

Draft Tax Administration Laws Amendment Bill, 2014

RELEASE

The draft Tax Administration Laws Amendment Bill, 2014, is hereby published for comment. The draft legislation gives effect to matters presented by the Minister of Finance in the Budget Review 2014, as tabled in Parliament earlier this year.

Members of the public are invited to submit comments on the draft legislation by no later than **17 August 2014** to:

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Draft Tax Administration Laws Amendment Bill, 2014

REPUBLIC OF SOUTH AFRICA

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GENERAL EXPLANATORY NOTE:

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

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

DRAFT BILL

To—

- amend the Income Tax Act, 1962, so as to effect consequential and textual amendments; to delete a provision; and to amend certain provisions;
- amend the Customs and Excise Act, 1964, so as to effect consequential amendments; to amend certain provisions; to insert certain provisions; and to effect technical corrections;
- amend the Value-Added Tax Act, 1991, so as to effect consequential amendments; and to amend certain provisions;
- amend the South African Revenue Service Act, 1997, so as to amend a provision;
- amend the Securities Transfer Tax Administration Act, 2007, so as to effect consequential amendments;
- amend the Tax Administration Act, 2011, so as to amend certain provisions; to effect technical corrections; and to effect textual and consequential amendments;
- amend the Tax Administration Laws Amendment Act, 2012, so as to effect technical corrections;
- amend the Customs Duty Act, 2014, so as to effect technical corrections; to effect consequential amendments; and to insert a provision;
- amend the Customs Control Act, 2014, so as to amend certain provisions; to effect consequential amendments; and to insert a provision;

and to provide for matters connected therewith.

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

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

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

“(e) paragraphs 5(2), 14(6), 18, **[20(1)(a) and (2), 20A(1) and (2),]** 21, 24 and 27 of the Fourth Schedule;”.

Amendment of section 30 of Act 58 of 1962, as amended by section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008, section 24 of Act 20 of 2006, section 22 of Act 3 of 2008, section 41 of Act 60 of 2008, section 41 of Act 17 of 2009, section 53 of Act 7 of 2010 and section 8 of Act 21 of 2012

2. Section 30 of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (9).

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

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

“(d) If, in terms of this Part~~[,]—~~

(i) a person has paid a dividend or received a dividend that is exempt in terms of section 64F; or

(ii) a company has declared and paid a dividend or a person has received a dividend that is exempt in terms of section 64FA,

that person or company must submit a return to the Commissioner by the last day of the month following the month during which the dividend is paid or received or declared and paid.”.

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Insertion of section 64MA in Act 58 of 1962

4. The Income Tax Act, 1962, is hereby amended by the insertion after section 64M of the following section:

“Refund of tax in respect of dividends *in specie*”

64MA. Notwithstanding the provisions of Chapter 13 of the Tax Administration Act, if—

(a) dividends tax is paid by a company in respect of a dividend that consists of a distribution of an asset *in specie* as a result of the company being unable to obtain the declaration and written undertaking contemplated in section 64FA(1)(a) or (2) by the date contemplated in that section; and

(b) both the declaration and the written undertaking are submitted to the company within three years after the payment of the tax,

the tax paid is refundable to the company by SARS if claimed within 4 years of the date of payment of the tax.”

Amendment of section 89*bis* of Act 58 of 1962, as amended by section 14 of Act 6 of 1963, section 21 of Act 95 of 1967, section 28 of Act 88 of 1971, section 45 of Act 85 of 1974, section 26 of Act 91 of 1982, section 35 of Act 94 of 1983, section 32 of Act 121 of 1984, section 21 of Act 65 of 1986, section 48 of Act 59 of 2000 and repealed by section 271 read with paragraph 66 of Schedule 1 of Act 28 of 2011

5. Section 89*bis* of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If any amount of employees’ tax is not paid in full within the period of seven days prescribed for payment of such amount by paragraph 2(1) of the Fourth Schedule, or if any amount of provisional tax is not paid in full within the relevant period prescribed for payment of such amount by paragraph 21, [22,] 23, 23A or 25(1) of that Schedule, interest shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be paid by the person liable to pay the amount in question at the prescribed rate (but subject to the provisions of section 89*quin*) on so much of such amount as remains unpaid in respect of the period (reckoned from the end of the

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relevant period prescribed as aforesaid for payment of such amount) during which the amount underpaid remains unpaid.”.

Amendment of section 89quin of Act 58 of 1962, as amended by section 34 of Act 121 of 184, section 25 of Act 36 of 1996, section 15 of Act 18 of 2009 and repealed by section 271 read with paragraph 66 of Schedule 1 of Act 28 of 2011

6. Section 89quin of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) any interest is payable under the provisions of sections **[88,]** 89, 89bis, **[or]** 89quat or section 164 of the Tax Administration Act;”.

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 58 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 24 of Act 19 of 2001, section 58 of Act 74 of 2002, section 34 of Act 30 of 2002, section 24 of Act 16 of 2004, section 47 of Act 32 of 2004, section 53 of Act 31 of 2005, section 1 of Act 3 of 2008, section 22 of Act 18 of 2009, section 96 of Act 24 of 2011 and section 21 of Act 21 of 2012

7. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(c) any natural person who **[on the last day of that year will be below the age of 65 years and who]** does not derive any income from the carrying on of any business, if—

- (i) the taxable income of that person for the relevant year of assessment will not exceed the tax threshold; or
- (ii) the taxable income of that person for the relevant year of assessment which is derived from interest, foreign dividends and rental from the letting of fixed property will not exceed **[R20 000]** R30 000;”;

(b) by the deletion in subparagraph (1) of item (d).

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

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of Schedule 1 to Act 28 of 2011, section 22 of Act 21 of 2012 and section 13 of Act 39 of 2013

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

(a) by the substitution in subparagraph (1)(d)(i) for subsubitems (aa), (bb) and (cc) of the following subsubitems:

“(aa) the amount of any taxable capital gain **[included therein]** contemplated in **[terms of]** section 26A; **[and]**

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

(cc) any amount (other than a severance benefit) contemplated in paragraph (d) of the definition of ‘gross income’ in section 1, included in the taxpayer’s taxable income for that year of assessment.”;

(b) by the substitution in subparagraph (1) for the proviso to item (d) of the following proviso:

“Provided that, if an estimate under item (a) or (b) must be made~~—~~

(a)] more than 18 months~~]; and~~

(b) in respect of a period that ends more than one year,]

after the end of the latest preceding year of assessment in relation to such estimate, the basic amount determined in terms of **[subitem]** subitems (i) and (ii) shall be increased by an amount equal to eight per cent per annum of that amount, from the end of such year to the end of the year of assessment in respect of which the estimate is made.”; and

(c) by the deletion in subparagraph (1)(e)(ii) of the proviso.

(2) Subsection (1) comes into operation for years of assessment commencing on or after 1 March 2015.

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

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

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

“PENALTY FOR UNDERPAYMENT OF PROVISIONAL TAX AS A RESULT OF UNDERESTIMATION”;

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

“(a) more than R1 million and such estimate is less than 80 per cent of the amount of the actual taxable income the Commissioner must impose, in addition to the normal tax **[chargeable]** payable in respect of the taxpayer’s taxable income for such year of assessment, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between—

- (i) the amount of normal tax₁ calculated₁ at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act, in respect of a taxable income equal to 80 per cent of such actual taxable income; and
- (ii) the amount of employees’ tax and provisional tax in respect of such year of assessment paid by the end of the year of assessment;

(b) in any other case, less than 90 per cent of the amount of such actual taxable income and is also less than the basic amount applicable to the estimate in question, as contemplated in paragraph 19(1)(d), the taxpayer shall, subject to the provisions of subparagraphs (2) and (3), be liable to pay to the Commissioner, in addition to the normal tax **[chargeable]** payable in respect of his or her taxable income for such year of assessment, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between the lesser of—

- (i) the amount of normal tax₁ calculated₁ at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act, in respect of a taxable income equal to 90 per cent of such actual taxable income; and

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(ii) the amount of normal tax calculated in respect of a taxable income equal to such basic amount, at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act,

and the amount of employees' tax and provisional tax in respect of such year of assessment paid by the end of the year of assessment.”;

(c) by the substitution in subparagraph (1) for the proviso of the following proviso:

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

(d) by the insertion after subsection (2) of the following subsections:

“(2A) If the final or last estimate of his or her taxable income is not submitted in terms of paragraph 19(1)(a) by a provisional taxpayer other than a company, or the estimate of its taxable income in respect of the period contemplated in paragraph 23(b) is not submitted in terms of paragraph 19(1)(b) by a company which is a provisional taxpayer, in respect of any year of assessment, the non-submission shall be deemed to be a nil submission.

(2B) Any penalty imposed under subparagraph (1) in respect of a year of assessment must be reduced by any penalty imposed under paragraph 27(1) in respect of payment referred to in paragraph 21(1)(b) or 23(b).”

(2) Subsection (1) comes into operation for years of assessment commencing on or after 1 March 2015.

Repeal of paragraph 20A of Fourth Schedule to Act 58 of 1962

10. (1) Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) comes into operation for years of assessment commencing on or after 1 March 2015.

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Amendment of paragraph 24 of Fourth Schedule to Act 58 of 1962, as amended by section 30 of Act 88 of 1965, section 54 of Act 85 of 1974 and section 52 of Act 94 of 1983

11. The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 24 of the following paragraph:

“24. The Commissioner may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of paragraph 21(1)(a) **[or paragraph 22]** or paragraph 23(a), if **[he]** the Commissioner is satisfied that the taxable income which may be derived by such taxpayer for the year of assessment in question cannot be estimated on the facts available at the time when payment of the amount in question has to be made.”.

Amendment of paragraph 27 of Fourth Schedule to Act 58 of 1962, as amended by section 43 of Act 121 of 1984, section 29 of Act 65 of 1986, section 48 of Act 32 of 2004 and section 271 read with paragraph 195 of Schedule 1 of Act 28 of 2011

12. The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 27(1) of the following paragraph:

“27. (1) If any provisional taxpayer fails to pay any amount of provisional tax for which **[he or she]** the provisional taxpayer is liable within the period allowed for payment thereof in terms of paragraph 21 or 23, or paragraph 25(1), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to ten per cent of the amount not paid.”.

Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 81 of Act 60 of 2001, section 38 of Act 30 of 2002, section 76 of Act 74 of 2002, section 47 of Act 20 of 2006, section 61 of Act 8 of 2007 and section 96 of Act 7 of 2010

13. Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (5) for the words following item (c) of the following words:

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“that person may only adopt the market value as the valuation date value of that asset if that person has furnished proof of that valuation to the Commissioner in the form as the Commissioner may prescribe, with the first return submitted by that person after the period contemplated in subparagraph (4) **[or, if it was not submitted with that return, within such period as the Commissioner may allow if proof is submitted that the valuation was performed within the period prescribed].**”; and

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

“that person must **[submit] retain** proof of that valuation **[in a form prescribed by the Commissioner with the return for the year of assessment during which that asset was disposed of].**”.

