

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. 40334 of 7 October 2016)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 18—2016]

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GENERAL EXPLANATORY NOTE:

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

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To—

- amend the Income Tax Act, 1962, so as to provide for delegation of a power to disclose certain information; to remove an obligation to submit a return for a dividend derived from a tax free investment; to amend a Schedule to include a class of taxpayers as provisional taxpayers; to amend a definition so as to include taxable dividends; to further regulate the manner of prescribing an effective date; to further regulate the withholding of employees' tax; and to effect textual amendments;
- amend the Customs and Excise Act, 1964, so as to narrow the scope of provisions relating to Special Economic Zones and to align terminology with terminology used in the Special Economic Zones Act, 2014; to broaden the scope of provisions relating to marking, tracking and tracing of tobacco products and to make certain changes relating to the maximum allowed weight of cigarettes for import or manufacturing; to align the prescription period for refunds to the general prescription period of three years; and to make changes to provisions relating to the payment and calculation of interest on outstanding amounts;
- amend the Value-Added Tax Act, 1991, so as to amend provisions to align with the Special Economic Zones Act, 2014; to amend provisions relating to acceptable documentary proof; to reinsert a prescription period; and to amend a Schedule;
- amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to provide greater alignment with the Fourth Schedule to the Income Tax Act, 1962; and to make technical corrections;
- amend the Tax Administration Act, 2011, so as to amend definitions; to specify payment of monies to the National Revenue Fund; to extend the term of office of the Tax Ombud; to provide for appointment of staff of the office of the Tax Ombud; to broaden the mandate of the Tax Ombud; to impose an obligation to provide reasons for not following non-binding recommendations by the Tax Ombud; to provide for disclosure of certain approved organisations; to extend the period for retention of records by SARS; to extend a period of limitation; to amend the provision for an additional assessment; to extend a period within which to apply for a condonation of a late objection; to amend the constitution of a tax court; to narrow the application of a provision; to add a definition and

make provision for a penalty relating to an impermissible avoidance arrangement; and to amend the provision for voluntary disclosure of a default;

- amend the Customs Duty Act, 2014, so as to delete certain unnecessary provisions and to combine certain provisions for purposes of clarity;
- amend the Customs Control Act, 2014, so as to make certain technical corrections; to delete certain unnecessary provisions; to make changes to provisions relating to the submission of cross-border train departure reports; to provide for the transmission of electricity under the international transit procedure; to broaden a rule enabling provision to include rules relating to the treatment of detained counterfeit goods in state warehouses; and generally to make adjustments for the smoother implementation of that Act,

and to provide for matters connected therewith.

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

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of 2008, section 2 of Act 61 of 2008, section 14 of Act 8 of 2010, section 271 of Act 28 of 2011, read with paragraph 25 of Schedule 1 to that Act, section 2 of Act 39 of 2013, section 2 of Act 44 of 2014 and section 1 of Act 23 of 2015

1. Section 3 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (5) of the word “and” at the end of paragraph (a), the substitution for the full stop at the end of paragraph (b) of the expression “; and” and the addition of the following paragraph:

“(c) to make a disclosure under section 69(8)(b)(i) of the Tax Administration Act.”.

Amendment of section 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004 and amended by section 5 of Act 32 of 2005, section 59 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 43 of Schedule 1 to that Act and section 2 of Act 23 of 2015

2. Section 35A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) If the seller does not submit a return in respect of that year of assessment within 12 months after the end of that year of assessment, the payment of **[that] the** amount in terms of subsection (4) is **[deemed to be a self-assessment]** a sufficient basis for an assessment in terms of section **[95(3)] 95** of the Tax Administration Act.”.

Amendment of section 64K of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008 and amended by section 53 of Act 17 of 2009, section 84 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 55 of Schedule 1 to that Act, section 14 of Act 21 of 2012, section 5 of Act 39 of 2013, section 5 of Act 44 of 2014 and section 4 of Act 23 of 2015

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

“(b) received a dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D, other than a dividend derived from a tax free investment contemplated in section 12T, that is exempt or partially exempt from dividends tax in terms of section 64F or 64FA.”.

Amendment of section 102 of Act 58 of 1962, as substituted by section 30 of Act 30 of 2002 and amended by section 35 of Act 20 of 2006 and section 271 of Act 28 of 2011 read with paragraph 70 of Schedule 1 to that Act

4. Section 102 of the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

“Refunds [and set off]”.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008, section 66 of Act 60 of 2008, section 17 of Act 18 of 2009, section 18 of Act 8 of 2010, section 93 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 77 of Schedule 1 to that Act, section 7 of Act 44 of 2014 and section 6 of Act 23 of 2015

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

(a) by the substitution in the definition of “provisional taxpayer” for paragraph (a) of the following paragraph:

“(a) any person (other than a company) who derives income by way of **[income]**—

(i) any remuneration from an employer that is not registered in terms of paragraph 15;

(ii) any amount which does not constitute remuneration; or

(iii) an allowance or advance contemplated in section 8(1);”;

(b) by the substitution in the definition of “provisional taxpayer” for item (BB) of paragraph (dd)(B) of the following item:

“(BB) the taxable income of that person for the relevant year of assessment which is derived from interest, dividends, foreign dividends **[and]**, rental from the letting of fixed property and any remuneration from an employer that is not registered in terms of paragraph 15 does not exceed R30 000;”;

(c) by the substitution in the definition of “remuneration” for the comma at the end of paragraph (f) of a semi-colon and by the addition after that paragraph of the following paragraph:

“(g) any amount received by or accrued to that person by way of a dividend contemplated in—

(i) paragraph (dd) of the proviso to section 10(1)(k)(i);

(ii) paragraph (ii) of the proviso to section 10(1)(k)(i);

(iii) paragraph (jj) of the proviso to section 10(1)(k)(i),”; and

(d) by the substitution in the definition of “remuneration” for the words in paragraph (ii) of the exclusion preceding the proviso of the following words:

“any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not a resident or an employee contemplated in paragraph (b), (c), (d)[,] or (e) **[or (f)]** of the definition of ‘employee’) in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered:”.

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 March 2017 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 March 2017 and applies in respect of any amount received or accrued on or after that date.

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, section 19 of Act 21 of 2012, section 13 of Act 26 of 2013, section 8 of Act 39 of 2013 and section 68 of Act 44 of 2014

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

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

“(1) Every—

(a) employer who is a resident; or

(b) representative employer in the case of any employer who is not a resident,

(whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph 2(1)(b) of the Second Schedule, deduct from the **[employees] employee’s** benefit or minimum individual reserve as contemplated in that paragraph, by way of employees’ tax an amount which shall be determined as provided in paragraph 9, 10[,] or 11 or [12] section 95 of the Tax Administration Act, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee’s spouse, in respect of such liability of that spouse, and shall, subject to the Employment Tax Incentive Act, 2013, pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which that person ceased to be an employer, or in either case within such further period as the Commissioner may approve.”; and

(b) by the substitution in subparagraph (4)(f) for subitem (i) of the following subitem:

“(i) as does not exceed 5 per cent of that remuneration after deducting therefrom the amounts contemplated in items **[(a) to (cA)] (a), (b) and (bA)**; and.”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2015 and applies in respect of donations paid on or after that date.

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 46 of Act 28 of 1997, section 55 of Act 59 of 2000, section 21 of Act 19 of 2001, section 41 of Act 20 of 2006, section 56 of Act 8 of 2007, sections 66 and 116 of Act 35 of 2007, section 66 of Act 3 of 2008, section 68 of Act 60 of 2008, section 20 of Act 18 of 2009, section 95 of Act 24 of 2011 and section 8 of Act 23 of 2015

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

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

“(1) 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 budget statement **[or as varied by the Minister under section 5(3) of this Act, to the rebates applicable in terms of section 6**

and section 6quat of this Act] and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe—

(a) deduction tables applicable to such classes of employees as [he] the Commissioner may determine, taking into account the rebates applicable in terms of section 6; and

(b) the manner in which such tables shall be applied,

and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of subparagraphs (3)[,] and (4) [and (5)] of this paragraph and paragraphs 10[,] and 11 and [12] section 95 of the Tax Administration Act, be determined in accordance with such tables or where subparagraph (3)[,] or (4) [or (5)] is applicable, in accordance with that subparagraph."

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

(2) Any tables prescribed by the Commissioner in accordance with sub-paragraph (1) shall come into force on [such] a date [as may be notified] prescribed by the Commissioner [in the Gazette], and shall remain in force until withdrawn by the Commissioner."

(c) by the deletion in subparagraph (3) of item (b); and

(d) by the deletion of subparagraph (5).

(2) Paragraph (c) of subsection (1) comes into operation on 1 March 2017.

Amendment of paragraph 10 of Fourth Schedule to Act 58 of 1962

8. Paragraph 10 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) If the Commissioner is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer [he], the Commissioner may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of [paragraphs] paragraph 11 and [12] section 95 of the Tax Administration Act, be determined accordingly."

Amendment of paragraph 11 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 21 of 1995, section 84 of Act 45 of 2003, section 42 of Act 20 of 2006 and section 69 of Act 60 of 2008

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

(2) Subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment commencing on or after that date.

Substitution of paragraph 11A of Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969 and amended by section 47 of Act 28 of 1997, section 19 of Act 34 of 2004, section 51 of Act 31 of 2005, section 67 of Act 35 of 2007, section 19 of Act 8 of 2010 and section 9 of Act 23 of 2015

10. The following paragraph is hereby substituted for paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962:

"11A. (1) Where by virtue of the provisions of paragraph (b), (d) or (e) of the definition of 'remuneration' in paragraph 1, the remuneration of an employee includes—

(a) any gain made by the exercise, cession or release of any right to acquire any marketable security as contemplated in section 8A;

(b) any gain made from the disposal of any qualifying equity share as contemplated in section 8B; or

(c) any amount referred to in section 8C which is required to be included in the income of that employee,

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

to be a person who pays or is liable to pay to that employee the amount of the gain referred to in paragraph (a) or (b) or the amount referred to in paragraph (c).

(2) Employees' tax in respect of the amount of remuneration contemplated in subparagraph (1) must, unless the Commissioner has granted authority to the contrary, be deducted or withheld by **[that]** the person referred to in subparagraph (1) from—

(a) any consideration paid or payable by **[him or her]** that person to that employee in respect of the cession, or release of that right or the disposal of that **[equity instrument or]** qualifying equity share, as the case may be²; or

(b) **[from]** any cash remuneration paid or payable by that person to that employee after that right has to the knowledge of that person been exercised, ceded or released or that equity instrument has to the knowledge of that person vested or that qualifying equity share has to the knowledge of that person been disposed of: Provided that where that person is an 'associated institution', as defined in paragraph 1 of the Seventh Schedule, in relation to any employer who pays or is liable to pay to that employee any amount by way of remuneration during the year of assessment during which the gain contemplated in subparagraph (1)(a) or (b) or the amount contemplated in subparagraph (1)(c) arises; and—

(i) is not resident nor has a representative employer; or

(ii) is unable to deduct or withhold the full amount of employees' tax during the year of assessment during which the gain or the amount arises, by reason of the fact that the amount to be deducted or withheld from that **[employee]** remuneration by way of employees' tax exceeds the amount from which the deduction or withholding can be made,

that person and that employer must deduct or withhold from the remuneration payable by them to that employee during that year of assessment an aggregate amount equal to the **[employee's]** employees' tax payable in respect of that gain or that amount and shall be jointly and severally liable for that aggregate amount of **[employee's]** employees' tax.

(3) The provisions of this Schedule apply in relation to the amount of employees' tax deducted or withheld under subparagraph (2) as though that amount had been deducted or withheld from the amount of the gain referred to in subparagraph (1)(a) or (b) or the amount referred to in subparagraph (1)(c).

(4) Before deducting or withholding **[employee's]** employees' tax under subparagraph (2) in respect of remuneration contemplated in subparagraph (1)(a) or (c), that person and that employer must ascertain from the Commissioner the amount to be so deducted or withheld.

(5) If that person and that employer are, by reason of the fact that the amount to be deducted or withheld by way of employees' tax exceeds the amount from which the deduction or withholding is to be made, unable to deduct or withhold the full amount of employees' tax during the year of assessment during which the gain referred to in subparagraph (1)(a) or (b) or the amount referred to in subparagraph (1)(c) arises, they must immediately notify the Commissioner of the fact.

(6) Where an employee has—

(a) under any transaction to which neither that person nor that employer is a party made any gain; or

(b) **[an employee has]** disposed of any qualifying equity share as contemplated in subparagraph (1),

that employee must immediately inform that person and that employer **[thereof]** of the transaction or the disposal and of the amount of that gain.

(7) Any employee who, without just cause shown by him or her, fails to comply with the provisions of subparagraph (6)² shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000.³

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

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

(2) Subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005, section 46 of Act 3 of 2008, section 18 of Act 61 of 2008, section 23 of Act 18 of 2009, section 271 of Act 28 of 2011, read with item 90 of Schedule 1 to that Act, section 22 of Act 21 of 2012, section 13 of Act 39 of 2013, section 9 of Act 44 of 2014 and section 16 of Act 23 of 2015

12. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

“(6) Subject to subparagraph (2), if an estimate of a provisional taxpayer’s taxable income in respect of any year of assessment is not submitted in terms of subparagraph (1)(a) or (b) by the last day of a period of four months after the last day of the year of assessment, the provisional taxpayer shall, for the purposes of this paragraph and paragraph 20, be deemed to have submitted an estimate of an amount of nil taxable income.”

