

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. 36941 of 18 October 2013)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 40—2013]

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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 **Transfer Duty Act, 1949**, so as to effect consequential amendments;
 - amend the **Income Tax Act, 1962**, so as to effect textual and consequential amendments; to amend provisions; and to effect technical corrections;
 - amend the **Customs and Excise Act, 1964**, so as to amend a provision; to make a new provision; and to amend provisions;
 - amend the **Value-Added Tax Act, 1991**, so as to effect technical corrections;
 - amend the **Skills Development Levies Act, 1999**, so as to make a new provision; and to effect consequential amendments;
 - amend the **Unemployment Insurance Contributions Act, 2002**, so as to make a new provision; and to effect consequential amendments;
 - amend the **Securities Transfer Tax Act, 2007**, so as to effect consequential amendments;
 - amend the **Mineral and Petroleum Resources Royalty Act, 2008**, so as to effect consequential amendments;
 - amend the **Mineral and Petroleum Resources Royalty (Administration) Act, 2008**, so as to effect a technical correction;
 - amend the **Tax Administration Act, 2011**, so as to amend certain provisions; to effect technical corrections; and to effect textual and consequential amendments;
- and to provide for matters connected therewith.

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

Amendment of section 20B of Act 40 of 1949, as inserted by section 9 of Act 45 of 2003

1. Section 20B of the Transfer Duty Act, 1949, is hereby amended by the substitution 5
for subsection (3) of the following subsection:

“(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such transaction, operation, scheme or understanding was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.”. 10

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

2. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (h) of the following paragraph: 10

“(h) paragraphs [12(5)(c)(i)] (bb)(A) of the proviso to paragraph 12A(6)(e), 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(e) of the Eighth Schedule.”.

Amendment of section 6quat of Act 58 of 1962, as substituted by section 4 of Act 59 of 2000 and amended by section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007, section 9 of Act 17 of 2009, section 7 of Act 18 of 2009, section 11 of Act 24 of 2011 and section 271 read with paragraph 29 of Schedule 1 to Act 28 of 2011 15

3. Section 6quat of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection: 20

“(5) Notwithstanding section [93,] 99(1) or 100 of the Tax Administration Act, an additional or reduced assessment in respect of a year of assessment to give effect to subsections (1) and (1A) may be made within a period that does not exceed six years from the date of the original assessment in respect of that year.”.

Amendment of section 6quin of Act 58 of 1962, as inserted by section 12 of Act 24 of 2011 and amended by section 13 of Act 24 of 2011 and section 4 of Act 21 of 2012 25

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

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

Amendment of section 64K of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008 and amended by section 53 of Act 17 of 2009, section 84 of Act 24 of 2011, section 271 read with paragraph 55 of Schedule 1 to Act 28 of 2011 and section 14 of Act 21 of 2012 35

5. Section 64K of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph: 40

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

Amendment of section 64N of Act 58 of 1962, as inserted by section 53 of Act 17 of 2009 and amended by section 17 of Act 21 of 2012 45

6. Section 64N of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) A company or regulated intermediary must obtain proof of any tax paid to any sphere of government of any country other than the Republic and deducted from the **[dividend]** dividends tax payable in terms of this section, in the form and manner prescribed by the Commissioner.”. 50

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and 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 17 of Act 18 of 2009, section 18 of Act 8 of 2010 and section 93 of Act 24 of 2011

7. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “personal service provider” for the words following subparagraph (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 **[shareholder or member of]** holder of a share in the company or member of the trust or is a connected person in relation to such person;”.

(2) Subsection (1) comes into operation on 1 January 2014.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 30 of Act 103 of 1976, section 28 of Act 113 of 1977, section 29 of Act 104 of 1980, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007, section 65 of Act 35 of 2007, section 18 of Act 18 of 2009, section 94 of Act 24 of 2011 and section 19 of Act 21 of 2012

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

(a) by the substitution in subparagraph (4) for items (a), (b) and (bA) of the following items, respectively:

“(a) any contribution by the employee concerned to any pension fund or provident fund which the employer is entitled or required to deduct from that remuneration, but limited to the deduction to which the employee is entitled under section 11(k) having regard to the remuneration and the period in respect of which it is payable;

(b) at the option of the employer, any contribution to a retirement annuity fund by the employee in respect of which proof of payment has been furnished to the employer, but limited to the deduction to which the employee is entitled under section **[11(n)] 11(k)** having regard to the remuneration and the period in respect of which it is payable;

(bA) any contribution made by the employer to any retirement annuity fund for the benefit of the employee, but limited to the deduction to which the employee is entitled under section **[11(n)] 11(k)** having regard to the remuneration and the period in respect of which it is payable;”; and

(b) by the deletion in subparagraph (4) of items (c) and (cA).

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

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2015 and applies in respect of premiums paid on or after that date.

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as inserted by section 41 of Act 90 of 1988 and amended by section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997, section 53 of Act 30 of 1998, section 56 of Act 59 of 2000, section 33 of Act 30 of 2002, section 56 of Act 74 of 2002, section 22 of Act 16 of 2004, section 43 of Act 20 of 2006, section 57 of Act 8 of 2007, section 44 of Act 3 of 2008, section 70 of Act 60 of 2008, section 20 of Act 8 of 2010 and section 271 read with paragraph 82 of Schedule 1 of Act 28 of 2011 5

9. Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (6). 10

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 and section 271 read with paragraph 83 of Schedule 1 of Act 28 of 2011

10. Paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (5). 15

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 and section 21 of Act 4 of 2008

11. (1) Paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 20

(a) by the substitution for subparagraph (7) of the following subparagraph:

“(7) It shall be sufficient compliance with the provisions of sub-paragraph (1) or (4) in regard to the delivery of any employee’s tax certificate to any employee or former employee if such certificate is delivered to the employees’ authorized agent or the representative taxpayer in respect of the remuneration show in such certificate or, where delivery cannot conveniently be effected by personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer [by registered post].”; and 25 30

(b) by the deletion of subparagraph (12).

(2) Subsection (1)(b) is deemed to have come into operation on 1 January 2013.

Amendment of paragraph 17 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and 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 and section 57 of Act 59 of 2000 and section 271 read with item 88 of Schedule 1 to Act 28 of 2011 35

12. (1) Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (5) of the following subparagraph:

“(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his or her budget statement or [as varied by the Minister under section 5(3) of this Act,] to the rebates applicable in terms of section 6(2) [and (3)(a) and section 6quat] of this Act and [to] taking into account any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied together with the period for which such tables shall remain in force.”. 40 45 50

(2) Subsection (1) is deemed to have come into operation on 1 January 2013.

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 Act 28 of 2011 and section 22 of Act 21 of 2012 5

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

(a) by the insertion in subparagraph (1)(d)(i) after subsubitem (aa) of the word “and”;

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

“(bb) the taxable portion of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit, other than any amount included under paragraph (eA) of the definition of ‘gross income’ in section 1;”; and 15

(c) by the deletion in subparagraph (1)(d)(i) of subsubitem (cc).

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of years of assessment commencing on or after that date. 20

Amendment of paragraph 20A of Fourth Schedule to Act 58 of 1962, as inserted by section 25 of Act 52 of 1970 and amended by section 45 of Act 88 of 1971, section 52 of Act 85 of 1974, section 40 of Act 121 of 1984, section 88 of Act 45 of 2003, section 271 read with item 92 of Schedule 1 to Act 28 of 2011 and section 24 of Act 22 of 2012 25

14. (1) Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by that provisional taxpayer during any year of assessment and the estimate of the taxpayer’s taxable income for that year required to be submitted by the taxpayer under paragraph 19(1) during the period contemplated in paragraph 21(1)(b)[, 22(1)] or 23(b), as the case may be, was not submitted by the taxpayer on or before the last day of that year the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 19(2) or has increased the amount thereof under paragraph 19(3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the amount by which the normal tax payable by the taxpayer in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by the taxpayer in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part and any amounts of employees’ tax deducted or withheld from the taxpayer’s remuneration by the taxpayer’s employer during such year.”. 35 40 45

(2) Subsection (1) is deemed to have come into operation on 1 January 2013.

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

15. (1) Paragraph 11 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended— 50

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

“(4A) For the purposes of paragraph 2(1) of the Fourth Schedule [and], section 89bis(2), section 6 of the Skills Development Levies Act, 1999 (Act No. 9 of 1999), and section 8 of the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), a registered micro business may elect to pay the amounts deducted or withheld in terms of that paragraph or [section] those sections to the Commissioner— 55

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

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

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

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

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

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

(a) the substitution for subsection (4) of the following subsection: 25

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

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

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

- (i) Premises managed or operated by the State or a public entity within the meaning of the Public Finance Management Act, 1999 (Act No 1 of 1999) as part of a port, airport, railway station or land border post and on which an activity to which this Act applies is carried out or allowed; 35
- (ii) premises licensed or registered in terms of this Act;
- (iii) premises occupied by a person licensed or registered in terms of this Act and used for purposes of the business for which that person is licensed or registered; and 40
- (iv) premises entered by an officer with the consent of the owner or person in physical control of the premises after that owner or person was informed that there is no obligation to admit the officer in the absence of a warrant. 45

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

- (i) that a warrant will be issued by a magistrate or judge if a warrant is applied for; and 50
- (ii) that the delay in obtaining the warrant is likely to defeat the purpose for which the officer seeks to enter the premises.

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

- (i) after having gained entry to any premises in terms of this subsection, conduct an inspection, examination, enquiry or a search; 55
- (ii) while **[he]** the officer is on the premises or at any other time require from any person the production then and there, or at a time and place fixed by the officer, of any book, document or thing which by this Act is required to be kept or exhibited or 60

which relates to or which **[he]** the officer has reasonable cause to suspect of relating to matters dealt with in this Act and which is or has been on the premises or in the possession or custody or under the control of any such person or his employee;

- (iii) at any time and at any place require from any person who has or is believed to have the possession or custody or control of any book, document or thing relating to any matter dealt with in this Act, the production thereof then and there, or at a time and place fixed by the officer; and 5
- (iv) examine and make extracts from and copies of any such book or document and may require from any person an explanation of any entry therein and may attach any such book, document or thing as in **[his]** the opinion of the officer may afford evidence of any matter dealt with in this Act. 10

(b) An officer may take with him or her on to any premises an assistant or a member of the police force[.], provided that only those assistants and members of the police force whose presence, in the reasonable opinion of the officer, is necessary for purposes of conducting the inspection, examination, enquiry or search on the premises may enter the premises. 15

(c) When entering any premises in terms of paragraph (aB), the officer shall comply with the following requirements: 20

- (i) The officer may enter the premises only during ordinary business hours unless in the reasonable opinion of the officer entry at any other time is necessary for purposes of this Act;
- (ii) the officer shall, upon seeking admission to the premises, inform the person in charge of the premises of the purpose of the entry; 25
- (iii) if the purpose of the entry is, or if the officer after having gained entry decides, to search the premises for goods, records or any other things in respect of which an offence in terms of this Act is suspected to have been committed or that may be used as evidence for the prosecution of such an offence— 30