Amendment of section 43 of Act 91 of 1964, as amended by section 6 of Act 105 of 1976, section 7 of Act 112 of 1977, section 6 of Act 86 of 1982, section 32 of Act 45 of 1995, section 34 of Act 34 of 1997, section 124 of Act 60 of 2001, section 45 of Act 30 of 2002, section 23 of Act 34 of 2004, section 8 of Act 36 of 2007 and section 92 of Act 60 of 2008

14. Section 43 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (7) for paragraph (d) of the following paragraph:

“(d) **[No] Except for the liability for duty in terms of the proviso to section 87(1), no** duty shall be payable on any goods to which this subsection relates on disposal as contemplated in paragraph (b), but any duty paid on such goods shall not be refundable.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 9 of Act 98 of 1980, section 8 of Act 86 of 1982, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002, section 138 of Act 45 of 2003, section 3 of Act 10 of 2005, section 90 of Act 31 of 2005, section 11 of Act 36 of 2007 and section 94 of Act 60 of 2008

15. Section 47 of the Customs and Excise Act, 1964, is hereby amended by the addition to subsection (9)(a) of the following subparagraph after subparagraph (iii):

“(iv) **(aa) For the purposes of this subparagraph ‘alcoholic beverages’ means alcoholic beverages as contemplated in Chapter 22 of Part 1 of Schedule No. 1.**

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- (bb) Every manufacturer or importer of an alcoholic beverage must, irrespective of any existing tariff determination at the time this paragraph comes into operation, apply for a tariff determination of that beverage in terms of paragraph (a).
- (cc) An application for a tariff determination must be accompanied by—
- (A) detailed information of the brand, process of manufacture, the ingredients used, the proportion in which they are used, the alcoholic strength and such other particulars as the Commissioner may specify; and
 - (B) evidence that the beverage complies with the Liquor Products Act, 1989 (Act No. 60 of 1989), and the regulations made under that Act.
- (dd) After the date this subparagraph comes into operation, application for a tariff determination must be made before release of a clearance for home consumption of the first importation or before manufacture commences, as may be applicable in respect of each alcoholic beverage.
- (ee) The Commissioner may, for the purposes of implementation of this subparagraph, by rule—
- (A) specify a period after the date this subparagraph comes into operation within which and the order in which any class or kind of alcoholic beverage manufactured or imported must be submitted for tariff determination; and
 - (B) prescribe any other matter as contemplated in subsection (13).
- (ff) If, for any alcoholic beverage, the brand, process of manufacture, any ingredient or the proportion in which it is used, or the alcoholic strength changes, application for a new tariff determination must be made before release of a clearance for home consumption or before manufacture commences, as may be applicable in respect of that alcoholic beverage.”.

Amendment of section 50 of Act 91 of 1964, as inserted by section 66 of Act 30 of 1998

16. Section 50 of the Customs and Excise Act, 1964, is hereby substituted by the following section:

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“Provisions relating to the disclosure of information in terms of agreements [and conventions]

50. (1) Notwithstanding the provisions of section 4(3)[— (a)] or any other law relating to confidentiality or secrecy, but subject to section 101B, the Commissioner may, in accordance with—

[(i)](a) any international agreement [or convention] in respect of [customs co-operation to which the Republic is a party] mutual administrative assistance and cooperation or exchange of information in customs matters which is in force and binds the Republic in terms of section 231 of the Constitution of the Republic of South Africa, 1996, hereinafter referred to as the ‘Constitution’; or

[(ii)](b) any other international agreement **[or convention to which the Republic is a party]** which binds the Republic in terms of section 231 of the Constitution, and in circumstances where the Commissioner is on good cause shown, satisfied that the international or regional interest or national public interest in the disclosure of information outweighs any potential harm to the person, firm or business to whom or to which such information relates—

[(aa)](i) disclose, or for the purpose of **[subparagraph (i)] paragraph (a),** in writing authorise any officer to disclose, any information relating to any person, firm or business acquired by an officer in carrying out any duty under this Act;

[(bb)](ii) render mutual and technical assistance in accordance with any **[convention or]** agreement contemplated in **[subparagraph (i)] paragraph (a);** and

[(cc)](iii) in writing authorise any officer to exercise any power under this Act which may be considered necessary for the **[purposes] purpose** of rendering such assistance or obtaining such information.

(2) (a) (i) If any agreement referred to in subsection (1)(a) provides for the automatic exchange of information of the cross-border movement of means of transport, goods and persons the Commissioner may

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determine the information, including the contents of any documents relating to clearance declarations for such movement, that will be allowed to be disclosed as contemplated in subsection(1)(b)(i).

(ii) Notwithstanding subsection (1) and subparagraph (i), the Commissioner may not disclose information in terms of this section where any of the grounds for refusal referred to in Chapter 4 of the Promotion of Access to Information Act, 2002 (Act No. 2 of 2002), except if disclosure is authorised for the purposes contemplated in section 46 of that Act.

(b) For the purposes of this subsection automatic exchange of information may include the systematic supply of clearance information by the customs authority of the sending party to the agreement to the customs authority of the receiving party in an agreed electronic or other structured format in advance of the arrival of the persons, goods or means of transport in the territory of the receiving party.

(c) Any information automatically exchanged must be treated as confidential by the receiving party and may only be used for the purposes of risk analysis by the customs authority of that party except if the party providing the information in writing authorises its use for other purposes or by other authorities in terms of the provisions of the agreement regulating the exchange of such information.

(d) The Commissioner may, in respect of the automatic exchange of information—

(i) authorise the use for other purposes or by other authorities of the information provided by the other party to the agreement as contemplated in paragraph (c);

(ii) specify conditions on which any information will be exchanged and on which it may be used for any other purpose or by any other authority;

(iii) refuse the exchange of information with a party to any agreement if the information will not be afforded in the territory of that party a level of protection that satisfies the requirements of this Act.

(e) For the purposes of this subsection any reference to the 'Commissioner' includes any officer contemplated in subsection 1 (b).

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~~[(b) the](3) The Commissioner may[, in the circumstances contemplated in paragraph (a)] for the purposes of subsection (1)(b)—~~

~~[(i)](a) disclose[, such] information or [as contemplated in paragraph (a)(i),] authorise [such] disclosure to a person authorised to act on behalf of any international agency, institution or organisation with which an agreement has been entered into with the Republic; and~~

~~[(ii)](b) specify the purpose for which such disclosure is authorised and the manner in which or the conditions under which such disclosure is to be made.~~

~~(4) The Commissioner may make rules in respect of any matter which the Commissioner reasonably considers to be necessary and useful to achieve the efficient and effective administration of this section.~~

Amendment of section 101B of Act 91 of 1964, as inserted by section 38 of Act 61 of 2008

17. Section 101B of the Customs and Excise Act, 1964, is hereby amended—

(a) by the insertion in subsection (1) of the following definition after the definition of “Advance Passenger Information”, “airline” and “operator”:

“ ‘person’ means a natural person and juristic person, unless the context otherwise requires;”;

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

“ ‘personal information’ means information relating to an identified or identifiable natural person and where it is applicable an identified or identifiable juristic person as determined by the Commissioner;”;

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

“(a) applies—

(i) to the Commissioner, an officer, or any person acting under a delegation from or under control or direction of the Commissioner; and

(ii) subject to section 4(3), (3A), (3B), (3C), (3D) and (3E), to any personal information in possession of or under the control of the Commissioner;

(c) regulates the manner in which personal information must be processed and protected by the Commissioner.”;

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

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“(a) The Commissioner or an officer may, subject to subsection (6), obtain and use personal information, if—

(i) Advance Passenger Information, only for the purpose specified in section 7A(2);

(ii) any other personal information obtained from any other source as contemplated in section 4(3), for the administration of any other provision of this Act, including any international agreement contemplated in section 50; or

(iii) provided by a party to an international agreement, in accordance with the provisions of that agreement and section 50.”;

(e) by the substitution in subsection (5)(a) for the words preceding subparagraph (i) of the following words:

“No records containing personal information which allows a **[passenger]** person to be identified shall be retained for longer than necessary for achieving the purpose of **[Advance Passenger Information]** personal information processing, unless—”;

(f) by the substitution in subsection (5)(a) for subparagraphs (i) and (v) of the following subparagraphs:

“(i) the **[passenger]** person authorises such retention;

(v) the personal information has been used to make a decision about a **[passenger]** person and the record must be retained for such a period as may be reasonably required for the **[passenger]** person to request access to the record.”;

(g) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“Personal information may not be further processed in a manner that is not compatible with the purpose for which **[Advance Passenger Information]** that information is obtained and used as contemplated in subsection (3)(a) by the Commissioner, unless—”;

(h) by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) the **[passenger]** person authorises such further processing;”;

(i) by the substitution in subsection (6)(b) for subparagraph (iii) of the following subparagraph:

“(iii) to prevent an imminent and serious threat to public safety or the life or health of the **[passenger]** person; or”;

(j) by the substitution in subsection (7) for paragraph (a) of the following paragraph:

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“(a) whether at the request of a **[passenger] person** or on own initiative, ensure that all records relating to personal information are complete, not misleading, up to date and accurate;”;

(k) by the substitution in subsection (9)(a) for the words preceding subparagraph (i) of the following words:

“Any **[passenger] person** is entitled to—”;

(l) by the substitution in subsection (9) for paragraph (b) of the following paragraph:

“(b) Where a **[passenger] person** makes a request contemplated in paragraph (a), the Commissioner must inform the **[passenger] person** that he or she may request the correction of any such information.”;

(m) by the substitution in subsection (9)(c) for the words preceding subparagraph (i) of the following words:

“Where the Commissioner receives a request for the correction of personal information from a **[passenger] person**, the Commissioner must—”;

(n) by the substitution in subsection (9)(c) for subparagraph (ii) of the following paragraph:

“(ii) in instances where the Commissioner decides on good cause not to correct the information, attach at the request of the **[passenger] person** a statement to the information concerning the correction sought but not made in such a manner that it will always be read together with the information;”;

(o) by the substitution in subsection (9)(c)(iii) for item (bb) of the following item:

“(bb) inform the **[passenger] person** of the actions taken as a result of the request for correction.”;

(p) by the substitution in subsection (10) for paragraphs (a) and (b) of the following paragraphs:

“(a) process personal information concerning a person's religion or philosophy of life, race, political persuasion or health or sexual life, except where the **[passenger] person** has given his or her explicit consent to the processing of the information;

(b) transfer any personal information about a **[passenger] person** to a foreign government other than in the manner contemplated in section 50: Provided that the Commissioner is satisfied that the recipient of that information is subject to a law which effectively upholds principles for fair handling of personal information that are substantially similar to the information protection principles set out in this section.”.

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Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, sections 81 and 108 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008, section 33 of Act 18 of 2009, section 119 of Act 7 of 2010, section 26 of Act 8 of 2010, section 129 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 196 of Schedule 1 to that Act, section 145 of Act 22 of 2012 and section 165 of Act 31 of 2013

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

(a) by the deletion in subsection (1) of the definition of “Controller” and the definition of “Customs and Excise Act”;

(b) by the insertion in subsection (1) of the following definitions before the definition of “customs controlled area”:

“ **‘customs authority’** has the meaning assigned thereto in section 1 of the Customs Control Act;

‘Customs Control Act’ means the Customs Control Act, 2014 (Act No. 31 of 2014);”;

(c) by the substitution in subsection (1) for the definition of “customs controlled area” of the following definition:

“ **‘customs controlled area’** has the meaning assigned thereto in section **[21A(1A) or (1)]₁** of the Customs **[and Excise] Control Act**;”;

(d) by the deletion in subsection (1) of the definition of “customs controlled area enterprise”;

(e) by the insertion in subsection (1) after the definition of “customs controlled area” of the following definition:

“ **‘Customs Duty Act’** means the Customs Duty Act, 2014 (Act No. 30 of 2014);”;

(f) by the insertion in subsection (1) of the following definition after the definition of “entertainment”:

“ **‘Excise Duty Act’** means the Excise Duty Act, 1964 (Act No. 91 of 1964);”;

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- (g) by the insertion in subsection (1) of the following definition after the definition of “grant”:
- “ **‘importation’**, in relation to goods, means when goods—
- (a) enter the Republic; or
- (b) are cleared for home use or a customs procedure before the arrival of the goods in the Republic,
- in terms of the Customs Control Act.”;
- (h) by the deletion in subsection (1) of the definition of “inbound duty and tax free shop”;
- (i) by the substitution in subsection (1) for the definition of “Industrial Development Zone (IDZ)” of the following definition:
- “ [**‘Industrial Development Zone (IDZ)’** has the meaning assigned thereto in **section 21A(1A) or (1) of the Customs and Excise Act**] **‘IDZ’** means an industrial development zone prescribed in an area designated as a Special Economic Zone in terms of section 23 or 24 of the Special Economic Zones Act.”;
- (j) by the substitution in subsection (1) for the definition of “Industrial Development Zone (IDZ) operator” of the following definition:
- “ [**‘Industrial Development Zone (IDZ) operator’** has the meaning assigned thereto in **section 21A(1A) or (1) of the Customs and Excise Act**] **‘IDZ operator’** means an operator defined in section 1 of the Special Economic Zones Act.”;
- (k) by the substitution in subsection (1) in paragraph (a) of the definition of “input tax” for subparagraph (ii) of the following subparagraph:
- “(ii) the vendor on the importation of goods by **[him]** that vendor; or”;
- (l) by the deletion in subsection (1) of the definition of “licensed customs and excise storage warehouse”;
- (m) by the insertion in subsection (1) of the following definitions after the definition of “services”:
- “ **‘SEZ’** means an area designated as a Special Economic Zone in terms of the Special Economic Zones Act;
- ‘SEZ enterprise’** means an SEZ enterprise as defined in section 1 of the Customs Control Act to the extent to which it is carried on in a customs controlled area.”;
- (n) by the insertion in subsection (1) of the following definition after the definition of “South African Revenue Service”:

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“ **‘Special Economic Zones Act’** means the Special Economic Zones Act, 2014 (Act No. 16 of 2014);”;

(o) by the insertion in subsection (1) of the following definition after the definition of “Stamp Duties Act”:

“ **‘storage warehouse’** has the meaning assigned thereto in section 1 of the Customs Control Act;”;

(p) by the insertion in subsection (1) of the following definition after the definition of “tax fraction”:

“ **‘tax free shop’** has the meaning assigned thereto in section 1 of the Customs Control Act;”.