Amendment of paragraph 20 of Fourth Schedule to Act 58 of 1962, as amended by section 25 of Act 72 of 1963, section 29 of Act 88 of 1965, section 47 of Act 89 of 1969, section 44 of Act 88 of 1971, section 51 of Act 85 of 1974, section 36 of Act 69 of 1975, section 50 of Act 94 of 1983, section 39 of Act 121 of 1984, section 19 of Act 61 of 2008, section 24 of Act 18 of 2009, section 271 of Act 28 of 2011, read with paragraph 91 of Schedule 1 to that Act, section 23 of Act 21 of 2012, section 10 of Act 44 of 2014 and section 17 of Act 23 of 2015

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

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

“(1) If in respect of a year of assessment the [actual] taxable income of a provisional taxpayer, as [finally] determined under this Act, [for the year of assessment in respect of which the final or last estimate of his or her taxable income is submitted in terms of paragraph 19(1)(a) by a provisional taxpayer other than a company, or the estimate of its taxable income in respect of the period contemplated in paragraph 23(b) is submitted in terms of paragraph 19(1)(b) by a company which is a provisional taxpayer, in respect of any year of assessment] is—

(a) more than R1 million and [such] the final or last estimate of taxable income submitted by that provisional taxpayer in terms of paragraph 19(1)(a) or (b) in respect of that year of assessment is less than 80 per cent of the amount of the [actual] provisional taxpayer’s taxable income, the Commissioner must impose[, in addition to the normal tax payable in respect of the taxpayer’s taxable income for such year of assessment,] a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between—

- (i) the amount of normal tax, calculated at the rates applicable in respect of [such] that year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable, in respect of a taxable income equal to 80 per cent of [such actual] the provisional taxpayer’s taxable income; and
- (ii) the amount of employees’ tax and provisional tax in respect of [such] that year of assessment paid by the end of the year of assessment; or

(b) R1 million or less and the final or last estimate of taxable income submitted by that provisional taxpayer in terms of paragraph 19(1)(a) or (b) in respect of that year of assessment is less than 90 per cent of the amount of [such actual] the provisional taxpayer’s taxable income and is also less than the basic amount applicable to

[the] that estimate [in question], as contemplated in paragraph 19(1)(d), [the taxpayer shall, subject to the provisions of subparagraphs (2), (2B) and (2C), be liable to pay to] the Commissioner[, in addition to the normal tax payable in respect of his or her taxable income for such year of assessment,] must impose a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between—

- (i) the lesser of—
 - (aa) the amount of normal tax, calculated at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable, in respect of a taxable income equal to 90 per cent of [such actual] the provisional taxpayer's taxable income; and
 - (bb) the amount of normal tax calculated in respect of a taxable income equal to such basic amount, at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable; and
- (ii) the amount of employees' tax and provisional tax in respect of such year of assessment paid by the end of the year of assessment:

Provided that any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit[, or severance benefit [or any other amount contemplated in paragraph (d) of the definition of 'gross income']] received by or accrued to or to be received by or accrue to the taxpayer during the relevant year of assessment shall not be taken into account for purposes of this subparagraph.”;

(b) by the deletion of subparagraph (2A); and

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

“(2C) [The] If—

- (a) a provisional taxpayer is deemed in terms of paragraph 19(6) to have submitted an estimate of an amount of nil taxable income due to a failure to submit an estimate by the last day of a period of four months after the last day of the year of assessment; and
- (b) the Commissioner [may, if he or she] is satisfied that the provisional taxpayer's failure [to submit such an estimate timeously] was not due to an intent to evade or postpone the payment of provisional tax or normal tax, the Commissioner may remit the whole or any part of [the] a penalty imposed under subparagraph (1).”.

Amendment of paragraph 28 of Fourth Schedule to Act 58 of 1962, as amended by section 29 of Act 90 of 1964, section 30 of Act 95 of 1967, section 48 of Act 89 of 1969, section 48 of Act 88 of 1971, section 23 of Act 90 of 1972, section 55 of Act 85 of 1974, section 53 of Act 94 of 1983, section 44 of Act 121 of 1984, section 30 of Act 65 of 1986 and section 49 of Act 32 of 2004

14. Paragraph 28 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (7).

Amendment of paragraph 3 of Seventh Schedule to Act 58 of 1962, as amended by section 23 of Act 8 of 2010

15. Paragraph 3 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (a) of the following item:

- “(a) and issue the employer with a notice of the assessment in terms of [paragraph 12 of the Fourth Schedule] section 96 of the Tax Administration Act for the unpaid amount of employees' tax that is required to be deducted or withheld from such cash equivalent; or”.

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, section 7 of Act 36 of 2007 and section 18 of Act 39 of 2013 and proposed repeal by section 12 of Act 32 of 2014

16. (1) Section 21A of the Customs and Excise Act, 1964, is hereby amended— 5
- (a) by the substitution in subsection (1) for the definition of “customs controlled Area or CCA” of the following definition: 5
- “**Customs Controlled Area**’ or ‘**CCA**’ means an area within an **[IDZ] SEZ**, designated by the Commissioner in concurrence with the Director General: Trade and Industry, which area is controlled by the Commissioner;”;
- (b) by the deletion in subsection (1) of the definitions of “Industrial Development Zone or IDZ” and “IDZ operator, CCA enterprise”;
- (c) by the insertion in subsection (1) after the definition of “IDZ operator, CCA enterprise” of the following definitions: 15
- “**Special Economic Zone**’ or ‘**SEZ**’ means—
- (a) an area designated by the Minister of Trade and Industry in terms of the Manufacturing Development Act, 1993 (Act No. 187 of 1993), as an industrial development zone and which is in terms of section 39(2) of the Special Economic Zones Act regarded to be an SEZ 20
- (b) an area designated as a Special Economic Zone in terms of section 23(6) of the Special Economic Zones Act, and
- ‘**SEZ operator**’, ‘**CCA enterprise**’ or any other expression as may be necessary, relating to any activity inside or outside an SEZ or a CCA shall have the meaning assigned thereto in any Schedule or rule; 25
- ‘**Special Economic Zones Act**’ means the Special Economic Zones Act, 2014 (Act No. 16 of 2014).”;
- (d) by the deletion of subsection (1A);
- (e) by the substitution for subsection (3) of the following subsection: 30
- “(3) Where any provision of the Manufacturing Development Act, 1993, or the Special Economic Zones Act or any regulation made **[thereunder]** under those Acts for the purpose of the **[IDZ] SEZ** is inconsistent or in conflict with any provision of this Act governing the administration of **[the]** a CCA, including any matter relating to the liability or levying of duty or any rebate, refund or drawback of duty, the **[provisions]** provision of this Act shall prevail over the provision of the Manufacturing Development Act, 1993, or of the Special Economic Zones Act, or the regulations made **[thereunder]** under those Acts.”;
- (f) by the deletion of subsection (5); 40
- (g) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
- “Any person, including, where relevant, a CCA enterprise or an **[IDZ] SEZ** operator, who for the purposes of any activity within a CCA—”;
- (h) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words: 45
- “The liability for duty in respect of any goods to which this section relates of an **[IDZ] SEZ** operator or a CCA enterprise or such other person shall cease—”;
- (i) by the substitution in subsection (9) (a) for the words preceding subparagraph (i) of the following words: 50
- “if the **[IDZ] SEZ** operator or CCA enterprise or such other person proves that, as the case may be—”;
- (j) by the substitution in subsection (9)(a) for subparagraph (ii) of the following subparagraph: 55
- “(ii) the goods have been **[duly consumed or otherwise]** used in the manufacture or production of any goods by the CCA enterprise in accordance with any relevant provision of this Act;”;
- (k) by the substitution in subsection (9)(a) for subparagraph (iv) of the following subparagraph: 60
- “(iv) the goods have, where relevant, been removed and received **[in any other premises registered or licensed under the provisions of**

- this Act] by a licensee of licensed premises or a rebate manufacturer; or”;**
- (l) by the substitution in subsection (14) for paragraph (a) of the following paragraph:
- “**(a) to designate an area within an SEZ as a CCA, provided that such designation takes place on application by—**
- (i) the holder of a Special Economic Zone licence issued in terms of the Special Economic Zones Act in respect of that SEZ;**
 - (ii) the entity established in terms of section 25(1) of the Special Economic Zones Act for the management of that SEZ; or**
 - (iii) the SEZ operator in respect of that SEZ;”;** and
- (m) by the substitution in subsection (14) for paragraph (g) of the following paragraph:
- “(g) after consultation with the Director-General: Trade and Industry regarding duties or functions of the **[IDZ] SEZ** operator or a CCA enterprise;”.
- (2) Subsection (1) comes into effect on the date of promulgation of this Act.

Substitution of section 35A of Act 91 of 1964, as inserted by section 5 of Act 112 of 1977 and amended by section 24 of Act 45 of 1995, section 135 of Act 45 of 2003 and section 20 of Act 32 of 2014

17. (1) The following section is hereby substituted for section 35A of the Customs and Excise Act, 1964:

“Special provisions regarding [cigarettes and cigarette] tobacco products

- 35A. (1) The Commissioner may prescribe by rule—**
- (a) the sizes and types of [containers] unit packets and packaging which may be used by a manufacturer for the packing of [cigarettes and cigarette] tobacco [.] products;**
 - (b) [distinguishing marks or numbers in addition to the stamp impression] any identification markings referred to in subsection (2) which must or must not appear on [containers of cigarettes and cigarette] unit packets and packaging of tobacco products removed from a customs and excise warehouse for home consumption or for export;**
 - (c) a national or regional tracking and tracing system for all tobacco products that are manufactured in the Republic; and**
 - (d) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.**
- (2) No licensee may remove [any cigarettes] tobacco products or allow [any cigarettes] tobacco products to be removed from a customs and excise warehouse unless—**
- (a) if removed for—**
 - (i) home consumption, [a stamp impression] any identification markings determined by the Commissioner [has] have been [made on their containers] affixed to or form part of the unit packets and packaging; or**
 - [(b) if removed for]**
 - (ii) export, [such stamp impression does not appear on the containers] any identification markings determined by the Commissioner have been affixed to or form part of the unit packets and packaging; and**
 - [(c)](b) the [cigarettes] tobacco products otherwise comply in every respect with the requirements prescribed by rule.**
- (3) No [cigarettes or cigarette] tobacco products shall be sold or disposed of or removed from the customs and excise manufacturing warehouse in question in partly or completely manufactured condition except in accordance with the provisions of this Act.**

- (4) No person shall—
- (a) counterfeit or make any facsimile of any **[die or impression stamp]** identification markings determined under subsection (2); or
- (b) be in possession of, use or offer for sale or for use—
- (i) any **[die or impression stamp]** identification markings counterfeited in contravention of paragraph (a); or
- (ii) any facsimile of any **[die or impression stamp]** identification markings made in contravention of that paragraph.”.

(2) Subsection (1) takes effect on a date to be determined by the Minister by notice in the *Gazette*. 10

Substitution of section 54 of Act 91 of 1964, as substituted by section 13 of Act 112 of 1977 and amended by section 43 of Act 45 of 1995, section 141 of Act 45 of 2003 and section 19 of Act 32 of 2005

18. (1) The following section is hereby substituted for section 54 of the Customs and Excise Act, 1964: 15

“Special provisions regarding the importation of [cigarettes] tobacco products

- 54.** (1) The Commissioner may prescribe by rule—
- (a) the sizes and types of **[containers]** unit packets and packaging in which **[cigarettes]** tobacco products may be imported into the Republic; 20
- (b) **[distinguishing marks or numbers in addition to the stamp impression]** any identification markings referred to in subsection (2) which must or must not appear on **[containers]** unit packets and packaging of imported **[cigarettes]** tobacco products; 25
- (c) a national or regional tracking and tracing system for all tobacco products that are imported into the Republic; and
- (d) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.
- (2) No person may import **[any cigarettes]** tobacco products unless— 30
- (a) if entered for—
- (i) home consumption, **[a stamp impression]** any identification markings determined by the Commissioner **[has]** have been [made on their containers] affixed to or form part of the unit packets and packaging; or 35
- [(b) if entered for]**
- (ii) storage in a customs and excise warehouse for export, **[such stamp impression does not appear on the containers]** any identification markings determined by the Commissioner have been affixed to or form part of the unit packets and packaging; 40
- and
- [(c)](b)** the **[cigarettes]** tobacco products otherwise comply in every respect with the requirements prescribed by rule.
- (3) No imported **[cigarettes]** tobacco products shall be sold or disposed of or removed from the customs and excise warehouse concerned except in accordance with the provisions of this Act. 45
- (4) (a) No **[cigarettes in containers bearing the stamp impression]** tobacco products in unit packets and packaging bearing the identification markings referred to in subsection (2) may be entered for removal in bond as contemplated in section 18 for transit through the Republic. 50
- (b) Any **[cigarettes in containers bearing such stamp impression]** tobacco products in unit packets and packaging bearing such identification markings so entered for removal in bond shall be liable to forfeiture in accordance with the provisions of this Act.”.

