.125 ***Customs Control Act, 2014: Amendment of section 695***

The proposed amendment aims to align the Customs Control Act with section 12 of the Public Finance Management Act, 1999, which requires SARS to pay into the revenue funds all amounts collected by it for the revenue funds and section 13 which enables SARS as a national public entity to retain all revenue not collected by it for a revenue fund.

2.126 ***Customs Control Act, 2014: Amendment of section 761***

The proposed amendment is a grammatical correction.

2.127 ***Customs Control Act, 2014: Amendment of section 762***

The proposed amendment corrects an incorrect reference.

2.128 ***Customs Control Act, 2014: Amendment of section 780***

The proposed amendment ensures that written proof that the administering authority has no objection to an application for termination of a detention of prohibited goods should only be submitted to the customs authority on request, and not in all cases.

2.129 ***Customs Control Act, 2014: Amendment of section 789***

The proposed amendment ensures that written proof that the administering authority has no objection to an application for termination of a detention of prohibited goods should only be submitted to the customs authority on request, and not in all cases.

2.130 ***Customs Control Act, 2014: Amendment of section 823***

The proposed amendment corrects an incorrect cross-reference.

2.131 ***Customs Control Act, 2014: Amendment of section 825***

The proposed amendment is of a consequential nature.

2.132 ***Customs Control Act, 2014: Amendment of section 832***

The proposed amendment tightens up the internal control over the power of customs officers to reconsider their own decisions.

2.133 ***Customs Control Act, 2014: Amendment of section 877***

The proposed amendment aims to broaden the scope of the provision to cover all non-prosecutable breaches listed in terms of section 876(1) consisting of a failure to submit to the customs authority full or accurate information other than information that may result in revenue prejudice, and not only such breaches that can be categorised as Category A breaches.

2.134 ***Customs Control Act, 2014: Amendment of section 896***

The term ‘‘place of residence’’ is too narrow and does not cover the situation where the litigant is a juristic entity. This is now replaced by the term ‘‘physical address’’.

2.135 ***Customs Control Act, 2014: Amendment of section 913***

The proposed amendment provides for an automatic extension of a timeframe for electronic submission of certain documents or communications in the case of a communications breakdown, and also provides for the submission of certain documents or communications in paper format in the event of such breakdown.

2.136 ***Tax Administration Laws Amendment Act, 2014: Amendment of section 32***

Section 45 of the Value-Added Tax Act, 1991, which deals with ''Interest on delayed refunds'' was introduced in its amended form by paragraph 134 of Schedule 1 to the Tax Administration Act, 2011. Proclamation 51 of 14 September 2014 announced the commencement of the whole Tax Administration Act, 2011, except certain specific sections dealing with interest and ''any provision of Schedule 1 to the Act that amends or repeals a provision of a tax Act relating to interest under that Act, to the extent of that amendment or repeal''. All of the exceptions are part of the Tax Administration Act, 2011, or the different tax Acts but they are not in operation. The provisions of the tax Acts relating to interest which had been amended or repealed are applied to calculate interest until the new interest provisions become effective by a future proclamation.

Section 45(2) of the Value-Added Tax Act, 1991, was amended by section 32 of the Tax Administration Laws Amendment Act, 2014. However, this amendment did not mention a specific effective date and hence became effective on promulgation of the Amendment Act. It is proposed that this amendment will take effect when the interest provisions of the Tax Administration Act, 2011, come into operation.

2.137 ***Tax Administration Laws Amendment Act, 2014: Amendment of section 52***

The change to the effective date of section 52 of the Tax Administration Laws Amendment Act, 2014, relates to the effective date of the interest provisions. Instead of referring to a date determined by the Minister, it should read ''the date on which section 187(2) of the Tax Administration Act, 2011, comes into operation''. Consequently the amendment will take effect on the same day the original subsection is brought into effect by the President's proclamation.

2.138 ***Short title and commencement***

The clause makes provision for the short title of the proposed Act and provides that different provisions of the Act may come into effect 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 2015 Budget Review, tabled in Parliament on 25 February 2015.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the National Treasury and South African Revenue Service 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.