(aa) the officer shall hand to the person in charge a written statement signed by the officer stating that a search of the premises is to be conducted unless, in the officer's reasonable opinion, there are circumstances of urgency which may result in the search being frustrated if its commencement is delayed until such a statement can be prepared; 35

(bb) the officer's actions shall be confined to such searching, inspection, enquiries and examination as are reasonably necessary for the purpose of the search; 40

(cc) the officer may, either before or after complying with item (aa), take such steps as the officer considers necessary to prevent persons present on the premises from concealing, destroying or tampering with any documents, data or things located on the premises; 45

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

(ee) the officer shall compile an inventory of all items removed from the premises and shall, prior to leaving the premises, sign the inventory and hand a copy thereof to the person in charge: Provided that if it is not possible in the circumstances to compile, sign and hand such inventory to the person in charge before leaving the premises, the officer shall seal the items to be removed and as soon as possible after removal of the items from the premises, compile the inventory in the presence of the person in charge of the premises, if that person requested to be present, and sign and hand a copy of the inventory to that person; 50

(ff) the officer shall compile a schedule of all copies and extracts made in the course of the search and shall, prior to leaving the premises, sign and hand a copy thereof to the person in charge; and 60

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

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

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

- (i) there are reasonable grounds for suspecting that an offence in terms of this Act has been committed;
- (ii) a search of the premises is likely to yield such goods, records or other things; and
- (iii) the search is reasonably necessary for the purposes of this Act.”; and

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

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

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

Insertion of section 4D in Act 91 of 1964

17. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 4C:

“Officers’ powers relating to criminal prosecutions

4D. An officer may—

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

Amendment of section 21A of Act 91 of 1964, as inserted by section 121 of Act 60 of 2001, amended by section 2 of Act 10 of 2005, section 18 of Act 21 of 2006 and section 7 of Act 36 of 2007

18. (1) Section 21A of the Customs and Excise Act, 1964, is hereby amended—

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

“Provision for [the] administration of customs controlled areas within industrial development zones and special economic zones”; and

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

“(1A) (a) For the purposes of this subsection, “Special Economic Zones Act” means an Act of Parliament that makes provision for special economic zones.

(b) Notwithstanding anything to the contrary in this section or any other provision of this Act, for the purposes of the Special Economic Zones Act, the Commissioner may by rule—

- (i) after consultation with any person or authority administering any activity in a special economic zone, designate a special economic zone or any part of a special economic zone as a CCA; 5
- (ii) regulate the customs and excise administration of the CCA, including but not limited to the control of the movement of goods and persons into, within or from the CCA, goods produced or manufactured or consumed and any other activity therein to which this Act relates; 10
- (iii) prescribe requirements in all respects to ensure the security of the CCA; and
- (iv) provide for any other matter that may be necessary and useful for the effective and efficient administration of a CCA. 15

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

(2) Subsection (1) comes into operation on the date on which the Act of Parliament referred to in section 21A(1A)(a) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), comes into operation. 20

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

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

- (a) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words: 25
 - “Every applicant for accredited client status shall apply for a specific level thereof and, in addition to the criteria prescribed for that level by rule or that may be determined by the Commissioner, prove, as may be applicable, the following:”;
- (b) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph: 30
 - “(ii) that the accounting records and other documents kept for providing evidence of compliance with customs and excise procedures utilise information prepared in a manner consistent with general accounting principles appropriate to the procedure concerned;”;
- (c) by the substitution in subsection (1)(b) for subparagraph (iv) of the following subparagraph: 35
 - “(iv) that the person who will administer the accredited client requirements has sufficient knowledge of customs and excise laws and procedures to implement and maintain an efficient and effective accredited client compliance system.”; and
- (d) by the addition to subsection (1) of the following paragraph: 40
 - “(c) The Commissioner may determine such separate criteria for accredited client status in respect of customs or excise clients as may be prescribed by rule.” 45

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

20. Any rule made under section 119A of the Customs and Excise Act, 1964, or any amendment or withdrawal of or insertion in such rule during the period 1 August 2012 up to and including 31 August 2013 shall not lapse by virtue of section 119A(3) of that Act. 50

Amendment of section 25 of Act 89 of 1991, as amended by section 96 of Act 30 of 1998, section 94 of Act 53 of 1999, section 40 of Act 34 of 2004, section 10 of Act 10 of 2005 and section 271 read with paragraph 118 of Schedule 1 to Act 28 of 2011 55

21. (1) Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (g) of the following paragraph:

“(g) any change whereby the provisions of section [27(4)(c)] 27(4)(a)(iii) are no longer applicable in the case of that vendor[:]”.

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

Amendment of section 27 of Act 89 of 1991, as amended by section 34 of Act 136 of 1991, section 28 of Act 136 of 1992, section 78 of Act 30 of 2000, section 11 of Act 10 of 2005, section 50 of Act 9 of 2006, section 1 of Act 3 of 2008, section 25 of Act 4 of 2008 and section 271 read with paragraph 120 of Schedule 1 to Act 28 of 2011 5

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

(a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 10

“For the purposes of subsection (3)(a) and subsection [(4)(c)] (4)(a)(iii)—”; and

(b) by the substitution in subsection (5) for the words in paragraph (b) preceding item (i) of the following words: 15

“the total value of the taxable supplies of a vendor within any period of 12 months referred to in subsection (3)(a) or [(4)(c)] (4)(a)(iii) shall not be deemed to have exceeded or be likely to exceed the amount referred to in subsection 3(a) or the amount referred to in subsection [(4)(c)] (4)(a)(iii), as the case may be, where that total value exceeds or is likely to exceed that amount, as the case may be, solely as a consequence of—”. 20

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

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 and section 271 read with paragraph 150 of Schedule 1 to Act 28 of 2011 25

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

(a) by the insertion after subsection (1) of the following subsection: 30

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

(b) by the substitution for subsection (2) of the following subsection: 35

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

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

Amendment to section 8 of Act 4 of 2002, as amended by section 81 of Act 30 of 2002, section 48 of Act 18 of 2009, section 32 of Act 8 of 2010 and section 271 read with paragraph 159 of Schedule 1 of Act 28 of 2011 40

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

(a) by the insertion after subsection (1) of the following subsection: 45

“(1A) Notwithstanding the provisions of subsection (1), if an employer is a micro business that is registered in terms of the Sixth Schedule to the Income Tax Act, the employer may pay the amount as described in subsection (1) to the Commissioner within the periods prescribed in paragraph 11(4A) of the Sixth Schedule to that Act.”; and 50

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

(2) An employer must, together with the payment referred to in subsection (1) or (1A), submit a return [reflecting the amount of the payment and such other particulars as the Minister may prescribe] to the Commissioner.”. 55

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

Amendment to section 13 of Act 4 of 2002, as amended by section 83 of Act 30 of 2002, section 51 of Act 18 of 2009 and section 271 read with paragraph 163 of Schedule 1 of Act 28 of 2011

25. (1) Section 13 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for subsection (1) of the following subsection: 5

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

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

Amendment of section 9 of Act 25 of 2007 15

26. Section 9 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Any decision of the Commissioner under subsection (1) is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act, 2011 (Act No. 28 of 2011), and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it is presumed, until the contrary is proved, that that scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.” 20

Amendment of section 12 of Act 28 of 2008 25

27. Section 12 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A decision of the Commissioner under subsection (1) is subject to objection and appeal [**mentioned in section 18(1)(d) of the Administration Act**] in accordance with Chapter 9 of the Tax Administration Act, 2011 (Act No. 28 of 2011), and whenever in proceedings relating thereto it is proved that the disposal, transfer, operation, scheme or understanding in question would result in the avoidance or postponement of liability for the royalty, or in the reduction of the amount thereof, it is presumed, until the contrary is proved, in the case of any such disposal, transfer, operation, scheme or understanding, that it was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of such liability, or the reduction of the amount of such liability. 30 35

Amendment of section 6 of Act 29 of 2008

28. Section 6 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection: 40

“(1) A registered person must submit a return [(**as**) to the Commissioner [may prescribe]] for the royalty payable in respect of a year of assessment—
(a) in the case of a company as defined in section 1 of the Income Tax Act, within [six] 12 months from the date on which its financial year ends; or 45
(b) in the case of any other person, within 12 months after the last day of that year.” 45

Amendment of section 19 of Act 29 of 2008, as amended by section 38 of Act 8 of 2010 and section 33 of Act 21 of 2012

29. (1) Section 19 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended— 50

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

- “**[In respect of a year of assessment an extractor]** The Commissioner must annually submit to the Minister of Finance a report, in the form and manner that the Minister may prescribe, within six months from the date that the Commissioner received the report from each extractor, advising the Minister of—”; 5
- (b) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:
- “(a) the volume of mineral resources transferred by **[that] each** extractor;
- (b) the gross sales of **[that] each** extractor as mentioned in section 6(1) and (2) of the Royalty Act;” 10
- (c) by the insertion in subsection (1) after paragraph (b) of the following paragraph:
- “(bA) the adjusted gross sales of the extractor if that adjustment is required in terms of section 6(5) of the Royalty Act;” 15
- (d) by the substitution for subsection (2) of the following subsection:
- “(2) The Minister of Finance and every person employed or engaged by him or her and the Commissioner and every person engaged by him or her must preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge by virtue of subsection (1), and may not communicate any such matter to any person whatsoever other than the Minister, the Commissioner or the registered person concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession of the Minister, the Commissioner or person except in the performance of his or her duties as required by the laws of the Republic or by order of a competent court.”; 20
25
and
- (e) by the deletion in subsection (7) of paragraph (a).
- (2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date. 30

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

- 30.** Section 1 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the insertion of the following definition after the definition of “original assessment”:
- “**‘outstanding tax debt’** means a tax debt not paid by the day referred to in section 162;” 35
- (b) by the substitution for the definition of “relevant material” of the following definition:
- “**‘relevant material’** means any information, document or thing that is foreseeably relevant for the administration of a tax Act as referred to in section 3 **[tax risk assessment, assessing tax, collecting tax, showing non-compliance with an obligation under a tax Act or showing that a tax offence was committed]**”; 40
- (c) by the substitution for the definition of “return” of the following definition:
- “**‘return’** means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is **[the] a** basis on which an assessment is to be made by SARS;” 45
- (d) by the substitution for the definition of “tax debt” of the following definition:
- “**‘tax debt’** means an amount **[of tax due by a person in terms of a tax Act]** referred to in section 169(1);” 50

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

- 31.** Section 3 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (e) of the following paragraph: 55
- “(e) collect tax debts and refund tax overpaid;”.

Amendment of section 10 of Act 28 of 2011

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

“(b) becomes effective only when signed by the **[person to whom the delegation is made]** Commissioner.”

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

33. Section 11 of the Tax Administration Act, 2011, is hereby amended—

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

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

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

“(3) A cost order in favour of SARS resulting from any civil proceedings under this Act constitutes funds of SARS within the meaning of section 24 of the SARS Act and must be paid to SARS despite any law to the contrary.”;

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(c) by the addition of the following subsections:

“(4) Unless the court otherwise directs, no legal proceedings may be instituted in the High Court against the Commissioner unless the applicant has given the Commissioner written notice of at least one week of the applicant’s intention to institute the legal proceedings.

