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REPUBLIC OF SOUTH AFRICA

**TAXATION LAWS SECOND
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary
published in Government Gazette No. 00000 of 00 March 2009)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

1 June 2009

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the—

- Estate Duty Act, 1955, so as to amend a time period; to repeal a section;
- Transfer Duty Act, 1949, so as to extend a time period;
- Income Tax Act, 1958, so as to insert new provisions; to amend the calculation of interest; to amend a definition; to effect textual and consequential amendments;
- Customs and Excise Act, 1964, so as to amend provisions empowering the withdrawal or amendment of a decision, notice or communication; to amend provisions regulating the removal in bond of goods; amend provisions regulating the exportation of goods from a customs and excise warehouse; to insert special provisions regarding the storage and clearance of stores, spares and equipment supplied to foreign-going ships and aircraft; to insert a provision specifying circumstances in which goods free of duty may be entered under a rebate item of Schedule No. 4; to amend provisions under which a penalty may be mitigated or remitted; to insert provisions in respect of schemes for purposes of avoiding liability for duty or reducing amounts of duty payable; to amend provisions regulating payment of outstanding amounts and interest; and to insert a provision empowering the making of rules for the purposes of modernising customs administration.

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- **Diamond Act, 1986, so as to clarify an existing provision;**
 - **Value-Added Tax Act, 1991, so as to insert a definition; to insert new provisions; to amend the calculation of interest; to effect textual and consequential amendments;**
 - **Skills Development Levies Act, 1999, so as to amend a definition; to insert new provisions; to amend the payment of interest; to effect textual and consequential amendments;**
 - **Unemployment Insurance Contributions Act, 2002, so as to amend a definition; to insert new provisions; to amend the calculation of interest; to effect textual and consequential amendments;**
 - **Diamond Export Levy (Administration) Act, 2007, so as to amend a time-period; to amend refunds; to amend the calculation of interest; to effect textual and consequential amendments;**
 - **Diamond Export Levy Act, 2007, so as to clarify an existing provision;**
 - **Securities Transfer Tax Act, 2007, so as to extend a time period;**
 - **Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to amend effective dates; provide for nonbinding private opinions; to effect textual amendments;**
- and to provide for matters connected therewith.**

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

1. Allocation of payments received in terms of Acts administered by the Commissioner for the South African Revenue Service

(1) Notwithstanding anything to the contrary contained in any Act administered by the Commissioner of the South African Revenue Service, in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), where any person does not designate the purpose of any payment made in terms of these

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Acts, the Commissioner may allocate such payment against the oldest amount of tax, levy, penalty or interest, outstanding at the time of the payment, other than amounts for which collection has been suspended in terms of any of those Acts.

(2) For purposes of subsection (1), the Commissioner may apply the first in first out principle in respect of a specific tax type, a group of tax types or all tax types in the manner as may be determined by the Commissioner.

(3) In the event a payment in subsection (1) is insufficient to extinguish all debts of the same age, the amount of the payment may be allocated among these debts as may be determined by the Commissioner.

(4) The age of a tax debt for purposes of subsection (1) is determined according to the duration from the date the debt became payable in terms of these Acts.”.

Special zero-rating in respect of goods or services supplied by Cricket South Africa

2. (1) The supply of goods or services by Cricket South Africa in respect of the staging of the 2009 International Premier League event in the Republic shall be subject to value-added tax imposed in terms of section 7(1) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), at the zero rate to the extent that consideration for that supply is received from the Board of Cricket Control of India.

(2) Subsection (1) is deemed to have come into operation on 1 April 2009.

Amendment of section 2 of Act 40 of 1949, as amended by section 1 of Act 59 of 1951, section 1 of Act 31 of 1953, section 1 of Act 32 of 1954, section 2 of Act 77 of 1964, section 1 of Act 56 of 1966, section 2 of Act 66 of 1973, section 3 of Act 88 of 1974, section 5 of Act 106 of 1980, section 3 of Act 87 of 1988, section 2 of Act 136 of 1992, section 3 of Act 97 of 1993, section 1 of Act 37 of 1995, section 9 of Act 37 of 1996, section 2 of Act 32 of 1999, section 2 of Act 30 of 2002, section 31 of Act 12 of 2003, section 1 of Act 16

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of 2004, section 1 of Act 9 of 2005, section 1 of Act 31 of 2005 and section 14 of Act 9 of 2006

3. (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If the Minister makes an announcement contemplated in subsection (2), that reduction or change comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of **[six]** 12 months from that date unless Parliament passes legislation giving effect to that announcement within that period of **[six]** 12 months.”.

