

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. 41178 of 13 October 2017)  
(The English text is the official text of the Bill)*

---

(MINISTER OF FINANCE)

[B 28—2017]

ISBN 978-1-4850-0402-8

No. of copies printed ..... 800

**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 Estate Duty Act, 1955, so as to effect technical corrections;
- amend the Income Tax Act, 1962, so as to make provision for exemption from a penalty; to make provision for exemption from an obligation to submit a return in certain cases; to effect certain technical amendments; to amend the Fourth Schedule to that Act to correct a numbering error; to make provision for the calculation of an allowance; to effect a consequential amendment; to provide for the smoothing over time of a deduction; to make provision for an inclusion in employees' tax;
- amend the Customs and Excise Act, 1964, so as to extend a provision related to information sharing; to clarify a provision related to imported fuel levy goods; to delete a provision that will no longer be implemented; to amend a provision related to customs controlled areas; to clarify a provision related to environmental levy goods; to amend a provision to delete references to the Value-Added Tax Act;
- amend the Value-Added Tax Act, 1991, so as to amend a provision related to customs duties;
- amend the Skills Development Levies Act, 1999, so as to clarify the wording of a provision;
- amend the Diamond Export Levy (Administration) Act, 2007, so as to effect technical corrections in certain provisions;
- amend the Tax Administration Act, 2011, so as to amend a provision dealing with decisions; to effect technical corrections; to amend a provision dealing with the constitution of the tax board; to delete an unnecessary provision; to amend a provision dealing with refunds; to amend a provision to provide that interest provisions may come into effect on different dates in respect of different tax types;
- amend the Customs Duty Act, 2014, so as to clarify who may claim refunds and drawbacks and to whom refunds and drawbacks will be paid; to amend a provision to broaden the scope for clearance declarations and amended clearance declarations to be regarded as applications for purposes of the Act;
- amend the Customs Control Act, 2014, so as to make certain technical corrections; to delete certain unnecessary provisions; to clarify certain provisions; to amend a provision by qualifying when a permission to depart must be submitted in relation to foreign-going vessels; to make changes to

- provisions relating to the submission of vessel and aircraft departure and arrival reports; to substitute a provision relating to customs permission for the transfer of ownership of goods under customs procedures so as to provide flexibility to exclude certain procedures where permission is not required and to more fully provide for different scenarios that may arise when goods are transferred; to effect changes to a section to broaden the notion of an amended clearance declaration; to amend sections to provide for and clarify various scenarios that may arise when transshipment operations take place at two different seaports; to make certain adjustments to provisions for purposes of systems facilitation; to provide more clarity in respect of reusable transport equipment entering and leaving the Republic and to create flexibility to provide for certain divergent issues concerning the different types of reusable transport equipment by rule; to simplify the removal of stores from a foreign-going vessel, aircraft or cross-border train; to provide for exclusions and exemptions; to limit the requirement of registration as electronic user to the person actually accessing the SARS electronic system; and generally to make adjustments for the smoother implementation of that Act;
- amend the Customs and Excise Amendment Act, 2014, so as to repeal a provision; to delete a paragraph;
  - amend the Tax Administration Laws Amendment Act, 2014, so as to delete a paragraph;
- and to provide for matters connected therewith.

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

**Insertion of section 9C in Act 45 of 1955**

1. The Estate Duty Act, 1955, is hereby amended by the insertion of the following section before section 10: 5

**“Payment of duty**

**9C.** The duty payable under this Act shall be paid on such date as may be prescribed in the notice of assessment issued in terms of section 9(3).”.

**Amendment of section 10 of Act 45 of 1955, as amended by section 271 of Act 28 of 2011 read with paragraph 18 of Schedule 1 to that Act and section 3 of Act 21 of 2012** 10

2. Section 10 of the Estate Duty Act, 1955, is hereby amended—

- (a) by the substitution for subsection (1), pending its substitution by section 271 of the Tax Administration Act, 2011 (Act No. 28 of 2011), read with paragraph 18 of Schedule 1 to that Act and section 3 of the Tax Administration Laws Amendment Act, 2012 (Act No. 21 of 2012), of the following subsection: 15
- “(1) If any duty remains unpaid at the expiration of a period of thirty days from the date [of] for payment [notified in accordance with subsection (2) of section *nine*] prescribed in terms of section 9C, there shall be payable, in addition to the unpaid duty, interest at the rate of six per cent. per annum on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment: Provided that, where the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the rate of six per cent. per annum shall be payable as from a date twelve months after the date of death on the difference (if any) between the duty assessed and any deposit (if any) made on account of the duty payable within the said period of twelve months.”; and 20
- (b) by the substitution for subsection (2) of the following subsection: 25
- “(2) Whenever the Commissioner is satisfied that the delay in the payment of duty within the period of thirty days from the date [of] for payment [notified in accordance with subsection (2) of section *nine*] prescribed in terms of section 9C, or within the period of twelve months 30

from the date of death, as the case may be, has not been occasioned either by the executor or by any person liable for the duty, [he] the Commissioner may allow an extension of time within which the duty may be paid without interest if, before the expiration of the said period of thirty days or the said period of twelve months, as the case may be or such further period as the Commissioner may allow—

- (a) a deposit on account of the duty payable is made of an amount which, in the opinion of the Commissioner, is reasonable, regard being had to the amount of the duty payable; and
- (b) application is made in writing to the Commissioner for such extension of time.”.

**Amendment of section 48C of Act 58 of 1962, as inserted by section 54 of Act 60 of 2008 and amended by section 67 of Act 25 of 2015**

3. (1) Section 48C of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

“(4) Where in the course of a year of assessment a registered micro business is deregistered in terms of paragraph 10(2) of the Sixth Schedule and a person becomes liable for payment of tax in terms of section 5 in respect of the taxable income of that deregistered micro business, that person is exempt from any penalties for underpayment of tax for which that person, solely as a result of becoming so liable in respect of that taxable income, would otherwise become liable under the Fourth Schedule to this Act or Chapter 15 of the Tax Administration Act.”.

(2) Subsection (1) comes into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.

**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, section 4 of Act 23 of 2015 and section 3 of Act 16 of 2016**

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

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

- (a) paid a dividend; or
- (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,

that person must submit a return in respect of that dividend to the Commissioner by the last day of the month following the month during which the dividend is paid or received, unless the dividend received—

- (i) is derived from a tax free investment contemplated in section 12T; or
- (ii) is received by a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or a beneficiary fund defined in section 1 of the Pension Funds Act, of which the receipts and accruals are exempt from normal tax in terms of section 10(1)(d)(i).”.

**Amendment of section 64L of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 271 of Act 28 of 2011 read with paragraph 56 of Schedule 1 to that Act and section 15 of Act 21 of 2012**

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

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

“(c) both the declaration and the written undertaking contemplated in section 64G(2)(a) or (3) are submitted to the company within three years after the date of payment of the dividend in respect of which they are made,”; and

- (b) by the substitution in subsection (1A) for the words following paragraph (b) of the following words:
- “so much of that amount as would not have been withheld had that rebate been deducted from the amount, is refundable to the person to whom the dividend was paid: Provided such rebate is claimed within three years after the date of payment of the relevant dividend.”. 5

**Amendment of section 64LA of Act 58 of 1962, as inserted by section 6 of Act 44 of 2014**

6. Section 64LA of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of the following paragraph: 10
- “(b) both the declaration and the written undertaking are submitted to the company within three years after the date of payment of the tax.”.

**Amendment of section 64M of Act 58 of 1962, as inserted by section 53 of Act 17 of 2009 and amended by section 16 of Act 21 of 2012**

7. Section 64M of the Income Tax Act, 1962, is hereby amended— 15
- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) both the declaration and the written undertaking contemplated in section 64G(2)(a) or (3) are submitted to the company within three years after the date of payment of the dividend in respect of which they are made.”; and 20
- (b) by the substitution in subsection (1A) for the words following paragraph (b) of the following words:
- “so much of that amount as would not have been withheld had that rebate been deducted from the amount, is refundable to the person to whom the dividend was paid: Provided such rebate is claimed within three years after the date of payment of the relevant dividend.”. 25

**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, section 6 of Act 23 of 2015 and section 5 of Act 16 of 2016** 30

8. (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: 45
- “(a) any person (other than a company) who derives income by way of—
- (i) any remuneration from an employer that is not registered in terms of paragraph 15; or
- (ii) any amount which does not constitute remuneration or an allowance or advance contemplated in section 8(1); [or
- (iii) an allowance or advance contemplated in section 8(1);]**”;
- (b) by the substitution in the definition of “remuneration” for paragraph (cA) of the following paragraph:
- “(cA) 80 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) 55

[which] that is based on the actual distance travelled by the recipient [ , and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under section 8(1)(b)(iii)];

Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of the amount of such allowance or advance must be included;”;

- (c) by the insertion in the definition of “remuneration” after paragraph (cB) of the following paragraph:

“(cC) 100 per cent of so much of the amount paid or granted as an allowance or advance referred to in section 8(1)(b)(iii) as exceeds the amount determined by applying the rate per kilometre for the simplified method in the notice fixing the rate per kilometre under section 8(1)(b)(ii) and (iii) to the actual distance travelled;”;

- (d) by the substitution in the definition of “remuneration” for the comma at the end of paragraph (g)(iii) of a semicolon and the addition after that subparagraph of the following subparagraph:

“(iv) paragraph (kk) of the proviso to section 10(1)(k)(i),”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2017 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 March 2018 and apply in respect of years of assessment commencing on or after that date.

(4) Paragraph (d) of subsection (1) comes into operation on the date on which paragraph (f) of section 16(1) of the Taxation Laws Amendment Act, 2017, comes into operation.

**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, section 68 of Act 44 of 2014 and section 6 of Act 16 of 2016**

9. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to subparagraph (4) of the following proviso:

“: Provided that at any time during the year of assessment the amount of the contribution to be deducted in terms of paragraphs (a), (b) and (bA) must not exceed an amount that bears to the amount stipulated in section 11F(2)(a) the same ratio as the period during which remuneration was paid by an employer to the employee bears to a whole year.”.

(2) Subsection (1) comes into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 11A of Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969 and amended by section 47 of Act 28 of 1997, section 19 of Act 34 of 2004, section 51 of Act 31 of 2005, section 67 of Act 35 of 2007, section 19 of Act 8 of 2010, section 9 of Act 23 of 2015 and section 10 of Act 16 of 2016**

10. (1) Paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (1), (2), (3), (4) and (5) of the following subparagraphs, respectively:

“(1) Where by virtue of the provisions of paragraph (b), (d) [or], (e) or (g) 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; 5
- (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; or
- (d) any amount received by or accrued to that employee by way of a dividend contemplated in— 10
  - (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); or
  - (iv) paragraph (kk) of the proviso to section 10(1)(k)(i), 15

the person by whom that right was granted or from whom [that] the equity instrument or qualifying equity share that gave rise to the gain or amount 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) or (d). 20

(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 the person referred to in subparagraph (1) from—

- (a) any consideration paid or payable by that person to that employee in respect of the cession, or release of that right or the disposal of that qualifying equity share, as the case may be; [or] 25
- (b) 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; or 30
- (c) any amount of a dividend contemplated in subparagraph (1)(d) accrued to that employee: 35

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) or (d) arises; and—

- (i) that person is not resident nor has a representative employer; [or] 40
- (ii) that person 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 remuneration by way of employees’ tax exceeds the amount from which the deduction or withholding can be made; or 45
- (iii) the amount of the dividend referred to in paragraph (c) consists of an equity instrument referred to in section 8C, 50

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 employees’ tax payable in respect of that gain or that amount and shall be jointly and severally liable for that aggregate amount of 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) or (d). 55

(4) Before deducting or withholding employees’ tax under subparagraph (2) in respect of remuneration contemplated in subparagraph (1)(a) [or], (c) or (d), that person and that employer must ascertain from the Commissioner the amount to be so deducted or withheld. 60

(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) or (d) arises, they must immediately notify the Commissioner of the fact."