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(5) The notice or any process by which the legal proceedings referred to in subsection (4) are instituted, must be served at the address specified by the Commissioner by public notice.”

Amendment of section 25 of Act 28 of 2011

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

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

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Amendment of section 26 of Act 28 of 2011, as substituted by section 41 of Act 21 of 2012

35. Section 26 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Commissioner may by public notice, at the time and place and by the due date specified, require a person who employs, pays amounts to, receives amounts on behalf of or otherwise transacts with another person, or has control over assets of another person, to submit a return by the date specified in the notice.”.

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Substitution of section 27 of Act 28 of 2011, as substituted by section 42 of Act 21 of 2012

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36. The following section is hereby substituted for section 27 of the Tax Administration Act, 2011:

“Other returns required

27. (1) A senior SARS official may require a person to submit further or more detailed returns regarding any matter for which a return under section 25 or 26 is required or prescribed by a tax Act.

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(2) A person required under subsection (1) to submit a return must do so in the prescribed form and manner and the return must contain the information prescribed by **[SARS]** the official and must be a full and true return.”.

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Amendment of section 34 of Act 28 of 2011, as amended by section 45 of Act 21 of 2012

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

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

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

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

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

Substitution of section 54 of Act 28 of 2011

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

“Powers of presiding officer

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

Amendment of section 68 of Act 28 of 2011

40. Section 68 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (i);
 - (b) by the insertion in subsection (1) of the phrase “; and” at the end of paragraph (j); and
 - (c) by the addition to subsection (1) of the following paragraph:
 “(k) 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 69 of Act 28 of 2011

41. Section 69 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the deletion in subsection (8) of the word “and” at the end of paragraph (a);
 - (b) by the insertion in subsection (8) of the phrase “; and” at the end of paragraph (b);
 - (c) by the addition to subsection (8) of the following paragraph:
 “(c) the name and tax practitioner registration number of a registered tax practitioner.”.

Amendment of section 70 of Act 28 of 2011

42. Section 70 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 (c);
 - (b) by the insertion in subsection (2) of the phrase “; and” at the end of paragraph (d);

- (c) by the addition to subsection (2) of the following paragraph:
 “(e) a recognised controlling body (as defined in section 239) of a registered tax practitioner, such information in relation to the tax practitioner as may be required to verify that sections 240A(2)(a) and 240A(3) are being given effect to.”. 5

Amendment of section 73 of Act 28 of 2011

43. Section 73 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b);
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 10
 “[other information relating to the tax affairs of the taxpayer] information, other than SARS confidential information, on which the taxpayer’s assessment is based; and”;
- (c) by the addition to subsection (1) of the following paragraph:
 “(d) other information relating to the tax affairs of the taxpayer.”; 15
- (d) by the substitution for subsection (2) of the following subsection:
 “(2) A request for information under subsection (1)[(c)] (d) must be made under the Promotion of Access to Information Act.”; and
- (e) by the deletion of subsection (3).

Amendment of section 79 of Act 28 of 2011, as amended by section 56 of Act 21 of 2012 20

44. Section 79 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (4) for paragraph (o) of the following paragraph:
 “(o) a statement confirming that all returns required to be rendered by that ‘applicant’ in terms of a tax Act have been rendered and any tax has been paid or arrangements acceptable to SARS have been made for the submission of any outstanding returns or for the payment of any outstanding tax debt.”. 25

Amendment of section 93 of Act 28 of 2011

45. Section 93 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 30
 “(b) necessary to give effect to a settlement under [section 149] Part F of Chapter 9;”.

Amendment of section 98 of Act 28 of 2011

46. Section 98 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (b); 35
- (b) by the insertion in subsection (1) of the phrase “; or” after paragraph (c);
- (c) by the addition to subsection (1) of the following paragraph:
 “(d) in respect of which the Commissioner is satisfied that—
 (i) it was based on—
 (aa) an undisputed factual error by the taxpayer in a return; 40
 or
 (bb) a processing error by SARS; or
 (cc) a return fraudulently submitted by a person not authorised by the taxpayer;
 (ii) it imposes an unintended tax debt in respect of an amount 45
 that the taxpayer should not have been taxed on;
 (iii) the recovery of the tax debt under the assessment would produce an anomalous or inequitable result;
 (iv) there is no other remedy available to the taxpayer; and
 (v) it is in the interest of the good management of the tax 50
 system.”; and
- (d) by the substitution for subsection (2) of the following subsection:
 “(2) An assessment withdrawn under this section is regarded not to have been issued, unless a senior SARS official agrees in writing with the taxpayer as to the amount of tax properly chargeable for the relevant tax 55

period and accordingly issues a revised original, additional or reduced assessment, as the case may be, which assessment is not subject to objection or appeal.”.

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

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

- (a) by the deletion in paragraph (d) of subsection (2) of the word “or” at the end of subparagraph (i);
- (b) by the insertion in paragraph (d) of subsection (1) of the phrase “; or” at the end of subparagraph (ii);
- (c) by the addition to paragraph (d) of subsection (2) of the following subparagraph:

“(iii) an assessment referred to in section 98(2).”.

Amendment of section 103 of Act 28 of 2011

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

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

Amendment of section 110 of Act 28 of 2011

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

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

Amendment of section 117 of Act 28 of 2011

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

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

Amendment of section 118 of Act 28 of 2011

51. Section 118 of the Tax Administration Act, 2011, is hereby amended—

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

“If the **[President]** president of the tax court, a senior SARS official or the ‘appellant’ so requests, the representative of the commercial community referred to in subsection (1)(c) must—”;
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) if the appeal relates to the business of mining, be a registered **[mining]** engineer with experience in that field; or”; and
- (c) by the substitution for subsection (3) of the following subsection:

“(3) If an appeal to the tax court involves a matter of law only or is **[an application for condonation or]** an interlocutory application or application in a procedural matter under the ‘rules’, the president of the court sitting alone must decide the appeal.”.

Amendment of section 129 of Act 28 of 2011

52. Section 129 of the Tax Administration Act, 2011, is hereby amended—

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

“In the case of an assessment or ‘decision’ under appeal or an application in a procedural matter referred to in section 117(3), the tax court may—”;

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

“(3) In the case of an appeal against an understatement penalty imposed by SARS under a tax Act, the tax court must decide the matter on the basis that the burden of proof is upon SARS and may reduce, confirm or increase the understatement penalty [so imposed].”; and

(c) by the addition of the following subsection:

“(5) Unless a tax court otherwise directs, a decision by the tax court in a test case designated under section 106(6) is determinative of the issues in an objection or appeal stayed by reason of the test case under section 106(6)(b) to the extent determined under the ‘rules’.”.

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

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

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

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

(b) by the addition of the following subsection:

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

- (a) a test case designated under section 106(5); or
- (b) an interlocutory application or an application in a procedural matter referred to in section 117(3).”.

Amendment of section 133 of Act 28 of 2011

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

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

Amendment of section 160 of Act 28 of 2011

55. Section 160 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

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

Amendment of section 161 of Act 28 of 2011

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

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

Amendment of section 163 of Act 28 of 2011

57. Section 163 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, in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax that is due or payable or the official on reasonable grounds is satisfied may be due or payable, authorise an *ex parte* application to the High Court for an order for the preservation of

any assets of a taxpayer or other person prohibiting any person, subject to the conditions and exceptions as may be specified in the preservation order, from dealing in any manner with the assets to which the order relates.”;

- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 5
 “(a) SARS may, in anticipation of the application under subsection (1) [and in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax due,] seize the assets pending the outcome of an application for a preservation order, which application must commence within 24 hours from the time of seizure of the assets or the further period that SARS and the taxpayer or other person may agree on.”; 10
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 15
 “(b) Until a preservation order is made in respect of the seized assets, SARS must take reasonable steps to preserve and safeguard the assets including appointing a curator bonis in whom the assets vest.”;
- (d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 20
 “A preservation order may be made if required to secure the collection of the tax referred to in subsection (1) and in respect of—”;
- (e) by the deletion in subsection (4) of the word “and” after paragraph (b);
- (f) by the insertion in subsection (4) of the phrase “; and” after paragraph (c);
- (g) by the addition to subsection (4) of the following paragraph 25
 “(d) upon application by SARS, confirm the appointment of the curator bonis under subsection (2)(a) or appoint a curator bonis in whom the seized assets vest.”; and
- (h) by the substitution in subsection (7) for paragraph (b) of the following paragraph: 30
 “(b) if not appointed under subsection (4)(d), appointing a curator bonis in whom the assets [of that taxpayer or another person liable for tax] vest;”.

Amendment of section 164 of Act 28 of 2011, as amended by section 64 of Act 21 of 2012 35

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

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 40
 “A senior SARS official may suspend payment of the disputed tax or a portion thereof having regard to—”;
- (b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words: 45
 “If **[the]** payment of tax **[which the taxpayer intended to dispute]** was suspended under subsection (3) and subsequently—”;
- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 50
 “A senior SARS official may deny a request in terms of subsection (2) or revoke a decision to suspend payment in terms of **[that]** subsection (3) with immediate effect if satisfied that—”.

Amendment of section 165 of Act 28 of 2011 50

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

- (a) by the substitution for subsection (2) of the following subsection: 55
 “(2) The taxpayer account must reflect the tax **[due]** liability in respect of each tax type included in the account.”;
- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 55
 “(a) the tax **[owed]** liability;”; and
- (c) by the substitution in subsection (3) for paragraphs (c) and (d) of the following paragraphs, respectively:

- “(c) the interest payable on outstanding **[amounts due]** tax debts;
 (d) **[any other amount owed]** the tax liability for any other tax type.”.

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

60. Section 166 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5

“Despite anything to the contrary contained in a tax Act, SARS may allocate payment made in terms of a tax Act against an amount of penalty or interest or the oldest amount of an outstanding tax debt at the time of the payment, other than amounts—”. 10

Amendment of section 169 of Act 28 of 2011

61. Section 169 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 15

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

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

“(3) SARS is regarded as the creditor for the purposes of **[an amount referred to in subsection (1) as well as any other amount if SARS has entered into an agreement under section 4(1)(a)(ii) of the SARS Act in terms of which SARS is the creditor for the State or the organ of state or institution concerned]** any recovery proceedings related to a tax debt. 20 25

(4) SARS need not recover **[an amount]** a tax debt under this Chapter if the amount thereof is less than R100 or any other amount that the Commissioner may determine by public notice, but the amount must be carried forward in the relevant taxpayer account.”. 30

Amendment of section 172 of Act 28 of 2011

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

“(1) If a person **[fails to pay tax when it is payable]** has an outstanding tax debt, SARS may, after giving the person at least 10 business days’ notice, file with the clerk or registrar of a competent court a certified statement setting out the amount of tax payable and certified by SARS as correct. 35

(2) SARS may file the statement irrespective of whether or not the **[amount of] tax debt** is subject to an objection or appeal under Chapter 9, unless the period referred to in section 164(6) has not expired or the obligation to pay the [amount] tax debt has been suspended under section 164.” 40

Amendment of section 175 of Act 28 of 2011

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

“(1) SARS may amend the amount of the tax **[due] debt** specified in the statement filed under section 172 if, in the opinion of SARS, the amount in the statement is incorrect.”. 45

Amendment of section 176 of Act 28 of 2011

64. Section 176 of the Tax Administration Act, 2011, is hereby amended—

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

“(2) SARS may file a new statement under section 172 setting out an amount of the tax debt included in a withdrawn statement.”; and 50

(b) by the addition of the following subsection:

“(3) If SARS is satisfied that a person has paid the full amount of the tax debt set out in a certified statement filed under section 172 and has no other outstanding tax debts, SARS must withdraw the statement if requested by the person in the prescribed form and manner.”.