Amendment of section 9A of Act 45 of 1955, as inserted by section 7 of Act 86 of 1987 and amended by section 14 of Act 60 of 2001

4. (1) Section 9A of the Estate Duty Act, 1955, is hereby amended by the substitution in paragraph (b) for subparagraph (i) of the proviso of the following subparagraph:

“(i) after the expiration of **[five years from the date of the assessment notice in terms of which any value or amount which should have been assessed to duty under such assessment was not so assessed or in terms of which the amount of duty assessed was less than the amount of such duty which was properly chargeable,]**—

(aa) three years from the date of a notice of assessment issued in terms of section 9(3) or 4(c); or

(bb) five years from the date on which a notice of assessment is deemed to have been issued as contemplated in section 9(4)(a) and (b).

unless the Commissioner is satisfied that the fact that the value or amount which should have been assessed to duty was not so assessed or the fact that the full amount of duty chargeable was not

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assessed, was due to fraud or misrepresentation or non-disclosure of material facts; or”.

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

Amendment of section 12 of Act 45 of 1955

5. (1) Section 12 of the Estate Duty Act, 1955, is hereby amended by the substitution for the proviso of the following proviso:

“: Provided that the liability under this section of any executor shall be a liability in his capacity as executor only and for an amount not exceeding the available assets in the estate, unless the liability is due to fraud.”.

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

Repeal of section 19 of Act 45 of 1955

6. (1) The Estate Duty Act, 1955, is hereby amended by the repeal of section 19.

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

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998, section 11 of Act 53 of 1999, section 14 of Act 30 of 2000, section 19 of Act 60 of 2001, section 8 of Act 74 of 2002, section 34 of Act 12 of 2003, section 14 of Act 45 of 2003, section 9 of Act 10 of 2006, section 3 of Act 21 of 2006,

7. Section 4 of the Income Tax Act, 1962, is hereby amended by—

(a) adding the word “or” at the end of item (iii) in subparagraph (c) of the proviso;

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(b) adding the following item to subparagraph (c) of the proviso:

“(iv) disclosing to an employer of a registered taxpayer, the tax reference number, identity number, physical or postal address of that taxpayer or such other non-financial information as the Commissioner may determine.”.

Amendment of section 6quat of Act 58 of 1962 as inserted by section 9 of Act 89 of 1969, repealed by section 5 of Act 94 of 1983, inserted by section 5 of Act 85 of 1987, amended by section 5 of Act 8 of 1997, amended by section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007

8. Section 6quat of the Income Tax Act, 1962, is hereby amended by—

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

“(4) For the purposes of this section the amount of any foreign tax proved to be payable as contemplated in subsection (1A) or (1C) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be **[converted]** translated to the currency of the Republic on the last day of that year of assessment by applying the average exchange rate for that year of assessment.”; and

(b) the insertion after subsection (4) of the following subsection:

“(4A) If the amount translated in accordance with subsection (4) includes a number of cents that is less than one rand, that amount must be rounded off to the nearest rand.”.

Amendment of section 69 of Act 58 of 1962, as inserted by section 8 of Act 34 of 2004, and amended by section 16 of Act 76 of 1968, section 37 of Act

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90 of 1988, section 38 of Act 101 of 1990, and repealed by section 32 of Act 129 of 1991, and inserted by section 62 of Act 45 of 2003 and amended by section 8 of Act 34 of 2004

9. Section 69 of the Income Tax Act, 1962, is hereby amended by the substitution for item (i) in subparagraph (a) of the following item:

“(i) the full names **[and]**, address and income tax reference number, if available;”.

Amendment of section 70 of Act 58 of 1962, as amended by section 11 of Act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974, section 24 of Act 69 of 1975, section 26 of Act 28 of 1997, section 37 of Act 53 of 1999, section 42 of Act 30 of 2000, section 44 of Act 59 of 2000, section 63 of Act 45 of 2003 and section 10 of Act 4 of 2008

10. (1) Section 70 of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (2), (3), (3A) and (3B).

Amendment of section 70A of Act 58 of 1962, as substituted by section 40 of Act 74 of 2002

11. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 70A of the following section:

“Return of information by portfolio of collective investment scheme

70A. Any portfolio of a collective investment scheme **[contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1] in securities**, and any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), managed or carried on by a company registered

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under section 42 of that Act for the purposes of Part V of that Act, shall furnish to the Commissioner an annual return in such form as the Commissioner may prescribe.”.