(2) Subsection (1) takes effect on a date to be determined by the Minister by notice in the *Gazette*. 55

Amendment of section 76B of Act 91 of 1964, as substituted by section 29 of Act 34 of 2004 and amended by section 20 of Act 32 of 2005, section 100 of Act 60 of 2008 and section 66 of Act 32 of 2014

19. (1) Section 76B of the Excise Duty Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph (e) of the following paragraph: 5

“(e) other than a refund or drawback referred to in paragraphs (a), (b), (c) and (d), shall be limited to an application received by the Controller within a period of [two] three years from the date of entry for home consumption of the goods to which the application relates.”

(2) Subsection (1) takes effect immediately after the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), has taken effect. 10

Substitution of section 76C of Act 91 of 1964, as inserted by section 67 of Act 30 of 1998

20. (1) The following section is hereby substituted for section 76C of the Customs and Excise Act, 1964: 15

“Set-off of refund against amounts owing

76C. (1) Where any refund of duty is in terms of this Act due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under any [other] law administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person in terms of this Act; Provided that that amount is first set off against any outstanding debt under this Act.” 20

(2) Subsection (1) comes into operation on a date determined by the Minister by notice in the *Gazette*. 25

Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 and amended by section 65 of Act 45 of 1995, section 72 of Act 30 of 1998, section 6 of Act 32 of 1999, Government Notices 540 of 1999, 1066 of 1999 and 185 of 2000, section 63 of Act 30 of 2000, section 111 of Act 74 of 2002, section 35 of Act 16 of 2004, section 93 of Act 31 of 2005, section 72 of Act 20 of 2006 and section 78 of Act 32 of 2014 30

21. (1) Section 105 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 35

“(a) interest shall be payable from such date [and for such period] as the Commissioner may determine by rule on any outstanding amount payable in terms of this Act, other than the outstanding amount of any penalty or forfeiture payable in terms of this Act that has been excluded by rule from interest payments;” and 40

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

“(e) any [such] interest so payable shall be calculated [monthly and a portion of a month shall be regarded as a full month] on the daily balance owing: Provided that as from the effective date referred to in section 926 of the Customs Control Act, 2014 (Act No. 31 of 2014), interest on any outstanding amount, including an amount outstanding on the effective date carried over from the previous day, shall be calculated on the daily balance owing and compounded at the end of each month; and” 45 50

(2) Subsection (1)—

(a) takes effect on a date determined by the Minister by notice in the *Gazette*; and

(b) applies as from the date referred to in paragraph (a) to the calculation of interest on any outstanding amount, including an amount outstanding on that date carried over from the previous day. 55

Amendment of section 113 of Act 91 of 1964, as amended by section 14 of Act 57 of 1966, section 11 of Act 103 of 1972, section 5 of Act 68 of 1973, section 49 of Act 42 of 1974, section 25 of Act 86 of 1982, section 7 of Act 89 of 1983, section 31 of Act 84 of 1987, section 17 of Act 68 of 1989, section 14 of Act 105 of 1992, section 12 of Act 98 of 1993, section 71 of Act 45 of 1995, section 73 of Act 30 of 1998 and section 82 of Act 32 of 2014 5

22. (1) Section 113 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) cigarettes with a mass of more than [2 kilograms] 1.2 kilogram per 1 000 cigarettes;”;
 - (b) by the substitution for subsection (9) of the following subsection:
 - “(9) No person shall manufacture cigarettes the mass of the tobacco of which exceeds [2 kilograms] 0.9 kilogram per 1 000 cigarettes.”.
- (2) Subsection (1) takes effect on the date of promulgation of this Act. 15

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, sections 81 and 108 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008, section 33 of Act 18 of 2009, section 119 of Act 7 of 2010, section 26 of Act 8 of 2010, section 129 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 108 of Schedule 1 to that Act, section 145 of Act 22 of 2012, section 165 of Act 31 of 2013, section 95 of Act 43 of 2014, section 19 of Act 44 of 2014 and section 128 of Act 25 of 2015 20 25 30

23. (1) Section 1(1) of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for the definition of “customs controlled area”, pending its substitution by section 19(1)(c) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following definition:
 - “‘**customs controlled area**’ has the meaning assigned thereto in section 21A[(1A) or] (1) of the Customs and Excise Act;”;
 - (b) by the substitution for the definition of “customs controlled area enterprise”, pending its deletion by section 19(1)(d) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following definition:
 - “‘**customs controlled area enterprise**’ has the meaning assigned thereto in section 21A[(1A) or] (1) of the Customs and Excise Act;”;
 - (c) by the deletion of the definitions of “IDZ” and “IDZ operator”;
 - (d) by the deletion of the definition of “SEZ”; and
 - (e) by the insertion in subsection (1) after the definition of “services” of the following definitions:
 - “‘**Special Economic Zone**’ or ‘**SEZ**’ has the meaning assigned thereto in section 21A(1) of the Customs and Excise Act;
 - ‘**SEZ operator**’ means an operator defined in section 1 of the Special Economic Zones Act;”.
- (2) Paragraphs (a), (b), (c) and (e) of subsection (1) are deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation. 45 50
- (3) Paragraph (d) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, 55

section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 of 2007, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009, section 120 of Act 7 of 2010, section 131 of Act 24 of 2011, section 146 of Act 22 of 2012, section 166 of Act 31 of 2013, section 21 of Act 44 of 2014 and section 129 of Act 25 of 2015 5

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

(a) by the substitution for subsection (24), pending its substitution by section 21(1)(a) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following subsection:

“(24) For the purposes of this Act, a vendor, being a customs controlled area enterprise or an [IDZ] SEZ operator, shall be deemed to supply goods in the course or furtherance of an enterprise where movable goods are temporarily removed from a place in a customs controlled area to a place outside the customs controlled area, situated in the Republic, if those goods are not returned to the customs controlled area within 30 days of its removal, or within a period approved in writing by the Controller: Provided that this subsection shall not apply where those movable goods are supplied by the customs controlled area enterprise or [IDZ] SEZ operator, prior to the expiry of the relevant prescribed time period: Provided further that this subsection shall not apply to—

(a) goods that are deemed to have been imported under paragraph (i) of the proviso to section 13(1); or

(b) goods to which section 18(10) previously applied.”;

(b) by the substitution for subsection (24) of the following subsection:

“(24) For the purposes of this Act, a vendor, being an SEZ enterprise or an [IDZ] SEZ operator in a customs controlled area, shall be deemed to supply goods in the course or furtherance of an enterprise where movable goods are temporarily removed from a place in a customs controlled area to a place outside the customs controlled area, situated in the Republic, if those goods are not returned to the customs controlled area within 30 days of its removal, or within a period approved in writing by the customs authority: Provided that this subsection shall not apply where those movable goods are supplied by the SEZ enterprise or [IDZ] SEZ operator, prior to the expiry of the relevant prescribed time period: Provided further that this subsection shall not apply to—

(a) goods that are cleared for home use in terms of the Customs Control Act; or

(b) goods to which section 18(10) previously applied.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation. 40

(3) Paragraph (b) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007, section 29 of Act 36 of 2007, Government Notice R.1024 in Government Gazette 32664 of 30 October 2009, section 134 of Act 24 of 2011, section 169 of Act 31 of 2013, section 96 of Act 43 of 2014, section 22 of Act 44 of 2014 and section 132 of Act 25 of 2015 45

25. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended— 55

(a) by the substitution in subsection (1) for paragraph (c), pending its substitution by section 22(1)(a) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following paragraph:

“(c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or 60

- by a customs controlled area enterprise or an **[IDZ] SEZ** operator in a customs controlled area: Provided that this subsection shall not apply where a ‘motor car’ as defined in section 1 is supplied to a person located in a customs controlled area;”;
- (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 5
- “(c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or by an SEZ enterprise or an **[IDZ] SEZ** operator in a customs controlled area: Provided that this subsection shall not apply where a ‘motor car’ as defined in section 1 is supplied to an SEZ enterprise or an **[IDZ] SEZ** operator in a customs controlled area;”;
- (c) by the substitution in subsection (1)(m), pending its substitution by section 22(1)(e) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), for the words preceding subparagraph (i) of the following words: 15
- “a vendor supplies movable goods, (excluding any ‘motor car’ as defined in section 1), in terms of a sale or instalment credit agreement to a customs controlled area enterprise or an **[IDZ] SEZ** operator and those goods are physically delivered to that customs controlled area enterprise or **[IDZ] SEZ** operator in a customs controlled area either—”;
- (d) by the substitution in subsection (1)(m) for the words preceding subparagraph (i) of the following words: 20
- “a vendor supplies movable goods, (excluding any ‘motor car’ as defined in section 1), in terms of a sale or instalment credit agreement to an SEZ enterprise or an **[IDZ] SEZ** operator in a customs controlled area and those goods are physically delivered to that SEZ enterprise or **[IDZ] SEZ** operator in a customs controlled area either—”;
- (e) by the substitution in subsection (1) for paragraph (mA), pending its substitution by section 22(1)(f) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following paragraph: 30
- “(mA) a vendor supplies fixed property situated in a customs controlled area to a customs controlled area enterprise or an **[IDZ] SEZ** operator under any agreement of sale or letting or any other agreement under which the use or permission to use such fixed property is granted;”;
- (f) by the substitution in subsection (1) for paragraph (mA) of the following paragraph: 35
- “(mA) a vendor supplies fixed property situated in a customs controlled area to an SEZ enterprise or an **[IDZ] SEZ** operator under any agreement of sale or letting or any other agreement under which the use or permission to use such fixed property is granted;”;
- (g) by the substitution in subsection (2) for paragraph (k), pending its substitution by section 22(1)(j) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following paragraph: 45
- “(k) the services are physically rendered elsewhere than in the Republic or to a customs controlled area enterprise or an **[IDZ] SEZ** operator in a customs controlled area; or”;
- (h) by the substitution in subsection (2) for paragraph (k) of the following paragraph: 50
- “(k) the services are physically rendered elsewhere than in the Republic or to an SEZ enterprise or an **[IDZ] SEZ** operator in a customs controlled area; or”.
- (2) Paragraphs (a), (c), (e) and (g) of subsection (1) are deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation. 55
- (3) Paragraphs (b), (d), (f) and (h) of subsection (1) come into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of 60

Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011, section 148 of Act 22 of 2012, section 173 of Act 31 of 2013, section 98 of Act 43 of 2014, sections 25 and 26 of Act 44 of 2014 and section 25 of Act 23 of 2015 5

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

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

“(f) the vendor, in the case where an amount is deducted from the sum of the amounts of output tax which are attributable to that period in terms of subsection (3)(c), (d), (dA), (e), (f), (g), (h), (i), (j), (k), (l), (m) or (n), is in possession of documentary proof, as is prescribed by the Commissioner, substantiating the vendor’s entitlement to the deduction at the time a return in respect of the deduction is furnished; or”;

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

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

(i) a ruling requested no later than two months prior to the expiry of the five-year period referred to in subsection (3) and issued in terms of section 41B of this Act or Chapter 7 of the Tax Administration Act confirms that the document in the vendor’s possession is acceptable for the purpose of making a deduction; and

(ii) the ruling and document are held by the vendor at the time a return in respect of the deduction is furnished: Provided that the Commissioner may only issue a ruling in terms of this paragraph if satisfied that—

(aa) the vendor has taken reasonable steps to obtain a document required in terms of paragraph (a), (b), (c), (d), (dA), (e) or (f) and is unable to obtain such a document due to circumstances beyond the vendor’s control; and

(bb) no other provision of this Act can be applied to satisfy the Commissioner that the document in the vendor’s possession is acceptable for purposes of making a deduction.”;

(c) by the substitution in subsection (3)(n) for subparagraphs (i) and (ii), pending their substitution by section 26(1)(e) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following subparagraphs: 45

“(i) those goods are returned to the customs controlled area enterprise or **[IDZ] SEZ** operator; or

(ii) those goods are supplied by the customs controlled area enterprise or **[IDZ] SEZ** operator where those goods are supplied after the relevant prescribed time period contemplated in section 8(24)”;

(d) by the substitution in subsection (3)(n) for subparagraphs (i) and (ii) of the following subparagraphs:

“(i) those goods are returned to the SEZ enterprise or **[IDZ] SEZ** operator in a customs controlled area; or

(ii) those goods are supplied by the SEZ enterprise or **[IDZ] SEZ** operator in a customs controlled area where those goods are supplied after the relevant prescribed time period contemplated in section 8(24)”.