(2) Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (l), (m), (o) and (p) of subsection (1) come into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

(3) Paragraphs (i), (j) and (n) of subsection (1) come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), comes into operation.

Amendment of section 7 of Act 89 of 1991, as amended by section 23 of Act 136 of 1991, section 14 of Act 136 of 1992, section 23 of Act 97 of 1993, section 33 of Act 37 of 1996, section 165 of Act 45 of 2003 and section 94 of Act 32 of 2004

19. (1) Section 7 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(b) on the importation of any goods **[into the Republic]** by any person on or after the commencement date; and”;

(b) by the substitution in subsection (3) for paragraphs (a), (b) and (d) of the following paragraphs:

“(a) Where any goods manufactured in the Republic, being of a class or kind subject to excise duty or environmental levy under Part 2 or 3 of Schedule No. 1 to the **[Customs and] Excise Duty Act**, have been supplied at a price which does not include such excise duty or environmental levy and tax has become payable in respect of the supply in terms of subsection (1)(a), value-added tax shall be levied and paid at the rate of 14 per cent for the benefit of the National Revenue Fund on an amount equal to the amount of such excise duty or environmental levy which, subject to any rebate of such excise duty or environmental levy under the said Act, is paid.

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(b) The tax payable in terms of paragraph (a) shall be paid by the person liable in terms of the **[Customs and] Excise Duty Act** for the payment of the said excise duty or environmental levy.

(d) **[Subject to this Act, the provisions of the Customs and Excise Act relating to the clearance of goods subject to excise duty or environmental levy and the payment of that excise duty or environmental levy shall *mutatis mutandis* have effect as if enacted in this Act]** The tax on the clearance of goods subject to excise duty or environmental levy shall be recovered in terms of the relevant provisions of the Excise Duty Act, as if the tax were an excise duty or environmental levy contemplated in that Act, whether or not the said provisions apply for the purposes of any excise duty or environmental levy levied in terms of that Act.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 of 2007, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009, section 120 of Act 7 of 2010, section 131 of Act 24 of 2011, section 146 of Act 22 of 2012 and section 166 of Act 31 of 2013

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

(a) by the substitution in subsection (24) for the words preceding the further proviso of the following words:

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

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area] SEZ enterprise or IDZ operator, prior to the expiry of the relevant prescribed time period.”; and

(b) by the substitution in subsection (24) for paragraph (a) of the further proviso of the following paragraph:

“(a) goods that are **[deemed to have been imported under paragraph (i) of the proviso to section 13(1)]** cleared for home use in terms of the Customs Control Act; or”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

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

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

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

“(c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or by **[a customs controlled area]** an SEZ enterprise or an IDZ operator in a customs controlled area: Provided that this subsection shall not apply where a ‘motor car’ as defined in section 1 is supplied to **[a person located in a customs controlled area]** an SEZ enterprise or an IDZ operator in a customs controlled area.”;

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

“(h) the goods consist of fuel levy goods referred to in Fuel Item Levy numbers 195.10.03, 195.10.17, 195.20.01 and 195.20.03 in Part 5A of Schedule No. 1 to the Customs **[and Excise]** Duty Act; or”;

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

“(hA) the goods consist of petroleum oil and oils obtained from bituminous minerals, known as crude, referred to in Heading No. 27.09 in Chapter 27 of Part 1 of

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Schedule No. 1 to the Customs **[and Excise] Duty** Act when supplied for the purpose of being refined for the production of fuel levy goods as defined in section 1 of the Customs **[and Excise] Duty** Act; or”;

(d) by the substitution in subsection (1) for paragraph (l) of the following paragraph:

“(l) the goods consist of illuminating kerosene (marked) intended for use as fuel for illuminating or heating, referred to in Fuel Item Levy number 195.10.13 in Part 5A of Schedule No. 1 to the Customs **[and Excise] Duty** Act and are not mixed or blended with another substance; or”;

(e) by the substitution in subsection (1)(m) for the words preceding subparagraph (i) of the following words:

“a vendor supplies movable goods, (excluding any ‘motor car’ as defined in section 1), in terms of a sale or instalment credit agreement to **[a customs controlled area] an SEZ** enterprise or an IDZ operator in a customs controlled area and those goods are physically delivered to that **[customs controlled area] SEZ** enterprise or IDZ operator in a customs controlled area either—”;

(f) by the substitution in subsection (1) for paragraph (mA) of the following paragraph:

“(mA) a vendor supplies fixed property situated in a customs controlled area to **[a customs controlled area] an SEZ** enterprise or an IDZ operator under any agreement of sale or letting or any other agreement under which the use or permission to use such fixed property is granted;”;

(g) by the substitution in subsection (1) for paragraph (u) of the following paragraph:

“(u) the supply of goods, other than the supply of goods by **[an inbound duty and] a** tax free shop, which have been imported and **[entered] cleared** for storage in a **[licensed Customs and Excise]** storage warehouse but have not been **[entered] cleared** for home **[consumption] use**; or”;

(h) by the substitution in subsection (1) for paragraph (v) of the following paragraph:

“(v) the supply of goods by **[an inbound duty and] a** tax free shop;”;

(i) by the substitution in subsection (2) for paragraph (e) of the following paragraph:

“(e) the services comprise the transport of goods or any ancillary transport services supplied directly in connection with the exportation from the Republic or the importation **[into the Republic]** of goods or the movement of goods through the Republic from one export country to another export country, where such services are supplied directly to a person who is not a resident of

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the Republic and is not a vendor, otherwise than through an agent or other person; or”; and

(j) by the substitution in subsection (2) for paragraph (k) of the following paragraph:

“(k) the services are physically rendered elsewhere than in the Republic or to **[a customs controlled area]** an SEZ enterprise or an IDZ operator in a customs controlled area; or”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 69 of Act 19 of 2001 section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006, section 82 of Act 20 of 2006, section 109 of Act 60 of 2008, section 147 of Act 22 of 2012 and section 170 of Act 31 of 2014

22. (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (k) for the words preceding the proviso of the following words:

“the supply of goods in the Republic by any person that is not a resident of the Republic and that is not a vendor, other than the supply of goods by **[an inbound duty and]** a tax free shop, which have not been **[entered]** cleared for home **[consumption]** use.”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

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 item 112 of Schedule 1 to that Act and section 171 of Act 31 of 2013

23. Section 13 of the Value-Added Tax Act, 1991, is hereby amended—

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

“For the purposes of this Act the importation of goods shall be deemed to **[be imported into the Republic]** take place on the date **[on which the goods are]** contemplated in section 22 of the Customs Duty Act, regardless of whether or not

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customs duty is payable or a rebate of customs duty is granted in terms of the **[provisions of the] Customs [and Excise] Control Act [deemed to be imported:]**”;

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

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

“For the purposes of this Act the value to be placed on the importation of goods **[into the Republic]** shall be deemed to be—”;

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

“(a) **[where such goods are entered or are required to be entered for home consumption in terms of the Customs and Excise Act,]** the value **[thereof]** of such goods for customs duty purposes, in terms of the Customs Duty Act, plus any duty levied, in terms of the said Customs Duty Act in respect of the importation of such goods, plus 10 per cent of the said value; or”;

(e) by the substitution for subsection (2A) of the following subsection:

“(2A) The value to be placed on the importation of goods **[into the Republic]** which have been **[imported and entered]** cleared for storage in a **[licensed Customs and Excise]** storage warehouse but have not been **[entered]** cleared for home **[consumption]** use shall be deemed to be the greater of the value determined in terms of subsection (2)(a) or the value of acquisition determined under section 10(3) if those goods while stored in that storage warehouse are supplied to any person before being **[entered]** cleared for home **[consumption]** use.”;

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

“Notwithstanding subsection (2), the value to be placed on the importation of goods **[into the Republic]** where—”;

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

“(a) for the collection (in such manner as the Commissioner may determine) by a SARS official, or the Managing Director of the South African Post Office Limited on behalf of the Commissioner, of the tax payable in terms of this Act in respect of the importation of any goods **[into the Republic]**; and”;

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

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“(6) [Subject to this Act, the provisions of the Customs and Excise Act relating to the importation, transit, coastwise carriage and clearance of goods and the payment and recovery of duty shall *mutatis mutandis* apply as if enacted in this Act, whether or not the said provisions apply for the purposes of any duty levied in terms of the Customs and Excise Act.] The tax on importation of goods shall be recovered in terms of the Customs Duty Act as if the tax were an import duty contemplated in section 18 of that Act, regardless of whether or not the said section applies for the purposes of any import duty levied in terms of that Act.”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011, section 148 of Act 22 of 2012, section 173 of Act 31 of 2013 and section xx of Taxation Laws Amendment Act of 2014

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

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

“No deduction of input tax in respect of a supply of goods or services, the importation of any goods [**into the Republic**] or any other deduction shall be made in terms of this Act, unless—”;

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

“(c) [**sufficient**] records are maintained as required by section 20(8) where the supply is a supply of second-hand goods or a supply of goods as contemplated in section 8(10) and in either case is a supply to which that section relates; or”;

(c) by the substitution in subsection (2) for paragraphs (d) and (dA) of the following paragraphs:

“(d) a [**bill of entry**] release notification or other document prescribed in terms of the Customs [**and Excise**] Control Act together with the receipt for the

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payment of the tax in relation to the said importation have been delivered (including by means of an electronic delivery mechanism) in accordance with that Act and are held by the vendor making that deduction, at the time that any return in respect of that importation is furnished; or

(dA) a **[bill of entry]** release notification or other document prescribed in terms of the Customs **[and Excise]** Control Act as contemplated in section 54(2A), and a statement as contemplated in section 54(3)(b) is held by the vendor at the time that any return in respect of that importation is furnished; or”;

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

“: Provided that where a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with this Act, or a **[bill of entry]** release notification or other document has been delivered (including by means of an electronic delivery mechanism) in accordance with the Customs **[and Excise]** Control Act, as the case may be, the Commissioner may determine that no deduction for input tax in relation to that supply or importation shall be made unless that tax invoice or debit note or credit note or that **[bill of entry]** release notification or other document is retained in accordance with the provisions of section 55 and Part A of Chapter 4 of the Tax Administration Act.”;

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

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

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

(f) by the substitution in paragraph (i) of the proviso to subsection (3) for subparagraph (bb) of the following subparagraph:

“(bb) goods were **[entered]** cleared for home **[consumption]** use in terms of the Customs **[and Excise]** Control Act.”.