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Amendment of section 177 of Act 28 of 2011

65. Section 177 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

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

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Amendment of section 179 of Act 28 of 2011

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

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

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Amendment of section 180 of Act 28 of 2011

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

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

Amendment of section 181 of Act 28 of 2011

68. Section 181 of the Tax Administration Act, 2011, is hereby amended—

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

“(1) This section applies where a company is wound up other than by means of an involuntary liquidation without having satisfied its outstanding tax debt, including its liability as a responsible third party, withholding agent, or a representative taxpayer, employer or vendor.”;

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

“The persons who are shareholders of the company within one year prior to its winding up are jointly and severally liable to pay the [unpaid] tax debt to the extent that—”; and

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

“(4) Persons who are liable for the tax debt of a company under this section may avail themselves of any rights against SARS as would have been available to the company.”.

Amendment of section 182 of Act 28 of 2011

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69. Section 182 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person (referred to as a transferee) who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for consideration below the fair market value of the asset is liable for the outstanding tax debt of the taxpayer.”.

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Amendment of section 186 of Act 28 of 2011

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

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

Amendment of section 190 of Act 28 of 2011

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

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

Amendment of section 191 of Act 28 of 2011 10

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

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

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

73. Section 192 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in the definition of “compromise” for the words preceding paragraph (a) of the following words: 20

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

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

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

and

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

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

Amendment of section 221 of Act 28 of 2011

74. Section 221 of the Tax Administration Act, 2011, is hereby amended by the substitution in the definition of “understatement penalty” for the words preceding paragraph (a) of the following words: 30

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

Amendment of section 222 of Act 28 of 2011 35

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

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

“(1) In the event of an ‘understatement’ by a taxpayer, the taxpayer must pay, in addition to the ‘tax’ payable for the relevant tax period, the understatement penalty determined under subsection (2) unless the ‘understatement’ results from a bona fide inadvertent error. 40

(2) The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table in section 223 to **[the]** each shortfall determined under subsections (3) and (4) in relation to each understatement in a return. 45

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

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

and

- (c) the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) If **[an ‘understatement’ results in]** there is a difference under both paragraphs (a) and (b) of subsection (3), the shortfall must be reduced by the amount of any duplication between the paragraphs.

(5) The tax rate applicable to the shortfall determined under subsections (3) and (4) is the maximum tax rate applicable to the taxpayer, ignoring an assessed loss or any other benefit brought forward from a preceding tax period to the tax period.”.

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

76. (1) Section 223 of the Tax Administration Act, 2011, is hereby amended—

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

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

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

- (b) by the substitution in subsection (3)(b) for the words preceding subparagraph (i) of the following words:

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

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

Substitution of section 224 of Act 28 of 2011, as substituted by section 74 of Act 21 of 2012

77. The following section is hereby substituted for section 224 of the Tax Administration Act, 2011:

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

“224. [A] The imposition of an understatement penalty under section 222 or a decision by SARS not to remit an understatement penalty under section 223(3), is subject to objection and appeal under Chapter 9.”.

Amendment of section 230 of Act 28 of 2011

78. Section 230 of the Tax Administration Act, 2011, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

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

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

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

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

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

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

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

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

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

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

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

- (a) provides the advice or completes or assists in completing a return [solely] for no consideration to that person or his or her employer or a connected person in relation to that employer or that person;
- (b) provides the advice [solely] in anticipation of or in the course of any litigation to which the Commissioner is a party or where the Commissioner is a complainant;
- (c) provides the advice [solely] as an incidental or subordinate part of providing goods or other services to another person; or
- (d) provides the advice or completes or assists in completing a return [solely]—
- (i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of the employer and connected persons in relation to the employer; or
- (ii) under the [direct] supervision of a [person who is a] registered tax practitioner who has assigned or approved the assignment of those functions to the person.”; and

- (b) by the insertion after subsection (2) of the following subsection:

“(2A) A tax practitioner who has assigned or approved the assignment of functions to a person under subsection (2)(d)(ii) is regarded as accountable for the actions of that person in performing those functions for the purposes of a complaint to a recognised controlling body under section 241(2).”.

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

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

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

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

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

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

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

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

Amendment of section 242 of Act 28 of 2011

83. Section 242 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Despite section 69, the senior SARS official lodging a complaint under section 241 may disclose the taxpayer information [**relating to the person’s tax affairs**] as in the opinion of the official is necessary to lay before the ‘controlling body’ to which the complaint is made. 5

(2) Before a complaint is lodged or information is disclosed, SARS must deliver to the taxpayer concerned and the person against whom the complaint is to be made notification of the intended complaint and information to be disclosed.”. 10

Amendment of section 246 of Act 28 of 2011, as amended by section 86 of Act 21 of 2012

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

(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 15

“(a) approved by SARS and—

(i) must be a person who is a senior official of the company [**and is approved by SARS**]; or

(ii) if no senior official resides in the Republic, may be another suitable person;”; and 20

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

“(3) If a public officer is not appointed as required under this section, the public officer is the [**managing director,**] director, company secretary or other officer of the company that SARS designates for that purpose.”. 25

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

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

“(a) outstanding tax debt [**outstanding**], excluding a tax debt contemplated in section 167 or 204 or a tax debt that has been suspended under section 164 or does not exceed the amount referred to in section 169(4); or” 30

Amendment of section 270 of Act 28 of 2011

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

(a) by the substitution of subsection (6) for the following subsection: 35

“(6) Additional tax, penalty or interest may be imposed or levied as if the repeal of the legislation in Schedule I had not been effected and may be assessed and recovered under this Act, if—

(a) additional tax, penalty or interest which but for the repeal would have been capable of being imposed, levied, assessed or recovered by the commencement date of this Act, has not been imposed, levied, assessed or recovered by the commencement date of this Act; or 40

(b) an understatement penalty, administrative non-compliance penalty or interest under this Act cannot be imposed, levied, assessed or recovered in respect of an understatement as defined in section 221, non-compliance or failure to pay that occurred before the commencement date of this Act.”; 45

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

“(6A) For the purposes of subsection (6), ‘capable of being imposed’ means that the verification, audit or investigation necessary to determine the additional tax, penalty or interest had been completed before the commencement date of this Act. 50

(6B) If a return was due by the commencement date of this Act, the requirement under section 223(3)(b)(i) is regarded as having been met for the purposes of remittance of a substantial understatement penalty. 55

(6C) A person who made a valid voluntary disclosure before the commencement date of this Act, qualifies for the relief referred to in section 229(b) if the audit or investigation of the person's affairs has commenced before but only concluded after commencement date of this Act and the requirements of Part B of Chapter 16 have been met. 5

(6D) If an understatement penalty is imposed as a result of an understatement, as defined in section 221, made in a return submitted before the commencement date of this Act, a taxpayer may object against the penalty under Chapter 9 (whether or not the taxpayer has previously objected against the assessment imposing the penalty) and if the return was required under— 10

(a) the Income Tax Act, a senior SARS official must, in considering the objection, reduce the penalty in whole or in part if satisfied that there were extenuating circumstances; or

(b) the Value-Added Tax Act, a senior SARS official must reduce the penalty in whole if the penalty was imposed under circumstances other than the circumstances referred to in item (v) of the understatement penalty table in section 223(1)."; 15

(c) by the substitution in subsection (7) for paragraph (b) of the following paragraph: 20

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

(d) by the substitution in subsection (8) for paragraph (b) of the following paragraph: 25

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

Amendment of Arrangement of Sections of Act 28 of 2011

87. The Arrangement of Sections of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for item 11 of the following item: 30

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

(b) by the substitution for item 224 of the following item:

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

Short title and commencement 35

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

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

(3) Subject to subsection (2), and save in so far as is otherwise provided for in this Act or the context otherwise indicates, the amendments effected by this Act come into operation on the date of promulgation of this Act. 40

**MEMORANDUM ON THE OBJECTS OF THE TAX
ADMINISTRATION LAWS AMENDMENT BILL, 2013**

1. PURPOSE OF BILL

The Bill amends administrative provisions of the Transfer Duty Act, 1949 (Act No. 40 of 1949), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Skills Development Levies Act, 1999 (Act No. 9 of 1999), the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), the Mineral and Petroleum Resources Royalty Act, 2008 (Act No. 28 of 2008), the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), the Mineral and Petroleum Resources Royalty Act, 2008 (Act No. 28 of 2008), the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008) and the Tax Administration Act, 2011 (Act No. 28 of 2011).

2. OBJECTS OF BILL

2.1 *Transfer Duty Act, 1949: Amendment of section 20B*

The proposed amendment is consequential to the Tax Administration Act, 2011, and provides that any decision by the Commissioner under section 20B(1) of the Act, will be subject to the dispute resolution procedures set out in Chapter 9 of the Tax Administration Act.

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

The now repealed paragraph 12(5) of the Eight Schedule to the Income Tax Act afforded the Commissioner discretion to extend the period to qualify for the exemption in respect of debt waivers in anticipation of liquidation or deregistration. This discretion is replicated in paragraph (bb)(A) of the proviso to paragraph 12A(6)(e) of the Eight Schedule. The proposed amendment replaces paragraph 12(5)(c)(i) with paragraph (bb)(A) of the proviso to paragraph 12A(6)(e) of the Eight Schedule.

2.3 *Income Tax Act, 1962: Amendment of section 6quat*

This section provides that for purposes of rebates or deductions in respect of foreign taxes on income, SARS has six years within which to issue an additional or reduced assessment. The proposed amendment is a technical correction to clarify that the exceptions to the prescription periods under section 99(2) of the Tax Administration Act, 2011, also apply to the period prescribed under section 6quat(5) of the Act.

2.4 *Income Tax Act, 1962: Amendment of section 6quin*

The term “return” is defined in the Tax Administration Act, 2011, to include a declaration. The proposed amendment ensures consistency between the Income Tax Act, the other tax Acts and the Tax Administration Act, 2011, so as to only use the defined term of “return” where mention is made of any document to be submitted to SARS that forms a basis of an assessment. The form of the return is prescribed by the Commissioner under section 25 of the Tax Administration Act.

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

The proposed amendment clarifies the date of submission of returns for purposes of dividends tax and further provides for returns to be submitted by persons that receive exempt dividends as specified. The additional return obligation on persons that receive exempt dividends aims to ensure that SARS has full sight of the exempt dividend flow so as to ensure that where one entity declares a dividend as being exempt it is in fact received by an exempt

beneficial owner of the dividend. This enables SARS to complete the audit trail and reconcile the dividend withholding tax flows.

2.6 *Income Tax Act, 1962: Amendment of section 64N*

The proposed amendment is of a textual nature.