(2) Paragraph (b) of subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of tax periods commencing on or after that date. 60

(3) Paragraph (c) of subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

(4) Paragraph (d) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005, section 49 of Act 9 of 2006, section 85 of Act 20 of 2006, section 112 of Act 60 of 2008, section 123 of Act 7 of 2010, section 138 of Act 24 of 2011, section 149 of Act 22 of 2012, section 27 of Act 44 of 2014 and section 135 of Act 25 of 2015

27. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for subsection (10), pending its substitution by section 27(1) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following subsection:

“(10) Where—

(a) goods or services have been supplied by a vendor at the zero rate in terms of sections 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k) to a vendor, that is a customs controlled area enterprise or an **[IDZ] SEZ** operator; or

(b) goods have been imported into the Republic by a vendor, being a customs controlled area enterprise or an **[IDZ] SEZ** operator and those goods are exempt from tax in terms of section 13(3),

and where a deduction of input tax would have been denied in terms of section 17(2), or to the extent that such goods or services are not wholly for consumption, use or supply within a customs controlled area in the course of making taxable supplies by that vendor, that is a customs controlled area enterprise or an **[IDZ] SEZ** operator, those goods or services shall be deemed to be supplied by the vendor concerned in the same tax period in which they were so acquired, in accordance with the formula:

A x B

in which formula—

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

‘B’ represents—

(i) the cost to the vendor of the acquisition of those goods or services which were supplied to him or her in terms of sections 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k); or

(ii) the value to be placed on the importation of goods into the Republic as determined in terms of section 13(2).”; and

(b) by the substitution for subsection (10) of the following subsection:

“(10) Where—

(a) goods or services have been supplied by a vendor at the zero rate in terms of section 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k) to a vendor, that is an SEZ enterprise or an **[IDZ] SEZ** operator in a customs controlled area; or

(b) goods have been imported by a vendor, being an SEZ enterprise or an **[IDZ] SEZ** operator in a customs controlled area and those goods are exempt from tax in terms of section 13(3),

and where a deduction of input tax would have been denied in terms of section 17(2), or to the extent that such goods or services are not wholly for consumption, use or supply within a customs controlled area in the course of making taxable supplies by that vendor, that is an SEZ enterprise or an **[IDZ] SEZ** operator, those goods or services shall be deemed to be supplied by the vendor concerned, that is an SEZ enterprise or an **[IDZ] SEZ** operator, in the same tax period in which they were so acquired, in accordance with the formula:

A x B

in which formula—

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

‘B’ represents—

- (i) the cost to the vendor, that is an SEZ enterprise or an **[IDZ]** SEZ operator, of the acquisition of those goods or services which were supplied to him or her in terms of section 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k); or
- (ii) the value to be placed on the importation of goods as determined in terms of section 13(2).”

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

(3) Paragraph (b) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001, section 88 of Act 20 of 2006, section 43 of Act 61 of 2008, section 271 of Act 28 of 2011 read with paragraph 133 of Schedule 1 to that Act, section 180 of Act 31 of 2013 and section 31 of Act 44 of 2014

28. (1) Section 44 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (3) of the following subsection:

“(4) (a) A refund of the amount of the excess contemplated in section 16(5) may only be made by the Commissioner if the return reflecting that amount is submitted within five years after the date on which the return was due to be submitted.

“(b) The amount of an excess contemplated in section 16(5) is regarded as a payment to the National Revenue Fund if the amount is reflected on a return submitted after the period contemplated in paragraph (a).”

(2) Subsection (1) comes into operation on 26 October 2016.

Amendment of section 55 of Act 89 of 1991, as amended by section 35 of Act 136 of 1992, section 38 of Act 97 of 1993, section 102 of Act 30 of 1998, section 17 of Act 10 of 2006, section 18 of Act 9 of 2007, section 37 of Act 36 of 2007 and section 271 read with paragraph 140 of Schedule 1 to Act 28 of 2011

29. Section 55 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (aB) of the following paragraph:

“(aB) any documentary proof required to be obtained and retained in accordance with section 16(2)(f) and (g);”

Amendment of section 86A of Act 89 of 1991, as inserted by section 176 of Act 60 of 2001 and as amended by section 106 of Act 43 of 2014

30. (1) Section 86A of the Value-Added Tax Act, 1991, is hereby amended—

- (a) pending its substitution by section 106(1) of the Taxation Laws Amendment Act, 2014 (Act No. 43 of 2014), by the substitution for section 86A of the following section:

“Provisions relating to [industrial development] special economic zones

86A. Where a provision of the Customs and Excise Act, [or] the Manufacturing Development Act, 1993 (Act No. 187 of 1993), or the Special Economic Zones Act, 2014 (Act No. 16 of 2014), or a regulation made thereunder governing the administration of [industrial development] special economic zones including a matter relating to the liability for or levying of value-added tax or a refund thereof or a supply of goods or services subject to tax at the zero-rate is inconsistent or in conflict with a provision of this Act, the provision of this Act will prevail.”; and

(b) by the substitution for section 86A of the following section:

“Provisions relating to IDZs

86A. Where a provision of the Customs Control Act, the Manufacturing Development Act, 1993 (Act No. 187 of 1993), or the Special Economic Zones Act, or a regulation made thereunder governing the administration of [IDZs or] SEZs including a matter relating to the liability for or levying of value-added tax or a refund thereof or a supply of goods or services subject to tax at the zero-rate is inconsistent or in conflict with a provision of this Act, the provision of this Act will prevail.”

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

(3) Paragraph (b) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R.111 in Government Gazette 24274 of 17 January 2003, section 189 of Act 45 of 2003, section 52 of Act 16 of 2004, section 53 of Act 16 of 2004, section 54 of Act 16 of 2004, section 55 of Act 16 of 2004, section 108 of Act 32 of 2004, section 111 of Act 31 of 2005, section 112 of Act 31 of 2005, section 113 of Act 31 of 2005, section 114 of Act 31 of 2005, section 115 of Act 31 of 2005, section 116 of Act 31 of 2005, section 117 of Act 31 of 2005, section 118 of Act 31 of 2005, section 119 of Act 31 of 2005, section 120 of Act 31 of 2005, section 121 of Act 31 of 2005, section 122 of Act 31 of 2005, section 123 of Act 31 of 2005, section 52 of Act 9 of 2006, section 53 of Act 9 of 2006, section 89 of Act 20 of 2006, section 85 of Act 8 of 2007, Government Notice R.958 in Government Gazette 30370 of 12 October 2007, section 107 of Act 35 of 2007, Government Notice R.766 in Government Gazette 32416 of 24 July 2009, section 143 of Act 24 of 2011, section 181 of Act 31 of 2013, Government Notice R.288 in Government Gazette 37554 of 17 April 2014 and Government Notice R.723 in Government Gazette 39100 of 14 August 2015

31. (1) Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution for Item 498.00 of the following item:

“498.00 IMPORTED GOODS FOR USE IN A CUSTOMS CONTROLLED AREA

NOTES:

1. Goods may only be imported and entered into a customs controlled area under this item where such goods are imported by a customs controlled area enterprise or an [IDZ] SEZ operator.

2. Goods may only be entered under item 498.02 by a registered SEZ operator as contemplated in rule 21A.04.

498.01/00.00/01.00 Goods that are imported into a customs controlled area by a customs controlled area enterprise

498.02/00.00/01.00 Goods of any description imported by a registered SEZ operator for use in the construction and maintenance of the infrastructure of a CCA in an SEZ.”

(2) Subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

Substitution of Arrangement of sections of Act 29 of 2008

32. (1) The following Arrangement of sections is hereby substituted for the Arrangement of sections of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008:

“ARRANGEMENT OF SECTIONS

<i>Part I</i>		
<i>Interpretation</i>		
1.	Definitions	
<i>Part II</i>		5
<i>Registration</i>		
2.	Registration	
3.	Cancellation of registration	
4.	Election for unincorporated body of persons	
<i>Part III</i>		10
<i>Estimates, returns, payments, adjusted estimates, refunds and records</i>		
5.	Estimates, returns and payments	
5A.	Adjustments of estimates	
6.	Payments and returns	
6A.	Refunds	15
8.	Maintenance of records	
<i>Part V</i>		
<i>Penalties and interest</i>		
14.	Penalty for underpayment as a result of underestimation of royalty payable	
16.	Interest	20
<i>Part VI</i>		
<i>Miscellaneous</i>		
17.	Administration of Act	
19.	Reporting, secrecy and disclosure	
20.	Regulations	25
21.	<u>Short title and commencement.</u> ”.	

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 1 of Act 29 of 2008, as amended by section 61 of Act 18 of 2009, section 33 of Act 8 of 2010, section 271 of Act 28 of 2011 read with paragraph 183 of Schedule 1 to that Act 30

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

- (a) by the deletion in subsection (1) of the definition of “Commissioner”;
- (b) by the deletion in subsection (1) of the definition of “notice of assessment”;
- (c) by the substitution in subsection (1) for the definition of “Royalty Act” of the following definition:
 - “ ‘**Royalty Act**’ means the Mineral and Petroleum Resources Royalty Act, 2008 (Act No. 28 of 2008);”;
- (d) by the substitution in subsection (1) for the definition of “Tax Administration Act” of the following definition:
 - “ ‘**Tax Administration Act**’ means the Tax Administration Act, 2011 (Act No. 28 of 2011);”.

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date. 45

Substitution of heading to Part III of Act 29 of 2008

34. (1) The following heading is hereby substituted for the heading to Part III of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008:

“Estimates, returns, payments, adjusted estimates, refunds and records”.

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date. 5

Substitution of section 5 of Act 29 of 2008, as amended by section 36 of Act 8 of 2010 and section 271 of Act 28 of 2011 read with paragraph 185 of Schedule 1 to that Act

35. (1) The following section is hereby substituted for section 5 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008: 10

“Estimates, returns and payments

5. (1) In respect of a year of assessment a registered person must—

- (a) estimate the royalty payable;
- (b) submit a return of that estimate; and
- (c) make a first payment equal to one-half of the amount of the royalty so estimated, 15

not later than six months after the first day of that year of assessment.

(2) In respect of a year of assessment a registered person must—

- (a) estimate the royalty payable;
- (b) submit a return of that estimate; and 20
- (c) make a second payment equal to the amount of the royalty so estimated less the amount paid as mentioned in subsection (1), by the last day of that year of assessment.”. 25

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date. 25

Insertion of section 5A in Act 29 of 2008

36. (1) The following section is hereby inserted in the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, after section 5:

“Adjustments of estimates

5A. (1) The Commissioner may require a registered person to justify any estimate of the royalty payable as mentioned in section 5(1) or (2) or to furnish particulars in respect of that estimate and, if the Commissioner is dissatisfied with the amount of that estimate, the Commissioner may increase the amount of the estimate to an amount that the Commissioner considers reasonable, which increase is not subject to objection and appeal. 30 35

(2) If in respect of a year of assessment a registered person does not submit an estimate by the end of the period specified in section 5(1) or (2), the Commissioner may estimate the amount of the royalty payable in respect of that year of assessment.

(3) Any additional amount of royalty payable as a result of the increase or estimate referred to in subsection (1) or (2) must be paid within the period specified in a notice of assessment referred to in section 96 of the Tax Administration Act and issued in respect of that additional assessment. 40

(4) Subject to subsection (2), if a registered person fails to submit an estimate of the royalty payable in respect of a year of assessment before the end of a period of four months after the last day of that year of assessment, that registered person is regarded as having submitted an estimate of an amount of nil royalty payable.”. 45

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date. 50

Amendment of section 6 of Act 29 of 2008, as amended by section 28 of Act 39 of 2013

37. (1) Section 6 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—

(a) by the substitution for the heading of the following heading: 5

“Payments and returns”;

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

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

“(2) If the amount of the royalty [**mentioned in subsection (1), that is**] payable in respect of a year of assessment exceeds the sum of the [**two**] payments made [**as mentioned in section 5, that excess must be paid within**] in terms of sections 5(1) and (2) and 5A, the registered person must— 10

(a) submit a return of that excess; and

(b) pay the excess, 15

not later than six months after the last day of that year of assessment.”;

and

(d) by the addition of the following subsection:

“(3) A registered person must submit a final return for the royalty payable in respect of a year of assessment not later than 12 months after the last day of that year of assessment.”. 20

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date.

Insertion of section 6A in Act 29 of 2008

38. (1) The following section is hereby inserted in the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 after section 6: 25

“Refunds

6A. If in respect of a year of assessment the amount of the royalty payable by a registered person is less than the sum of the payments made by that registered person in terms of sections 5, 5A and 6, the excess must be refunded by the Commissioner to the registered person under Chapter 13 of the Tax Administration Act.”. 30

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date.

Substitution of section 8 of Act 29 of 2008, as amended by section 271 of Act 28 of 2011 read with paragraph 187 of Schedule 1 to that Act 35

39. (1) The following section is hereby substituted for section 8 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008:

“Maintenance of records

8. [(1)] In addition to the records required under the Tax Administration Act, a registered person must retain the following records in respect of mineral resources extracted from within the Republic: 40

(a) particulars of ‘earnings before interest and taxes’ as mentioned in section 5 of the Royalty Act with sufficient detail to identify all the gross sales, income and allowable deductions in respect of those earnings; 45

(b) particulars of “gross sales” as mentioned in section 6 of the Royalty Act with sufficient detail to identify all transferred mineral resources in respect of those gross sales and the persons acquiring those transferred mineral resources; 50

(c) the quantity of mineral resources—
(i) extracted but not transferred; and
(ii) [those] transferred,

- by that registered person with sufficient detail to identify **[those]** the mineral resources extracted but not transferred and **[transferred]** the mineral resources transferred;
- (d) the accounting income with sufficient detail to identify the ‘earnings before interest and taxes’ as mentioned in section 5 of the Royalty Act that relate to that accounting income; 5
- (e) **[a]** any ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account or financial statement; and
- (f) any information specifically required by the Commissioner by public notice.”. 10

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date.

Repeal of Part IV of Act 29 of 2008

40. (1) Part IV of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby repealed. 15

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date.

Substitution of heading to Part V of Act 29 of 2008

41. (1) The following heading is hereby substituted for the heading to Part V of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008: 20

“**[Refunds, penalty] Penalties and interest**”.