(2) Paragraphs (a), (c), (d), (e) and (f) of subsection (1) come into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20

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of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005, section 49 of Act 9 of 2006, section 85 of Act 20 of 2006, section 112 of Act 60 of 2008, section 123 of Act 7 of 2010, section 138 of Act 24 of 2011 and section 149 of Act 22 of 2012

25. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (10) of the following subsection:

“(10) Where—

- (a) goods or services have been supplied by a vendor at the zero rate in terms of **[sections] section** 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k) to a vendor, that is **[a customs controlled area]** an SEZ enterprise or an IDZ operator in a customs controlled area; or
- (b) goods have been imported **[into the Republic]** by a vendor, being **[a customs controlled area]** an SEZ enterprise or an IDZ operator in a customs controlled area and those goods are exempt from tax in terms of section 13(3),

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

$$A \times B$$

in which formula—

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

‘B’ represents—

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

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(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 27 of Act 89 of 1991, as amended by section 34 of Act 136 of 1991, section 28 of Act 136 of 1992, section 78 of Act 30 of 2000, section 11 of Act 10 of 2005, section 50 of Act 9 of 2006, section 1 of Act 3 of 2008, section 25 of Act 4 of 2008, section 271 read with paragraph 120 of Schedule 1 to Act 28 of 2011 and section 22 of Act 39 of 2014

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

- (a) by the deletion in subsection (1) of the definition of “Category F”;
- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 - “(a) Every vendor, not being a vendor who falls within Category C, D[,] or E [**or F**] as contemplated in subsection (3), (4)[,] or (4A) [**or (4B)**], shall fall within Category A or Category B.”;
- (c) by the substitution in subsection (3) for the words following paragraph (c) of the following words:
 - “and the Commissioner has directed that, with effect from the commencement date or such later date as may be appropriate, the vendor shall fall within Category C: Provided that a vendor falling within Category C shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if the vendor has applied in writing to be placed within Category A, B, D[,] or E [**or F**] and the Commissioner is satisfied that by reason of a change in the vendor’s circumstances he satisfies the requirements of this section for placing within Category A, B, D[,] or E [**or F**].”;
- (d) by the substitution in subsection (4) for the words following paragraph (b) of the following words:
 - “and the Commissioner has directed that, with effect from the commencement date or such later date as may be appropriate, the vendor shall fall within Category D: Provided that a vendor falling within Category D shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if written application is made by the person who made the application referred to in subparagraph (v) for the vendor to be placed within Category A, B, C[,] or E [**or F**] or the Commissioner is satisfied that by reason of a

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change in circumstances that vendor should be placed within Category A, B, C[,] or E [or F].”;

(e) by the substitution in subsection (4A) for paragraph (ii) of the proviso of the following paragraph:

“(ii) the Commissioner is satisfied that by reason of a change in circumstances, that vendor should be placed in Category A, B, C[,] or D [or F]; or”; and

(f) by the deletion of subsection (4B).

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

Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 2000, section 180 of Act 45 of 2003, section 41 of Act 34 of 2004, section 38 of Act 32 of 2005, section 87 of Act 20 of 2006 and section 271 read with paragraph 124 of Schedule 1 to Act 28 of 2011

27. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) any person who holds himself out as a person entitled to a refund or who produces, furnishes, authorises, or makes use of any tax invoice or document or debit note and has obtained any undue tax benefit or refund under the provisions of **[an export incentive scheme]** any regulation referred to in paragraph (d) of the definition of ‘exported’ in section 1, to which such person is not entitled.”.

Amendment of section 39 of Act 89 of 1991, as amended by section 136 of 1991, section 30 of Act 136 of 1992, section 6 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997, sections 165 and 166 of Act 60 of 2001, section 184 of Act 45 of 2003, section 50 of Act 16 of 2004, section 105 of Act 32 of 2004, section 22 of Act 9 of 2005, section 39 of Act 32 of 2005, section 114 of Act 60 of 2008, section 39 of Act 18 of 2009 and section 271 read with paragraph 128 of Schedule 1 to Act 28 of 2011

28. (1) Section 39 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(4) Where any importer of goods which are required to be **[entered]** cleared under the Customs **[and Excise]** Control Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date **[on which the goods are entered under the said Act for home consumption in the Republic**

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or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later] contemplated in section 13(1), the Commissioner must, in accordance with Chapter 15 of the Tax Administration Act, impose on that importer a penalty equal to 10 per cent of the said amount of tax.”;

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

“(5) Where any person who is liable for the payment of tax fails to pay any amount of such tax on the date on which in terms of the **[Customs and] Excise Duty Act**, liability arises for the payment of the excise duty or environmental levy referred to in section 7(3)(a), the Commissioner must, in accordance with Chapter 15 of the Tax Administration Act, impose on that person a penalty equal to 10 per cent of the said amount of tax.”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001, section 88 of Act 20 of 2006, section 36 of Act 36 of 2007, section 43 of Act 61 of 2008, section 271 read with item 133 of Schedule 1 to Act 28 of 2011 and section 180 of Act 31 of 2013

29. Section 44 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (9) of the following subsection:

“(9) The Commissioner may make or authorise a refund of any amount of tax which has become refundable to any person under the provisions of **[an export incentive scheme]** any regulation referred to in paragraph (d) of the definition of ‘exported’ in section 1.”.

Amendment of section 45 of Act 89 of 1991, as substituted by section 271 read with paragraph 134 of Schedule 1 to Act 28 of 2011

30. Section 45 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Despite the provisions of Chapter 12 of the Tax Administration Act, if a person fails to[—

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- (a) without just cause submit relevant material, requested by SARS for purposes of verification, inspection or audit of a refund in accordance with Chapter 5 of the Tax Administration Act; or**
- (b)]** furnish SARS in writing with particulars of the account required in terms of section 44(3)(d) to enable SARS to transfer a refund to that account, no interest accrues on the amount refundable for the period from the date that—
 - (i) in respect of subparagraph (a), the relevant material was required to be submitted; or**
 - (ii) in respect of subparagraph (b),]** the refund is authorised, until the date that the person submits the **[relevant material or]** bank account particulars.”.

Amendment of section 54 of Act 89 of 1991, as amended by section 40 of Act 136 of 1991, section 34 of Act 136 of 1992, section 25 of Act 20 of 1994, section 46 of Act 27 of 1997, section 100 of Act 53 of 1999 and section 51 of Act 16 of 2004

31. (1) Section 54 of the Value-Added Tax Act, 1991, is hereby amended—

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

“: Provided that a **[bill of entry] release notification** or other document prescribed in terms of the Customs **[and Excise] Control** Act in relation to that importation may nevertheless be held by such agent.”;

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

“(b) a **[bill of entry] release notification** or other document prescribed in terms of the Customs **[and Excise] Control** Act in relation to the importation of goods is held by an agent as contemplated in subsection (2A),”; and

(c) by the substitution in subsection (6)(b) for subparagraph (i) of the following subparagraph:

“(i) the supply is directly in connection with either the exportation, or the arranging of the exportation, of goods from the Republic to any country or place outside the Republic, or the importation, or the arranging of the importation, of goods **[to the Republic]** from any country or place outside the Republic, including, in either case, the transportation of those goods within the Republic as part of such exportation or importation, as the case may be; or”.

(2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

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Amendment of section 30 of Act 34 of 1997

32. Section 30 of the South African Revenue Service Act, 1997, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) No person may **[apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between the company, body, firm, business or undertaking and SARS]**—

(a) use the name or abbreviated name or any logo or design of SARS without its authorisation;

(b) falsely represent any material or substance as emanating from SARS;

(c) use any name or description which implies some association or connection between the person or any corporate entity, body, firm, business or undertaking and SARS; or

(d) register or use a domain name which incorporates the name or description South African Revenue Service or SARS or the name or description of any of its subsidiaries.”.

Insertion of section 6 in Act 26 of 2007

33. The Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007), is hereby amended by the insertion of the following section:

“Penalty on default

6. If any tax remains unpaid after the relevant date for payment referred to in section 3 the Commissioner must, under Chapter 15 of the Tax Administration Act, 2011, impose a penalty of 10 per cent of the unpaid tax but the Commissioner may remit the penalty or any portion thereof in accordance with the provisions of Chapter 15 of the Tax Administration Act, 2011.”.

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

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

(a) by the substitution for the definition of “international tax agreement” of the following definition:

“ ‘**international tax agreement**’ means an agreement entered into with the government of another country—

(a) in accordance with a tax Act; or

(b) any other agreement entered into between the competent authority of the Republic and the competent authority of another country relating to the automatic exchange of information under an international tax agreement;”;

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

“ ‘**relevant material**’ means any information, document or thing that in the opinion of SARS is **[foreseeably]** foreseeably relevant for the administration of a tax Act as referred to in section 3;”;

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

“ ‘**return**’ means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment, **[or]** is a basis on which an assessment is to be made by SARS or incorporates relevant material requested by SARS;”.

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

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

“(3) If SARS **[has]**, in accordance with an international agreement, received a request for, wishes to spontaneously exchange or is obliged to exchange—”.

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

36. Section 26 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A person required under subsection (1) to submit a return must do so in the prescribed form and manner and the return must—

(a) contain the information prescribed by the Commissioner; [and]

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- (b) **[must]** be a full and true return; and
- (c) for purposes of providing the information required in the return, comply with the due diligence requirements as may be prescribed in a tax Act, an international tax agreement or by the Commissioner in the public notice consistent with an international standard for exchange of information.”.

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

37. (1) Section 34 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution for the definition of “participant” of the following definition:
- “ **‘participant’**, in relation to an ‘arrangement’, means—
- (a) a ‘promoter’; or
- (b) a **[company or trust which]** person who directly or indirectly **[derives]** will derive or assumes that **[it]** the person **[derives]** will derive a ‘tax benefit’ or ‘financial benefit’ by virtue of an ‘arrangement’;”;
- (b) by the substitution for the definition of “promoter” of the following definition:
- “ **‘promoter’**, in relation to an ‘arrangement’, means a person who is principally responsible for organising, designing, selling, financing or managing the **[reportable]** ‘arrangement’;”;
- (c) by the insertion after the definition of “promoter” of the following definition:
- “ **‘reportable arrangement’** means an ‘arrangement’ referred to in section 35(1) or 35(2);” and
- (d) by the substitution for the definition of “tax benefit” of the following definition:
- “ **‘tax benefit’** **[includes]** means the avoidance, postponement **[or]**, reduction or evasion of a liability for tax.”.
- (2) Subsection (1) comes into operation on 16 July 2014.

Amendment of section 35 of Act 28 of 2011

38. (1) Section 35 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “An ‘arrangement’ is a ‘reportable arrangement’ **[if it is listed in terms of subsection (2) or]** if a **[‘tax benefit’ is or will be derived or is assumed to be**

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derived by any] person is a 'participant' [by virtue of] in the 'arrangement' and the 'arrangement'—"; and

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

"(2) [The] An 'arrangement' is a 'reportable arrangement' if the Commissioner [may list an 'arrangement' by public notice, if] is satisfied that any person is a 'participant' in the 'arrangement' [may lead to an undue a 'tax benefit'] and has listed the 'arrangement' in a public notice."

(2) Subsection (1) comes into operation on 16 July 2014.

Amendment of section 36 of Act 28 of 2011, as amended by section 46 of Act 21 of 2012

39. (1) Section 36 of the Tax Administration Act, 2011, is hereby amended—

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

"An 'arrangement' is an excluded 'arrangement' and not a 'reportable arrangement' if it is—"; and

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

"(4) The Commissioner may determine an 'arrangement' to be an excluded 'arrangement' by public notice, if satisfied that the 'arrangement' is not likely to lead to [an undue] a 'tax benefit'."

(2) Subsection (1) comes into operation on 16 July 2014.

Amendment of section 37 of Act 28 of 2011, as amended by section 47 of Act 21 of 2012

40. (1) Section 37 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for subsections (1), (2) and (3) of the following subsections respectively:

"(1) The ['promoter' must disclose the]** information referred to in section 38 in respect of a 'reportable [**']arrangement' must be disclosed by a person who—****

(a) is a 'participant' in an 'arrangement' on the date on which it qualifies as a 'reportable arrangement', within 45 business days after that date; or

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(b) becomes a 'participant' in an 'arrangement' after the date on which it qualifies as a 'reportable arrangement', within 45 business days after becoming a 'participant'.