(2) Subsection (1) comes into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006, section 9 of Act 21 of 2006, section 5 of Act 36 of 2007, section 25 of Act 61 of 2008, section 24 of Act 8 of 2010, section 3 of Act 25 of 2011 and section 16 of Act 39 of 2013, repealed by section 4 of Act 32 of 2014 and amended by section 22 of Act 23 of 2015**

11. Section 4 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended—

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

“(ii) disclosing to the Director-General of the Department of Trade and Industry or the Economic Development Department such information in relation to imports and exports and importers and exporters as may be required by such Director-General for the determination and application of any trade policy;”;

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

“(v) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and duties have been delegated by the Minister in terms of **[Exchange Control Regulations, 1961]** regulations issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those **[Regulations]** regulations or the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);”;

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

“(3A) The Statistician-General or the Director-General of the Department of Trade and Industry or the Economic Development Department or the National Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state or any person acting under the direction and control of such Statistician-General or Director-General of the Department of Trade and Industry or the Economic Development Department or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury or the Chief Commissioner of the International Trade Administration Commission or the Director of the Financial Intelligence Centre or the head of any organ of state, shall not disclose any information supplied under the proviso to subsection 3 to any person or permit any person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties under any Act from which such powers or duties are derived.”.



**Amendment of section 19A of Act 91 of 1964, as amended by section 40 of Act 19 of 2001, section 64 of Act 30 of 2002, section 31 of Act 61 of 2008 and section 9 of Act 32 of 2014**

12. (1) Section 19A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words: 5

“Notwithstanding anything to the contrary contained in this Act the Commissioner may by rule, in respect of any excisable goods specified in Section A of Part 2 of Schedule No. 1 [or fuel levy goods or any class or kind of such goods] manufactured in the Republic or fuel levy goods manufactured in or imported into the Republic or any class or kind of such goods—”. 10

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

**Amendment of section 20 of Act 91 of 1964, as amended by section 4 of Act 95 of 1965, section 8 of Act 105 of 1969, section 1 of Act 86 of 1982, section 6 of Act 84 of 1987, section 14 of Act 59 of 1990, section 14 of Act 45 of 1995, section 59 of Act 30 of 1998, section 41 of Act 19 of 2001, section 88 of Act 31 of 2005, section 10 of Act 32 of 2014 and section 126 of Act 25 of 2015** 15

13. (1) Section 20 of the Customs and Excise Act, 1964, is hereby amended by the deletion of subsection (7). 20

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

**Amendment of section 21A of Act 91 of 1964, as inserted by section 121 of Act 60 of 2001 and 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, repealed by section 12 of Act 32 of 2014 and amended by section 16 of Act 16 of 2016** 25

14. Section 21A of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014, is hereby amended—

(a) by the substitution in subsection (9) for paragraph (a) of the following paragraph: 30

“(a) if the SEZ operator or CCA enterprise or such other person proves that, as the case may be—  
 (i) the duty on the goods concerned has been paid;  
 (ii) the goods have been duly exported;  
 (iii) any goods brought temporarily into the CCA are removed therefrom in accordance with the provisions of this Act and any conditions imposed by the Commissioner; or  
 (iv) the goods have been used in the manufacture or production of any goods by the CCA enterprise in accordance with any relevant provision of this Act and such goods have been removed and received on other licensed or registered premises for manufacture or production of any other goods by the licensee or registrant in accordance with any relevant provision of this Act;” and 35  
 40

(b) by the insertion after subsection (9) of the following subsection: 45

“(9A) The liability for duty in respect of any imported goods that have been used in the manufacture or production of goods as referred to in paragraph (a)(iv) of subsection (9), that ceased as contemplated in that paragraph in respect of a CCA enterprise, shall—  
 (a) be assumed by the receiving licensee or registrant referred to in paragraph (a)(iv) of that subsection; and  
 (b) cease in accordance with any relevant provision of this Act pertaining to such licensee or registrant.” 50

**Substitution of section 54C of Act 91 of 1964, as inserted by section 139 of Act 45 of 2003 and renumbered by section 32 of Act 16 of 2004**

15. (1) Section 54C of the Customs and Excise Act, 1964, is hereby substituted by the following section:

**“Application of other provisions of this Act** 5

**54C.** [(1)] Subject to such exceptions and adaptations as may be prescribed in this Chapter, any Schedule or any rule, the provisions of this Act **[relating to] governing the administration of excisable goods, including—**

- (a) (i) the importation of excisable goods and imported excisable goods; and
- (ii) the payment of duty on imported excisable goods; or
- (b) (i) the manufacture of excisable goods; and
- (ii) the entry for home consumption, removal from any customs and excise manufacturing warehouse and payment of duty 15 contemplated in section 19A,

shall apply *mutatis mutandis* to environmental levy goods imported into or manufactured in the Republic.”.

(2) Subsection (1) comes into operation on the date on which section 18(4) of the Rates and Monetary Amounts and Amendment of Revenue Laws Act, 2017, comes into operation. 20

**Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, section 109 of Act 74 of 2002, section 146 of Act 45 of 2003, section 27 of Act 34 of 2004, section 92 of Act 31 of 2005, section 70 of Act 20 of 2006, section 95 of Act 35 of 2007, section 99 of Act 60 of 2008 and section 63 of Act 32 of 2014** 25

16. (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended— 35

- (a) by the substitution in subsection (1A)(b) for subparagraph (ii) of the following subparagraph:

“(ii) is registered[, **in addition to any other registration required under this Act, for value-added tax purposes under the provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and]** for diesel refund purposes on compliance with the requirements determined by the Commissioner for the purposes of this Act **[and the Value-Added Tax Act];”;** 40

- (b) by the substitution in subsection (1A) for paragraph (d) of the following paragraph: 45

“(d) The Commissioner may—

- (i) pay any such refund upon receipt of a duly completed return from any person who has purchased distillate fuel for use as contemplated in the said item of Schedule No. 6; and
- (ii) pay any such refund by means of the system **[in operation for refunding value-added tax]** as may be prescribed by rule; **[and** 50
- (iii) **for the purposes of payment, set off any amount refundable to any person in terms of the provisions of this section and the said items against any amount of value-added tax payable by such person;]**”; 55

- (c) by the deletion in subsection (1A) of paragraph (f);

- (d) by the substitution in subsection (4A)(b) for subparagraph (i) of the following subparagraph:

“(i) Any return for refund of such levies shall be in such form and shall declare such particulars and shall be **[for such quantities and]** for such periods as may be **[determined by the Commissioner]** prescribed by rule.”;

- (e) by the substitution in subsection (4A)(f)(i) for items (bb) and (cc) of the following items respectively: 5

“(bb) has contravened or failed to comply with the provisions of this Act **[or the Value-Added Tax Act 1991 (Act No. 89 of 1991)];**

(cc) has been convicted of an offence under this Act, **or the said Value-Added Tax Act];** or”; and 10

- (f) by the substitution in subsection (4A) for paragraph (g) of the following paragraph:

“(g) For the purposes of the administration of the refunds of levies on distillate fuel as provided in this section and item 670.04 of Schedule No. 6 the Commissioner may, subject to the provisions of section 3(2), delegate by rule any of the Commissioner’s powers, duties or functions under this Act to any officer, **including any officer employed in administering the provisions of the Value-Added Tax Act, 1991 (Act No. 89 of 1991)].**” 15

- (2) Subsection (1) comes into operation on a date determined by the Minister by notice in the *Gazette*. 20

**Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004, section 106 of Act 31 of 2005, section 110 of Act 60 of 2008, section 135 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 112 of Schedule 1 to that Act, section 171 of Act 31 of 2013 and section 24 of Act 44 of 2014** 25

17. (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (6) of the following subsection: 30

“(6) The tax on importation of goods shall be paid and recovered **[or refunded]** in terms of Chapter 3 of the Customs Duty Act or refunded in terms of Chapter 4 of that Act, as if the tax were an import duty **[contemplated in section 18 of that Act]**, regardless of whether or not the said **[section]** Chapter applies for the purposes of any import duty levied in terms of that Act.”. 35

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

**Amendment of section 6 of Act 9 of 1999, as amended by section 76 of Act 19 of 2001, section 43 of Act 18 of 2009, section 271 of Act 28 of 2011 read with paragraph 150 of Schedule 1 to that Act, section 23 of Act 39 of 2013 and section 30 of Act 23 of 2015** 40

18. Section 6 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to section 7, every employer must, not later than seven days, or such longer period as the Commissioner determines, after the end of each month in respect of which the levy is payable, pay the levy to the Commissioner **[within the period determined in this Act].**” 45

**Amendment of section 1 of Act 14 of 2007, as amended by section 53 of Act 18 of 2009 and by section 271 of Act 28 of 2011 read with paragraph 167 of Schedule 1 to that Act** 50

19. Section 1 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended—

(a) by the deletion in subsection (1) of the definitions of “Commissioner”, “Income Tax Act” and “notice of assessment”;

(b) by the substitution for the definition of “Tax Administration Act” of the following definition: 55

“ ‘**Tax Administration Act**’ means the Tax Administration Act, 2011 (Act No. 28 of 2011);” and

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

“(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Diamonds Act, the Levy Act or the Tax Administration Act bears that meaning for purposes of this Act.”. 5

#### **Amendment of section 4 of Act 14 of 2007, as amended by section 55 of Act 18 of 2009**

20. Section 4 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 10

“(a) A registered person must submit a return and payment as contemplated in **[subsection (5)]** section 5 to reach any office designated by the Commissioner by rule made under section 18 during the hours of business prescribed by the Commissioner by rule under the Customs and Excise Act, 1964, within a period of 30 days after the ending date of each assessment period described in subsection (2), but not later than the penultimate business day of that period.”. 15

#### **Amendment of section 9 of Act 14 of 2007**

21. Section 9 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended— 20

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

“If during any assessment period in respect of which an election described in section **[7]** 8 applies a producer fails to be exempt (in terms of **[sections]** section 7, 8 or 9 of the Levy Act, as the case may be) from the levy otherwise imposed under the Levy Act, that producer must—”; 25

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

“(2) If during any assessment period in respect of which an election described in section **[7]** 8 applies, a diamond beneficiator fails to be exempt (in terms of section 11 of the Levy Act) from the levy otherwise imposed under the Levy Act, that diamond beneficiator will be deemed to be subject to the levy as if that diamond beneficiator had delivered a bill of entry for export in respect of all diamonds purchased during that period from that diamond beneficiator at a diamond exchange and export centre.”. 30 35

#### **Amendment of section 9 of Act 28 of 2011**

22. Section 9 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 40

“(1) A decision made by a SARS official **[and]** or a notice to a specific person issued by SARS under a tax Act, excluding a decision given effect to in an assessment or a notice of assessment that is subject to objection and appeal.[—

(a) **is regarded as made by a SARS official, authorised to do so or duly issued by SARS, until proven to the contrary; and** 45

(b) may in the discretion of a SARS official described in **[subparagraphs (i) to (iii)]** paragraph (a), (b) or (c) or at the request of the relevant person, be withdrawn or amended by—

**[(i)](a)** the SARS official; 50

**[(ii)](b)** a SARS official to whom the SARS official reports; or

**[(iii)](c)** a senior SARS official.”; and

(b) by the addition of the following subsection:

“(3) A decision made by a SARS official or a notice to a specific person issued by SARS under a tax Act is regarded as made by a SARS official authorised to do so or duly issued by SARS, until proven to the contrary.” 55

**Amendment of section 102 of Act 28 of 2011**

23. Section 102 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) that an amount or item is deductible or may be [set-off] set off.”