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 14 of Act 29 of 2008, as amended by section 37 of Act 8 of 2010 and section 32 of Act 23 of 2015

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

- (a) by the substitution for the heading of the following heading: 30
“Penalty for underpayment as a result of underestimation of royalty payable”;

- (b) by the substitution for subsection (1) of the following subsection: 35
“(1) If in respect of a year of assessment the royalty [mentioned in section 6(1) in respect of a year of assessment] payable exceeds the [amount] amounts paid under sections 5(1) and (2) and 5A [as mentioned in section 5 in respect of that year] and that excess is greater than 20 per cent of the royalty [mentioned in section 6(1)] payable, the Commissioner [may] must impose a penalty, which is regarded as a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, that may not exceed 20 per cent of that excess.”; 40
 and

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

- “(4) If— 45
- (a) a registered person is regarded under section 5A(4) as having submitted an estimate of an amount of nil royalty payable in respect of a year of assessment due to a failure to submit an estimate before the end of a period of four months after the last day of that year of assessment; and
- (b) the Commissioner is satisfied that the failure was not due to an intent to evade or postpone the payment of the royalty, 50
 the Commissioner may remit the whole or any part of a penalty imposed under subsection (1).”.

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date.

Repeal of section 15 of Act 29 of 2008

43. (1) Section 15 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby repealed.

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date. 5

Amendment of section 16 of Act 29 of 2008

44. (1) Section 16 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—

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

“(1) The Commissioner must pay interest **[calculated on a monthly basis]** in accordance with the provisions contained in Chapter 12 of the Tax Administration Act in respect of overpayment of an amount [or royalty] paid to the extent that that amount exceeds—

(a) in the case where that amount was paid in respect of a notice of assessment, the amount so assessed; or 15

(b) in any other case, the amount of royalty properly chargeable under the Royalty Act[, 15

if that excess is not refunded within 30 days after the later of—

(i) **the date which is six months after the last day of a year of assessment in respect of which the royalty giving rise to that excess is required to be paid as mentioned in section 6; or** 20

(ii) **the date of receipt of a refund claim mentioned in section 13 in respect of that excess].”;**

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

“(2) A registered person must pay interest **[calculated on a monthly basis]** in accordance with the provisions contained in Chapter 12 of the Tax Administration Act—

(a) in respect of so much of the **[estimated]** amount that must be paid **[as mentioned]** in terms of section 5(1) or (2), 5A or 6 as is not paid on the day by which that payment was required to be made **[in respect of the six months after the first day that that estimated payment is due]** under this Act; and 30

[(b) in respect of so much of the estimated amount that must be paid as mentioned in section 5(2) as is not paid on the day by which that payment was required to be made in respect of the six months after the first day that that estimated payment is due; or] 35

(c) in respect of so much of the amount that must be paid **[as mentioned in section 6]** under an additional assessment issued by the Commissioner, other than an additional assessment under section 5A, as is not paid on the day by which that payment was required to be made **[in respect of any period after the first day that that payment is due].”;** and 40

(c) by the deletion of subsection (3).

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date. 45

Repeal of section 18A of Act 29 of 2008

45. (1) Section 18A of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby repealed.

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date. 50

Amendment of section 19 of Act 29 of 2008, as amended by section 38 of Act 8 of 2010, section 33 of Act 21 of 2012 and section 29 of Act 39 of 2013

46. (1) Section 19 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—
- (a) by the substitution for the heading of the following heading: 5
 “**Reporting, secrecy and disclosure**”;
 - (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10
 “**[The] Despite Chapter 6 of the Tax Administration Act, 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—**”;
 - (c) by the substitution for subsection (2) of the following subsection: 15
 “(2) The Minister of Finance and every person employed or engaged by him or her **[and the Commissioner and every person employed or 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) are subject to section 67(4) of the Tax Administration Act, **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
 - (d) by the deletion of subsections (3), (4), (5) and (6);
 - (e) by the substitution in subsection (7) for the words following paragraph (c) of the following words: 30
 “any information submitted under **[this]** subsection (1).”; and
 - (f) by the addition of the following subsection: 30
 “(8) The provisions of subsection (2) apply to the persons referred to in subsection (7) and any person engaged or employed by them that has access to the information.”.
- (2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date. 35

Amendment of section 1 of Act 28 of 2011, as amended by section 36 of Act 21 of 2012, section 30 of Act 39 of 2013, section 37 of Act 44 of 2014 and section 33 of Act 23 of 2015

47. Section 1 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of “SARS official” of the following definition: 40
- “**SARS official**” means—
- (a) the Commissioner[,];
 - (b) an employee of SARS; or
 - (c) a person contracted or engaged by SARS, other than an external legal representative, for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner;” 45

Amendment of section 11 of Act 28 of 2011, as amended by section 40 of Act 21 of 2012, section 33 of Act 39 of 2013 and section 36 of Act 23 of 2015 50

48. Section 11 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection: 55
- “(3) **[A] An amount due or payable as a result of a cost order in favour of SARS recovered by the State Attorney 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] the National Revenue Fund.**”.

Amendment of section 14 of Act 28 of 2011

49. Section 14 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) for a term of [**three**] five years, which term may be renewed.”.

Amendment of section 15 of Act 28 of 2011

5

50. Section 15 of the Tax Administration Act, 2011, is hereby amended—

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

“(1) The Tax Ombud must appoint the staff of the office of the Tax Ombud who must be employed in terms of the SARS Act [**and be seconded to the office of the Tax Ombud at the request of the Tax Ombud in consultation with the Commissioner**].”; and

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

“(4) The expenditure connected with the functions of the office of the Tax Ombud is paid [**out of the funds of SARS**] in accordance with a budget approved by the Minister for the office.”.

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Amendment of section 16 of Act 28 of 2011

51. Section 16 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The mandate of the Tax Ombud is to—

(a) review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS; and

(b) review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, any systemic and emerging issue related to a service matter or the application of the provisions of this Act or procedural or administrative provisions of a tax Act.”.

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Amendment of section 20 of Act 28 of 2011

52. Section 20 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Tax Ombud’s recommendations are not binding on [**taxpayers**] a taxpayer or SARS, but if not accepted by a taxpayer or SARS, reasons for such decision must be provided to the Tax Ombud within 30 days of notification of the recommendations and may be included by the Tax Ombud in a report to the Minister or the Commissioner under section 19.”.

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Amendment of section 69 of Act 28 of 2011

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

“(b) a list of—

(i) pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds as defined in section 1(1) of the Income Tax Act; and

(ii) [**approved**] public benefit organisations approved for the purposes of [**the provisions of**] sections 18A and 30 of the Income Tax Act;”.

40

Amendment of section 97 of Act 28 of 2011

54. Section 97 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) The record of an assessment, including the return or records on which it was based, whether in electronic format or otherwise, may be destroyed by SARS after [**five**] seven years from the date of assessment or the expiration of a further period that may be required—

50

(a) by the Auditor-General;

- (b) as a result of the application of section 99(2)(c); or
(c) for purposes of a verification, audit or criminal investigation under Chapter 5
or a dispute under Chapter 9.”.

Amendment of section 99 of Act 28 of 2011, as amended by section 59 of Act 21 of 2012, section 47 of Act 39 of 2013 and section 51 of Act 23 of 2015 5

55. Section 99 of the Tax Administration Act, 2011, is hereby amended by the addition in subsection (2)(d) of the word “or” at the end of subparagraph (i) and the deletion of subparagraph (ii).

Amendment of section 100 of Act 28 of 2011

56. Section 100 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 10

- “(a) subsection (1)(d), (e) and (f), if the relevant period under section 99(1)(a), (b) or (c) has expired, SARS may only make an additional assessment under the circumstances referred to in section 99(2)(a) and (b);”.

Amendment of section 104 of Act 28 of 2011 15

57. Section 104 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

- “(a) for a period exceeding [21] 30 business days, unless a senior SARS official is satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection.”. 20

Amendment of section 118 of Act 28 of 2011, as amended by section 51 of Act 39 of 2013

58. Section 118 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) If the appeal involves— 25
- (a) a complex matter that requires specific expertise and the president of the tax court so directs after considering any representations by a senior SARS official or the ‘appellant’, the representative of the commercial community referred to in subsection (1)(c) may be a person with the necessary experience in that field of expertise; 30
- (b) the valuation of assets and the 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 be a sworn appraiser.”.

Amendment of section 151 of Act 28 of 2011

59. (1) Section 151 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (a) of the following paragraph: 35

- “(a) a person who is or may be chargeable to tax or with a tax offence;”.
- (2) Subsection (1) is deemed to have come into operation on 1 October 2012.

Substitution of section 194 of Act 28 of 2011, as amended by section 54 of Act 44 of 2014 40

60. (1) The following section is hereby substituted for section 194 of the Tax Administration Act, 2011:

“Application of Chapter

194. Parts C and D of this Chapter apply only in respect of a tax debt owed by a ‘debtor’ if the liability to pay the tax debt is not disputed under Chapter 9 by the ‘debtor’.”. 45

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

Amendment of section 221 of Act 28 of 2011, as amended by section 74 of Act 39 of 2013

61. Section 221 of the Tax Administration Act, 2011, is hereby amended—

(a) by the insertion of the following definition before the definition of “repeat case”:

“**‘impermissible avoidance arrangement’** means an arrangement in respect of which Part IIA of Chapter III of the Income Tax Act is applied and includes, for purposes of this Chapter, any transaction, operation, scheme or agreement in respect of which section 73 of the Value-Added Tax Act or any other general anti-avoidance provision under a tax Act is applied.”;

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

“**‘repeat case’** means a second or further case of any of the behaviours listed under items (i) to [(v)] (vi) of the understatement penalty percentage table reflected in section 223 within five years of the previous case.”; and

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

“**‘understatement’** means any prejudice to SARS or the *fiscus* as a result of—

- (a) a default in rendering a return;
- (b) an omission from a return;
- (c) an incorrect statement in a return; **[or]**
- (d) if no return is required, the failure to pay the correct amount of ‘tax’;
- or
- (e) an ‘impermissible avoidance arrangement’.”.

Amendment of section 223 of Act 28 of 2011, as amended by section 73 of Act 21 of 2012 and section 76 of Act 39 of 2013

62. Section 223 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

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

1	2	3	4	5	6	
<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 criminal investigation</i>	<i>Voluntary disclosure before notification of audit or criminal investigation</i>	35 40
(i)	‘Substantial understatement’	10%	20%	5%	0%	50
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%	
(iii)	No reasonable grounds for ‘tax position’ taken	50%	75%	25%	0%	55
(iv)	‘Impermissible avoidance arrangement’	75%	100%	35%	0%	
[(iv)] (v)	Gross negligence	100%	125%	50%	5%	60
[(v)] (vi)	Intentional tax evasion	150%	200%	75%	10%”	

Substitution of section 226 of Act 28 of 2011, as amended by section 65 of Act 23 of 2015

63. The following section is hereby substituted for section 226 of the Tax Administration Act, 2011:

“Qualification of person subject to audit or investigation for voluntary disclosure 5

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

- (a) **a pending audit or investigation into the affairs of the person seeking relief, which is related to the ‘default’ the person seeks to disclose; or** 10
- (b) **an audit or investigation that has commenced, but has not yet been concluded, which is related to the ‘default’ the person seeks to disclose].** 15

(2) [A] If the person seeking relief has been given notice of the commencement of an audit or criminal investigation into the affairs of the person, which has not been concluded and is related to the disclosed ‘default’, the disclosure of the ‘default’ is regarded as not being voluntary for purposes of section 227, unless a senior SARS official 20
[may direct that a person may apply for voluntary disclosure relief, despite the provisions of subsection (1), where the official] is of the view, having regard to the circumstances and ambit of the audit or investigation, that—

- [(a) the audit or investigation is related to the ‘default’ the person seeks to disclose;]** 25
- (b) the ‘default’ in respect of which the person [**wishes to apply for voluntary disclosure**] has sought relief would not otherwise have been detected during the audit or investigation; and
- (c) the application would be in the interest of good management of the tax system and the best use of SARS’ resources. 30

(3) A person is deemed to [**be aware of a pending**] have been notified of an audit or criminal investigation[, or that the audit or investigation has commenced], if—

- (a) a representative of the person; 35
- (b) an officer, shareholder or member of the person, if the person is a company;
- (c) a partner in partnership with the person;
- (d) a trustee or beneficiary of the person, if the person is a trust; or
- (e) a person acting for or on behalf of or as an agent or fiduciary of the person, 40

has [**become aware of a pending**] been given notice of the audit or investigation[, or that the audit or investigation has commenced].”.

Amendment of section 270 of Act 28 of 2011, as amended by section 86 of Act 39 of 2013 and section 65 of Act 44 of 2014 45

64. Section 270 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (6D) for paragraph (b) of the following paragraph:

- “(b) the Value-Added Tax Act or the Fourth Schedule to the Income Tax Act, a senior SARS official must reduce the penalty in whole if the penalty was imposed under circumstances other than the circumstances referred to in item 50
 [(v)] (vi) of the understatement penalty table in section 223(1).”.