[(2) If there is no 'promoter' in relation to the 'arrangement' or if the 'promoter' is not a resident, all other 'participants' must disclose the information.]

(3) A 'participant' need not disclose the information if the 'participant' obtains a written statement from[—

(a) the 'promoter' that the 'promoter' has disclosed the 'arrangement'; or

(b)] any other 'participant'[, if subsection (2) applies,] that the other 'participant' has disclosed the 'reportable [']arrangement'."; and

(b) by the deletion of subsection (4).

(2) Subsection (1) comes into operation on 16 July 2014.

Amendment of section 38 of Act 28 of 2011

41. (1) Section 38 of the Tax Administration Act, 2011, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The [**'promoter' or 'participant' must submit,**] following information in relation to a 'reportable arrangement', must be submitted in the prescribed form and manner and by the date specified[—].”

(2) Subsection (1) comes into operation on 16 July 2014.

Amendment of section 39 of Act 28 of 2011

42. (1) The Tax Administration Act, 2011, is hereby amended by the substitution for section 39 of the following section:

“Reportable arrangement reference number

39. SARS must, after receipt of the information contemplated in section 38, issue a 'reportable arrangement' reference number to each 'participant' for administrative purposes only.

(2) Subsection (1) comes into operation on 16 July 2014.

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

43. Section 46 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) A person receiving from SARS a request for relevant material under this section must submit the relevant material to SARS at the place, in the format and within the time specified in the request.”.

Amendment of section 50 of Act 28 of 2011

44. Section 50 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A judge may, on application made *ex parte* and authorised by a senior SARS official grant an order in terms of which a person described in section 51(3) is designated to act as presiding officer at the inquiry referred to in this section.”

Amendment of section 162 of Act 28 of 2011

45. Section 162 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) **[SARS]** The Commissioner may by public notice prescribe the method of payment of tax, including electronically.”.

Amendment of section 164 of Act 28 of 2011, as amended by section 58 of Act 39 of 2013

46. Section 164 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraphs (b) and (c) of the following paragraphs:

“(b) **[the amount of tax involved]** the merits of the taxpayer’s basis of disputing the assessment and the strength of the disputed assessment as are evident from any document related to the assessment;

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- (c) the amount of tax involved and the risk of dissipation of assets by the taxpayer concerned during the period of suspension or other indications of jeopardy of recovery of the amount;”.

Amendment of section 184 of Act 28 of 2011

47. The Tax Administration Act, 2011, is hereby amended by the substitution for section 184 of the following section:

“Recovery of tax debts from [responsible third parties] other persons

184. (1) SARS has the same powers of recovery against the assets of a person [referred to in] who is personally liable under section 155, 157, 179, 180, 181, 182 or 183 of this Part as SARS has against the assets of the taxpayer and the person has the same rights and remedies as the taxpayer has against such powers of recovery.

(2) SARS must provide a [responsible third party] person referred to in subsection (1) with an opportunity to make representations—

- (a) before the [responsible third party] person is held liable for the tax debt of the taxpayer in terms of section 155, 157, 179, 180, 181, 182 or 183, if this will not place the collection of tax in jeopardy; or
- (b) as soon as practical after the [responsible third party] person is held liable for the tax debt of the taxpayer in terms of section 155, 157, 179, 180, 181, 182 or 183.”.

Amendment of section 187 of Act 28 of 2011

48. Section 187 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Interest payable under a tax Act is calculated on—

- (a) the daily balance owing; or
- (b) the daily balance owing and compounded monthly, [and] which method of determining interest will apply to a tax type from the date the Commissioner [may] [prescribe] prescribes it by public notice [from which date this method of determining interest will apply to a tax type].”.

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Amendment of section 190 of Act 28 of 2011, as amended by section 71 of Act 39 of 2013

49. Section 190 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) A person is entitled to a refund under subsection (1)~~[(b)]~~ only if the refund is claimed by the person **[within three years,]** in the case of—

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

(b) [five years, in the case of] self-assessment, within five years from the date [of the assessment] the return had to be submitted or, in the absence of a return, payment had to be made in terms of the relevant tax Act.”.

Amendment of section 194 of Act 28 of 2011

50. The Tax Administration Act, 2011, is hereby amended by the substitution for section 194 of the following section:

“Application of Chapter

194. **[This]** Parts C and D of this Chapter [applies] apply only in respect of a tax debt owed by a ‘debtor’ if the liability to pay the tax debt is not disputed by the ‘debtor’.”.

Amendment of section 195 of Act 28 of 2011

51. Section 195 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A senior SARS official may decide to temporarily ‘write off’ an amount of tax debt—

(a) if satisfied that the tax debt is uneconomical to pursue as described in section 196 at that time; or

(b) for the duration of the period that the ‘debtor’ is subject to business rescue proceedings under Chapter 6 of the ‘Companies Act’, as referred to in section 132 of that Act.”.

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Amendment of section 207 of Act 28 of 2011

52. Section 207 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister a summary of the tax debts which were ‘written off’ or ‘compromised’ in whole or in part during the period covered by the summary, which must—

- (a) be in a format which, subject to section 70(5), does not disclose the identity of the ‘debtor’ concerned;
- (b) be submitted **[by the end of the month]** within 60 business days following the end of the fiscal year; and
- (c) contain details of the number of tax debts ‘written off’ or ‘compromised’[,], and the amount of revenue forgone, **[and the estimated amount of savings in costs of recovery,]** which must be reflected in respect of main classes of taxpayers or sections of the public.”.

Amendment of section 240 of Act 28 of 2011, as amended by section 82 of Act 21 of 2012 and section 81 of Act 39 of 2013

53. Section 240 of the Tax Administration Act, 2011, is hereby amended—

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

“A person may not register as a tax practitioner under subsection (1) or SARS may deregister a registered tax practitioner if the person—”;

(b) by the substitution in subsection (3) for the full stop at the end of paragraph (b) of a semicolon;

(c) by the addition to subsection (3) of the following paragraph:

“(c) during the preceding five years has been convicted of a serious tax offence.”;

and

(d) by the addition of the following subsection:

“(4) If criminal proceedings for a serious tax offence have been instituted but not finalised against a person, a senior SARS official may—

(a) not register the person as a registered tax practitioner; or

(b) suspend the registration of the person as a registered tax practitioner,

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for the duration of the criminal proceedings commencing on the date that prosecution is instituted and ending on the date that the person is finally acquitted.”.

Amendment of section 240A of Act 28 of 2011, as amended by section 83 of Act 21 of 2002 and section 82 of Act 39 of 2013

54. (1) Section 240A of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A body must within the prescribed time period and in the prescribed form and manner, if recognised under—

(a) subsection (1), submit a list of its members to whom the provisions under section 240(1) apply; and

(b) subsection (2) [must], submit a report on its members and compliance with this Chapter [within the prescribed time period and in the prescribed form and manner].”.

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

Amendment of section 248 of Act 28 of 2011

55. Section 248 of the Tax Administration Act, 2011, is hereby amended by—

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

“Public officer in event of liquidation [or], winding-up or business rescue”;

(b) the renumbering of section 248 to subsection (1); and

(c) the addition of the following subsection:

“(2) In the event of a company referred to in section 246(1) being subject to a business rescue plan referred to in Part D of Chapter 6 of the ‘Companies Act’, the business rescue practitioner as defined in that Act is required to exercise, in respect of the company, all the functions and assume all the responsibilities of a public officer under a tax Act for the period that the company is subject to the business rescue plan.”.

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Amendment of section 255 of Act 28 of 2011, as amended by section 88 of Act 21 of 2012

56. Section 255 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) SARS may, in the case of a return or other document submitted in electronic format, accept an electronic or digital signature of a person as a valid signature for purposes of a tax Act if a signature is required.”.

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

57. (1) The following section is hereby substituted for section 256 of the Tax Administration Act, 2011:

“Tax [clearance certificate] compliance status”

256. (1) A taxpayer may apply, in the prescribed form and manner, to SARS for a **[tax clearance certificate in the prescribed form and manner]** confirmation of the taxpayer’s tax compliance status.

(2) SARS must issue or decline to issue the **[certificate]** confirmation of the taxpayer’s tax compliance status within 21 business days from the date the application is submitted or such longer period as may reasonably be required if a senior SARS official is satisfied that the **[issuing of a tax clearance certificate]** confirmation of the taxpayer’s tax compliance status may prejudice the efficient and effective collection of revenue.

(3) A senior SARS official may provide a taxpayer with confirmation of the taxpayer’s tax compliance status **[and may confirm that the taxpayer is tax compliant by issuing a tax clearance certificate]** as compliant only if satisfied that the taxpayer is registered for tax and does not have any—

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

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(b) outstanding return unless an arrangement acceptable to the SARS official has been made for the submission of the return; or

(c) outstanding request from SARS to provide relevant material if in the opinion of the SARS official there is no just cause for the delay.

(4) A **[tax clearance certificate]** confirmation of tax compliance status must be in the prescribed **[form]** format and include at least—

(a) the original date of issue of the tax **[clearance certificate]** compliance status confirmation to the taxpayer;

(b) the name, taxpayer reference number[, **address**] and identity number or company registration number of the taxpayer;

(c) the date of the **[application for a certificate]** confirmation of the tax compliance status of the taxpayer to an organ of state or a person referred to in subsection (5); and

(d) a **[statement]** confirmation of the tax compliance status of the taxpayer [that the taxpayer is tax compliant as determined on the original date of issue of the certificate] as at the date referred to in subparagraph (c)]; and

(e) the expiry date of the certificate].

(5) Despite the provisions of Chapter 6, SARS may confirm the taxpayer's tax compliance status as at the date of a request by **[a sphere of government, parastatal or other]**—

(a) an organ of state; or

(b) a person to whom the taxpayer has presented the [certificate] tax compliance status confirmation.

(6) SARS may **[withdraw a certificate with effect from the date of the issue thereof if the certificate]** alter the taxpayer's tax compliance status to non-compliant if the confirmation—

(a) was issued in error; or

(b) was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts.

(7) A **[certificate is invalid]** taxpayer's tax compliance status will be indicated as non-compliant by SARS for the period commencing on the date that the taxpayer no longer complies with a requirement under subsection (3) and ending on the date that the taxpayer remedies the non-compliance.”.

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

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Amendment of section 270 of Act 28 of 2011, as amended by section 86 of Act 39 of 2013

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

(a) by the substitution in subsection (6D) for paragraphs (a) and (b) of the following paragraphs:

“(a) the Income Tax Act, excluding returns required under the Fourth Schedule to that Act, a senior SARS official must, in considering the objection, reduce the penalty in whole or in part if satisfied that there were extenuating circumstances; or

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

(b) by the repeal of subsection (8).

Repeal of section 11 of Act 21 of 2012

59. (1) The Tax Administration Laws Amendment Act, 2012, is hereby amended by the repeal of section 11.

(2) Subsection (1) is deemed to have come into operation on 30 June 2013.

Amendment of section 26 of Act 21 of 2012

60. Section 26 of the Tax Administration Laws Amendment Act, 2012, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection ~~[(1)](1)(a)~~ is deemed to have come into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.”.

Amendment of section 88 of Act 30 of 2014

61. Section 88(1)(a) of the Customs Duty Act, 2014 (Act No. 30 of 2014), is hereby amended by the substitution for subparagraph (iii) of the following subparagraph:

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“(iii) an origin determination or origin re-determination referred to in section 156(2);
or”.

Amendment of section 201 of Act 30 of 2014

62. Section 201 of the Customs Duty Act, 2014, is hereby amended by—

(a) the substitution in subsection (2) for the Table of the following Table:

“FIXED AMOUNT PENALTIES

Category of breach	Amount of penalty
Category A	Maximum of R2500
Category B	R5 000
Category C	R7 500
Category D	R10 000

”; and

(b) the addition of the following subsection:

“(4) No fixed amount penalty may be imposed in terms of this section for a breach consisting of a failure to submit to the customs authority full or accurate information, other than information that may result in revenue prejudice, if the breach was committed inadvertently and in good faith.”.