**Amendment of section 110 of Act 28 of 2011, as amended by section 49 of Act 39 of 2013**

24. Section 110 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

“if the chairperson, after considering any representations by a senior SARS official, or the taxpayer, considers it necessary—”

**Amendment of section 113 of Act 28 of 2011**

25. Section 113 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (9) for paragraph (a) of the following paragraph:

“(a) at the request of the senior SARS [representative] official; and”

**Amendment of section 125 of Act 28 of 2011**

26. Section 125 of the Tax Administration Act, 2011, is hereby amended by the deletion of subsection (2).

**Amendment of section 160 of Act 28 of 2011, as amended by section 55 of Act 39 of 2013**

27. Section 160 of the Tax Administration Act, 2011, is hereby amended by the substitution for the heading of the following heading:

“[Right to recovery of taxpayer] Taxpayer’s right to recovery”.

**Amendment of section 190 of Act 28 of 2011, as amended by section 71 of Act 39 of 2013, section 53 of Act 44 of 2014 and section 60 of Act 23 of 2015**

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

“(5A) If a person who carries on the ‘business of a bank’ as defined in the Banks Act, 1990 (Act No. 94 of 1990), holds an account on behalf of a client into which an amount referred to in subsection (5) is deposited, reasonably suspects that the payment of the amount is related to a tax offence, the person must immediately report the suspicion to SARS in the prescribed form and manner and, if so instructed by SARS, not proceed with the carrying out of any transaction in respect of the amount for a period not exceeding two business days unless—  
 (a) SARS or a High Court directs otherwise; or  
 (b) SARS issues a notice under section 179.”

**Amendment of section 270 of Act 28 of 2011, as amended by section 86 of Act 39 of 2013, section 65 of Act 44 of 2014 and section 64 of Act 16 of 2016**

29. Section 270 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (6E) of the following subsection:

“(6E) Until the date on which the whole of Chapter 12 and of Schedule 1 to this Act come into operation in respect of a tax type—  
 (a) the accrual and payment of interest on an understatement penalty imposed under section 222 must be calculated in the manner that interest upon an additional tax penalty imposed under a tax Act, prior to the repeal of the penalty by this Act, [is] was calculated in terms of the interest provisions of the relevant tax Act; and  
 (b) the effective date referred to in section 187(3)(f) for tax understated before 1 October 2012 must be regarded as the commencement date of this Act.”

**Amendment of section 272 of Act 28 of 2011**

30. Section 272 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The President may determine different dates for different provisions of this Act to come into operation and for the purposes of Chapter 12 and the provisions relating to interest in Schedule 1, the Minister may determine by public notice the date on which they come into operation in respect of a tax type.”.

**Insertion of section 65A in Act 30 of 2014**

31. The following section is hereby inserted in the Customs Duty Act, 2014, after section 65:

**“Persons entitled to claim refunds and drawbacks**

**65A.** (1) Only the following persons are entitled to claim a refund in terms of this Chapter:

- (a) If the claim is for a refund of a duty or interest on a duty, the person who cleared the goods in respect of which the duty or interest was paid; and
- (b) if the claim is for a refund of an administrative penalty or interest on such a penalty, the person on whom the penalty was imposed.

(2) Only the following persons are entitled to claim a drawback in terms of this Chapter:

- (a) If the goods exported are still in the same condition they were when imported, the person who cleared the imported goods in respect of which the duty was paid;
- (b) if the goods exported were manufactured from the imported goods in respect of which the duty was paid—
  - (i) the person who cleared the imported goods in respect of which the duty was paid; or
  - (ii) any other person authorised in terms of the Customs Tariff to claim drawbacks.

(3) Subsection (1) or (2) applies irrespective of whether the person entitled to the refund or drawback in terms of that subsection or another person on that person’s behalf actually paid the duty, penalty or interest.

(4) This section does not prevent a refund or drawback that has been approved from being paid by the Commissioner into the bank account of a person other than the person entitled to claim the refund or drawback, provided that that bank account has been designated in accordance with the rules by the person entitled to claim the refund or drawback.”.

**Substitution of section 67 of Act 30 of 2014, as substituted by section 79 of Act 23 of 2015**

32. The following section is hereby substituted for section 67 of the Customs Duty Act, 2014:

**“Application for refund and drawback**

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

- (a) **the person who paid the duty, penalty or interest;**
- (b) **that person’s duly appointed representative; or**
- (c) **any other person authorised by the Commissioner]**

a person entitled to claim the refund or drawback in terms of section 65A.”.

**Amendment of section 68 of Act 30 of 2014**

33. Section 68 of the Customs Duty Act, 2014, is hereby amended—

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

“(b) **[accompanied]** supported by a motivation justifying the refund or drawback;”;

(b) by the deletion of subsection (2).

**Amendment of section 224 of Act 30 of 2014**

34. Section 224(1) of the Customs Duty Act, 2014, is hereby amended by the substitution for paragraph (g) of the following paragraph:

“(g) the manner and time in which applications may be made for authorisations, permissions, approvals or exemptions that may be granted by the customs authority in terms of a provision of this Act, and the circumstances in which the submission of clearance declarations or amended clearance declarations may be regarded as such applications;”.

**Amendment of section 43 of Act 31 of 2014**

35. Section 43 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1)(a) for subparagraphs (xxi), (xxiii) and (xxiv) of the following subparagraphs, respectively:

“(xxi) **[cross border]** cross-border pipelines;

(xxiii) **[cross border]** cross-border cable-cars; or

(xxiv) **[cross border]** cross-border conveyor belts;”.

**Amendment of section 52 of Act 31 of 2014**

36. Section 52 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No foreign-going vessel may depart from a customs seaport to a foreign destination without a permission to depart issued by the customs authority.”.

**Amendment of section 53 of Act 31 of 2014**

37. Section 53 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A vessel departure report referred to in subsection (1) must be submitted within a timeframe as may be prescribed by rule—

(a) after the departure of the vessel from that seaport, in the case of a vessel operated by a carrier; or

(b) before the departure of the vessel from that seaport, in the case of a vessel not operated by a carrier.”.

**Repeal of section 58 of Act 31 of 2014**

38. Section 58 of the Customs Control Act, 2014, is hereby repealed.

**Amendment of section 59 of Act 31 of 2014**

39. Section 59 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) An aircraft departure report referred to in subsection (1) must be submitted within a timeframe as may be prescribed by rule—

(a) after the departure of the aircraft from that airport, in the case of an aircraft operated by a carrier; or

(b) before the departure of the aircraft from that airport, in the case of an aircraft not operated by a carrier.”.

**Amendment of section 90 of Act 31 of 2014**

40. Section 90 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1)(g) for subparagraph (iv) of the following subparagraph:

- “(iv) a vehicle which entered the Republic under its own power or on its own wheels, when the vehicle arrives at the land [**border post**] border-post where the vehicle enters the Republic.”. 5

**Amendment of section 91 of Act 31 of 2014**

41. Section 91 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1)(d) for subparagraph (i) of the following subparagraph:

- “(i) foreign-going vessels or aircraft or [**cross border**] cross-border trains referred to in section 334(2) as stores reasonably needed for that vessel, aircraft or train on its current voyage; or”. 10

**Amendment of section 94 of Act 31 of 2014**

42. Section 94 of the Customs Control Act, 2014, is hereby amended by the insertion in subsection (1) after paragraph (d) of the following paragraph: 15

- “(dA) if the goods are to be exported by road on board a vehicle other than a truck, when the vehicle arrives at the land border-post where the goods will leave the Republic;”.

**Repeal of section 97 of Act 31 of 2014**

43. Section 97 of the Customs Control Act, 2014, is hereby repealed. 20

**Amendment of section 111 of Act 31 of 2014**

44. Section 111 of the Customs Control Act, 2014, is hereby amended—

- (a) by the substitution for the heading of the following heading: 25  
**“Transfer of ownership of goods under certain customs procedures”;**
- (b) by the substitution for subsection (1) of the following subsection:  
 “(1) Ownership of goods under a customs procedure determined by rule in terms of subsection (8)(a) may not without the approval of the customs authority be transferred to another person whilst the goods are under that procedure.”; 30
- (c) by the insertion after subsection (1) of the following subsection:  
 “(1A) Subsection (1) applies irrespective of whether—  
 (a) the goods after the transfer of ownership will remain under the customs procedure for which the goods were cleared before the transfer of ownership; or 35  
 (b) ownership of the goods will be transferred simultaneously with the release of the goods for a subsequent customs procedure that may be permissible.”;
- (d) by the insertion after subsection (3) of the following subsection:  
 “(3A) If in terms of any rules referred to in section 903(1)(i) a 40  
 clearance declaration or amended clearance declaration is regarded to be an application referred to in subsection (3), the declaration or amended declaration may despite the other provisions of this Act be submitted, as may be prescribed by rule—  
 (a) by the prospective new owner of the goods; or 45  
 (b) if that prospective new owner is not located in the Republic, by the registered agent in the Republic of that prospective new owner.”;
- (e) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:  
 “If ownership of goods under a customs procedure is transferred with the approval of the customs authority in accordance with subsection (1) and the goods remain under that procedure as contemplated in subsection (1A)(a)—”; 50



- (f) by the substitution in subsection (5) for paragraph (b) of the following paragraph:
- “(b) the new owner of the goods or, if only a share in the ownership of the goods has been transferred, the person to whom that share has been transferred, or, if the new owner or that person is not located in the Republic, the registered agent in the Republic of that new owner or person—
- (i) must be regarded to have cleared the goods or that share for that procedure;
  - (ii) assumes the obligations of the previous owner or holder of that share;
  - (iii) must comply with any requirements and conditions applicable to the goods in terms of that procedure; and
  - (iv) must comply with any conditions imposed by the customs authority in respect of the transfer.”; and
- (g) by the addition after subsection (6) of the following subsections:
- “(7) If ownership of goods under a customs procedure is transferred with the approval of the customs authority simultaneously with the release of the goods for a subsequent customs procedure as contemplated in subsection (1A)(b), the prospective new owner or that person’s registered agent who submitted the clearance declaration in terms of subsection (3A) must for purposes of section 166 be regarded to be the person who cleared the goods for that subsequent procedure.
- (8) The Commissioner may regulate the application of this section by rule, which may include rules—
- (a) determining the customs procedures to which subsection (1) applies;
  - (b) prescribing, despite the other provisions of this Act, distinctive clearance formalities to be complied with when ownership of goods under customs procedures determined in terms of paragraph (a) is to be transferred, as well as rules providing for a prospective new owner or that person’s registered agent—
    - (i) to amend an existing clearance declaration submitted in respect of the goods to show the new owner or that agent as the person clearing the goods; or
    - (ii) to clear the goods or a portion of the goods for a subsequent customs procedure;
  - (c) limiting—
    - (i) the subsequent customs procedures referred to in subsection (1A)(b) that will be permissible for purposes of that subsection, which may include a procedure which is of the same kind as the existing procedure; and
    - (ii) the circumstances in which those procedures will be permissible; and
  - (d) exempting from subsection (1), transfers of ownership of goods under customs procedures determined in terms of paragraph (a) to categories of persons or in circumstances where tax collection is not at risk.”.