Substitution of paragraph 189 of Schedule 1 to Act 28 of 2011

65. The following paragraph is hereby substituted for paragraph 189 of Schedule 1 to the Tax Administration Act, 2011:

“Repeal of sections 10, 11, 12[,] and 13 [and 16]

189. Sections 10, 11, 12[,] and 13 [and 16] of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, are hereby repealed.” 5

Amendment of section 95 of Act 30 of 2014

66. Section 95 of the Customs Duty Act, 2014, is hereby amended by—
 (a) the deletion in subsection (1)(a) of subparagraph (ii); and
 (b) the deletion in subsection (2) of paragraph (b). 10

Amendment of section 171 of Act 30 of 2014

67. Section 171 of the Customs Duty Act, 2014, is hereby amended—
 (a) by the insertion after subsection (1) of the following subsection:
 “(1A) (a) A process in the production of goods is substantial for purposes of subsection (1) if at least the applicable percentage referred to in paragraph (b) of the production costs of those goods is represented by materials produced and labour utilised in a specific country. 15
 (b) The applicable percentage of production cost for purposes of paragraph (a) is—
 (i) the percentage as may be determined in the Customs Tariff in respect of the goods; or
 (ii) 25 per cent, if no percentage is determined in terms of subparagraph (i).”; and
 (b) by the addition after subsection (2) of the following subsection:
 “(3) The Commissioner may by rule prescribe the manner in which the production cost of goods must be determined for purposes of subsection (1A)(a).” 25

Repeal of section 172 of Act 30 of 2014

68. Section 172 of the Customs Duty Act, 2014, is hereby repealed.

Amendment of section 175 of Act 30 of 2014 30

69. Section 175 of the Customs Duty Act, 2014, is hereby amended by the substitution for subsection (3) of the following subsection:
 “(3) If packaging in which goods are contained is regarded to have the same origin as the goods, the value of the packaging may for the purposes of section [172] 171 be taken into account in determining the production cost of the goods, but only if the goods are ordinarily sold by retail in such packaging.” 35

Amendment of section 1 of Act 31 of 2014, as amended by section 83 of Act 23 of 2015

70. Section 1(1) of the Customs Control Act, 2014, is hereby amended by the substitution for the definition of “international transit” or “international transit procedure” of the following definition:
 “‘international transit’ or ‘international transit procedure’ means the customs procedure described in section 194(2) read with section 194(2A);” 40

Substitution of section 63 of Act 31 of 2014

71. The following section is hereby substituted for section 63 of the Customs Control Act, 2014:

“Departure reports

63. (1) The carrier operating a cross-border train in the Republic to a destination outside the Republic must report to the customs authority the departure of the train from [each] the last railway station in the Republic before the train leaves the Republic [where— 5

(a) travellers or crew or cargo bound for a destination outside the Republic are taken on board that train; or 10

(b) a cross-border railway carriage transporting such travellers or crew or cargo is attached to that train].

(2) A train departure report must be submitted within a timeframe as may be prescribed by rule after the departure of the train from [a] the railway station referred to in subsection (1).” 15

Amendment of section 91 of Act 31 of 2014

72. Section 91 of the Customs Control Act, 2014, is hereby amended by the deletion in subsection (2) of paragraph (a).

Amendment of section 94 of Act 31 of 2014

73. Section 94 of the Customs Control Act, 2014, is hereby amended by the deletion in subsection (2) of paragraph (b). 20

Amendment of section 194 of Act 31 of 2014

74. Section 194 of the Customs Control Act, 2014, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) The international transit procedure is despite subsection (2) also available for electricity generated in another country which is transmitted through the Republic’s electricity grid to a third country, irrespective of whether the electricity imported or a quantity of electricity equivalent to the quantity imported is exported to that third country.” 25

Amendment of section 204 of Act 31 of 2014 30

75. Section 204 of the Customs Control Act, 2014, is hereby amended by the addition of the following subsection:

“(3) (a) This Part does not apply to the transmission of electricity under the international transit procedure as provided for in section 194(2A).

(b) The Commissioner may by rule prescribe other requirements and conditions for an international transit operation involving the transmission of electricity.” 35

Amendment of section 308 of Act 31 of 2014

76. Section 308 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The licensee of a storage warehouse must submit to the customs authority regular reports for such kinds or classes of goods and for such periods as may be prescribed by rule or as the customs authority may require in a specific case.” 40

Amendment of section 576 of Act 31 of 2014

77. Section 576 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection: 45

“(2) A record in terms of subsection (1)(a) must be kept in such a manner and format and must contain such information as may be **[prescribe]** prescribed by rule.”

Amendment of section 600 of Act 31 of 2014, as amended by section 122 of Act 23 of 2015

- 78.** Section 600 of the Customs Control Act, 2014, is hereby amended—
- (a) by the deletion of the word “and” at the end of paragraph (b);
 - (b) by the substitution for the full stop at the end of paragraph (c) of a semicolon; 5
and
 - (c) by the addition of the following paragraphs:
 - “(d) the manner in and the conditions on which detained suspected counterfeit goods may be kept in a state warehouse pending a decision on the removal of the goods in terms of section 815 or any other provision applicable to counterfeit goods; and 10
 - (e) the provisions of this Chapter that are inappropriate for suspected counterfeit goods kept in a state warehouse and from the application of which such goods are excluded.”.

Amendment of section 626 of Act 31 of 2014, as amended by section 123 of Act 23 of 2015 15

- 79.** Section 626 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph (d) of the following paragraph:
- “(d) exempting importers or exporters or other categories of persons referred to in paragraph (c) from any provision of this Chapter;”.
- 20

Amendment of section 687 of Act 31 of 2014

- 80.** Section 687 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:
- “(d) goods released for the temporary admission or temporary export procedure on authority of a [CDP] CPD or ATA carnet, from the guaranteeing 25
association guaranteeing that carnet;”.

Amendment of section 929 of Act 31 of 2014

- 81.** (1) Section 929 of the Customs Control Act, 2014, is hereby amended by the addition of the following subsection:
- “(7) This section does not affect the application as from the effective date of section 701(2) of this Act and sections 45(2) and 76(3) of the Customs Duty Act, including the extended application of those sections in terms of section 105(2) of the Excise Duty Act, and as from the effective date interest on any outstanding amount to which those sections apply, including an amount outstanding on the effective date carried over from the previous day, must be calculated in accordance with those sections.”.
- 30
-
- 35

(2) Subsection (1) takes effect immediately after the Customs Control Act, 2014 (Act No. 31 of 2014), has taken effect in terms of section 944 of that Act.

Amendment of section 19 of Act 44 of 2014

- 82.** (1) Section 19 of the Tax Administration Laws Amendment Act, 2014, is hereby amended— 40
- (a) by the substitution for subsection (2) of the following subsection:
 - “(2) Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), [(i), (j)], (l), (m), [(n),] (o) and (p) of subsection (1) come into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.”; and 45
 - (b) by the addition of the following subsection:
 - “(3) Paragraphs (i), (j) and (n) of subsection (1) come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), comes into operation.”.
 50
- (2) Subsection (1) is deemed to have come into operation on 20 January 2015.

Short title and commencement

83. (1) This Act is called the Tax Administration Laws Amendment Act, 2016.

(2) Subject to subsections (3) and (4), and save in so far as is otherwise provided for in this Act, or the context otherwise indicates, the amendments effected by this Act come into operation on the date of promulgation of this Act.

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

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

**MEMORANDUM ON THE OBJECTS OF TAX
ADMINISTRATION LAWS AMENDMENT BILL, 2016**

1. PURPOSE OF BILL

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

2. OBJECTS OF BILL

2.1 Income Tax Act, 1962: Amendment of section 3

2.1.1 The Commissioner's function to approve a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or the amendments to the rules of these funds was delegated to the Executive Officer of the Financial Services Board ('FSB'), with effect from 1 April 2012, under section 3(5). Accordingly, with effect from 1 April 2012, these funds had to submit all rules and amendments directly to the FSB to be considered for income tax approval.

2.1.2 The FSB publishes a list of all the funds that are registered with the FSB on their website. However, section 70(3)(b) of the Tax Administration Act, 2011, only provides that required information, such as the income tax approval status of a pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund, may be provided to the FSB in order for the FSB to carry out their duties and functions in respect of the regulation and supervision of the Pension Funds Act, 1956, under section 3(a) of the Financial Services Board Act, 1990. This section does not give the FSB permission to disclose the information provided by SARS to any third party.

2.1.3 It is recommended that section 69(8) of the Tax Administration Act be amended to specifically allow the FSB to disclose the income tax approval status of a pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund to a third party. The proposed amendment will allow the FSB to similarly also publish the details of funds approved for income tax purposes on their website.

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

The proposed amendment is a technical correction to an amendment contained in section 2 of the Tax Administration Laws Amendment Act, 2015, and furthermore aims to insert a correct reference.

2.3 Income Tax Act, 1962: Amendment of section 64K

Investors receiving dividends from tax-free investments are required to submit an exempt dividends tax return to SARS following the receipt of every dividend payment. The proposed amendment aims to relieve investors from this obligation.

2.4 Income Tax Act, 1962: Amendment of section 102

The proposed amendment is a technical correction, to update the heading to accord with its present content.

2.5 Income Tax Act, 1962: Amendment of paragraph 1 of the Fourth Schedule

- 2.5.1 Paragraphs (a) and (b): If foreign employers in South Africa do not deduct PAYE, local employees should pay provisional tax in terms of the Fourth Schedule.
- 2.5.2 In terms of paragraph (c) of the definition of a provisional taxpayer, a person can become a provisional taxpayer upon notification by the Commissioner. A method for doing so would be for SARS to send letters to the various employers informing them that all local recruits employed by them are regarded as provisional taxpayers. However, notification of the local recruits employed by foreign employers is cumbersome and administratively onerous for SARS. In many cases SARS may not even have some of the personal information of the local recruits on record. This will require SARS to obtain all the necessary information from the employers and thereafter inform the employees that they are provisional taxpayers.
- 2.5.3 The proposed amendment aims to avoid this administratively onerous task by providing that any person who derives, by way of income, remuneration from an employer that is not registered in terms of the Fourth Schedule, be included in the definition of provisional taxpayer.
- 2.5.4 Paragraph (c): Certain dividends received from restricted equity instruments do not qualify for an income tax exemption and are taxable on assessment of the directors and employees. The proposed amendment aims to specifically include these taxable dividends in the definition of “remuneration” for PAYE in paragraph 1 of the Fourth Schedule.
- 2.5.5 Paragraph (d): The proposed amendment deletes an obsolete reference.

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

- 2.6.1 Paragraph (a): The proposed amendment deletes an obsolete reference to paragraph 12 of the Fourth Schedule, which paragraph was deleted in 2011, with the introduction of the Tax Administration Act, 2011. This reference should be linked to section 95 of the Tax Administration Act.
- 2.6.2 Paragraph (b): The proposed amendment deletes obsolete references to items that were deleted with effect from 1 March 2015.

2.7 Income Tax Act, 1962: Amendment of paragraph 9 of the Fourth Schedule

- 2.7.1 Paragraph (a): The proposed amendment aims to update the text by removing an obsolete reference. It also clarifies the fact that the deduction tables prescribed by the Commissioner in terms of this paragraph cannot take into account all the rebates claimable by taxpayers, specifically foreign tax credits claimable by employees under section 6*quat*. The proposed provision instead states clearly that these tables should take account of the rebates applicable in terms of section 6.

- 2.7.2 Paragraph 9(2) of the Fourth Schedule provides that any tables prescribed by the Commissioner will come into force on such date as may be notified by the Commissioner in the *Government Gazette*, and shall remain in force until withdrawn.
- 2.7.3 New tax deduction tables are formulated in consequence of the adjustment to the tax thresholds and brackets announced by the Minister of Finance in the annual Budget Review. The new tax deduction tables are then published on the SARS website and a general notice in this regard is issued directly to users of the Statutory Tax Rates prior to its implementation date.
- 2.7.4 The new tax deduction tables are implemented by employers as from 1 March of a particular year and subsequent to notification as mentioned. It is therefore submitted that publication of the effective date in the *Government Gazette* is redundant in the modern context and in this regard the proposed amendment aims to remove this requirement for future purposes.
- 2.7.5 Paragraph (c): It is proposed that an employer should apply to the Commissioner for a directive before paying out any lump sum envisaged in paragraph (d) or (e) of the definition of “gross income”, i.e. the exception that was contained in subparagraph (3)(b) should be removed. SARS has the capacity to deal with these directives and they provide greater certainty to SARS, employers and taxpayers.
- 2.7.6 Paragraph (d): The proposed amendment is consequential to the proposed repeal of paragraph 11C. See the note on the proposed repeal of paragraph 11C hereunder.

2.8 Income Tax Act, 1962: Amendment of paragraph 10 of the Fourth Schedule

The proposed amendment affects a textual correction and deletes an obsolete reference to paragraph 12 of the Fourth Schedule, which paragraph was deleted in 2011, with the introduction of the Tax Administration Act, 2011. This reference should be linked to section 95 of the Tax Administration Act.

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

The proposed amendment is consequential to the proposed repeal of paragraph 11C. See the note on the proposed repeal of paragraph 11C hereunder.

2.10 Income Tax Act, 1962: Amendment of paragraph 11A of the Fourth Schedule

The proposed amendment adjusts the wording of paragraph 11A, as a consequence of the changes made to this paragraph in the Tax Administration Laws Amendment Act, 2015.

2.11 Income Tax Act, 1962: Repeal of paragraph 11C of the Fourth Schedule

The proposed amendment repeals the provision for payment of employees' tax (PAYE) by directors of private companies. The provisions of section 7B would apply to the variable remuneration received by the director in that it is deemed to accrue to the director on the date on which it is paid to the director. This is also the date on which the amount of the remuneration becomes claimable as expenditure by the private company.