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

The proposed amendment changes the word “shareholder” to “holder of shares” for purposes of style consistency. It also ensures that the reference to “trust” includes any member of the trust.

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

The proposed amendment is consequential to the changes effected to the deduction in respect of retirement fund contributions. See notes on REVISED CONTRIBUTION INCENTIVES FOR RETIREMENT SAVINGS in the Explanatory Memorandum to the Taxation Laws Amendment Bill, 2013.

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

Paragraph 11B(6) requires a written declaration by the employee to show that he or she will be over 65 years of age on the last day of the year of assessment, before the rebate in terms of section 6(2)(b) will be allowed. This age verification is no longer required as SITE has been made obsolete by the increased tax threshold. For example: as the tax threshold for 2014 (with regard to persons under 65 years of age) is R67 111 and the SITE threshold is R60 000, taxpayers will never be liable for SITE and PAYE below R60 000 and the section 6(2)(b) rebate will not be considered, which makes verification unnecessary. The proposed amendment deletes the age verification requirement.

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

Paragraph 11C(5) states that a tax certificate may be withheld by the employer until such time as PAYE paid by the employer on behalf of a director, has been repaid to the employer by the director. The EMP501 reconciliation process requires the director’s tax certificate to be reconciled and submitted to SARS along with all the other employees’ tax certificates. The tax certificate is then pre-populated in the director’s annual return, allowing assessment to take place (which could include a refund). Hence, as a result of the pre-population of IRP5 certificates in individuals’ returns, the withholding of the issue of the tax certificates to the directors is no longer required and this provision is now obsolete and, accordingly, deleted.

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

Paragraph 13(7) provides for a tax certificate to be delivered to an employee either directly or by registered post. Reference to “registered post” seems to exclude other delivery methods. The proposed amendment aims to provide the employer the option to deliver the certificate to the employee in another manner, for example, electronically.

2.12 *Income Tax Act, 1962: Paragraph 17 of Fourth Schedule*

The proposed amendment deletes obsolete references.

2.13 *Income Tax Act, 1962: Paragraph 19 of Fourth Schedule*

The proposed amendment clarifies that all lump sums (and the municipal employee anti-cash out inclusion) are excluded from PAYE withholding.

2.14 Income Tax Act, 1962: Paragraph 20A of Fourth Schedule

The amendment deletes an obsolete reference.

2.15 Income Tax Act, 1962: Paragraph 11 of Sixth Schedule

Paragraphs (a) and (b): In 2012, the legislative framework governing the taxation of micro businesses was changed to make provision for the payment of PAYE and VAT on a 6 monthly basis, as opposed to the normal monthly or bi-monthly regime. These measures form part of reducing the compliance burden and costs of micro businesses by simplifying and improving requirements, processes and systems used to service the small business segment. This legislative framework is now extended to include skills development levies and unemployment insurance contributions. Consistency is also ensured with regard to the due date for payment of employees' tax, as per paragraph 11(4A) of the Sixth Schedule, with regard to the seven day period after the end of the relevant tax period. The proposed amendment will apply in respect of tax periods commencing on or after 1 March 2014.

2.16 Customs and Excise Act, 1964: Amendment of section 4

Section 4 is being amended pursuant to a judgment of the Western Cape High Court (*Patrick Lorenz Martin Gaertner vs The South African Revenue Service (12632/12)*) in terms of which subsections 4(4)(a)(i) and (ii), 4(4)(b), 4(5) and 4(6) of the Customs and Excise Act, 1964, were declared unconstitutional. These provisions of the Act afford very wide powers to officers to search any premises whatsoever at any time, without the requirement of a warrant. The Court suspended the effect of the order to afford Parliament an opportunity to amend section 4 to correct the constitutional defect.

The proposed amendment aims to achieve this in the following way:

- The broad principle embodied in the proposed provision is that an officer may only enter premises on authority of a warrant.
- There are however exceptions to this general rule and certain premises may be entered without a warrant: Premises licensed or registered in terms of the Act, business premises of licensed or registered persons, premises managed or operated by the State or an organ of state as part of a port, airport, railway station or land border post and premises entered with the consent of the owner or person in physical control of the premises.
- Warrantless entry to premises for which a warrant is ordinarily required is furthermore allowed in circumstances where an officer believes that a warrant would have been issued if applied for, but that the delay in obtaining a warrant is likely to defeat the purpose for which entry is sought.
- Requirements are provided for the conduct of officers when they enter and search premises in these circumstances.
- The proposed amendment also sets out the requirements for obtaining a warrant.

2.17 Customs and Excise Act, 1964: Insertion of section 4D

Clause 4D is inserted in the Act to clarify SARS officers' powers relating to criminal investigations. The proposed provision affords officers the power to investigate for purposes of criminal prosecution whether an offence in terms of the Act has been committed, to lay criminal charges for the prosecution of the offence and to provide such assistance to the prosecuting authority as may be required for the prosecution of the offence.

2.18 Customs and Excise Act, 1964: Amendment of section 21A

Section 21A currently provides for Customs Controlled Areas (CCA) situated in an industrial development zone (IDZ) in giving effect to provisions of the Manufacturing Development Act, 1993 (Act No. 187 of 1993) and the regulations made in terms of that Act. IDZ operators and enterprises in the CCA may import goods under rebate of duty and on which VAT is exempt.

The Special Economic Zones Bill [B 3B-2013], seeks to provide in clause 39 that the existing industrial development zones will continue, but the operator must comply with the framework regulating Special Economic Zones in terms of that Bill within three years of its commencement. However, as the Special Economic Zones Bill is not yet enacted, the proposed amendment will refer to an Act of Parliament providing for special economic zones.

In order to provide for CCAs contemplated in clause 34(1)(b) of the Special Economic Zones Bill, it is proposed that a new subsection is inserted in section 21A to enable the Commissioner to designate a CCA in a Special Economic Zone after consultation with any person or authority administering any activity in a special economic zone. The Commissioner is further empowered to make rules for administering the CCA. The provisions of section 21A, with the necessary changes, are also made applicable to CCAs designated for the purposes of that Act, which will enable that the duty and VAT concessions of the CCA may be extended to the CCA of the Special Economic Zone.

It is proposed that the subsection will come into operation on the date on which the Special Economic Zones Bill comes into operation.

2.19 Customs and Excise Act, 1964: Amendment of section 64E

Section 64E provides for the conferral of accredited client status and requires that applicants meet certain criteria. The proposed amendment extends the current criteria applicable to customs laws and procedures to cover excise laws and procedures. It also allows the Commissioner to determine separate criteria for customs or excise clients as may be prescribed by rule. The proposed amendment promotes the SARS strategic intent of modernising excise to a risk management and segmentation approach. This will enable SARS to concentrate their resources on higher risk areas while still having control over low risk clients.

2.20 Customs and Excise Act, 1964: Continuation of amendments made under section 119A

This proposed amendment provides, as contemplated in section 119A of the Act, for the continuation of any rule made under that section or any amendment or withdrawal of or insertion in such rule during the period 1 August 2012 to 31 August 2013.

2.21 Value-Added Tax Act, 1991: Amendment of section 25

The proposed amendment is consequential to the amendment of section 27 of the Value-Added Tax Act by the Tax Administration Laws Amendment Act, 2012.

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

The proposed amendments are consequential to the amendment of section 27 of the Value-Added Tax Act by the Tax Administration Laws Amendment Act, 2012.

2.23 Skills Development Levies Act, 1999: Amendment of section 6

See the discussion in paragraph 2.15 above.

2.24 Unemployment Insurance Contributions Act, 2002: Amendment of section 8

Paragraphs (a) and (b): See the discussion in paragraph 2.15 above.

2.25 Unemployment Insurance Contributions Act, 2002: Amendment of section 13

See the discussion in paragraph 2.15 above.

2.26 Securities Transfer Tax Act, 2007: Amendment of section 9

The proposed amendment is consequential to the Tax Administration Act, 2011, and provides that any decision of the Commissioner under section 9(1) of the Act, is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act.

2.27 Mineral and Petroleum Resources Royalty Act, 2008: Amendment of section 12

The proposed amendment is consequential to the Tax Administration Act, 2011, and provides that any decision of the Commissioner under section 12(1) of the Act, is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act.

2.28 Mineral and Petroleum Resource Royalty (Administration) Act, 2008: Amendment of section 6

As the payment of royalties in terms of the Act is a deductible expense for normal income tax purposes, the finalisation of the income tax return (ITR14) is dependent upon the annual royalty return (MPR3). The proposed amendment brings into line the dates of submission of the two returns i.e. 12 months after financial year end.

2.29 Mineral and Petroleum Resource Royalty (Administration) Act, 2008: Amendment of section 19

The Royalty return due date is changed to match the Income Tax return date in order to ensure meaningful comparison between the two returns.

2.30 Tax Administration Act, 2011: Amendment of section 1

Paragraph (a) and (d): The insertion of the definition of “outstanding tax debt” and proposed amendment to the definition of “tax debt” aims to clarify what is regarded as a “tax debt” and what is an “outstanding tax debt” recoverable under the Act. A “tax debt” means an amount of tax due or payable in terms of a tax Act as set out in section 169(1) of the Tax Administration Act. For example: A tax debt may be payable but not due in a situation where a tax debt is disputed, but remains payable pursuant to the pay-now-argue-later rule. However, a disputed tax debt will only be “due” if a tax court or higher court finally determines the dispute in favour of SARS. Conversely a tax debt may also be due but not payable, for example an understatement penalty.

The term “outstanding tax debt” is used in the sections assigning recovery powers to SARS i.e. it is a prerequisite before recovery proceedings may be instituted by SARS. The proposed amendment therefore clarifies that the recovery powers can be used only if an amount of tax is not paid within the prescribed period for payment.

Paragraph (b): The proposed amendment clarifies that there must be a nexus between material requested by SARS and the administration of a tax Act for purposes of which the material is required.

Paragraph (c): The proposed amendment clarifies that a return by the taxpayer only constitutes *one basis* on which an assessment by SARS is based and not the *only basis*. SARS may have multiple sources of information to determine the correct tax liability of the taxpayer. These include the taxpayer's return, third party returns such as returns regarding interest received by the taxpayer, as well as information obtained by SARS under its powers to request information. These sources of information may be used to issue an original or revised assessment.

2.31 Tax Administration Act, 2011: Amendment of section 3

The proposed amendment is a technical correction.

2.32 Tax Administration Act, 2011: Amendment of section 10

Under the common law a delegation is a unilateral act that does not require the written acceptance of the person so delegated to become effective. The delegation becomes effective when signed by the delegating person. The proposed amendment brings the section in line with the common law approach.

2.33 Tax Administration Act, 2011: Amendment of section 11

Paragraph (a): The proposed amendment is consequential to the further proposed amendments to section 11.

Paragraph (b): The proposed amendment aims to clarify that this provision overrides the requirement under the State Attorneys Act, 1957, that such legal costs "must" be paid into the National Revenue Fund if recovered by the State Attorney in matters involving SARS. Legal costs are incurred by SARS from its own account and moneys recovered under an order for legal costs in favour of SARS, constitute funds of SARS and must be paid to SARS.