#### **Amendment of section 165 of Act 31 of 2014**

45. Section 165 of the Customs Control Act, 2014, is hereby amended by the deletion of subsection (3).

#### **Amendment of section 174 of Act 31 of 2014**

46. Section 174 of the Customs Control Act, 2014, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) If the person clearing goods for a customs procedure requires in terms of section 908 an extension of a maximum timeframe applicable to the goods in terms of that procedure, that person may apply for the extension of the timeframe by submitting to the customs authority an amended version of the clearance declaration in which the required timeframe has been added.”.

**Amendment of section 180 of Act 31 of 2014**

47. Section 180(3) of the Customs Control Act, 2014, is hereby amended—

- (a) by the deletion of the word “and” at the end of paragraph (a);
- (b) by the substitution for the full stop of the expression “; and” at the end of paragraph (b); and
- (c) by the addition of the following paragraph:

“(c) any other information prescribed by rule.”.

**Amendment of section 249 of Act 31 of 2014**

48. Section 249 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“A transshipment clearance declaration must [, **in addition to**] contain the information required in terms of section 167, which is not excluded by rule for purposes of a transshipment clearance, and must also state—”.

**Substitution of section 251 of Act 31 of 2014**

49. The following section is hereby substituted for section 251 of the Customs Control Act, 2014:

**“Use of other documents as transshipment clearance declarations**

**251.** A [**transport document or other**] document as may be prescribed by rule, issued or submitted in respect of the goods to be transhipped, may serve as a transshipment clearance declaration provided that such [**transport document or other**] document reflects the minimum information concerning those goods as may be prescribed by rule for purposes of this section.”.

**Amendment of section 254 of Act 31 of 2014**

50. Section 254 of the Customs Control Act, 2014, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Transshipment goods off-loaded from a vessel or aircraft referred to in section 253(a) at a customs seaport or airport where the transshipment operation is commenced or carried out must—

- (a) be secured at the terminal where the goods are off-loaded or on premises licensed for the receipt, storage and handling of transshipment goods; and
- (b) if secured on premises referred to in paragraph (a), be kept on those premises until the goods are moved to a terminal at [**that**] the seaport or airport where the goods are to be loaded on board the vessel or aircraft referred to in section 253(b).

(2) No transshipment goods may in terms of subsection (1) be moved from one customs controlled area to another customs controlled area [**at the customs seaport or airport where the transshipment operation is carried out**] without giving notice to the customs authority as may be prescribed by rule.”.

**Amendment of section 257 of Act 31 of 2014**

51. Section 257 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If transshipment goods for purposes of the transshipment operation are to be transported by public road from [**the**] one customs controlled area [**where the goods are secured in terms of section 254 to the terminal where the goods are to be loaded on board the vessel or aircraft that will transport the goods out of the Republic**] to another customs controlled area—

- (a) those goods may not be transported by a person other than a carrier licensed for that purpose;

- (b) the licensee of the **[premises]** customs controlled area where those goods **[are secured]** happen to be may not give delivery of the goods to anyone other than such a licensed carrier; and
- (c) the carrier transporting the goods may not give delivery of the goods to anyone other than the licensee of the **[terminal from where the goods are to be loaded on board the vessel or aircraft that will transport the goods out of the Republic]** customs controlled area where the goods are to be delivered.”.

#### Amendment of section 269 of Act 31 of 2014

52. Section 269 of the Customs Control Act, 2014, is hereby amended— 10
- (a) by the substitution for the heading of the following heading:
    - “**[Release notification to state]** Maximum period of temporary admission”;
  - (b) by the deletion of subsection (1);
  - (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 15
    - “A period **[determined in terms of subsection (1)]** stated in a clearance declaration in terms of section 268(c) may, subject to section 908, not exceed—”; and
  - (d) by the substitution for subsection (3) of the following subsection: 20
    - “(3) The period mentioned in a **[release notification]** clearance declaration may be extended **[in terms of section 908]** only once except if good cause is shown for an additional extension.”.

#### Substitution of section 290 of Act 31 of 2014

53. The following section is hereby substituted for section 290 of the Customs Control Act, 2014: 25

##### “Reusable transport equipment entering Republic

- 290.** (1) Transport equipment entering the Republic as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, comes under the temporary admission procedure without any formal clearance or release for that procedure if that transport equipment— 30
- (a) **[that transport equipment]** is not re-entering the Republic on the inbound leg of the temporary export procedure;
  - (b) **[that transport equipment]** is destined to leave the Republic without any interruption in its current use as reusable transport equipment for goods in the ordinary course of international trade; and 35
  - (c) **[the carrier who brought the transport equipment into the Republic or, if that carrier is not located in the Republic, that carrier’s registered agent, keeps record of that transport equipment, as may be prescribed by rule]** is of a type or category recognised by rule for purposes of this section. 40
- (2) A person as may be prescribed by rule must keep record in accordance with the rules of reusable transport equipment that automatically came under the temporary admission procedure in terms of subsection (1). 45
- ~~[(2)]~~(3) If the current use of transport equipment that automatically came under the temporary admission procedure in terms of subsection (1) as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, is for any reason interrupted or discontinued whilst the transport equipment is under that procedure, **[the carrier or, if that carrier is not located in the Republic, that carrier’s registered agent, must immediately report]** the interruption or discontinuation must promptly be reported to the customs authority by a person and in a manner as may be prescribed by rule. 50
- ~~[(3)]~~(4) Parts 2, 3 and 4 of this Chapter do not apply to reusable transport equipment referred to in subsection (1).”.
- 55

**Amendment of section 294 of Act 31 of 2014**

54. Section 294 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) (a) A carrier operating a vessel, aircraft, locomotive or railway carriage referred to in section 289(1) **[or who brought transport equipment referred to in section 290(1) into the Republic]** or, if that carrier is not located in the Republic, that carrier’s registered agent, is guilty of an offence if that carrier or carrier’s agent fails to comply with section 289(2) **[or 290(2)]**. 5
- (b) A person referred to in section 290(3) is guilty of an offence if that person fails to comply with that section.” 10

**Amendment of section 303 of Act 31 of 2014**

55. Section 303 of the Customs Control Act, 2014, is hereby amended by the deletion of paragraph (b).

**Amendment of section 304 of Act 31 of 2014**

56. Section 304 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection: 15

- “(2) When goods cleared and released for warehousing are delivered to the storage warehouse indicated in the clearance declaration—
- (a) the carrier that transported the goods to that warehouse must **[notify the customs authority of]** record the delivery of the goods as may be prescribed by rule; and 20
- (b) the licensee of that warehouse must **[notify the customs authority of]** record the receipt of the goods as may be prescribed by rule.”

**Amendment of section 346 of Act 31 of 2014**

57. Section 346 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 25

- “**[A]** Unless determined otherwise by rule, a stores arrival report referred to in subsection (1) must be submitted to the customs authority together with or as part of the arrival report that must be submitted in respect of—” 30

**Amendment of section 350 of Act 31 of 2014, as amended by section 104 of Act 23 of 2015**

58. Section 350 of the Customs Control Act, 2014, is hereby amended—

- (a) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph: 35
- “(i) are cleared and released for another permissible customs procedure, including clearance and release [or, subject to subsection (2),] for supply as stores to another foreign-going vessel or aircraft or a cross-border train;”;
- (b) by the deletion of subsection (2); 40
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) No clearance or release in terms of Part 2 is needed when stores are returned to the same vessel, aircraft or train from which those goods were removed in terms of subsection (1)(b)(i), (ii) or (iv).”;
- (d) by the substitution for subsection (4) of the following subsection: 45
- “(4) Stores removed as contemplated in subsection (1)(b)(i), (ii) or (iv) must be returned to the vessel, aircraft or train or to another vessel, aircraft or train under the operational control of the same carrier within a timeframe as may be prescribed by rule read with sections 908 and 909.” 50

#### Amendment of section 354 of Act 31 of 2014

59. Section 354 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“**[A]** Unless determined otherwise by rule, a stores departure report referred to in subsection (1) must be submitted to the customs authority together with or as part of the departure report that must be submitted in respect of—”.

#### Amendment of section 380 of Act 31 of 2014

60. Section 380 of the Customs Control Act, 2014, is hereby amended—

(a) by the substitution for the heading of the following heading: 10

“**[Release of goods for] Maximum period of temporary export**”;

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

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

“A period determined in **[terms of subsection (1)]** the clearance declaration in terms of section 379(1)(a)(ii) for the return of the goods may, subject to section 908, not exceed—”; and

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

“(3) The period **[mentioned in a release notification]** determined in a clearance declaration may be extended in terms of section 908 only once except if good cause is shown for an additional extension.”.

#### Amendment of section 385 of Act 31 of 2014

61. Section 385(1)(d) of the Customs Control Act, 2014, is hereby amended by the substitution for subparagraph (i) of the following subparagraph:

“(i) in the case of temporarily exported goods referred to in section 375(1)(a), within the period stated in the **[release notification]** clearance declaration referred to in section **[380(1)]** 379(1)(a)(ii) or as extended in accordance with section 380(3);”.

#### Substitution of section 403 of Act 31 of 2014

62. The following section is hereby substituted for section 403 of the Customs Control Act, 2014: 30

##### “Reusable transport equipment leaving Republic

403. (1) Transport equipment leaving the Republic as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, comes under the temporary export procedure without any formal clearance or release for that procedure if that transport equipment— 35

(a) **[that transport equipment]** is not leaving the Republic on the outbound leg of the temporary admission procedure;

(b) **[that transport equipment]** is destined to be returned to the Republic without any interruption in its current use as reusable transport equipment for goods in the ordinary course of international trade; and 40

(c) **[the carrier who takes the transport equipment out of the Republic or, if that carrier is not located in the Republic, that carrier’s registered agent, keeps record of that transport equipment, as may be prescribed by rule]** is of a type or category recognised by rule for purposes of this section. 45

(2) A person as may be prescribed by rule must keep record in accordance with the rules of reusable transport equipment that automatically came under the temporary export procedure in terms of subsection (1). 50

**[(2)](3)** If the current use of transport equipment that automatically came under the temporary export procedure in terms of subsection (1) as reusable transport equipment currently in use as transport equipment for goods in the ordinary course of international trade, is for any reason interrupted or

discontinued whilst the transport equipment is under that procedure, **[the carrier or, if that carrier is not located in the Republic, that carrier's registered agent, must immediately report]** the interruption or discontinuation must promptly be reported to the customs authority by a person and in a manner as may be prescribed by rule. 5

~~[(3)]~~(4) Parts 2, 3 and 4 of this Chapter do not apply to reusable transport equipment referred to in subsection (1).”.

#### **Amendment of section 406 of Act 31 of 2014**

63. Section 406 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (5) of the following subsection: 10

“(5) A person referred to in section 403(3) is guilty of an offence if that person fails to comply with that section.”.

#### **Amendment of section 408 of Act 31 of 2014**

64. Section 408(1)(a) of the Customs Control Act, 2014, is hereby amended by the substitution for subparagraph (i) of the following subparagraph: 15

“(i) to be processed **[in the Republic]** on specific inward processing premises without clearing the goods for home use under Chapter 8; and”.