2.12 Income Tax Act, 1962: Amendment of paragraph 19 of the Fourth Schedule

If an estimate for the second provisional tax period is not submitted before the due date of the subsequent provisional tax payment, the provisional taxpayer is deemed to have submitted an estimate of nil taxable income, thereby triggering a penalty under paragraph 20. It is proposed that the window period for submission of provisional tax estimates be closed four months after the end of the relevant year of assessment. Furthermore this deeming provision relates to the submission of an estimate and is therefore moved from paragraph 20 to subparagraph (6) of paragraph 19.

2.13 Income Tax Act, 1962: Amendment of paragraph 20 of the Fourth Schedule

2.13.1 Paragraph *(a)*: The penalty for underpaying provisional tax is based on a percentage of normal tax payable after taking into account rebates and tax already paid. Certain once-off amounts, such as retirement lump-sum and severance-benefit payments, are excluded from the calculation of the penalty because they are taxed separately in terms of special tables and the tax owed is withheld before payment is made. Taxpayers are required to pay provisional tax on the other amounts listed in paragraph *(d)* of the definition of gross income in section 1, because these other amounts are not taxed under the lump-sum tax tables. However, because these amounts are excluded from the penalty calculation, taxpayers are not penalised if they fail to pay the required provisional tax. To correct this, it is proposed that the penalty calculation's exclusion of the amounts in paragraph *(d)* not taxed in terms of the special tables, be removed.

2.13.2 The wording of subparagraph (1) and the rest of paragraph 20 is adjusted to provide greater clarity.

2.13.3 Paragraph *(b)* The contents of subparagraph (2A) have been moved to paragraph 19(6) and subparagraph (2A) is accordingly deleted.

2.13.4 Paragraph *(c)*: As a consequential amendment to the amendment described in paragraph *(b)* above, the relief granted by the Commissioner for failure to submit an estimate not due to an intent to evade or postpone the payment of provisional tax only applies to the non-submission of a provisional tax estimate by the end of the four month period specified in paragraph 19(6) of the Fourth Schedule.

2.14 Income Tax Act, 1962: Amendment of paragraph 28 of the Fourth Schedule

Payment of refunds by the Commissioner is now regulated under section 190 of the Tax Administration Act, 2011, and hence the paragraph can be deleted.

2.15 Income Tax Act, 1962: Amendment of paragraph 3 of the Seventh Schedule

The proposed amendment deletes an obsolete reference to paragraph 12 of the Fourth Schedule, which paragraph was deleted in 2011, with the introduction of the Tax Administration Act, 2011. This reference should be linked to section 96 of the Tax Administration Act.

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

The proposed amendment aims to—

- (a)* align definitions and terms to that of the Special Economic Zones Act, 2014;

- (b) delete reference to the value-added tax liability as it is covered in that Act and duty liability is covered by subsection (9) of this section; and
- (c) clarify removals to other licensed premises and rebate manufacturers.

2.17 Customs and Excise Act, 1964: Amendment of section 35A

- 2.17.1 The proposed amendments facilitate South Africa's compliance with its fiscal marker and tracking and tracing obligations under Article 8 of the Protocol to Eliminate Illicit Trade in Tobacco Products of the World Health Organisations' Framework Convention on Tobacco Control. The proposals empower the Commissioner to prescribe by rule the necessary identification markings, and a national or regional tracking and tracing system for tobacco products. As a consequence, the current diamond stamp marking of cigarette containers will be replaced.
- 2.17.2 The proposed amendment applies the fiscal marker and tracking and tracing obligations in respect of locally manufactured tobacco products.

2.18 Customs and Excise Act, 1964: Amendment of section 54

- 2.18.1 See the note to the amendment of section 35A.
- 2.18.2 The proposed amendment applies the fiscal marker and tracking and tracing obligations in respect of imported tobacco products.

2.19 Excise Duty Act, 1964: Amendment of section 76B

The proposed amendment aligns the prescription period for refunds to the general prescription period of three years. The effect of the amendment is that the period will be the same across the customs and excise spectrum.

2.20 Excise Duty Act, 1964: Amendment of section 76C

Section 76C authorises the Commissioner to set off any amount of duty refundable to a person in terms of this Act against any amount of tax, additional tax, duty, levy, charge, interest or penalty not timeously paid by such person in terms of any other law administered by the Commissioner. The proposed amendment aims to ensure that a refund of duty will in the first instance be set off against a debt under this Act and thereafter against a debt under any other law administered by the Commissioner.

2.21 Customs and Excise Act, 1964: Amendment of section 105

In terms of section 105 of the Customs and Excise Act, 1964, interest on amounts payable in terms of the Act that are in arrears must currently be calculated monthly, whereas the new customs laws will introduce interest on arrears on daily balances owing which will be compounded at the end of each month. The purpose of the amendment to section 105 is to switch to interest calculation on arrears on daily balances as from a date earlier than the effective date for the new laws and to compound interest as from the effective date. This arrangement will apply uniformly to all customs and excise payments that are in arrears, whether they are due on imported goods or locally produced goods.

2.22 Customs and Excise Act, 1964: Amendment of section 113

- 2.22.1 Illicit tobacco manufacturers have been avoiding excise duties through duplicate manufacturing runs of both legal and illegal products and have avoided prosecution through the declaration of inaccurate cigarette manufacturing input to output ratios. The proposed amend-

ment reduces the maximum allowed tobacco content of locally manufactured cigarettes to 0.9kg per 1000 to more accurately reflect volumes of tobacco inputs currently used in cigarette production. This will assist anti-illicit tobacco enforcement interventions that match tobacco inputs against declared cigarette outputs.

- 2.22.2 The proposed amendment also reduces the maximum allowed weight of imported cigarettes to 1.2kg per 1000 to similarly reflect the volumes of tobacco inputs currently used in the production of imported cigarettes. Anti-illicit tobacco enforcement on imported cigarettes considers the weight of the completed cigarettes and their unit packaging, hence the higher weight limitation compared to locally manufactured cigarettes.

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

The proposed amendments are technical corrections to adjust a reference due to changes in section 21A of the Customs and Excise Act, 1964, and to adjust wording after the promulgation of the Special Economic Zones Act, 2014, on 9 February 2016.

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

- 2.24.1 Paragraph (a): The proposed amendments are technical corrections to adjust the wording after the promulgation of the Special Economic Zones Act, 2014, on 9 February 2016.
- 2.24.2 Paragraph (b): The proposed amendment adjusts the wording that will come into operation when the Customs Control Act, 2014, comes into operation.

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

The proposed amendments are technical corrections to adjust the wording after the promulgation of the Special Economic Zones Act, 2014, on 9 February 2016.

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

- 2.26.1 Paragraph (a): The proposed amendment is a technical correction to an amendment in section 25 of the Tax Administration Laws Amendment Act, 2015, and it aims to insert a reference.
- 2.26.2 Paragraph (b): The Value-Added Tax Act places a statutory obligation on vendors to issue documents in a defined form and manner. These requirements are attuned to commercial and accounting practice and ensure a seamless audit trail. Recipient vendors are occasionally issued with defective documents or are unable to obtain documents from supplying vendors, resulting in an inability to make input tax deductions.
- 2.26.3 With effect from 1 April 2015, section 25 of the Tax Administration Laws Amendment Act, 2015, introduced section 16(2)(g) in the Value-Added Tax Act to provide relief to recipient vendors in these situations. The current amendment provides clarity with regard to the considerations that the Commissioner will take into account for accepting alternative documentary proof. It is important to note that vendors can only access this relief as a last resort. Vendors must still be able to demonstrate that a sincere effort has been put into obtaining the proper documents and maintain proof of those efforts. Furthermore, vendors would have to make an application for a ruling no later than 2 months prior to expiry of the five-year prescription period and only if and when that ruling is issued, may the amount be deducted as input

tax at that later stage. Lastly, invoking this provision will not allow vendors to backdate the claim to a past tax period that has already been closed.

2.26.4 Paragraph (c): The proposed amendment is a technical correction to adjust the wording after the promulgation of the Special Economic Zones Act, 2014, deemed to have come into effect on 9 February 2016, the date on which that Act came into operation.

2.26.5 Paragraph (d): The same wording changes are effected in the text due to come into effect when the Customs Control Act, 2014, comes into effect.

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

2.27.1 Paragraph (a): The proposed amendment is a technical correction to adjust the wording after the promulgation of the Special Economic Zones Act, 2014, deemed to have come into effect on 9 February 2016, the date on which that Act came into operation.

2.27.2 Paragraph (b): The same wording changes are effected in the text due to come into effect when the Customs Control Act, 2014, comes into effect.

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

A vendor is required to submit VAT returns in accordance with its allocated tax period. Where the total amount of input tax for a particular tax period exceeds the total amount of output tax for that tax period, the vendor will submit a VAT return for that tax period, requesting SARS to pay a refund to that vendor; this is commonly referred to as a refund of VAT arising from a VAT return. It is proposed that the time limit within which a vendor or any other person must request a refund of VAT arising from a VAT return in order for SARS to properly pay that refund, be clarified. Accordingly, for a refund arising from a VAT return, the VAT return must be submitted within five years from the due date of that VAT return.

2.29 Value-Added Tax Act, 1991: Amendment of section 55

The proposed amendment is consequential to the addition of section 16(2)(g) by section 25 of the Tax Administration Laws Amendment Act, 2015, and it aims to insert a reference.

2.30 Value-Added Tax Act, 1991: Amendment of section 86A

2.30.1 Paragraph (a): Technical corrections to adjust wording after the promulgation of the Special Economic Zones Act, 2014, deemed to have come into effect on 9 February 2016, the date on which that Act came into operation.

2.30.2 Paragraph (b): The same wording changes are effected in the text due to come into effect when the Customs Control Act, 2014, comes into effect.

2.31 Value-Added Tax Act, 1991: Amendment of Schedule 1

The proposed amendment is a technical correction to adjust the wording of item 498.00 after the Special Economic Zones Act, 2014, came into effect on 9 February 2016.

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

The payment of mineral and petroleum resources royalties under the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, largely follows the provisional tax scheme in the Fourth Schedule of the Income Tax Act, 1962. However, to improve payment automation, greater alignment with the Fourth Schedule is required, particularly with regard to interest and penalties. The proposed amendments aim to effect such alignment as well as other technical corrections to the Act.

**2.33 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Amendment of section 1**

The amendments proposed are technical corrections to align the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, with the definitions in the Tax Administration Act, 2011.

**2.34 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Amendment of heading to Part III**

The proposed consequential amendment will reflect the contents of the Part in the order in which these items are dealt with in the Part.

**2.35 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Amendment of section 5**

Section 5 deals with the first and second payments of the royalty payable for a year of assessment. In practice this process starts with the calculation of an estimate of the royalty payable for the year. A return of this estimate must then be submitted to SARS. The submission of the return constitutes an original self-assessment in terms of section 91(2) of the Tax Administration Act, 2011. Payment of the amount due must then take place within the specified period. This process of estimate, return and payment is repeated in the second period. The amended wording more clearly reflects the steps in the process.

**2.36 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Insertion of section 5A**

2.36.1 The provisions contained in the proposed new section 5A are at present contained in section 15 of the Act. Placing them straight after section 5 makes clear the order in which the actions take place, as SARS may adjust a first or second estimate as soon as the return has been submitted. In cases where no return is submitted, SARS may make an estimate. The proposed amendment further aligns this section with paragraph 19(3) of the Fourth Schedule to the Income Tax Act, 1962, in that the adjusted estimate will not be subject to objection and appeal.

2.36.2 The proposed new subsection (4) mirrors the changes to similar provisions in paragraphs 19 and 20 of the Fourth Schedule to the Income Tax Act, 1962. To avoid payment of a penalty, taxpayers may decide not to file a return. In such a case, the taxpayer is deemed to have submitted a nil estimate and this amount forms the basis for the calculation of the penalty imposed under section 14.

**2.37 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Amendment of section 6**

The proposed amendment to the heading clarifies that the provision applies to the returns and payments for a year of assessment. A final payment must be made of the amount still owed after all the previous payments for that year

have been made. The proposed wording change reflects the fact that there may be more than two payments if an estimate is adjusted under section 5A.

**2.38 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Insertion of section 6A**

The proposed section allows for refunds in case of overpayment by the taxpayer, under section 190 of the Tax Administration Act, 2011.

**2.39 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Amendment of section 8**

The proposed wording changes clarify which records must be kept specifically for the purposes of the principal Act.

**2.40 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Repeal of Part IV**

Most of the provisions relating to assessment were repealed because they were made obsolete by the Tax Administration Act, 2011. Submission of returns under sections 5(1) and (2) and 6 are original self-assessments by taxpayers of their tax liability under section 91(2) of the Tax Administration Act, 2011. The contents of the remaining section 9, pertaining to notices of assessment, have been incorporated in the proposed new section 5A and Part IV is no longer required.

**2.41 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Amendment of heading to Part V**

The proposed adjustment of the words more accurately reflects the content of the Part.

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

2.42.1 Paragraph (a): The proposed change to the heading clarifies that a penalty is levied under this section in the case of underpayment as a result of underestimation and not on the underestimation as such.