Amendment of section 202 of Act 30 of 2014

63. Section 202 of the Customs Duty Act, 2014, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The customs authority may for a Category A breach referred to in the Table in section 201(2) consisting of a failure to submit to the customs authority full or accurate information other than information that may result in revenue prejudice, impose in terms of subsection (1) a fixed amount penalty for the breach only after it has issued a warning for the same or a similar type of breach to the person who committed the breach.”.

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Amendment of section 221 of Act 30 of 2014

64. The following section is hereby substituted for section 221 of the Customs Duty Act, 2014:

“Admissibility of certain statements in documents

221. In any criminal or civil proceedings arising from the **[application]** implementation or enforcement of this Act, any statement in any record, letter or other document submitted, kept or received by or on behalf of any person to the effect that goods of a particular price, value (including any commission, discount, cost, charge, expense, royalty, freight, tax, drawback, refund, rebate or other information which relates to such goods and has a bearing on such price or value), quantity, quality, nature, strength or other characteristic have been produced, imported, exported, ordered, supplied, purchased, sold, dealt with, processed, traded in or held in stock by that person, is admissible as evidence that that person has produced, imported, exported, ordered, supplied, purchased, sold, dealt with, processed, traded in or held in stock goods of that price, value, quantity, quality, nature, strength or other characteristic.”.

Amendment of section 177 of Act 31 of 2014

65. Section 177 of the Customs Control Act, 2014, is hereby amended by the addition of the following subsection:

“(5) Subsection (4) only applies if a change referred to in paragraph (a) of that subsection, or any refund, amount, discount, commission or credit or debit referred to in paragraph (b) of that subsection, affects any information included in the clearance declaration submitted in respect of the goods to which the invoice relates.”.

Amendment of section 178 of Act 31 of 2014

66. Section 178 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) notify the customs authority of—

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- (i) any amendment to an invoice that affects any information included in the clearance declaration submitted in respect of the goods to which the invoice relates; or
- (ii) the receipt of such an amended invoice or a debit or credit note; and”.

Amendment of section 241 of Act 31 of 2014

67. Section 241 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsections:

“(2) This Chapter applies to the transfer of imported goods **[at a customs seaport or airport]**—

(a) from one foreign-going vessel or aircraft to another foreign-going vessel or aircraft at the same customs seaport or airport; or

(b) from one foreign-going vessel at a customs seaport to another foreign-going vessel at another customs seaport served by the same Customs Office.

(3) Any reference in this Act to a customs seaport where a transshipment operation is carried out must, where subsection (2)(b) applies, be read as referring to both customs seaports as contemplated in that subsection.”.

Amendment of section 242 of Act 31 of 2014

68. Section 242 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) to be transferred **[at a customs seaport or airport]**—

(i) from the foreign-going vessel **[or aircraft]** on which those goods were imported to another foreign-going vessel **[or aircraft at that seaport or airport]** on which those goods are to be exported from the Republic, whether the exporting vessel is docked at the same seaport as the importing vessel or at another seaport served by the same Customs Office; or

(ii) at the same customs airport from the foreign-going aircraft on which those goods were imported to another foreign-going aircraft on which those goods are to be exported from the Republic; and”.

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Amendment of section 634 of Act 31 of 2014

69. Section 634 of the Customs Control Act, 2014, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) Subsection (2) does not apply to—

(a) the licensee of inward or home use processing premises importing goods for inward or home use processing on those premises; or

(b) the licensee of inward processing premises exporting inward processed compensating products obtained from the inward processing of goods on those premises.”.

Short title and commencement

70. (1) This Act is called the Tax Administration Laws Amendment Act, 2014.

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

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

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DRAFT MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2014

1. PURPOSE OF BILL

The Bill proposes to amend administrative provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007), the Tax Administration Act, 2011 (Act No. 28 of 2011), the Tax Administration Laws Amendment Act, 2012 (Act No. 21 of 2012), the Customs Duty Act, 2014, and the Customs Control Act, 2014.

2. OBJECTS OF BILL

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

Decisions made under certain provisions of the Income Tax Act are subject to objection and appeal under section 3 of that Act. The amendment adds a reference to decisions made under paragraph 5(2) of the Fourth Schedule to that Act. It also removes decisions under paragraph 20(1)(a) and (2) and 20A(1) and (2) of the Fourth Schedule as the procedure for the imposition, remittal and objection and appeal of these penalties are regulated under Chapter 15 of the Tax Administration Act, 2011.

2.2 *Income Tax Act, 1962: Amendment of section 30*

Books of account, records or other documents relating to any approved public benefit organisation (PBO) must be retained and carefully preserved for a period of four years after the date of the last entry in any book or, if kept in electronic or any other form, for a period of four years after completion of the transactions, act or operations to which they relate. The duty to keep records under section 29 of the Tax Administration Act, 2011, is a period of five years from the date of the submission of an income tax return. The amendment proposes to align the record-keeping requirements relating to PBOs in the Income Tax Act with the requirements of the Tax Administration Act, 2011.

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

The Tax Administration Laws Amendment Act, 2013, inserted a return obligation for persons receiving exempt dividends. Section 64K(1)(d) of the Income Tax Act presently requires returns when a section 64F exempt dividend is paid in cash. The amendment proposes to extend the return obligation where *in specie* dividends, exempt in terms of section 64FA of the Act, are paid or received.

2.4 *Income Tax Act, 1962: Insertion of section 64MA*

The amendment enables a company to claim a refund of dividends tax paid to SARS where the company had to pay the tax in respect of the distribution of dividends *in specie* as a result of being unable to obtain the declaration and written undertaking contemplated in section 64FA(1)(a) or (2) of the Income Tax Act.

For example, a listed South African corporation undertakes an unbundling exercise in terms of which the unbundled shares are distributed as assets *in specie* to its shareholders. The company is liable for the dividends tax unless the shareholder has, by the date of the distribution of the asset *in specie* submitted to the company a declaration that the dividends are exempt or that a reduced dividends tax rate can be applied. The listed corporation is not able to obtain the relevant declarations as it does not have the detailed shareholder information at hand and hence could not obtain the information by the time the transaction took place etc. As such, the listed corporation is liable for dividends tax on the asset *in specie* and, as a result of the limited application of section 64L, is not able to claim a refund of any dividends tax which would not have been payable had the corporation been in possession of the declarations.

2.5 *Income Tax Act, 1962: Amendment of section 89bis*

Paragraph 22 of the Fourth Schedule was repealed. The proposed amendment deletes an obsolete reference to this paragraph.

2.6 *Income Tax Act, 1962: Amendment of section 89quin*

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The proposed amendment is consequential to the repeal of section 88 of the Income Tax Act by Schedule 1 to the Tax Administration Act, 2011, and inserts the reference to section 164 of the Tax Administration Act which is the relevant provision (post the repeal of section 88) that regulates interest in cases where the payment of the tax was suspended subject to objection and appeal.

2.7 Income Tax Act, 1962: Amendment of paragraph 18 of Fourth Schedule

The amendment proposes to align the exemptions from payment of provisional tax for people 65 years or older with those of people under 65. The threshold for taxable income derived from interest, foreign dividends and fixed property rentals is raised from R20 000 (previously only applicable to under 65s) to R30 000 for all natural persons.

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

Paragraph (a): The proposed amendment provides that amounts contained in paragraph (d) of "gross income" (other than severance benefits) must be excluded from the basic amount due to the irregular and once-off nature of these amounts. The amendments to subsubitems (aa) and (bb) are consequential to the insertion of item (cc) in paragraph 19(1)(d)(i).

Paragraph (b): Paragraph (b) of the proviso to paragraph 19(1)(d) of the Fourth Schedule serves no purpose due to the more important 18 month test in paragraph (a). It is proposed that paragraph (b) be deleted.

Paragraph (c): The proviso to paragraph 19(1)(e)(ii) is in conflict with the 14 day rule for the use of the most recent assessment for determining a basic amount. Taxpayers accessing the provisional tax function on e-Filing long before the final date of payment of provisional tax can use the basic amount generated by the system at that stage and then argue that the 14 day rule cannot be applied.

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

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Paragraph (a): The heading is amended to clarify the type of penalty. See further paragraph 2.10 below.

Paragraph (b): Paragraph 20 refers to normal tax and not *net* normal tax. In the case of an underestimation the penalty may be levied on the tax determined before deducting rebates. This needs to be rectified. The proposed amendment will have the effect that in the case of individuals, whenever the calculation of normal tax is to be done, tax rebates are also to be deducted.

Paragraph (c): The proposed amendment provides that irregular and once-off payments included in "gross income" under paragraph (d) of the definition in section 1 are added to the exclusions in the proviso to paragraph 20(1).

Paragraph (d): It has been argued that if the provisional taxpayer does not submit his or her second estimate, then the provisions of paragraph 20 do not apply. The *rationale* behind this argument is that paragraph 20 is based on the submitted estimate and there is no provision that provides that non-submission of the estimate would be deemed to be a nil submission. The proposed amendment aims to clarify SARS's position that where a person does not submit his or her estimate as required then that estimate is deemed to be a nil estimate. A person who does not submit the estimate at all cannot be better off than a person who did submit the estimate but under estimated his or her taxable income.

The insertion of subsection (2B) allows for the reduction of a penalty imposed under paragraph 20(1) by the amount of a penalty imposed under paragraph 27 in respect of the same provisional tax period.

2.10 Income Tax Act, 1962: Repeal of paragraph 20A of Fourth Schedule

An underestimation contemplated in paragraph 20 of the Fourth Schedule may result in a penalty under both paragraphs 20(1) and 20A(1). This constitutes administrative double jeopardy as both penalties arise from the same default. This is constitutionally impermissible as being contrary to the right to administrative justice. Also, paragraph 20 has been amended to allow a reduction of a penalty under paragraph 20(1) by the amount of any penalty under paragraph 27 for the late payment of provisional tax. This approach is

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thus aligned with the Tax Administration Act scheme under which a default may not be subjected to both an administrative non-compliance penalty and an understatement penalty.

2.11 *Income Tax Act, 1962: Amendment of paragraph 24 of Fourth Schedule*

Paragraph 22 of the Fourth Schedule was repealed. The proposed amendment deletes an obsolete reference to this paragraph and effects a textual correction.

2.12 *Income Tax Act, 1962: Amendment of paragraph 27 of Fourth Schedule*

See paragraph 2.10 above.

2.13 *Income Tax Act, 1962: Amendment of paragraph 29 of Eighth Schedule*

Paragraph (a): The provisions of this paragraph dealt with a transitional rule as far as the valuation date (1 October 2001) value of valued assets is concerned. It is partially obsolete as it is not the intention that the Commissioner will extend the date of the submission of proof of valuation to a date after the date of the first return submitted after 30 September 2004. It is proposed that the following words be deleted: “or, if it was not submitted with that return, within such period as the Commissioner may allow if proof is submitted that the valuation was performed within the period prescribed”.

Paragraph (b): SARS no longer requires taxpayers to submit supporting documents with their tax returns as these will be specifically requested by SARS if the taxpayer is selected for a verification of audit. The proposed amendment brings paragraph 29(6) in line with this practice. Taxpayers must, however, retain proof of valuation of assets should they wish to adopt the market value basis for determining the valuation date value of a pre-valuation date asset.

2.14 *Customs and Excise Act, 1964: Amendment of section 43*

Section 43(7) of the Customs and Excise Act provides for the disposal of various goods. Paragraph (d) provides that no duty is payable on any goods to which the subsection

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relates on disposal as contemplated in paragraph (b) of the subsection, but any duty paid is not refundable. Section 87(1) provides for the circumstances in which goods are liable to forfeiture. In terms of a proviso to the section forfeiture does not affect liability to any other penalty or punishment which has been incurred under the Act or any other law, or liability for any unpaid duty or charge in respect of the goods.

The proposed amendment to paragraph (d) is intended to clarify that the liability for duty in terms of the proviso to section 87(1) is not included in the exemption in paragraph (d) for payment of duty on the goods disposed in terms of the subsection.