#### **Amendment of section 415 of Act 31 of 2014**

65. Section 415 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1)(b) for subparagraphs (i) and (ii) of the following subparagraphs, respectively: 20

- “(i) the carrier that transported the goods must **[notify the customs authority of]** record the delivery of the goods as may be prescribed by rule; and
- (ii) the licensee must **[notify the customs authority of]** record the receipt of the goods as may be prescribed by rule, if the goods were delivered to those licensed premises.”. 25

#### **Amendment of section 435 of Act 31 of 2014**

66. Section 435(1)(a) of the Customs Control Act, 2014, is hereby amended by the substitution for subparagraph (i) of the following subparagraph: 30

“(i) to be processed on specific home use processing premises without clearing the goods for home use **[in terms of]** under Chapter 8; and”.

#### **Amendment of section 442 of Act 31 of 2014**

67. Section 442 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (2)(b) for subparagraphs (i) and (ii) of the following subparagraphs, respectively: 35

- “(i) the carrier that transported the goods must **[notify the customs authority of]** record the delivery of the goods as may be prescribed by rule; and
- (ii) the licensee must **[notify the customs authority of]** record the receipt of the goods as may be prescribed by rule, if the goods were delivered to those licensed premises.”. 40

#### **Amendment of section 460 of Act 31 of 2014, as amended by section 118 of Act 23 of 2015**

68. Section 460 of the Customs Control Act, 2014, is hereby amended—
- (a) by the insertion of the word “and” at the end of paragraph (b);
  - (b) by the substitution for the expression “; and” for a full stop at the end of paragraph (c); and
  - (c) by the deletion of paragraph (e). 45

**Amendment of section 558 of Act 31 of 2014**

69. Section 558 of the Customs Control Act, 2014, is hereby amended by the insertion after paragraph (b) of the following paragraph:

“(bA) excluding categories of persons to whom section 542(2) or 549(2) applies from the notification obligation imposed by that section if baggage of travellers or crew members is damaged, destroyed, lost or unaccounted for;”.

**Amendment of section 604 of Act 31 of 2014**

70. Section 604 of the Customs Control Act, 2014, is hereby amended by the addition of the following subsection, the existing provision becoming subsection (1):

“(2) Subsection (1) does not apply to a category of persons exempted by rule from that subsection.”.

**Amendment of section 606 of Act 31 of 2014**

71. Section 606 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person may[, **either personally or through a person who is a registered electronic user,**] submit to the customs authority electronically through an electronic system referred to in section 913(1)(a) any declaration, report, statement, return, notice, application, request or other document or communication that may or must be submitted to the customs authority in terms of this Act or a tax levying Act unless that person is registered as an electronic user for that particular system.”.

**Amendment of section 626 of Act 31 of 2014, as amended by section 123 of Act 23 of 2015 and section 79 of Act 16 of 2016**

72. Section 626 of the Customs Control Act, 2014, is hereby amended by the insertion after paragraph (d) of the following paragraph:

“(dA) prescribing disclosure of any business relationships registered persons may have with other registered persons or with licensees;”.

**Amendment of section 665 of Act 31 of 2014**

73. Section 665 of the Customs Control Act, 2014, is hereby amended by the insertion after paragraph (h) of the following paragraph:

“(hA) disclosure of any business relationships licensees may have with other licensees or with registered persons;”.

**Amendment of section 681 of Act 31 of 2014**

74. Section 681 of the Customs Control Act, 2014, is hereby amended by the deletion of subsection (2).

**Insertion of section 935A in Act 31 of 2014**

75. The following section is hereby inserted in the Customs Control Act, 2014, after section 935:

**“Special arrangement in relation to deferments of tax granted or allowed in terms of 1964 Act**

**935A.** (1) For purposes of this Part a deferment of customs duty granted or allowed by the Commissioner in terms of the 1964 Act is not a measure to which section 928 applies and all such deferments expire when the Customs Duty Act takes effect.

(2) Subsection (1) does not prevent a person whose deferment of customs duty granted or allowed in terms of the 1964 Act has expired in terms of that subsection, from reapplying for a deferment of duty benefit referred to in section 24 of the Customs Duty Act, read with section 942A(3) of this Act.

(3) For purposes of this section ‘customs duty’ has the meaning assigned to it in the 1964 Act.” 5

#### **Insertion of section 942A in Act 31 of 2014**

76. (1) The following section is hereby inserted in the Customs Control Act, 2014, after section 942:

#### **“Exercise of certain powers before effective date 10**

**942A.** (1) The Commissioner may at any time before the effective date exercise a power conferred on the Commissioner in terms of this Act, the Customs Duty Act or the Excise Duty Act to the extent that the exercise of that power is necessary to facilitate a smooth transition to those Acts on the effective date, and may in particular at any time before the effective date— 15

- (a) make and publish any rules provided for in those Acts;
- (b) establish Customs Offices for purposes of those Acts, determine jurisdictional areas and functions for those Customs Offices and make other administrative arrangements;
- (c) designate persons as customs officers for purposes of those Acts, issue identity cards to those officers and equip those officers as necessary; and 20
- (d) delegate powers and duties, and issue instructions, for purposes of those Acts. 25

(2) Anything done in terms of subsection (1) before the effective date takes effect on the effective date or such later date as the Commissioner may determine.

(3) (a) If the Commissioner has in terms of subsection (1)(a) published rules on applications for registration, licensing or deferment of duty benefits, the Commissioner may by rule provide that applications referred to in section 931(2), 933(2) or 935A(2) may be submitted by applicants before the effective date at any time after a date determined by rule. 30

(b) An application submitted in terms of paragraph (a) before the effective date may be considered and dispensed with by the Commissioner or a delegated person referred to in subsection (1)(d) either before or after the effective date. 35

(c) If such an application is considered and dispensed with before the effective date, the decision on the outcome of the application comes into effect on the effective date.

(d) An application referred to in paragraph (a) submitted, considered or dispensed with before the effective date must be submitted, considered or dispensed with as if the application were submitted after the effective date and the provisions and rules regulating applications of the relevant type were in full force and effect.” 40

(2) Section 942A, as inserted in the Customs Control Act, 2014, by subsection (1), takes effect despite section 944(1) and (2) of that Act on the date of promulgation of this Act. 45

#### **Repeal of section 43 of Act 32 of 2014**

77. (1) Section 43 of the Customs and Excise Amendment Act, 2014, is hereby repealed. 50

(2) Subsection (1) is deemed to have come into effect on 21 July 2014.

#### **Amendment of section 63 of Act 32 of 2014**

78. (1) Section 63 of the Customs and Excise Amendment Act, 2014, is hereby amended by the deletion of paragraph (b).

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



**Amendment of section 24 of Act 44 of 2014**

**79.** (1) Section 24 of the Tax Administration Laws Amendment Act, 2014, is hereby amended—

(a) by the deletion in subsection (1) of paragraph (e); and

(b) by the substitution for subsection (2) of the following subsection: 5

“(2) [Subsection] Paragraphs (a), (b), (c), (d), (f), (g) and (h) of subsection (1) [comes] come into operation on the date on which the Customs Control Act, 2014, takes effect.”.

(2) Subsection (1) is deemed to have come into effect on 16 January 2015.

**Short title and commencement**

10

**80.** (1) This Act is called the Tax Administration Laws Amendment Act, 2017.

(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. 15

(4) The amendments to the Customs Control Act, 2014, save in so far as is otherwise provided for in this Act, 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 THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2017**

**1. PURPOSE OF BILL**

The Bill proposes to amend the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Value-Added Tax Act, 1991, the Skills Development Levies Act, 1999, the Diamond Export Levy (Administration) Act, 2007, the Tax Administration Act, 2011, the Customs Duty Act, 2014, the Customs Control Act, 2014, the Customs and Excise Amendment Act, 2014, and the Tax Administration Laws Amendment Act, 2014.

**2. OBJECTS OF BILL**

**2.1 *Estate Duty Act, 1955: Insertion of section 9C***

A new section is proposed to clarify the date for payment of Estate Duty, i.e. the date indicated in the assessment.

**2.2 *Estate Duty Act, 1955: Amendment of section 10***

The proposed amendment is consequential upon the repeal of section 9(2) by section 271 read with paragraph 16(b) of Schedule 1 to the Tax Administration Act, 2011. The obsolete reference to the deleted subsection is replaced with a reference to the date on which payment of the duty is due, as indicated in the proposed new section 9C.

**2.3 *Income Tax Act, 1962: Amendment of section 48C***

Qualifying micro businesses (with turnover up to R1 million a year) are eligible for preferential income tax rates i.e. such businesses are taxed on turnover. Where a registered micro business exceeds the R1 million turnover threshold during a particular year of assessment, it may be deregistered as a micro business with effect from the beginning of the month following the month during which the threshold was so exceeded.

Currently, there are no transitional measures for micro businesses that have grown sufficiently during the course of a particular year of assessment to migrate into the normal income tax regime. This can result in unforeseen administrative penalties for a deregistered micro business. The proposed amendment enables the deregistered micro business to transition smoothly by exempting the micro business from any penalties for underpayment of tax under the Fourth Schedule to the Income Tax Act or Chapter 15 of the Tax Administration Act, 2011, to which the micro business would otherwise have become liable solely as a result of being deregistered due to its qualifying turnover exceeding R1 million.

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

The Tax Administration Laws Amendment Act, 2016, exempts persons who derive a dividend from a tax free investment (section 12T of the Income Tax Act) from submitting a return in respect of that dividend. Retirement funds are tax exempt savings vehicles, as is the case with tax free investments, and the exemption from submitting returns is now also extended to these funds.

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

The proposed amendment is a technical correction. Section 64E(2) of the Income Tax Act provides for the date a dividend is paid for purposes of Part VIII of the Act. It is at that date that the liability for dividends tax is determined. The refund rules in sections 64L, 64LA and 64M refer to "payment of the dividend" and not "*date of payment of the dividend*". The proposed amendment aligns the wording and clarifies that the period within

which refunds may be made (i.e. the three-year limit) applies from the date of payment of the dividend.

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

See the note on paragraph 2.5.

## **2.7 Income Tax Act, 1962: Amendment of section 64M**

See the note on paragraph 2.5.

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

*Ad paragraph (a):* The proposed amendment aims to correct internal numbering in paragraph (a) of the definition of “remuneration”.

*Ad paragraph (b):* The proposed amendment excludes allowances or advances in respect of transport expenses based on the actual distance travelled by the recipient. The taxable amount with regard thereto will now be calculated in terms of the new proposed paragraph (cC) of the definition of remuneration.

*Ad paragraph (c):* To facilitate and simplify the calculation and administration of employees’ tax, skills development levy and unemployment insurance contributions, it is proposed that the rate indicated by the Minister of Finance by notice in the *Gazette* for the simplified method be applied to determine the amount of remuneration irrespective of the limitation on the distance for the simplified method in the notice. This means that, to the extent an allowance is paid by an employer for business travel by an employee at a rate exceeding the rate per kilometre referred to under the simplified method, the excess will be regarded as remuneration for purposes of determining the amount of employees’ tax payable.

Therefore, reference to “the rate per kilometre for the simplified method” in the proposed amendment for employees’ tax purposes is not affected by the existing 12 000 kilometre limitation. The limitation is only relevant to the taxpayer’s eligibility for the simplified method on assessment.