2.42.2 Paragraph (b): The proposed wording change clarifies that the amount of the royalty paid is not limited to the amount paid under section 5 but includes additional amounts paid under section 5A. The existing wording makes the imposition of a penalty under this section discretionary. An electronic filing environment requires certainty and, in line with paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, the imposition of a penalty becomes automatic.

2.42.3 Paragraph (c): The proposed new subsection mirrors the proposed changes to paragraph 20(2A) and (2C) of the Fourth Schedule to the Income Tax Act.

**2.43 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Repeal of section 15**

See the note to the insertion of section 5A.

**2.44 Mineral and Petroleum Resources Royalty (Administration) Act, 2008:
Restitution and amendment of section 16**

To make provision for interest to accrue on outstanding amounts of tax or refunds specifically under the Mineral and Petroleum Resources Royalty Act, 2008, it is proposed that section 16 of the Mineral and Petroleum Resources Royalty (Administration) Act be reinserted. Interest under this Act can then

accrue in accordance with the interest provisions contained in Chapter 12 of the Tax Administration Act, 2011. These provisions have not yet become effective for all the tax Acts but are specifically made applicable for the purposes of the mineral royalty. Paragraph (a) proposes to insert subsection (1) that deals with interest due by SARS, whereas subsection (2), inserted by paragraph (b), deals with interest due by taxpayers. Paragraph (c) proposes the deletion of subsection (3), dealing with the rate of interest due. This matter will be dealt with under section 189 of the Tax Administration Act, 2011.

2.45 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Repeal of section 18A

Non-binding private opinions are defined in section 75 of the Tax Administration Act, 2011, and applied under section 88 of that Act. The reference to them can therefore be deleted as it is no longer necessary.

2.46 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 19

2.46.1 Paragraph (a): The proposed change to the heading clarifies the content of the section.

2.46.2 Paragraph (b): The proposed amendment provides that despite the confidentiality provisions contained in the Tax Administration Act, 2011, the Commissioner must annually submit to the Minister of Finance a report received from each extractor.

2.46.3 Paragraph (c): The proposed amendment provides that the Minister of Finance and any person employed or engaged by him or her with regard to all matters that may come to his or her knowledge in terms of section 19 of the Act, must preserve the secrecy of the information as provided in section 67(4) of the Tax Administration Act, 2011, and may only disclose information to another person if the disclosure is necessary to perform the functions as specified.

2.46.4 Paragraph (d): The secrecy provisions contained in subsections (3), (4), (5) and (6) are now contained in the Tax Administration Act and it is therefore no longer necessary to maintain them in the Mineral and Petroleum Resources Royalty (Administration) Act.

2.46.5 Paragraph (e): The proposed amendment is of a technical nature as it corrects a reference.

2.46.6 Paragraph (f): The proposed amendment provides that the preservation of secrecy of the information also applies to the Director-General of the Department of Mineral Resources and the chief executive officer of the agency designated by the Minister responsible for Mineral Resources in terms of section 70 of the Mineral and Petroleum Resources Development Act, 2002, as well as any person engaged or employed by them that has access to the information.

2.47 Tax Administration Act, 2011: Amendment of section 1

An external legal practitioner briefed to represent SARS in legal matters, in particular an advocate, must advise and assist SARS with the required degree of independence and does not, in doing so, carry out the provisions of a tax Act under the control, direction or supervision of the Commissioner. The proposed amendment aims to address uncertainty that has arisen in this regard in practice.

2.48 Tax Administration Act, 2011: Amendment of section 11

Legal costs recovered by the state attorney on behalf of SARS are paid directly to SARS, not to the National Revenue Fund. The proposed amendment provides that legal costs recovered by the state attorney on behalf of SARS must be paid to the National Revenue Fund.

2.49 Tax Administration Act, 2011: Amendment of section 14

The proposed amendment aims to enhance the independence of the Tax Ombud by extending his or her tenure.

2.50 Tax Administration Act, 2011: Amendment of section 15

The proposed amendment aims to enhance the independence of the Tax Ombud in respect of the appointment of the staff of the Office of the Tax Ombud. In addition, an amendment is proposed that the expenditure connected with the functions of the office of the Tax Ombud is paid in accordance with a budget for the office approved by the Minister. The amendment furthermore provides that the Tax Ombud must appoint the staff of his or her office which staff must be employed in terms of the South African Revenue Service Act, 1997 (SARS Act). The reference to the SARS Act is essential if the Tax Ombud's staff are to enjoy the same conditions of service as SARS staff.

2.51 Tax Administration Act, 2011: Amendment of section 16

The proposed amendment aims to extend the mandate of the Tax Ombud to include the investigation and review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, of any systemic and emerging issue related to a service matter; the application of the provisions of the Tax Administration Act; or procedural or administrative provisions of a tax Act, as defined in the Tax Administration Act.

2.52 Tax Administration Act, 2011: Amendment of section 20

The proposed amendment aims to enhance the effectiveness of the Tax Ombud's recommendations. If SARS or the taxpayer does not accept them, reasons must be provided within a period of 30 days. This will ensure that the Tax Ombud is able to review the reasonableness of the reasons to inform future action.

2.53 Tax Administration Act, 2011: Amendment of section 69

See the note on the amendment of section 3 of the Income Tax Act, 1962.

2.54 Tax Administration Act, 2011: Amendment of section 97

The proposed amendment aims to clarify that the "record" of an assessment includes the return and the documents in support thereof provided to SARS for purposes of a verification or audit. It would be nonsensical to only destroy the assessment and not the supporting documents which generally constitute the more voluminous part of the "record" of an assessment. The period of 5 years is extended to 7 years to align it with the maximum period of extension for prescription in section 99(3), and additional grounds where a further period may be required are added.

2.55 Tax Administration Act, 2011: Amendment of section 99

The proposed amendment is a technical correction. The resolution of a dispute under section 99(2)(d)(i) includes a judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal.

2.56 Tax Administration Act, 2011: Amendment of section 100

The general principle is that finality of a dispute must be achieved, i.e. the resolution of a dispute in respect of the issues in dispute and the relevant tax period must be final. The amendment clarifies that only in exceptional circumstances should SARS be allowed to “reopen” the tax period, audit and issue an additional assessment after prescription. Prior to the expiry of the periods listed in section 99(1), where the factors listed in section 99(2) are absent, SARS may still issue an additional assessment to comply with its statutory duties to ensure payment of the correct amount of tax in respect of the tax period that was under dispute within the normal expiry period for that tax period.

2.57 Tax Administration Act, 2011: Amendment of section 104

The current period for lodging an objection is 30 business days from the date of assessment. This has been shown to be too short in practice, particularly in complex matters, resulting in a large number of applications for condonation. A longer period for lodging an objection will be proposed which will be effected in the dispute resolution rules issued under section 103 of the Act. It is proposed that condonation of a late objection not based on exceptional circumstances may be extended by SARS for a period up to 30 days, but if there are exceptional circumstances this period may be further extended by SARS. The maximum period within which a late objection may be extended remains three years.

2.58 Tax Administration Act, 2011: Amendment of section 118

Currently section 118 provides that if a tax appeal relates to the business of mining, the commercial member must be a registered engineer with experience in that field, or a sworn appraiser if it involves the valuation of assets. Because other matters of a technical nature may also require a commercial member with expertise in the relevant field, it is proposed that an amendment be considered to include a more generic provision for this purpose. The proposed amendment gives effect to this proposal.

2.59 Tax Administration Act, 2011: Amendment of section 151

The proposed amendment aims to clarify that “relevant material” may be obtained in respect of a person subject to a criminal investigation in line with the administration of a tax Act under section 3(2)(c), (d), (f) and (h), and that all information gathering powers and other relevant provisions where the word “taxpayer” is used, apply to such suspect.

2.60 Tax Administration Act, 2011: Amendment of section 194

The proposed amendment is a technical correction.

2.61 Tax Administration Act, 2011: Amendment of section 221

Amendments to the understatement penalty regime to enhance clarity with regard to whether and the extent to which understatement penalties are imposable in GAAR matters pursuant to recent contentions in this regard, are proposed. Under the additional tax penalty regime, the predecessor to the understatement penalty regime, case law supported the imposition of such penalties in GAAR matters. The amendments will clarify that this prevails in respect of understatement penalties, which is also in line with international law. In addition, to provide clarity as to what would be the appropriate penalty in GAAR matters, it is proposed that a new behavioural category is inserted in the understatement penalty table.

2.62 Tax Administration Act, 2011: Amendment of section 223

See the note on the amendment to section 221.

2.63 Tax Administration Act, 2011: Amendment of section 226

The proposed amendments aim to clarify the application of the section. It furthermore inserts a requirement that a person seeking voluntary disclosure relief must be given notice of the commencement of an audit or criminal investigation into the affairs of the person as opposed to the requirement that the person has become aware of a pending audit or criminal investigation or that the audit or criminal investigation has commenced.

2.64 Tax Administration Act, 2011: Amendment of section 270

The proposed amendment is consequential to the amendments to sections 221 and 223.

2.65 Tax Administration Act, 2011: Amendment of paragraph 189 of Schedule 1

The proposed amendment is consequential to the amendments made to the Mineral and Petroleum Resources Royalty (Administration) Act, 2008.

2.66 Customs Duty Act, 2014: Amendment of section 95

The proposed amendment is aimed at providing for less harsh consequences to flow from a failure by a person to comply with a request by Customs to submit a worksheet or additional documents. The result of the proposed amendment will be that such a failure will not be a Category 2 offence in terms of section 95, but only a non-prosecutable breach of the Act for which an administrative penalty may be imposed.

2.67 Customs Duty Act, 2014: Amendment of section 171

The current separate provisions of sections 171 and 172 appear to overlap. The proposed amendment in effect combines sections 171 and 172, and section 172 is consequently repealed.

2.68 Customs Duty Act, 2014: Repeal of section 172

See the note on the amendment of section 171 of the Customs Duty Act, 2014.

2.69 Customs Duty Act, 2014: Amendment of section 175

The proposed amendment is consequential to the amendments proposed in relation to sections 171 and 172 of the Customs Duty Act, 2014.

2.70 Customs Control Act, 2014: Amendment of section 1

The proposed amendment is consequential to the amendments to sections 194 and 204 of the Customs Control Act, 2014.

2.71 Customs Control Act, 2014: Amendment of section 63

The proposed amendment is intended to ensure that departure information submitted in relation to a cross-border train is reliable and final when the train leaves the Republic.

2.72 Customs Control Act, 2014: Amendment of section 91

The proposed amendment is intended to align the *de minimis* regime in relation to import duty with the international tendency to utilise a minimum

threshold in relation to the value of goods below which no duties will be collected, without restriction as to the kind of goods or the frequency of import.

2.73 Customs Control Act, 2014: Amendment of section 94

The proposed amendment is intended to facilitate the clearance process in respect of containerised goods exported from the Republic in instances where the goods are containerised at a place other than a container depot.

2.74 Customs Control Act, 2014: Amendment of section 194

The proposed amendment provides for the international transit of electricity imported from a neighbouring country through the Republic to third countries. Currently the provisions regulating the international transit of goods are too restrictive to enable such transits.

2.75 Customs Control Act, 2014: Amendment of section 204

See the notes on the amendment of section 194 of the Customs Control Act, 2014.

2.76 Customs Control Act, 2014: Amendment of section 308

The proposed amendment provides flexibility in that it allows the Commissioner to prescribe the kind of warehoused goods in relation to which regular reports have to be submitted.

2.77 Customs Control Act, 2014: Amendment of section 576

The amendment is proposed to correct an error.

2.78 Customs Control Act, 2014: Amendment of section 600

The proposed amendment enables the Commissioner to prescribe rules specifically applicable where suspected counterfeit goods which were detained by Customs are secured in terms of section 570(2)(e) in a state warehouse, pending removal of the goods to a counterfeit goods depot or termination of the detention. Suspected counterfeit goods secured in a state warehouse should not be subject to the other provisions of Chapter 27 of the Act applicable to goods removed to state warehouses, for example provisions relating to reclaiming or disposal. The amendment accordingly also provides for the exclusion of suspected counterfeit goods from provisions of the Chapter, as may be prescribed by rule, that are inappropriate for such goods. Counterfeit goods are disposed of in terms of the Counterfeit Goods Act.

2.79 Customs Control Act, 2014: Amendment of section 626

The proposed amendment is consequential to the amendment to section 626(c) effected in terms of section 123 of the Tax Administration Laws Amendment Act, 2015.

2.80 Customs Control Act, 2014: Amendment of section 687

The purpose of the proposed amendment is to correct an error.

2.81 Customs Control Act, 2014: Amendment of section 929

This amendment to section 929 is aimed at ensuring that a single system of interest calculation applies to all amounts outstanding as from the effective date, irrespective of which law must be applied to the goods. The amendment is proposed purely for purposes of legal clarity and to avoid any uncertainty as

to which legal regime applies to interest calculation during the transition period.

2.82 Tax Administration Laws Amendment Act, 2014: Amendment of section 19

The proposed amendment is a technical correction to adjust the effective date for definitions pertaining to the Special Economic Zones Act, 2014. It is proposed that these definitions are deemed to have come into effect on 9 February 2016, the date on which the Special Economic Zones Act came into operation.

2.83 Short title and commencement

The clause makes provision for the short title of the proposed Act and provides that different provisions of the Act may come into effect on different dates.

3. CONSULTATION

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

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2016 Budget Review, tabled in Parliament on 24 February 2016.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the National Treasury and South African Revenue Service are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.

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