Prior notice of intended legal proceedings

Paragraph (c): The proposed amendment essentially seeks to avoid unnecessary and costly litigation. Prior notice of an intended court application seeks to ensure that the matter is brought to the attention of an appropriate senior official, who can use the prior notice period productively to investigate the merits of the intended application and, if appropriate, resolve a dispute before formal court proceedings. It is submitted that most parties to a dispute would prefer resolution over litigation. The opportunity afforded by the prior notice requirement to seek resolution will also lessen the burden on the court system. The prior notice requirement is ameliorated by allowing a court to waive formal compliance in extremely urgent cases.

The amendment also seeks parity between customs and excise litigation under the Customs and Excise Act, 1964, and litigation related to a tax Act administered through the Act. Under section 92 of the Customs and Excise Act legal proceedings may only be instituted against the Commissioner if prior notice of at least one month of the intended legal proceeding has been given. Furthermore, the notice must be delivered at such places as may be prescribed by rule under that Act.

Specified place of service of proceedings

No standard practice has evolved, and no clear law exists, which clarifies where court papers citing SARS are to be filed. In practice, applications have been served haphazardly on branch offices of SARS or on an Office of the

State Attorney. Although the head of SARS is the Commissioner, at SARS Head Office, SARS has not normally taken issue with the place of service. However, this has often resulted in challenges being experienced in complying with the time limitations prescribed by the court rules. Under the Act the Commissioner must be cited as respondent for purposes of any legal proceedings arising under a tax Act and not the relevant SARS branch office or SARS official.

2.34 Tax Administration Act, 2011: Amendment of section 25

The proposed amendment aims to afford the Commissioner the power to require returns other than those specifically referred to in a tax Act. The scheme of the Tax Administration Act is to administer a return obligation imposed under another tax Act or the Act. A tax Act generally only imposes the obligation to submit a return, while the form and manner is prescribed under the Act. A return must contain the information prescribed by a tax Act or the Commissioner.

A return is one method of information gathering. Information requests are *ad hoc* whereas returns are much broader, apply to a category of taxpayers and are generally, but not always, required on a recurring basis. In practice, it may happen that returns other than those currently specifically required under the tax Acts are necessary to administer a tax Act, including the Tax Administration Act itself. While SARS could send out individual requests for information in some cases, this option is inappropriate when information is sought from a large number of people.

Furthermore, if the identity of persons from whom information is required is unknown, then the standard information-gathering process is inappropriate. For example, if information is required by other countries in terms of an international tax agreement, the Commissioner should be enabled to request a specific return even if it is not specifically required under a South African tax Act other than the Tax Administration Act.

If a return may only be required if specifically prescribed in a tax Act other than the Act, this will limit the use of returns for purposes of information gathering.

2.35 Tax Administration Act, 2011: Amendment of section 26

As a result of a technical oversight, section 26 of the Act does not include the authority of the Commissioner to prescribe the due date for the submission of third party returns, as is done in respect of taxpayer returns in section 25(1)(b). The proposed amendment corrects this technical oversight.

2.36 Tax Administration Act, 2011: Amendment of section 27

The proposed amendment ensures that the power exercised in terms of this section, given the impactful nature thereof, requires the approval of a senior SARS official specifically authorised by the Commissioner for this purpose.

2.37 Tax Administration Act, 2011: Amendment of section 34

The proposed amendment caters for the fact that companies may no longer use South Africa's Generally Accepted Accounting Practice (GAAP) for financial periods commencing on or after 1 December 2012.

2.38 Tax Administration Act, 2011: Amendment of section 46

Extensive criminal investigative powers are assigned to SARS in the Tax Administration Act. SARS may, under the Act, complete a criminal investigation and lay a charge with the SA Police Services ("SAPS"). The

National Prosecuting Authority (“NPA”) must then determine whether to institute a prosecution.

It is evident from the Criminal Procedure Act, 1977, that the ability to require information to be provided in a prescribed manner is not limited to specific investigative authorities, such as SAPS or NPA. Sections 212 and 236 of the Criminal Procedure Act extend the general admissibility requirements of documentary evidence to criminal proceedings. In practice, affidavits are obtained during a criminal investigation, from banks for example, and then presented as evidence if criminal proceedings are instituted.

The proposed amendment will enable SARS to obtain these documents in a manner that it may be used as *prima facie* evidence to obviate the unnecessary calling of third parties as witnesses. It does not, however, empower SARS to use authority under the Criminal Procedure Act. SARS’s power to request information is under section 46 of the Act, which allows SARS to direct the manner in which it may obtain information for purposes of an audit or criminal investigation, including under oath or by way of solemn declaration.

2.39 Tax Administration Act, 2011: Amendment of section 54

The proposed amendment is stylistic.

2.40 Tax Administration Act, 2011: Amendment of section 68

The proposed amendment is a technical correction. Given the clear prejudice to the effectiveness of SARS’s audits or investigations should its verification or audit selection procedures or methods be disclosed, such information should be included under “SARS confidential information”. SARS’s audit selection methods are premised on the reality that it is impossible to audit all returns. The effective administration of the tax system presupposes that taxpayers should not know when they will be selected for an audit. At the conclusion of the audit, the taxpayer is entitled to SARS’s reasons and examination methods that result in an assessment. This mirrors the protection of such information *inter alia* afforded under section 44(2)(a) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

2.41 Tax Administration Act, 2011: Amendment of section 69

The proposed amendment gives effect to a proposal by the Tax Practitioner Controlling Bodies to ensure that taxpayers are able to determine if the practitioner they are dealing with is a duly registered tax practitioner.

2.42 Tax Administration Act, 2011: Amendment of section 70

The proposed amendment gives effect to a proposal by the Tax Practitioner Controlling Bodies to ensure that SARS may exchange information with them to verify that practitioners are both members of a Recognised Controlling Body and registered with SARS. Such disclosure would only be to the extent required to give effect to the objectives of section 240A of the Act.

2.43 Tax Administration Act, 2011: Amendment of section 73

Paragraph (a): The proposed amendment is consequential to the further proposed amendments to section 73 discussed below.

Paragraph (b): The proposed amendment aims to avoid the problem that if taxpayer information obtained by SARS “relates to a third party”, the information can in effect only be provided under the Promotion of Access of Information Act, 2000, (“PAIA”) with the consent of such third party under section 42 of that Act. Particularly in the context of auditing transactions involving several taxpayers and third parties, this is a problem when SARS uses the information to assess one or more of the taxpayers involved.

The rationale for requiring the taxpayer to apply under PAIA for information obtained by SARS from other sources, is to afford SARS the protection under that Act in respect of, for example, premature requests that may prejudice the outcome of an audit or investigation, as well as to protect information obtained from informants, information regarding SARS's audit and investigative methods and information that could frustrate the deliberative process in SARS. This typically occurs in the pre-assessment stage. However, once third party information is used to determine the tax liability of a taxpayer, SARS should be able to disclose such information to the taxpayer in the performance of its duties without having to obtain the prior consent of third parties to whom the information also relates.

Paragraphs (c) and (d): The proposed amendments are consequential to the proposed amendments to section 73 discussed above.

Paragraph (e): Section 73(1) relates to information on which the taxpayer's assessment is based. This information forms part of the reasons that SARS should provide to justify the assessment and must be given to the taxpayer as a matter of course. The taxpayer should not have to pay for copies of this information.

2.44 Tax Administration Act, 2011: Amendment of section 79

The proposed amendment is contextual to make use of the proposed defined term "outstanding tax debt".

2.45 Tax Administration Act, 2011: Amendment of section 93

The proposed amendment is a technical correction.

2.46 Tax Administration Act, 2011: Amendment of section 98

In practice, erroneous assessments are often only discovered after all prescription periods and remedies have expired and it becomes apparent that it would be unreasonable and inequitable to recover the tax due under such assessments. Examples are assessments that result from fraud by a person not authorised by the taxpayer to complete or submit a return, an undisputed error by the taxpayer in a return or a processing error by SARS in making the assessment. The proposed amendments aim to address this problem by allowing for the withdrawal of assessments in specified narrow circumstances.

The proposed amendments further provide that a senior SARS official may agree with the taxpayer as to the amount of tax properly chargeable for the relevant tax period and subsequently issue a revised original, additional or reduced assessment, pursuant to such agreement, which assessment would then not be subject to objection and appeal.

2.47 Tax Administration Act, 2011: Amendment of section 99

In terms of section 99 of the Act, there are certain circumstances where SARS may not make an assessment. This prohibition will not apply where *inter alia*, the assessment is necessary to give effect to the resolution of a dispute under Chapter 9 of the Act or to a judgment pursuant to an appeal under Part E of Chapter 9 of the Act, where there does not exist any right of further appeal. The proposed amendment aims to extend these grounds to include assessments made pursuant to a withdrawal in the circumstances referred to in section 98(1) of the Act.

2.48 Tax Administration Act, 2011: Amendment of section 103

The proposed amendment enables the Commissioner to prescribe the form of documents required to be completed or delivered under the dispute resolution

rules which rules, in turn, are published in a regulation by the Minister of Finance.

The proposed amendment affords only a limited authority to the Commissioner to prescribe the form of documents, such as the notices of objection and appeal, required under the dispute resolution rules. It is and always has been the practice that the form of the documents used in the dispute resolution process be prescribed by the Commissioner but only within the ambit of the empowering provision. The Minister is not involved in the design of documents used for purposes of tax administration, since this is the responsibility of the Commissioner.

2.49 Tax Administration Act, 2011: Amendment of section 110

The proposed amendment is a technical correction. The decisions that a tax board may make in deciding a tax appeal are similar to those of the tax court under section 129 with the necessary changes.

2.50 Tax Administration Act, 2011: Amendment of section 117

The proposed amendment affords the tax court jurisdiction to hear and decide procedural matters instituted under the dispute resolution rules. It also aims to clarify the difference between interlocutory applications and applications in a procedural matter relating to a dispute under Chapter 9 of the Act and instituted under the dispute resolution rules.

2.51 Tax Administration Act, 2011: Amendment of section 118

Paragraph (a): The proposed amendment is stylistic.

Paragraph (b): In practice, problems are experienced in appointing mining engineers as members of the tax court. The amendment proposes that a registered engineer with experience in the field of mining may be appointed instead, as they are more readily available.

Paragraph (c): The proposed amendment enables the president of the tax court sitting alone to deal with interlocutory and procedural matters instituted under the dispute resolution rules.

2.52 Tax Administration Act, 2011: Amendment of section 129

Paragraph (a): The proposed amendment affords the tax court the jurisdiction to decide procedural matters instituted under the dispute resolution rules.

Paragraph (b): The proposed amendment clarifies that the tax court, in dealing with an appeal against the imposition of an understatement penalty, is not limited to the behavioural category in the Understatement Penalty Table initially chosen by SARS. The tax court may decide, based on the evidence, that another behavioural category in the Table is more appropriate and reduce or increase the penalty accordingly.

Paragraph (c): The proposed amendment clarifies what is the effect of the decision of the tax court in a test case designated under section 104(6) of the Act. It is not intended that the judgment by the tax court in the test case will be binding on other tax courts—it will only be binding on the taxpayers whose objections or appeals were stayed or selected for the test case.