**Examples: Reimbursive allowances based on actual distance forming part of remuneration** For the purposes of the examples below, it is assumed the rate per kilometre in the simplified method in the Notice by the Minister of Finance is set at R3.55 per kilometre for the year of assessment.

### **Example 1**

*Facts:* During the month the employee travels 260 kilometres for business purposes and is refunded by the employer at R3.55 per kilometre.

*Result:* The allowance of R923 does not form part of remuneration for employees’ tax purposes as the rate per kilometre does not exceed the rate of R3.55 set out in the simplified method.

**Example 2**

*Facts:* During the month the employee travels 840 kilometres for business purposes and is refunded by the employer at R5.00 per kilometre.

*Result:* Only R1 218  $((5.00-3.55) \times 840)$  of the total allowance of R4 200 forms part of remuneration for employees' tax purposes, being the portion by which the allowance paid or granted by the employer exceeds an allowance based on a rate per kilometre of R3.55.

**Example 3**

*Facts:* During the year of assessment the employee travels 17 891 kilometres for business purposes and is refunded by the employer at R4.20 per kilometre.

*Result:* Only R11 629  $((4.20-3.55) \times 17\,891)$  of the total allowance of R75 142 forms part of remuneration for employees' tax purposes over the course of the year, being the portion by which the allowance paid or granted by the employer exceeds an allowance based on a rate per kilometre of R3.55. The fact that the distance travelled exceeds the existing distance limitation of 12 000 kilometres under the simplified method does not have any effect on the determination of remuneration for employees' tax purposes.

*Ad paragraph (d):* The proposed amendment is consequential to the amendment to section 10(1)(k)(i) proposed in the Taxation Laws Amendment Bill, 2017.

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

For purposes of calculating income tax, employees are able to deduct contributions to pension, provident and retirement funds from their income in terms of section 11F. The deduction is limited to the lesser of R350 000 or 27,5 per cent of the greater of remuneration or taxable income. Contributions under these caps are deducted in full. Where the annual cap of R350 000 applies, the amendment proposes to spread it for employees' tax purposes on a cumulative basis. The cumulative cap will be based on the portion of the employee's year of assessment during which the employee receives remuneration from an employer. For example, if an employee is employed by an employer for a period of 7 months during the 2018/19 year of assessment the employer will apply a deduction limitation of R204 167  $(R350\,000 \times \frac{7}{12})$ . As the cumulative cap only applies for employees' tax purposes, any unused portion of the annual cap will be taken into account on assessment.

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

The proposed amendment adjusts the wording of paragraph 11A to provide for changes in employees' tax brought about by the expansion of the definition of "remuneration" in 2016.

Paragraph 11A of the Fourth Schedule to the Income Tax Act deems certain persons to be persons that pay or are liable to pay amounts to employees by way of remuneration. This means that these persons fall into the definition of "employer" for purposes of the Fourth Schedule. The Taxation Laws Amendment Act, 2016, expanded the definition of "remuneration" in the Fourth Schedule to include any amount received by or accrued to a person by way of a dividend contemplated in paragraphs (dd), (ii) and (jj) of the proviso to section 10(1)(k)(i) of the Income Tax Act. The persons by whom the right was granted or from whom the equity instrument or qualifying equity share that gave rise to the gain or amount was acquired, are therefore considered to be employers and must now deduct employee's tax in respect of the dividends

paid or from the remuneration payable by them to that employee during that year of assessment.

Listed shares are processed via a Central Securities Depository Participant (CSDP). However, the CSDP will not be required to deduct employees' tax. Where an employee holds shares through a share incentive scheme, the employer or person from whom the shares were acquired, acting on behalf of the employee, should inform the CSDP under section 64H(2) of the Income Tax Act, that no dividends tax must be withheld from the relevant dividend in terms of section 64F(1)(l) of the Act.

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

The 2017 Budget Review proposed that the current legal authorisation for the sharing of trade statistics with organs of state be reviewed for its appropriateness and possibly be amended. The proposed amendment updates the list of government entities that are allowed access to SARS' trade statistics and the conditions for the sharing of such information to more closely reflect the data needs of government to research, formulate and apply trade-related policies.

#### **2.12 Customs and Excise Act, 1964: Amendment of section 19A**

Progressive imports of finished fuel levy goods necessitate the additional regulation of licensed storage warehousing in the liquid fuels industry. The Taxation Laws Amendment Act, 2015, inserted section 20(7) of the Customs and Excise Act for this purpose. The 2015 amendment has proven inadequate and will not be implemented. It is accordingly repealed and the amendment to section 19A is proposed as a more suitable vehicle to facilitate the required warehousing reforms.

#### **2.13 Customs and Excise Act, 1964: Amendment of section 20**

See the note on paragraph 2.12.

#### **2.14 Customs and Excise Act, 1964: Amendment of section 21A**

*Ad paragraph (a):* The proposed amendment re-orders the current sequence of subparagraphs in subsection (9)(a) and further clarifies the cessation of liability for duty on imported goods used in the manufacture or production of other goods by a Customs Controlled Area (CCA) enterprise. The proposed subparagraph (iv) provides that liability ceases if it can be proved that the goods have been used in the manufacturing or production of goods by the CCA enterprise and that those goods have been removed to other licensed or registered premises for manufacture or production of any other goods by the licensee or registrant of such premises in accordance with any relevant provision of the Customs and Excise Act.

*Ad paragraph (b):* The proposed insertion of subsection (9A) makes provision for the assumption of the liability for duty that ceased as contemplated in the amended subsection (9)(a)(iv), by a person described in that subsection.

#### **2.15 Customs and Excise Act, 1964: Amendment of section 54C**

This amendment refines the description of those other provisions of the Customs and Excise Act that also apply with any necessary changes as the context may require to the environmental levy. The revised wording clarifies that the scope of this section is limited to those provisions that govern the administration of excisable goods.

### **2.16 Customs and Excise Act, 1964: Amendment of section 75**

The 2015 Budget Review announced a comprehensive review of the administration of the diesel refund, which requires the delinking thereof from the VAT system. The 2017 Budget Review announced the legislative amendments contained in this proposal that will facilitate these reforms. Further amendments to the Schedules and Rules of the Customs and Excise Act, will be developed following public consultations to implement the outcome of the review.

### **2.17 Value-Added Tax Act, 1991: Amendment of section 13**

The proposed amendment is a technical correction to adjust the wording and to clarify that the payment, recovery and refund of VAT on imported goods must be done in accordance with the Customs Duty Act, 2014, as from its commencement date.

### **2.18 Skills Development Levies Act, 1999: Amendment of section 6**

The proposed amendment is a technical correction to remove unnecessary wording.

### **2.19 Diamond Export Levy (Administration) Act, 2007: Amendment of section 1**

The proposed amendments are technical corrections to align the definitions of the various Acts that apply for purposes of the Diamond Export Levy (Administration) Act. The interpretation of terms defined in the Diamonds Act, 1986, the Diamond Export Levy Act, 2007, and the Tax Administration Act, 2011, apply in the context of the Diamond Export Levy (Administration) Act.

### **2.20 Diamond Export Levy (Administration) Act, 2007: Amendment of section 4**

The proposed amendment is a technical correction to correct a reference.

### **2.21 Diamond Export Levy (Administration) Act, 2007: Amendment of section 9**

The proposed amendments are technical corrections to correct internal references.

### **2.22 Tax Administration Act, 2011: Amendment of section 9**

It has been submitted that, with regard to decisions that are not subject to objection and appeal, a taxpayer can potentially be prejudiced by not having access to other effective internal remedies that may provide relief, such as section 9 of the Tax Administration Act. The taxpayer's only other remedy would then be to lodge a complaint with the Tax Ombud or take the matter up on review before the High Court in terms of the Promotion of Administrative Justice Act, 2000 (PAJA).

For example, estimated royalty payments under the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, were amended last year. Although these amendments were closely modelled on the provisional tax system in the Income Tax Act, 1962, a technical difference meant that section 9 of the Tax Administration Act did not cover SARS' adjustments to estimated royalty payments leaving a taxpayer without the section 9 review or the objection and appeal remedy in Chapter 9 of the Act.

Section 9 of the Tax Administration Act is essentially the enabling provision that allows a SARS official, in the official's discretion or at the request of a taxpayer, to amend or withdraw decisions that are not subject to objection and appeal, so ensuring that the *functus officio* principle does not apply. Decisions

that are given effect to in an assessment or notice of assessment are however excluded, since assessments generally have the separate remedy of objection and appeal. Hence, section 9 operates separately from the dispute resolution process and instead forms a legislative underpinning for SARS' internal complaints resolution procedures, managed by the SARS Complaints Management Office. Details of this process are available on the SARS website.

As a result of the public comment process on the 2016 legislation and the identification of a situation where a decision given effect to in a notice of assessment is not subject to objection and appeal, it is therefore proposed that such a decision be subject to the remedy under section 9. This will afford the taxpayer an internal remedy before exercising external remedies of, for example, lodging a complaint with the Tax Ombud or instituting a review application to the High Court under PAJA.

#### ***2.23 Tax Administration Act, 2011: Amendment of section 102***

The proposed amendment is a technical correction to correct spelling.

#### ***2.24 Tax Administration Act, 2011: Amendment of section 110***

In practice the current provision has been interpreted to mean that the appointment of an accountant or commercial member to the tax board is required if any one of the chairperson, SARS or the taxpayer considers it necessary. It is proposed that the chairperson of the tax board has the final decision as to whether or not an accountant or commercial member must form part of the constitution of the tax board. This is consistent with section 118 of the Tax Administration Act where the president of the tax court may, after considering any representations by SARS or the appellant in the matter, direct that the representative of the commercial community may be a person with the necessary experience in a particular field.

#### ***2.25 Tax Administration Act, 2011: Amendment of section 113***

The proposed amendment is a technical correction to align the wording used throughout this Part.

#### ***2.26 Tax Administration Act, 2011: Amendment of section 125***

The proposed amendment is a technical correction. The right of the appellant or his or her representative to appear at the hearing before the tax board is implicit.

#### ***2.27 Tax Administration Act, 2011: Amendment of section 160***

The proposed amendment is a technical correction to clarify meaning.

#### ***2.28 Tax Administration Act, 2011: Amendment of section 190***

Currently, section 190(5A) requires a bank, if it reasonably suspects that the payment of a refund is related to a tax offence, to immediately report the suspicion to SARS in the prescribed form and manner. Upon such notification SARS has the discretion to instruct the bank to hold the funds for two business days, pending an investigation by SARS into the matter. However, given the speed with which amounts can be transferred to other accounts and the high incidence of using bank accounts in committing tax offences—in particular fraudulent refunds, this instruction may be too late in practice, rendering the provision ineffective.

The amendment proposes that a bank, if it reasonably suspects that the payment of a refund into the taxpayer's account is related to a tax offence place an automatic hold on the taxpayer's account whilst the matter is reported

to SARS. This will ensure that the funds are secured as soon as the transaction is reported. Banks generally have sophisticated systems in place to detect and analyse suspicious transactions and it is considered unlikely that such suspicion will be unreasonable. In any event, the hold is limited to the amount of the suspicious transaction and two business days. The two business days will commence when the hold is placed and the transaction is reported to SARS. The hold may be lifted if either SARS or a High Court directs otherwise, so a taxpayer who believes it is inappropriate may approach either to make their case.