2.15 *Customs and Excise Act, 1964: Amendment of section 47*

Liquor manufacturers may currently request tariff determinations from SARS to obtain certainty on the appropriate tariff classification and excise duty rate applicable to their products. These voluntary applications for tariff determinations are now made compulsory to ensure that all alcoholic beverages are accurately and consistently classified. Any new alcoholic beverage or existing beverage that changes its production process, ingredients or proportion thereof, alcoholic strength or brand name is now made subject to a compulsory tariff determination before release for home consumption or before manufacture commences. Substantiating information will have to be submitted, together with evidence of compliance with the requirements of the Liquor Products Act, 1989 (Act No. 60 of 1989), to promote harmonisation with agricultural legislation. These compulsory tariff determinations will be phased in to ease their administrative burden.

2.16 *Customs and Excise Act, 1964: Amendment of section 50*

Section 50 of the Customs and Excise Act provides for the exchange of information in terms of agreements and conventions. The amendment proposes provisions for the exchange of information as well as the automatic exchange of information, which include the systematic supply of clearance information by the customs authority of the sending party to the agreement to the customs authority of the receiving party in an agreed electronic or other structured format in advance of the arrival of the persons, goods or means of transport in the territory of the receiving party.

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It now provides that any information automatically exchanged must be treated as confidential by the receiving party and may only be used for the purposes of risk analysis by the customs authority of that party except if the Commissioner in writing authorises its use for other purposes or by other authorities in terms of the provisions of the agreement regulating the exchange of such information. The disclosure of information is made subject to section 101B in which provision is made for the protection of personal information.

The proposed amendment also empowers the Commissioner, in respect of the automatic exchange of information, to specify conditions on which any information will be exchanged and on which it may be used for any other purpose or by any other authority and refuse the exchange of information with a party to any agreement if the information will be afforded in the territory of that party a level of protection that does not satisfy the requirements of this Act.

2.17 Customs and Excise Act, 1964: Amendment of section 101B

Section 101B of the Customs and Excise Act presently provides for the processing and protection of personal information of a passenger transmitted to the Commissioner as Advance Personal Information in terms of section 7A. The amendments are related to the amendments to section 50 for the exchange and automatic exchange of information in terms of international agreements.

Paragraph (a): The amendments propose that the provisions for "passenger" in the section should be substituted by a provision for "person", which is defined as meaning a natural and juristic person, unless the context otherwise requires.

Paragraph (b): Personal information is also defined as meaning information relating to an identified or identifiable natural person and where it is applicable an identified or identifiable juristic person.

Paragraph (c): In terms of amendments to subsection (2), the section applies (subject to section 4(3) and other subsections of section 4, which relate to the disclosure of information) to any personal information in possession or under the control of the Commissioner.

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Paragraph (d): The amendments to subsection (3) include proposals that the Commissioner may obtain and use personal information for the administration of any other provision of the Act including any international agreement contemplated in section 50. If the personal information is provided by a party to an international agreement the Commissioner may obtain and use the information in accordance with the provisions of that agreement and section 50.

Paragraph (e) to (p): See notes to paragraphs (a) and (b).

Subsection (10)(b) provides that the Commissioner may not transfer any information to a foreign government other than in a manner contemplated in section 50, provided that the Commissioner is satisfied that the recipient of that information is subject to a law which effectively upholds principles of fair handling of personal information that are substantially similar to the information protection principles set out in the section.

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

The Value-Added Tax Act relies to a large extent on certain provisions and procedures performed in the current Customs and Excise Act, 1964, relating to the export and import of goods. This is to ensure that the correct VAT rate or exemption is applied to exports and imports whilst aligning the rules pertaining to the time and value of exports and imports. The new Customs Control Act, 2014, and the Customs Duty Act, 2014, are to replace the existing Customs and Excise Act, 1964. This required a review and alignment of the Value-Added Tax Act, 1991, and the two new Acts. The proposed amendments in this paragraph as well as paragraphs 2.19 to 2.25, 2.27, 2.29 and 2.31 hereunder flow from the process of review and alignment with the aforementioned Acts.

2.19 *Value-Added Tax Act, 1991: Amendment of section 7*

See paragraph 2.18 above.

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

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See paragraph 2.18 above.

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

See paragraph 2.18 above.

2.22 Value-Added Tax Act, 1991: Amendment of section 12

See paragraph 2.18 above.

2.23 Value-Added Tax Act, 1991: Amendment of section 13

See paragraph 2.18 above.

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

Paragraphs (a), (c), (d), (e) and (f): See paragraph 2.18 above.

Paragraph (b): The entitlement to deduct input tax is, *inter alia*, dependant on the vendor obtaining and retaining documentary evidence in support of the amount that is deducted. In this regard the deduction of input tax in respect of the acquisition of second-hand goods is dependent on the vendor obtaining and retaining the records stipulated in section 20(8) of the Value-Added Tax Act. The amendment clarifies that the records to be obtained and retained are the declaration as well as the details stipulated in paragraphs (a) to (f) of section 20(8).

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

See paragraph 2.18 above.

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

The fourth-monthly VAT category for vendors was introduced in 2005 to assist small retailers. Vendors qualify if taxable supplies constitute R1.5 million or less during a 12-

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month period. Less than 1 000 vendors, with only R44 million output tax and R23 million input tax, were registered for this provision in 2012/13. Government proposes to eliminate this category and to bring registered vendors into the bimonthly category. The proposed amendment gives effect to Government's proposal.

2.27 Value-Added Tax Act, 1991: Amendment of section 31

See paragraph 2.18 above.

2.28 Value-Added Tax Act, 1991: Amendment of section 39

See paragraph 2.18 above.

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

See paragraph 2.18 above.

2.30 Value-Added Tax Act, 1991: Amendment of section 45

It is argued that the suspension of interest on refunds subject to an audit is contrary to the neutralization of interest across all tax types and is not in accordance with the *rationale* of "time-value of money" encapsulated in the Tax Administration Act, 2011. The proposed amendment therefore deletes the suspension of interest in instances where SARS requested relevant material for purposes of audit. In practice, it has also proven factually difficult to apply.

2.31 Value-Added Tax Act, 1991: Amendment of section 54

See paragraph 2.18 above.

2.32 South African Revenue Service Act, 1997: Amendment of section 30

Section 30 of the South African Revenue Service Act was found to be too restrictive in its prohibition in preventing the unlawful use of SARS's names, trademarks and logos.

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Fraudulent use of SARS's names, trademarks and logos by for example bogus tax practitioners has become prevalent and has been aggravated by improper and unauthorised use in domain names, the internet and social media. The purpose of the proposed amendment is to broaden SARS's protection against unlawful use of its intellectual property and to protect the broad public from fraudulent schemes and misrepresentations of SARS's names and logos on the internet, in various media as false advertising and on goods.

2.33 *Securities Transfer Tax Administration Act, 2007: Amendment of section 6*

The proposed amendment aligns the late payment penalty provisions of the Securities Transfer Tax Administration Act with those of the Tax Administration Act, 2011. The specific provision imposing a penalty for the unpaid tax is retained in the relevant tax Act, whereas the remittance of that penalty as well as other general procedural matters relating to that penalty (which is an administrative non-compliance penalty) must be dealt with in accordance with the procedures in Chapter 15 of the Tax Administration Act, 2011. This is also the legislative scheme applied in other tax Acts that impose late payment penalties.

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

Paragraph (a): This amendment ensures that the definition of an international tax agreement includes all agreements under which SARS exchanges information with other countries.

Paragraph (b): This amendment clarifies that the statutory duty to determine the relevance of any information, document or thing for purposes of e.g. a verification or audit, is that of SARS and the term foreseeable relevance does not imply that taxpayers may unilaterally decide relevance and refuse to provide access thereto.

Paragraph (c): This amendment clarifies that a return is also an information gathering mechanism to obtain for example a), third party information which may not necessarily constitute a basis of an assessment but is simply used by SARS to verify the correctness of taxpayer returns or b), information required for purposes of meeting SARS's exchange of information obligations under international tax agreements.

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2.35 Tax Administration Act, 2011: Amendment of section 3

This amendment ensures that the subsection not only caters for requests for information under an international tax agreement but also spontaneous and automatic exchange of information.

2.36 Tax Administration Act, 2011: Amendment of section 26

Certain international tax agreements impose due diligence obligations on third parties required to submit information in returns for exchange of information purposes.

2.37 Tax Administration Act, 2011: Amendment of section 34

Paragraph (a): The proposed amendment widens the definition of a participant to include persons other than companies and trusts and clarifies that the definition only applies to participants who will derive or assume they will derive a tax benefit or financial benefit by virtue of an arrangement.

Paragraph (b): The proposed amendment corrects the reference to an arrangement, rather than a reportable arrangement.

Paragraph (c): The proposed amendment inserts a definition for reportable arrangement for clarification purposes.

Paragraph (d): It is proposed that the definition of tax benefit be made more specific and to include tax evasion as a tax benefit for purposes of the reportable arrangement legislative scheme.

2.38 Tax Administration Act, 2011: Amendment of section 35

Paragraph (a): The proposed changes are textual in order to make a clear distinction between subsections (1) and (2) and to correct the references to defined terms.

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Paragraph (b): There has been some uncertainty about when a tax benefit is 'undue'. This change is proposed in order to provide more certainty about the circumstances under which the Commissioner may list an arrangement. At the same time, greater certainty is afforded to the term 'tax benefit'.

2.39 Tax Administration Act, 2011: Amendment of section 36

There has been some uncertainty about when a tax benefit is 'undue'. This change is proposed in order to provide more certainty about the circumstances under which the Commissioner may list an arrangement as not being likely to give rise to a tax benefit.

2.40 Tax Administration Act, 2011: Amendment of section 37

Paragraph (a): The proposed change clarifies the reporting obligation of the promoter of an arrangement and all of the participants. Because participant is defined to include a promoter it is unnecessary to define separate reporting obligations for each. The proposed change also clarifies that all participants to a reportable arrangement are responsible for reporting that arrangement and when the reporting obligation arises. The arrangement is reportable within 45 business days of becoming a reportable arrangement, or within 45 days of a person becoming a participant in an existing reportable arrangement. A participant need not report the arrangement if that participant has a written statement from any other participant that the arrangement has been reported.

Paragraph (b): The deletion of subsection (4) is consequential to the amendments to subsection (1).

2.41 Tax Administration Act, 2011: Amendment of section 38

This amendment is consequential on the amendments to section 37 clarifying the reporting obligation of participants.

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2.42 Tax Administration Act, 2011: Amendment of section 39

The proposed amendment is consequential on the insertion of a definition of “reportable arrangement” in section 34.

2.43 Tax Administration Act, 2011: Amendment of section 46

It has happened that taxpayers refused to provide information in a certain format, particularly electronic format even if this is the “original” source of the information, and are only prepared to hand over print-outs. Although this is implicit from the ambit of section 46 read with section 30 of the Tax Administration Act the proposed amendment will clarify the fact that SARS may specify the format in which the relevant material requested by SARS must be submitted in order to avoid similar disputes in the future.

2.44 Tax Administration Act, 2011: Amendment of section 50

The proposed amendment clarifies that the senior SARS official need not personally bring the intended application but must only authorise the bringing of the application by SARS.

2.45 Tax Administration Act, 2011: Amendment of section 162

The proposed amendment seeks to specify that the method of payment of tax may be prescribed by the Commissioner by public notice.

2.46 Tax Administration Act, 2011: Amendment of section 164

The proposed amendment clarifies that SARS may, in considering a request for suspension of disputed tax, consider the merits of the taxpayer’s arguments, to the extent available as the suspension may be requested prior to lodging an objection, as well as the strength of the disputed assessment. Although the factors listed in section 164(3) were never intended to be exhaustive as a SARS official is administratively obliged to look at all relevant factors, the amendment will clarify that the merits are relevant to the extent available.

2.47 Tax Administration Act, 2011: Amendment of section 184

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Currently, although it is evident that SARS must have *prima facie* grounds to believe and bears the onus to prove that a representative taxpayer or withholding agent is personally liable under section 155 or 157 of the Tax Administration Act, as the case by be, the Act does not provide for a process to recover the tax from such persons, as section 184 does not apply to them and currently only applies to sections 180 to 183. Despite the fact that a person appointed under section 179 may be personally liable in the circumstances referred to in section 179(3), section 179 is also excluded from section 184.