The remedies of taxpayers who are selected but do not wish to be part of the test case will be regulated in the new dispute resolution rules to be issued under section 103 of the Act.

Taxpayers who agreed to a stay of their disputes (or have been ordered by a tax court order to stay their disputes) will be bound by a final judgment. Taxpayers

whose disputes were stayed and exercised their right to participate as co-appellant in the case, will be able to further appeal the test case. In addition, if taxpayers are of the view that the test case judgment does not apply to the facts and issues in their stayed disputes, the rules will permit the taxpayers to approach the tax court for an order to pursue their dispute independently. This is specifically catered for in the proposed amendment by the insertion of the words “unless a tax court otherwise directs”.

2.53 Tax Administration Act, 2011: Amendment of section 130

Paragraph (a): The proposed amendment is consequential to the further proposed amendments to section 130 discussed below.

Paragraph (b): The proposed amendment enables the tax court to award costs as provided for in the dispute resolution rules in a test case, interlocutory application or application in a procedural matter instituted under the rules. Under the rules, provision will also be made for costs relating to the cases stayed pending the outcome of the test case.

2.54 Tax Administration Act, 2011: Amendment of section 133

The proposed amendment is a technical correction.

2.55 Tax Administration Act, 2011: Amendment of section 160

The proposed amendment aims to protect a third party compelled under section 179 to pay amounts owed to or held on behalf of a tax debtor to SARS, from recovery actions by the tax debtor on this basis. It aims to ensure parity between third parties obliged to pay amounts to SARS solely under compulsion of law where the payment does not originate from wrongful conduct or from being a party to or beneficiary of dissipating actions by the tax debtor.

2.56 Tax Administration Act, 2011: Amendment of section 161

The proposed amendment clarifies that the “tax debt” in this context is an “outstanding tax debt” in respect of which SARS may initiate recovery proceedings under the Act.

2.57 Tax Administration Act, 2011: Amendment of section 163

Paragraph (a): A preservation order is not a recovery mechanism. SARS’s recovery powers of quantified and outstanding tax debts are contained in Chapter 11 of the Act. The proposed amendment clarifies what the main purpose of a preservation order is, namely to deal with both the situation where a taxpayer subject to e.g. an audit takes steps to transfer assets to avoid payment of the tax properly chargeable *and* where the taxpayer takes such steps once there is a quantified tax liability. This is in line with the common law *Mareva injunction* remedy.

However, the fact that SARS may apply for a preservation order in respect of tax that may be due or payable, does not mean that SARS may make use of this measure to preserve assets under circumstances where it has yet to be determined that it is likely that a debt will arise. If the audit is not completed and the tax debt not yet quantified, a senior SARS official on reasonable grounds must be satisfied that tax may be due or payable.

Paragraph (b): The proposed amendment is consequential to the other proposed amendments to section 163.

Paragraph (d): The proposed amendment clarifies that “tax” in this context means the tax that is or may be due or payable referred to in subsection (1).

Paragraphs (c), (e), (f), (g) and (h): The proposed amendments provide for the appointment of a *curator bonis* by SARS to safeguard seized assets before the granting of a preservation order under subsection (7) and the ability of the court to confirm the appointment or, if one was not appointed by SARS, order the appointment of a *curator bonis*.

2.58 Tax Administration Act, 2011: Amendment of section 164

Paragraph (a): Section 164 of the Act does not apply to the undisputed part of the assessment. The proposed amendment provides that the disputed amount under an assessment may be partially suspended, rather than an all or nothing approach.

Paragraph (b): The proposed amendment is a technical correction to clarify that this subsection caters for both scenarios for suspension envisaged under subsection (2) i.e. where the taxpayer intends to object but is waiting, for example, for reasons requested under the rules or needs more time to formulate the grounds of objection, and where the taxpayer has already lodged an objection.

Paragraph (c): The proposed amendment is a technical correction.

2.59 Tax Administration Act, 2011: Amendment of section 165

Paragraphs (a) to (c): The proposed amendments aim to introduce more neutral terms to avoid confusion between tax liability and tax due or owed.

2.60 Tax Administration Act, 2011: Amendment of section 166

The proposed amendment is contextual to make use of the defined term “tax debt”.

2.61 Tax Administration Act, 2011: Amendment of section 169

Paragraph (a): The proposed amendment is contextual to make use of the defined term “tax debt”.

Paragraph (b): Amendment to subsection (3): The proposed amendment is a technical correction in view of the fact that an agreement under section 4(1)(a)(ii) of the South African Revenue Service Act, 1997, is included as a “tax Act” for purposes of the definition of “tax debt”.

Amendment to subsection (4): The proposed amendment clarifies that the amount in this context is a “tax debt”.

2.62 Tax Administration Act, 2011: Amendment of section 172

The proposed amendment clarifies that the statement referred to in subsection (2) may only be filed if the period referred to in section 164(6) has expired i.e. that recovery proceedings under this section may only be instituted in respect of an “outstanding tax debt”.

Section 164(6) provides that during the period commencing on the day that SARS receives a request for suspension for disputed tax and ending 10 business days after the issue of SARS’ decision or revocation, no recovery proceedings may be taken unless SARS has a reasonable belief that there is a risk of dissipation of assets. If SARS does not give the notice required under section 164(6), the 10 day period does not commence and SARS cannot take any recovery proceedings. The proposed amendment clarifies that the statement referred to in subsection (2) may only be filed if the period referred to in section 164(6) has expired.

2.63 Tax Administration Act, 2011: Amendment of section 175

The proposed amendment is contextual to make use of the defined term “tax debt”.

2.64 Tax Administration Act, 2011: Amendment of section 176

Paragraph (a): The proposed amendment is contextual to make use of the defined term “tax debt” and to clarify that the new statement may include an amount of the tax debt that differs from the amount in the withdrawn statement.

Paragraph (b): The proposed amendment obliges SARS to withdraw a judgment if the relevant tax debt is satisfied, in order to assist a taxpayer in restoring financial credibility. A taxpayer must submit a withdrawal request in the prescribed form and manner.

Furthermore, a senior SARS official must be satisfied that the tax debt has been paid in full and that there are no other “outstanding tax debts”. A debtor normally has to apply to court for rescission of a judgment and a creditor is generally under no obligation to withdraw a judgment once the debt is paid. As a departure from this general principle, this provision compels SARS to withdraw the judgment once all tax debts are paid to assist taxpayers in restoring their financial credibility. This significant additional obligation on SARS should accordingly be limited to deserving taxpayers who have *no* outstanding tax debts.

It should be noted the proposed amendment does not apply to cases where a tax debt is or was never owed. If the debt should never have existed SARS already has the power to withdraw the judgment.

2.65 Tax Administration Act, 2011: Amendment of section 177

Paragraph (a): The proposed amendment clarifies that recovery proceedings under this section may only be instituted in respect of an “outstanding tax debt” as defined.

Paragraph (b): The proposed amendment clarifies that a separate application by SARS is not required before it may institute recovery proceedings under this section in respect of a disputed tax debt for which no suspension under section 164 was requested or exists. In pursuance of judicial economy the same court before which the proceedings are instituted decides whether leave should be given to SARS to pursue such proceedings.

2.66 Tax Administration Act, 2011: Amendment of section 179

The proposed amendment clarifies that recovery proceedings under this section may only be instituted in respect of an “outstanding tax debt” as defined.

2.67 Tax Administration Act, 2011: Amendment of section 180

The proposed amendment clarifies that an “outstanding tax debt” is contemplated here.

2.68 Tax Administration Act, 2011: Amendment of section 181

Paragraph (a): The proposed amendment clarifies that an “outstanding tax debt” is contemplated here.

Paragraph (b): The proposed amendment is contextual to make use of the defined term “tax debt”.

Paragraph (c): The proposed amendment is contextual to make use of the defined term “tax debt”.

2.69 Tax Administration Act, 2011: Amendment of section 182

The proposed amendment clarifies that an “outstanding tax debt” is contemplated here.

2.70 Tax Administration Act, 2011: Amendment of section 186

The proposed amendment clarifies that an “outstanding tax debt” is contemplated here.

2.71 Tax Administration Act, 2011: Amendment of section 190

The proposed amendment clarifies that an amount erroneously paid by SARS as a refund is regarded as an “outstanding tax debt” and recoverable by SARS as such.

2.72 Tax Administration Act, 2011: Amendment of section 191

The proposed amendment clarifies that a refund may only be set off against a tax debt if no suspension request of the debt under section 164 is pending or if no suspension exists.

2.73 Tax Administration Act, 2011: Amendment to section 192

Paragraph (a) and (c): The proposed amendment clarifies that a “tax debt” is contemplated here.

Paragraph (b): The proposed amendment clarifies that an “outstanding tax debt” is contemplated here.

2.74 Tax Administration Act, 2011: Amendment of section 221

The proposed amendment clarifies that the tax period is relevant to calculating the shortfall under section 222(3) and (4) and not *whether* there is prejudice to SARS or the *fiscus* as referred to in the definition of “understatement”.

2.75 Tax Administration Act, 2011: Amendment of section 222

Paragraph (a): Amendment of subsection (1): The proposed amendment clarifies when an “understatement” will not result in a penalty by excluding *bona fide* inadvertent errors. This gives effect to the announcement in this regard in the 2013 Budget Review. The proposed amendment will apply with effect from 1 October 2012, but will also apply to understatements made in a return before 1 October 2012. Due to the broad range of possible errors, the proposal to define the term “*bona fide* inadvertent error” has the potential to inadvertently exclude deserving cases and include undeserving cases. SARS will, however, develop guidance in this regard for the use of taxpayers and SARS officials.

Amendment of subsection (2): The purpose of the amendment is to avoid an unnecessarily onerous penalty. If more than one understatement is made in a return, the applicable behavioural category in respect of each understatement must be separately or individually determined as the behaviour may differ. For example, one understatement may result from reasonable care not taken while another may result from gross negligence. The amendment clarifies that the approach should not be to determine the net shortfall of the entire period and then apply the “highest applicable percentage”. To follow the example above, this would mean that the higher percentage for gross negligence would apply in respect of both understatements.

Paragraph (b): This amendment follows from the amendment to the definition of “understatement” in section 221. See the discussion in paragraph 2.73 above.

Paragraph (c): Amendment of subsection (4): The proposed amendment removes the unnecessary and arguably circular reference to “understatement” in the subsection.

Amendment of subsection (5): The proposed amendment is contextual to clarify which tax rate is contemplated here.

2.76 Tax Administration Act, 2011: Amendment of section 223

Paragraph (a): The proposed amendment reduces the applicable percentages of the penalty in the case of “substantial understatements”, “reasonable care not taken” or “no reasonable grounds for tax position taken”. The percentages are now more aligned with comparative tax jurisdictions where largely similar penalty regimes apply. The applicable percentages for gross negligence or intentional tax evasion remain the same. Column 5 and 6 of the understatement penalty table are amended to include the word “investigation” and is a correction consequently to the wording of section 229(b) of the Act.