### ***2.29 Tax Administration Act, 2011: Amendment of section 270***

The proposed amendment clarifies that the manner in which interest was calculated in respect of an additional tax penalty under the provisions of the tax Act imposing the penalty, prior to the repeal of the penalty by the Tax Administration Act, will apply for purposes of the calculation of interest on understatement penalties until Chapter 12 of the Tax Administration Act has come into effect.

### ***2.30 Tax Administration Act, 2011: Amendment of section 272***

The full interest scheme of the Tax Administration Act as set out in Chapter 12 and the consequential amendments to the interest provisions of the tax Acts have not been promulgated with the rest of the Act with effect from 1 October 2012 in light of the system changes required to implement the new interest scheme. This was effected by section 272(2) of the Act that provided that the President may determine different dates for different provisions of this Act to come into operation. SARS now seeks to implement the new interest scheme in phases based on tax type. Accordingly, an amendment is proposed to allow the Minister, for purposes of Chapter 12 and the provisions relating to interest in Schedule 1 once promulgated, to determine by public notice the date on which they come into operation in respect of a tax type.

### ***2.31 Customs Duty Act, 2014: Insertion of section 65A***

The proposed section is aimed at combatting refund and drawback fraud and irregularities. Refund and drawback applications will only be allowed from persons “entitled to” a refund or drawback as stipulated in the section. For instance, in the case of a duty refund, only the person who cleared the goods in respect of which the duty was paid will be entitled to claim a refund of the duty, whether or not that person was the person who actually paid the duty.

If a refund or drawback is approved, it will be paid only into the bank account of the person entitled to the refund or drawback as provided for in the section, unless that person has authorised SARS to pay the refund or drawback into a designated bank account of a third person. In circumstances where a third person has, for instance, paid a duty on behalf of the person clearing the goods, the third person will not be entitled to claim any refunds but that third person’s bank account may be designated as the bank account into which the refund must be paid. Provision will, however, be made in the rules for submission of the application by other duly authorised persons on behalf of the person entitled to claim.

### ***2.32 Customs Duty Act, 2014: Substitution of section 67***

The proposed amendment is consequential in order to give effect to the proposed new section 65A.



**2.33 Customs Duty Act, 2014: Amendment of section 68**

The proposed amendment is aimed at systems facilitation. Firstly, SARS' electronic system is not designed to receive accompanying documents as section 68(1) of the Customs Duty Act, envisages. Instead, the system generates a request for supporting documents to be submitted separately.

Secondly, as section 68(2) is too specific for system facilitation purposes, it is proposed to rather delete subsection (2) and replace it with a wider, general provision to broaden the scope for clearance declarations and amended clearance declarations to be regarded as applications for purposes of the Act, including refund applications. The proposed provision is to be inserted in section 224(1)(g).

**2.34 Customs Duty Act, 2014: Amendment of section 224**

See the note to paragraph 2.33.

**2.35 Customs Control Act, 2014: Amendment of section 43**

The proposed amendment is a technical correction to correct spelling.

**2.36 Customs Control Act, 2014: Amendment of section 52**

The current provision is unnecessary for domestic departures. The proposed amendment provides that permissions to depart should only apply to vessels about to depart to foreign destinations.

**2.37 Customs Control Act, 2014: Amendment of section 53**

In terms of the current provision, departure reports must be submitted after departure of the vessel. This should work well for vessels operated by carriers as their reports must be submitted electronically through EDI. However, if departure reports are to be submitted in paper format by the on-board operators of private vessels, the reports can only be submitted before departure. The proposed amendment provides for the submission of departure reports before departure where it is to be submitted by the on-board operator of a private vessel.

**2.38 Customs Control Act, 2014: Amendment of section 58**

The repeal of the current provision which requires customs permission for the departure of an aircraft is proposed as it appears to be too onerous in respect of the airline industry in view of the rapid turnaround times for aircraft landing and departing from customs airports.

**2.39 Customs Control Act, 2014: Amendment of section 59**

In terms of the current provision, departure reports must be submitted after departure of the aircraft. This should work well for aircraft operated by carriers as their reports must be submitted electronically through EDI. However, if departure reports are to be submitted in paper format by the on-board operators of private aircraft, the report can only be submitted before departure. The proposed amendment provides for the submission of departure reports before departure where they are to be submitted by the on-board operator of a private aircraft.

**2.40 Customs Control Act, 2014: Amendment of section 90**

The proposed amendment is a technical correction to correct spelling.

#### **2.41 Customs Control Act, 2014: Amendment of section 91**

The proposed amendment is a technical correction to correct spelling.

#### **2.42 Customs Control Act, 2014: Amendment of section 94**

Section 94 of the Customs Control Act determines the time when export clearances must be submitted in respect of goods to be exported from the Republic. The equivalent provision for imported goods, section 90, contains a timeframe for the submission of clearance declarations in the case of goods imported on board vehicles whilst section 94 only covers goods exported on board trucks. This is an oversight and the proposed amendment aims to correct this.

#### **2.43 Customs Control Act, 2014: Amendment of section 97**

The current section allows a clearance of goods for home use or a customs procedure to be substituted for another clearance before release of the goods. As release normally happens within seconds, this provision is impractical. Furthermore it is neither a Kyoto requirement nor a current provision of the Customs and Excise Act, 1964. It is therefore proposed that the section be deleted.

#### **2.44 Customs Control Act, 2014: Amendment of section 111**

Under the Customs and Excise Act, 1964, the transfer of ownership of goods is subject to customs permission only in the case of warehoused goods (see section 26 of that Act). Section 111(1) of the Customs Control Act, as currently worded, will extend the permission requirement to all customs procedures as from the effective date. The section is too wide and should apply only to goods under customs procedures as may be prescribed by rule where ownership control is essential. The proposed amendment will provide the necessary flexibility to limit the permission requirement for ownership transfers to goods under selected procedures, such as warehousing, home use processing and inward processing, and to exclude the permission requirement in the case of procedures where it is not needed, such as the export, tax free shop and stores procedures.

Section 111(1) furthermore currently covers only transfers of ownership where the goods remain under the same procedure after the transfer and consequently excludes situations where, for instance, warehoused goods are moved to another warehouse which requires a new clearance. (See the definition of “warehousing”). The new proposed provision in section 111(1A) is aimed at extending section 111(1) to ownership transfers in situations where a new clearance is required, and also to cover the proposed amendments to sections 408(1)(a)(i) and 435(1)(a)(i), which will provide for new clearances to be submitted where goods under the home use and inward processing procedures are transferred between licensees of processing premises.

In terms of the current provisions of the Customs Control Act only the importer or owner can submit a clearance declaration and only the person who cleared the goods may submit an amended clearance declaration. The implication is that if clearance declarations or amended clearance declarations are used to apply for section 111 permissions, only the current owner will be able to submit an application. This restriction seems to complicate the application of section 111, which can be avoided if section 111 is amended to allow prospective new owners to submit clearance declarations in circumstances where they are not yet the owners. The new subsection (3A) gives effect to this proposal.

Subsection (5) applies only in the scenario where the goods remain under the same customs procedure after the transfer of ownership as contemplated in section 111(1A)(a), for instance a transfer in a public warehouse. The proposed new subsection (7) will apply where the goods, simultaneously with the transfer, come under a new procedure as contemplated in section 111(1A)(b).

The purpose of the proposed subsection (8) is generally to enable the customs authority to regulate the application of section 111 by way of rules.

#### **2.45 Customs Control Act, 2014: Amendment of section 165**

Section 165(3) of the Customs Control Act, which requires submission of a clearance instruction on request by the customs authority, is superfluous as it repeats what section 176(1)(c) essentially stipulates, that is to say such a document is a supporting document for a clearance which like all supporting documents must be submitted on request. It is proposed that section 165(3) be deleted.

#### **2.46 Customs Control Act, 2014: Amendment of section 174**

In terms of the existing provisions of section 174 of the Customs Control Act an amended clearance declaration can only correct an error or update or change existing information on the initial declaration. The aim of this proposed amendment is to broaden this notion of an amended clearance declaration and to allow a clearance declaration also to be amended for purposes of extending a timeframe that applies to the goods in terms of a customs procedure for which the goods were cleared.

These timeframe extensions may in terms of section 908 be granted by the customs authority on application by the person who cleared the goods. As a separate application process would be more onerous, it is felt that integrating the application process with the clearing system would be a better option. Not only would it simplify the process for both SARS and the trade, but also save costs.

The amendment would therefore allow a person who cleared goods for a customs procedure and who requires a timeframe extension applicable to the procedure, to simply submit through the electronic clearance system an amended clearance declaration stating the extended timeframe.

#### **2.47 Customs Control Act, 2014: Amendment of section 180**

The addition proposed by the amendment is aimed at creating the necessary flexibility in relation to what information should be on a release notification.

#### **2.48 Customs Control Act, 2014: Amendment of section 249**

Section 167 of the Customs Control Act prescribes mandatory information to be included in all clearance declarations. In the case of transshipment clearance declarations not all the mandatory information may in certain circumstances be necessary, especially in the Ngqura/Port Elizabeth seaport scenario, and it is accordingly proposed in order to create the necessary flexibility, to make provision for the exclusion by rule of certain clearance information that is generally mandatory.

#### **2.49 Customs Control Act, 2014: Amendment of section 251**

It is proposed that section 251 of the Customs Control Act be amended to allow the customs authority to prescribe the documents that may be used as transshipment clearances.

**2.50 Customs Control Act, 2014: Amendment of section 254**

Currently section 254 of the Customs Control Act only covers the scenario where the transshipment operation is carried out at the port of import of the goods. The proposed amendments are aimed at also covering the scenario where a transshipment operation involves two separate seaports, viz. the port where the goods were off-loaded after import and another port where the goods are loaded for export.

**2.51 Customs Control Act, 2014: Amendment of section 257**

Currently section 257 of the Customs Control Act covers the transport of transshipment goods only from the premises where the goods are secured to the export terminal. This does not cover all the possible scenarios, especially where the transshipment operation involves two separate seaports, that is to say the port where the goods were off-loaded after import and another port where the goods are loaded for export. The proposed amendment aims to broaden the scope of the section to cover all possible scenarios where transshipment goods are transported by public road.

**2.52 Customs Control Act, 2014: Amendment of section 269**

This proposed amendment is necessary for purposes of electronic systems facilitation. The reasoning is that if release is given for a clearance containing the period of temporary admission required by the importer, the release would include approval of that period as well. If the period is to be extended, the importer can apply for extension by submitting an amended clearance declaration which is more systems facilitative than a separate application for extension.

If the extension exceeds the maximum period stipulated in section 269(2) of the Customs Control Act, necessitating a section 908 application, the amended declaration can also serve as an application in terms of section 908 of the Act obviating the need for a separate application in terms of that section.

**2.53 Customs Control Act, 2014: Substitution of section 290**

The current provisions relating to reusable transport equipment are unclear and these amendments are suggested to improve legal certainty. The rationale for section 290 of the Customs Control Act is to provide a tax free platform for reusable transport equipment when imported and exported. The problem is, however, to keep track of the reusable transport equipment to ensure that it is re-exported. Because of the technical nature of this matter, the best way to deal with it is through rules where the necessary flexibility exists to address divergent issues concerning the different types of reusable transport equipment such as containers, unit load devices, pallets, packing material and racking.

**2.54 Customs Control Act, 2014: Amendment of section 294**

The proposed amendment is consequential to the proposed amendment to section 290 of the Customs Control Act.