This appears to be an oversight. Personal liability for the tax debt of another person under section 155 or 157 does not constitute a tax liability of the representative taxpayer or withholding agent and thus cannot be a basis for issuing an assessment against them under the Act. This essentially means that once satisfied that there are *prima facie* grounds to believe a representative taxpayer, withholding agent or person appointed under section 179 is personally liable under section 155, 157 or 179, and after following administratively fair procedures as required under the Promotion of Administrative Justice Act, 2000, SARS can only institute a normal civil claim against such representative taxpayer or withholding agent and may not use any of its expedited recovery powers under Chapter 11 of the Act. The proposed amendment aims to rectify this oversight and enables SARS to use the same powers of recovery under section 184 of the Act against the assets of a personally liable representative taxpayer, withholding agent or person appointed under section 179, as well as providing them with the protection afforded under this section.

2.48 Tax Administration Act, 2011: Amendment of section 187

This amendment clarifies that simple interest applies to a given tax type until such time that the Commissioner issues a public notice to the effect that compounded interest will apply to that tax type.

2.49 Tax Administration Act, 2011: Amendment of section 190

The proposed amendment aims to clarify that a refund in the case of self-assessment where a return is required e.g. VAT, must be made within five years from the date the return has to be submitted or if no return was submitted, the date that payment had to be made.

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2.50 Tax Administration Act, 2011: Amendment of section 194

The proposed amendment will enable SARS to temporarily write-off a tax debt where it is evident that the tax debt is uneconomical to pursue and is thus akin to a “doubtful debt”, despite the fact that the tax debt may still be disputed by the debtor. Debts that are temporarily written off may be reinstated once it becomes economical to pursue.

2.51 Tax Administration Act, 2011: Amendment of section 195

A tax debt can be written off temporarily if it is “uneconomical to pursue”. “Uneconomical to pursue” means that the total cost of recovery of that tax debt is likely to exceed the anticipated amount to be recovered. In order to determine whether the cost of recovery is likely to exceed the anticipated amount to be recovered a senior SARS official must have regard to factors such as the steps that have been taken to date to recover the tax debt and the costs involved in those steps, the likely cost of continuing action to recover the tax debt and the anticipated return from that action, the financial position of the debtor, including the debtor’s assets and liabilities, cash flow and possible future income streams.

Where a taxpayer is engaged in business rescue proceedings SARS’s recovery efforts are suspended *ex lege* until the business rescue proceedings are over or when the business rescue plan has failed, and the tax debt becomes recoverable again. Consequently a tax debt tied up in this procedure cannot easily meet the test of “uneconomical to pursue” as laid out above and it is proposed that the tax debt may be temporarily written off by SARS for the duration of the period that the debtor is subject to the business rescue proceedings. The temporary write off of a tax debt does not absolve the debtor from paying but allows SARS to suspend collection proceedings which by law it is obliged to do, until such time as the business rescue proceedings come to an end and the debt is economical to pursue.

2.52 Tax Administration Act, 2011: Amendment of section 207

The proposed amendment allows SARS more time to submit its report on tax debts which were written off or compromised. It furthermore removes the onerous and impractical requirement to calculate an estimate of the amount of savings in costs of recovery, as it will

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not in all cases be the reason for the write off or compromise or quantifiable. A tax debt may on another basis be written off or compromised where in the best interest of the state and these records as a result of strict corporate governance procedures are available for inspection by the Auditor-General.

2.53 Tax Administration Act, 2011: Amendment of section 240

Paragraphs (a) and (b): The proposed amendment clarifies that if qualifying criminal convictions of a registered tax practitioner are discovered subsequent to registration SARS may deregister the practitioner.

Paragraph (c): The proposed amendment enables SARS to prevent the registration of a person as a tax practitioner or to deregister a person as a tax practitioner where that person was convicted of a serious tax offence in the preceding five years.

Paragraph (d): The proposed amendment addresses the practical problem that a registered tax practitioner may continue to practice as such, and even continue with unlawful practices, despite pending criminal proceedings for a serious tax offence. In view of the fact that criminal proceedings may take a substantial amount of time to finalise, this amendment enables SARS to refuse to register the practitioner or suspend the practitioner as a temporary measure to protect itself as well as taxpayers. This suspension may only be effected once prosecution by the National Prosecuting Authority is instituted indicating that there is a *prima facie* case with reasonable prospect of success. Once finally acquitted, the person will be allowed to register or the suspension will be lifted.

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

The proposed amendment provides that each of the statutory recognised controlling bodies referred to in section 240A(1) must submit a list of its members, to whom the provisions of section 240(1) apply, to SARS. SARS can use this information to verify if these members are duly registered as tax practitioners.

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2.55 Tax Administration Act, 2011: Amendment of section 248

The proposed amendment provides that where a company is subject to a business rescue plan in terms of Chapter 6 of the Companies Act, 2007, the business rescue practitioner is required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under a tax Act for the duration of the period that the company is subject to the business rescue plan.

2.56 Tax Administration Act, 2011: Amendment of section 255

Section 255(2) of the Tax Administration Act permits the use of electronic or digital signatures for returns or other documents submitted in electronic format. Subsection (2) permits the use of an electronic or digital signature for a return or other document. Subsection (3) deals with the question of whether an electronic or digital signature has been used with the authority of the person whose signature has been used. A cross-reference to “the person” has been inserted in subsection (2) to clarify which person is referred to for purposes of subsection (3).

2.57 Tax Administration Act, 2011: Amendment of section 256

A new tax clearance system has been operationalised by SARS in order to modernise and improve the functionality by SARS of issuing tax clearance certificates for purposes of e.g. government tenders for both taxpayers and third parties that have to award the tender. The wording of section 256 of the Tax Administration Act is amended significantly to align the section with the new modernised confirmation of tax compliance status system and to deal with certain practical implications encountered in the implementation thereof.

2.58 Tax Administration Act, 2011: Amendment of section 270

Paragraph (a): In the Tax Administration Laws Amendment Act, 2013, section 270(6D) was amended to accommodate the difference in the additional tax scheme under the Value-Added Tax Act, 1991, and the understatement penalty scheme in the Tax Administration Act in the sense that an understatement made in a value-added tax (VAT) return submitted before the commencement date of the Act will only result in additional tax if there was intent

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to evade tax. Under the understatement penalty scheme, a penalty may also be imposed if reasonable care was not taken, no reasonable tax position existed or gross negligence existed. In other words, the Act removes the intent requirement as the basis for the imposition of additional tax under the Value-Added Tax Act, 1991.

While removing the intent requirement may create penalties that did not previously exist, it will not establish duties that, properly understood, the Value-Added Tax Act, 1991, did not already impose such as the obligation to submit true and correct returns. The amendment at the time provided that a senior SARS official who considers an objection by the taxpayer against an understatement penalty imposed as a result of an understatement in a VAT return submitted before the commencement of the Act, must reduce the penalty in whole if the penalty was imposed under circumstances other than the circumstances referred to in item (v) of the understatement penalty table i.e. an intent to evade tax.

As a similar basis i.e. intent to evade, was applied for the imposition of additional tax in terms of the paragraph 6(2A) of the Fourth Schedule to the Income Tax Act, 1962, prior to its repeal by the Act. It is proposed that PAYE must be treated the same as VAT for purposes of section 270(6D), as both required an intention to evade tax prior to the imposition of additional tax.

Paragraph (b): This amendment is consequential to the amendment of section 187(2).

2.59 Tax Administration Laws Amendment Act, 2012: Repeal of section 11

The earlier (2012) version of the withholding tax on interest was inserted by section 69 of Act 22 of 2012 (money Bill provisions) and by section 11 of Act 21 of 2012 (administration provisions). Section 69 of Act 22 of 2012 was repealed by section 199 of Act 31 of 2013 when revised withholding tax on interest provisions was introduced. The effective date for this was 30 June 2013.

To complete the exercise section 11 of Act 21 of 2012 must also be repealed, as from the same date. The proposed deletion takes place in the Tax Administration Laws Amendment Bill, 2014, as the amendment deals with administrative provisions.

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2.60 *Tax Administration Laws Amendment Act, 2012: Amendment of section 26*

The effective date of 1 March 2014 should apply only to the amendment contained in section 26(1)(a). The other amendments contained in that section are deemed to have come into operation on the date of the promulgation of the Act, i.e. 20 December 2012.

2.61 *Customs Duty Act, 2014: Amendment of section 88*

The proposed amendment is a technical correction to insert a word inadvertently omitted.

2.62 *Customs Duty Act, 2014: Amendment of section 201*

Paragraph (a): The proposed substitution of the Table in subsection (2) is aimed at the alignment of section 201 with section 876 of the Customs Control Act, 2014, and in particular aligns the penalty amounts for the different categories of breaches with the penalty amounts in the Customs Control Act.

Paragraph (b): The proposed amendment is aimed at the alignment of section 201 of the Customs Duty Act with section 876 of the Customs Control Act, 2014, and inserts subsection (4) providing that a fixed amount penalty may not be imposed for a breach consisting of a failure to submit full or accurate information other than information that may result in revenue prejudice, if the breach was committed inadvertently and in good faith.

2.63 *Customs Duty Act, 2014: Amendment of section 202*

The proposed substitution of subsection (3) is aimed at the alignment of section 202 of the Customs Duty Act with section 877 of the Customs Control Act, 2014, and provides for the customs authority to impose a fixed amount penalty for a Category A breach referred to in the Table in section 201(2) of the Act consisting of a failure to submit full or accurate information other than information that may result in revenue prejudice, only after it has issued a warning for the same or a similar type of breach.

2.64 *Customs Duty Act, 2014: Amendment of section 221*

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The proposed amendment of section 221 of the Customs Duty Act contains an amendment of a technical nature and also corrects an error in respect of a word inadvertently omitted.

2.65 *Customs Control Act, 2014: Amendment of section 177*

The proposed amendment inserts a new subsection (5) limiting the application of subsection (4) which provides for a person clearing goods to notify the customs authority of any change in the particulars on an invoice or other circumstances described in the subsection. The effect of the proposed subsection (5) is that a notification is only required if the change referred to in subsection (4) affects any of the information included in the clearance declaration submitted in respect of the goods to which the invoice relates.

2.66 *Customs Control Act, 2014: Amendment of section 178*

The proposed amendment is related to the amendment in section 177 of the Customs Control Act and qualifies section 178(5)(a)(i) by providing that notification in terms of this subsection must only take place if an amendment to an invoice affects any of the information included in the clearance declaration submitted in respect of the goods to which the invoice relates.

2.67 *Customs Control Act, 2014: Amendment of section 241*

The proposed amendment is aimed at widening the application of Chapter 11 of the Customs Control Act to also include the transfer of goods from one foreign-going vessel at a customs seaport to another foreign-going vessel at another seaport which is served by the same Customs Office. This is to make provision for the transfer of goods between the customs seaports Port Elizabeth and Port of Ngqura.

2.68 *Customs Control Act, 2014: Amendment of section 242*

The proposed amendment is consequential to the amendment of section 241 of the Customs Control Act.

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2.69 *Customs Control Act, 2014: Amendment of section 634*

The proposed amendment is aimed at avoiding a double licensing requirement in respect of licensees of inward or home use processing premises. In terms of section 634(2) of the Customs Control Act no person may import goods for inward processing or home use processing unless that person is licensed as an importer for inward or home use processing. Similarly no person may export goods as inward processed compensating products unless that person is licensed as an exporter of inward processed compensating products. Section 630 of the Act however also requires inward processing premises or home use processing premises to be licensed. The proposed inserted subsection (2A) provides that subsection (2) does not apply in the case where the premises are licensed as required in terms of section 630.

2.70 *Short title and commencement*

Clause 70 provides for the name of the proposed Act. Different provisions of the Act may come into operation 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 2014 Budget Review, tabled in Parliament on 26 February 2014.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the

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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.