Paragraph (b): The proposed amendment clarifies that for purposes of a remittance request for a “substantial understatement penalty”, the opinion in issue must have been given by a tax practitioner that is independent from the taxpayer. Opinions by, for example, in-house tax practitioners will not qualify given their potential vested interests in such matters as in-house tax practitioners are not independent of their employers and are not subject to the same statutory or other sanctions as other practitioners. They are not required to register as tax practitioners, since they qualify for an exclusion from registration, and could legally retain their employment even if removed from the rolls of a recognised controlling body.

2.77 Tax Administration Act, 2011: Amendment of section 224

The right to object and appeal against an understatement penalty, given effect to in an assessment, flows from the fact that if a taxpayer is aggrieved by the assessment the taxpayer may object under section 104. However, as a result of uncertainty in this regard, the proposed amendment clarifies that a taxpayer may object and appeal against the imposition of any understatement penalty and not only against the decision not to remit a “substantial understatement penalty”.

2.78 Tax Administration Act, 2011: Amendment of section 230

The proposed amendment clarifies that a “tax debt” is contemplated here.

2.79 Tax Administration Act, 2011: Amendment of section 231

The proposed amendment clarifies that a “tax debt” is contemplated here.

2.80 Tax Administration Act, 2011: Amendment of section 235

The proposed amendment clarifies that this is not an enabling but a limitation provision. Any SARS official may in the performance of their duties lay criminal charges in respect of tax offences, but in the case of tax evasion under this section only a senior SARS official may do so given the serious nature of the charge and the potential sentence upon conviction.

2.81 Tax Administration Act, 2011: Amendment of section 240

Paragraphs (a) and (b): The proposed amendments regarding the use of the word “solely” in subsection (2), aims to allow combinations between the different scenarios referred to in section 240(2)(a) to (d), for example a person who completes returns for no consideration under paragraph (a) may also complete such returns under paragraph (d), without having to register as a tax practitioner.

Furthermore, under the current wording persons who are under the *direct supervision* of a person who is a registered tax practitioner need not register as tax practitioners. However, the result of this according to the industry is that “intermediate managers” between trainees or articled clerks, for example, and a partner or director must also register as tax practitioners. The exclusion from registration for subordinates must, however, be balanced against the need to ensure that a registered tax practitioner is accountable for the actions of a subordinate.

In view of the arguable adverse practical implications of the “direct supervision” requirement, an amendment to replace it with the concept of acceptance of accountability by the tax practitioner assigning the completion of returns or tax advisory functions to a person or persons, is proposed. This will regard the partner or director who is a registered tax practitioner and who assigned or approved the assignment of the functions to e.g. the intermediate manager and the trainees or articled clerks, as accountable for the actions of the person or persons in performing the functions, for purposes of complaints by taxpayers or SARS to the relevant recognised controlling body.

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

Paragraph (a): The proposed amendment caters for Recognised Controlling Bodies that have both tax practitioner members and other members. The requirements under section 240A(2)(a) will only apply to the tax practitioner members.

Paragraph (b): The proposed amendment provides that the report by the Recognised Controlling Body must be submitted in the form prescribed by SARS.

2.83 Tax Administration Act, 2011: Amendment of section 242

The term “taxpayer information” is a defined term. It would include information provided by both the taxpayer and the tax practitioner to SARS or obtained by SARS under its information gathering powers. It is thus subject to secrecy and the proposed amendment is required to ensure that SARS may disclose the necessary “taxpayer information” to a controlling body regarding the taxpayer concerned and the tax practitioner against whom the complaint is lodged.

2.84 Tax Administration Act, 2011: Amendment of section 246

Paragraph (a): The public officer of a company must reside in South Africa and is responsible for all acts, matters, or things that the public officer’s company must do under a tax Act. Enforcement of these duties and obligations would be impossible if the public officer does not reside in the Republic. Section 246(2) affords SARS discretion to approve a suitable public officer based on such officer’s position in the relevant company. The purpose is to ensure that a suitably senior person is accountable for the tax obligations of the company, which obligations in SARS’s view should preferably be dealt with at the executive or board level of a company by an official who has a say at this level.

However, the current wording does not cater for non-resident companies which are obliged to register for tax in South Africa for VAT or income tax as a result of income sourced in the country. Often these companies do not have a physical presence or employees in South Africa. To address these problems an amendment is proposed under which SARS may approve a person as public officer who is *not* a senior official or even an employee of the company *if* the person is regarded as suitable for this purpose by a senior SARS official. The suitability of the person will be determined by the seniority, status and influence of the person in the company at executive or board level. Examples are independent attorneys or accountants used or appointed by non-resident companies who have such seniority, status and influence.

Paragraph (b): The proposed amendment aims to align the terminology used in subsection (3) with that of the Companies Act, 2008.

2.85 Tax Administration Act, 2011: Amendment of section 256

The proposed amendment is contextual in order to make use of the proposed definition of the term “outstanding tax debt”.

2.86 Tax Administration Act, 2011: Amendment of section 270

The drafting of the Tax Administration Bill was announced in the 2005 Budget Review as a legislative review project to incorporate into one piece of legislation certain generic administrative provisions, which were duplicated in the different tax Acts, as well as to remove redundant administrative provisions and to simplify the provisions. The administrative provisions in the different tax Acts originate from 1962 and although the provisions have been amended over the years, the tax Acts have become very fragmented and disparate provisions arose in the different tax Acts. These provisions were also outdated and not aligned with modern approaches, business, accounting and constitutional rights.

During the drafting of the Tax Administration Bill, SARS was assisted by international experts from the IMF and the constitutionality of the Bill was also reviewed by both expert constitutional counsel and the State Law Advisers who certified the Bill as constitutional.

As was made clear during the Parliamentary process when the Tax Administration Act was enacted, the general transitional approach when drafting the Tax Administration Bill was that the new Act would apply to an act, omission or proceeding taken, occurring on instituted before the commencement date—see section 270(1). This applied to the imposition of understatement penalty from the outset i.e. the commencement date of the Act. During the public commentary stage and parliamentary hearings on the Tax Administration Bill, no concerns regarding this retrospective application were raised.

To have continued these actions or proceedings under the “old law” would have necessitated different processes and systems in SARS into the indefinite future which would have increased the cost of tax administration substantially. It would also have defeated the legislative reform intended by the Act, in that SARS would have had to still apply the duplicatory, outdated, fragmented, disparate and unnecessarily complicated provisions, which were addressed and corrected by the Act, indefinitely.

As an exception to the general transitional approach under section 270(1), section 270(6) of the Act was enacted to allow additional tax (rather than an understatement penalty) to be imposed if the verification, audit or investigation had been completed before the Act commenced, but the assessment had not been issued. The section specified that additional tax must have been “capable of” being imposed, in the sense that all other requirements for the

intended imposition must have been met, before the Act commenced, but was not.

In practice, uncertainty has arisen as to whether the exception under section 270(6) has a wider application in that it means that additional tax must be imposed in respect of all returns containing understatements submitted before the commencement date of the Act. It is, furthermore, argued that if an understatement penalty cannot be imposed in respect of understatements in returns submitted before the commencement date of the Act, they will also escape additional tax on the grounds that it has been repealed. In other words, taxpayers making these understatements will not be subject to any penalty for their unacceptable behaviour.

In the light of the above, an amendment to section 270(6) is proposed to clarify that if an understatement penalty cannot be imposed, additional tax may be imposed.

Paragraph (b): Under the additional tax legislation the amount of the penalty was subject to an open-ended discretion as a taxpayer could incur a penalty anywhere between 0 to 200%. Under the Act a structured approach based on taxpayer behaviour was adopted. Both before and after the commencement date of the Act a penalty was imposed for an understatement and was and still is calculated as a percentage of the amount of the shortfall. In both cases the relevant behaviour of the taxpayer influences the amount of the penalty. Whereas the additional tax penalty scheme allowed the recognition of extenuating circumstances to reduce penalties from 200%, the Act now incorporates similar factors under broader behavioural categories namely reasonable care not taken, unreasonable tax position, gross negligence and intentional tax evasion.

However, it is accepted that clarification may be required and that there may be unanticipated consequences arising from the transitional approach adopted regarding understatement penalties. The following additional amendments are, therefore, proposed:

New subsection (6A): This amendment aims to clarify the original purpose of the exception under subsection (6), namely that additional tax may be imposed if capable of being imposed which would only be the case if the verification, audit or investigation necessary to determine the additional tax, penalty or interest had been completed before the commencement date of the Act.

New subsection (6B): The understatement penalty scheme includes a “substantial understatement penalty” which is strictly imposed if the shortfall resulting from an understatement amounts to the greater of five per cent of the amount of tax properly chargeable or refundable, or R1 000 000. The Act provides for the remittance of these penalties if certain requirements are met. One of the requirements for remittance is that the taxpayer must be in possession of an opinion by a registered tax practitioner, regarding the arrangement in issue that was issued by no later than the date that the relevant return was due.

As a taxpayer submitting a return before commencement of the Act was not aware of this requirement at that time, this amendment will enable taxpayers seeking remittance of a “substantial understatement penalty” in respect of an understatement made before the commencement date of the Act, to use an opinion obtained after the relevant return was submitted.

New subsection (6C): This amendment enables taxpayers who made voluntary disclosures before the commencement date of the Act, to qualify for relief on an understatement penalty if the audit of their affairs was concluded after the commencement date.

New subsection (6D)(a): This amendment allows a senior SARS official who considers an objection by the taxpayer against an understatement penalty imposed as a result of an understatement in a return submitted in terms of the Income Tax Act, 1962, before the commencement date of the Act, to reduce the penalty in whole or in part if satisfied that there were extenuating circumstances.

New subsection (6D)(b): The additional tax scheme under the Value-Added Tax Act, 1991, and the understatement penalty scheme differ in the sense that an understatement made in a value-added tax (VAT) return submitted before the commencement date of the Act will only result in additional tax if there was intent to evade tax. Under the understatement penalty scheme, a penalty may also be imposed if reasonable care was not taken, no reasonable tax position existed or gross negligence existed. In other words, the Act removes the intent requirement as the basis for the imposition of additional tax under the Value-Added Tax Act.

It is likely to be difficult for vendors to argue that had they known about the application of the understatement penalty scheme to returns submitted before commencement of the Act, they would not have been negligent in filing their VAT returns. While removing the intent requirement may create penalties that did not previously exist, it will not establish duties that, properly understood, the Value-Added Tax Act did not already impose such as the obligation to submit true and correct returns.

However, out of an abundance of caution, an amendment is proposed which provides that a senior SARS official who considers an objection by the taxpayer against an understatement penalty imposed as a result of an understatement in a VAT return submitted before the commencement of the Act, must reduce the penalty in whole if the penalty was imposed under circumstances other than the circumstances referred to in item (v) of the understatement penalty table i.e. an intent to evade tax.

Paragraphs (c) and (d): The proposed amendment is a technical correction as the Act, in the context of interest, uses the term “interest payable”.

2.87 Tax Administration Act, 2011: Amendment of Arrangement of Sections

The proposed amendment is consequential to the proposed amendment to sections 11 and 224 of the Act.

2.88 Short title and commencement

Clause 87 provides for the name and commencement of the proposed Act.

3. CONSULTATION

The amendments proposed by this Bill were published on the websites of National Treasury and SARS for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large 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 2013 Budget Review.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers 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.