**2.55 Customs Control Act, 2014: Amendment of section 303**

The amendment is proposed to remove an unnecessary requirement.

**2.56 Customs Control Act, 2014: Amendment of section 304**

The proposed amendment replaces the notification requirement in section 304(2) of the Customs Control Act with a less onerous "recording requirement" in terms of which the carrier delivering the goods and the licensee of the premises receiving the goods will be required to merely note

and keep record of the delivery or receipt of the goods. The customs authority can then request that these records be submitted to it when needed.

#### ***2.57 Customs Control Act, 2014: Amendment of section 346***

It has in terms of section 86 of the Customs Control Act been decided to exempt, as from the effective date until further notice, all sea and air carriers from submitting arrival reports referred to in sections 50 and 56 of the Act. This exemption will have an effect on section 346(2) as carriers would not be able to submit their stores arrival reports as part of the vessel or aircraft arrival reports as contemplated in section 346(2). It is accordingly proposed to amend section 346(2) of the Act and to provide for an alternative submission methodology to be prescribed by rule for the duration of the exemption.

#### ***2.58 Customs Control Act, 2014: Amendment of section 350***

The proposed amendment to section 350(1) of the Customs Control Act clarifies that stores under the stores procedure may be removed from a foreign-going vessel or aircraft or a cross-border train by means of a clearance for another permissible procedure, which includes a stores clearance onto another foreign-going vessel, aircraft or cross-border train. It is further proposed that subsection (2) be deleted to simplify the process of clearing stores under the stores procedure as stores onto other vessels, aircrafts or trains.

The amendment to subsection (3) clarifies that that no clearance declaration is required in cases where stores removed from a foreign-going vessel, aircraft or cross-border train for a purpose stated in subsection (1)(b) (i.e. for securing, reconditioning or repairing the stores), are returned to the same foreign-going vessel, aircraft or cross-border train.

The amendment to subsection (4) is proposed as it is impractical to require stores removed as contemplated in subsection (1)(b) from a vessel, aircraft or train to always be returned to the same vessel, aircraft or train. The subsection now allows carriers to return the removed stores to any vessel, aircraft or train under their operational control.

#### ***2.59 Customs Control Act, 2014: Amendment of section 354***

In terms of section 86 of the Customs Control Act it has been decided to exempt, as from the effective date until further notice, all sea and air carriers from submitting departure reports referred to in sections 53 and 59 of the Act. This exemption will have an effect on section 354(2) of the Act as carriers would not be able to submit their stores departure reports as part of the vessel or aircraft departure reports as contemplated in section 354(2). It is accordingly proposed to amend section 354(2) and to provide for an alternative submission methodology to be prescribed by rule for the duration of the exemption.

#### ***2.60 Customs Control Act, 2014: Amendment of section 380***

This amendment is proposed for purposes of electronic system facilitation. The reasoning is that if release is given for a clearance indicating the period of temporary export required by the importer, the release would include approval of that period as well. If the period is to be extended, the importer can apply for extension by submitting an amended clearance declaration which is more systems facilitative than a separate application for extension.

If the extension exceeds the maximum period stipulated in section 380(2) of the Customs Control Act, necessitating a section 908 application, the amended declaration can also serve as an application in terms of section 908 of the Act, obviating the need for a separate application in terms of that section.

**2.61 Customs Control Act, 2014: Amendment of section 385**

The proposed amendment is a consequential adjustment necessitated by the proposed amendment to section 380 of the Customs Control Act.

**2.62 Customs Control Act, 2014: Substitution of section 403**

The current provisions relating to reusable transport equipment are unclear and these amendments are suggested to improve legal certainty. The rationale for section 403 of the Customs Control Act is to provide a tax free platform for reusable transport equipment when temporarily exported. The problem is, however, to keep track of the reusable transport equipment to ensure that it is returned. Because of the technical nature of this matter, the best way to deal with it is through rules where the necessary flexibility exists to address divergent issues concerning the different types of reusable transport equipment such as containers, unit load devices, pallets, packing material and racking.

**2.63 Customs Control Act, 2014: Amendment of section 406**

The proposed amendment is consequential to the proposed amendment to section 403 of the Customs Control Act.

**2.64 Customs Control Act, 2014: Amendment of section 408**

This proposed amendment is aimed at removing any doubt that inward processing is a premises specific procedure. If goods under this procedure are to be transferred to and processed at other inward processing premises than the premises specified in the initial clearance declaration, a new clearance declaration must be submitted.

**2.65 Customs Control Act, 2014: Amendment of section 415**

The proposed amendment replaces the notification requirement in section 415(1) of the Customs Control Act with a less onerous “recording requirement” in terms of which the carrier delivering the goods and the licensee of the premises receiving the goods will be required to merely note and keep record of the delivery or receipt of the goods. The customs authority can then request that these records be submitted to it when needed.

**2.66 Customs Control Act, 2014: Amendment of section 435**

This proposed amendment is aimed at removing any doubt that home use processing is a premises specific procedure. If goods under this procedure are to be transferred to and processed at other home use processing premises than the premises specified in the initial clearance declaration, a new clearance declaration for home use processing must be submitted.

**2.67 Customs Control Act, 2014: Amendment of section 442**

The proposed amendment replaces the notification requirement in section 442(2) of the Customs Control Act with a less onerous “recording requirement” in terms of which the carrier delivering the goods and the licensee of the premises receiving the goods will be required to merely note and keep record of the delivery or receipt of the goods. The customs authority can then request that these records be submitted to it when needed.

**2.68 Customs Control Act, 2014: Amendment of section 460**

Section 460(e) of the Customs Control Act requires that the kind of compensating products that will be obtained from the outward processing of goods must be stated on the outward processing clearance declaration when the goods to be processed are exported. As this information will be on the

permit issued by ITAC for the export of the goods, it is unnecessary to duplicate this information on the clearance declaration and it is consequently proposed that section 460(e) be deleted.

**2.69 Customs Control Act, 2014: Amendment of section 558**

This proposed amendment accommodates a complaint by the airline industry that section 542(2) or 549(2) of the Customs Control Act place an impractical burden on especially air carriers to notify the customs authority of all damaged and lost travellers' baggage items. The amendment provides for the exemption of a category of persons such as airline carriers from the notification requirement in relation to baggage without affecting the baggage owner's current right to submit the notification personally and claim tax relief for damaged or lost baggage items.

**2.70 Customs Control Act, 2014: Amendment of section 604**

Section 604 of the Customs Control Act is currently too widely drafted as it affects, for instance, customs procedures where the transfer of ownership is implicit in the procedure, such as the tax free shop, stores and export procedures. The amendment is necessary to limit the registration requirement to persons acquiring ownership of goods in circumstances where tax collection is at risk and liability is an issue.

**2.71 Customs Control Act, 2014: Amendment of section 606**

This proposed amendment deletes the current requirement of "double registration" in terms of which a client who makes use of the services of a registered electronic user to submit documents on his or her behalf, is also required to be registered as an electronic user. Only the person who actually accesses the SARS systems must be registered and controlled.

**2.72 Customs Control Act, 2014: Amendment of section 626**

The proposed amendment is intended to facilitate the functioning of SARS' electronic system in relation to, amongst others, the validation of the roles of, and relationships between, parties involved in the customs supply chain. It is furthermore aimed at combatting fraud and tax evasion.

**2.73 Customs Control Act, 2014: Amendment of section 665**

The proposed amendment is intended to facilitate the functioning of SARS' electronic system in relation to, amongst others, the validation of the roles of, and relationships between, parties involved in the customs supply chain. It is furthermore aimed at combatting fraud and tax evasion.

**2.74 Customs Control Act, 2014: Amendment of section 681**

The subsection proposed to be deleted requires the holder of an accredited client status certificate to return the certificate to the customs authority if the certificate is withdrawn. The provision is obsolete as these certificates are issued electronically and not manually.

**2.75 Customs Control Act, 2014: Insertion of section 935A**

The proposed section 935A of the Customs Control Act aims to introduce a special arrangement for deferments granted in terms of the Customs and Excise Act, 1964. As a general transition principle, section 928 of the Customs Control Act provides for the continuation of all approvals, permissions, authorisations, exemptions, rebates, relief and other existing measures, including deferments, granted under the 1964 Act when the new legislation takes effect. Insofar as the deferment of tax under the 1964 Act is concerned, it is proposed that deferments of customs duty should not be a measure that

automatically continues but that these deferments should rather lapse on the date when the Customs Duty Act takes effect. It is further proposed that existing deferment holders who operated under the 1964 Act on a deferment system for the payment of customs duties should be given the opportunity to apply for deferment benefits under the Customs Duty Act before the effective date. The aim is to have all these new deferment benefits in place on “day one” of the new legislation.

#### **2.76 Customs Control Act, 2014: Insertion section 942A**

The proposed section 942A of the Customs Control Act aims to provide legal certainty for the performance, before the effective date of the new Customs Acts, of certain actions that are necessary to achieve a smooth transition to the new dispensation. The section enables the Commissioner to exercise certain powers in terms of the new Acts before the effective date where this is necessary to implement the new Acts as from the effective date, such as the publishing of rules, the appointment of customs officers, the delegation of powers and duties, etc. All these actions will only take effect as from the effective date.

With regard to rules regulating the registration, licensing and deferment benefits for customs duty under the new Acts, section 942A also allows Customs to start with these processes and allow the submission of applications well before the effective date. This is bound to be a massive undertaking that cannot be delayed until the effective date and should start as soon as possible. However, decisions taken in terms of these rules on the granting of any of those applications before the effective date will only come into effect on the effective date.

#### **2.77 Customs and Excise Amendment Act, 2014: Amendment of section 43**

The proposed amendment is a technical correction. In light of the proposed substitution of section 54C of the Customs and Excise Act, 1964 (see paragraph 2.15), the amendment in section 43 must be deleted to prevent it from overriding the proposed amendment to section 54C once the Customs and Excise Amendment Act comes into operation.

#### **2.78 Customs and Excise Amendment Act, 2014: Amendment of section 63**

The proposed repeal of paragraph (b) of section 63 of the Customs and Excise Amendment Act, 2014, amending section 75(4A)(f) of the Customs and Excise Act, 1964, is a technical amendment required as a consequence of the proposed amendment to section 75 of the Customs and Excise Act, 1964 (see paragraph 2.16 above).

Although the Customs and Excise Amendment Act, 2014, has been promulgated, it has not yet come into effect. The proposed amendment to section 75 of the Customs and Excise Act, 1964, is intended to come into effect on a date earlier than the “effective date” of the Customs and Excise Amendment Act, 2014. For this reason the wording of subsection 75(4A)(f) has to be restored to the way it read before the 2014 amendment.

#### **2.79 Tax Administration Laws Amendment Act, 2014: Amendment of section 24**

The amendment proposes the deletion of paragraph (e) of section 24 of the Tax Administration Laws Amendment Act, 2014. This paragraph amended section 13(2A) of the Value-Added Tax Act, 1991, as from the date on which the Customs Control Act, 2014, comes into operation. The current amendment is required as a consequence of the scrapping of subsection (2A) proposed by the Taxation Laws Amendment Bill, 2017, from its insertion which came into effect on 10 January 2012. The amendment contained in the 2014 legislation is deemed to have been deleted from the date of promulgation of the 2014 Act.



**2.80 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 2017 Budget Review, tabled in Parliament on 22 February 2017.

**5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers and the National Treasury and SARS 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.





Printed by Creda Communications

ISBN 978-1-4850-0402-8