(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

Repeal of section 72 of Act 58 of 1962 as amended by section 72 of Act 59 of 2000 and section 12 of Act 4 of 2008

12. The Income Tax Act, 1962, is hereby amended by the repeal of section 72.

Insertion of section 73BA in Act 58 of 1962

13. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 73B of the following section:

“Record keeping in relation to declarations and undertakings for purposes of dividends tax

73BA. Any person that submits, receives or relies on any written declaration or undertaking contemplated in Part VIII of Chapter II must retain a copy of that declaration or undertaking for a period of five years from the date on which that declaration or undertaking was submitted, received or relied on by that person.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962 (as inserted by section 56(1) of the Revenue Laws Amendment Act, 2008 (Act No. 60 of 2008)), comes into operation.

Amendment to section 88 of Act 58 of 1962, as amended by section 12 of Act 6 of 1963, section 44 of Act 85 of 1974, section 25 of Act 103 of 1976,

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section 24 of Act 91 of 1982, section 30 of Act 121 of 1984, section 17 of Act 70 of 1989, section 40 of Act 113 of 1993, section 14 of Act 32 of 2005, section 60 of Act 60 of 2001 and section 17 of Act 4 of 2008

14. The Income Tax Act, 1962, is hereby amended by the substitution for section 88 of the following section—

“88. Payment of tax pending appeal.—(1) Unless the Commissioner otherwise directs in terms of subsection (4) [The]—

(a) the obligation to pay any tax chargeable under this Act [shall not];
and

(b) the right to receive and recover any tax chargeable under this Act[, shall not, unless the Commissioner so directs,]

shall not be suspended [by any] during the duration of an objection or appeal or pending the decision of a court of law under section 86A[, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or that court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate, the interest being calculated from the date proved to the satisfaction of the Commissioner to be the date on which that excess was received and amounts short-paid being recoverable with interest calculated as provided in section 89].

(2) A taxpayer may request the Commissioner to suspend the obligation to pay the amount of tax in dispute under this section.

(3) The Commissioner may request a taxpayer who has lodged an objection or appeal and requests suspension of payment, to provide information concerning the taxpayer’s financial position, or to update previously provided information.

(4) The Commissioner may, upon request by the taxpayer pursuant to the lodging of an objection or appeal, suspend payment of the portion of the

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tax, chargeable under the assessment, which is in dispute having regard to—

- (a) the compliance history of the taxpayer;
- (b) the amount of tax involved;
- (c) the risk of dissipation of assets by the taxpayer concerned during the period of suspension;
- (d) whether the taxpayer has an arguable case;
- (e) whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;
- (f) whether fraud is involved in the origin of the dispute, or
- (g) whether the taxpayer has failed to furnish information requested under subsection (3).

(5) The Commissioner may revoke a decision to suspend payment in terms of subsection (4) with immediate effect whenever he or she is satisfied that—

- (a) there is a collection risk;
- (b) sequestration or liquidation proceedings are imminent; or
- (c) the taxpayer has employed dilatory tactics in conducting the objection or appeal; or
- (d) it appears that the taxpayer does not have an arguable case.

(6) Where any assessment is altered in accordance with—

- (a) an objection or appeal;
- (b) a decision by a court of law under Section 86A; or
- (c) a decision by the Commissioner to concede the appeal to the tax board or the tax court of that court of law,

a due adjustment must be made, amounts paid in excess refunded with interest at the prescribed rate, the interest being calculated to the date the refunded tax is paid and amounts short-paid being recoverable with interest calculated as provided in section 89.

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~~[(2)](7)~~ The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the National Revenue Fund.

~~[(3)](8)~~ The provisions of section 102 (3) apply *mutatis mutandis* in respect of any amount refundable and any interest payable by the Commissioner under this [subsection (1)] section.”.

Amendment of section 88A of Act 58 of 1962 as inserted by section 74 of Act 45 of 2003,

15. Section 88A of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “**dispute**” of the following definition:

““**dispute**” means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law which arises pursuant to the issue of an assessment;”.

Amendment of section 89quin of Act 58 of 1962 as inserted by section 34 of Act 121 of 1984 and amended by section 25 of Act 36 of 1996

16. Section 89quin of the Income Tax Act, 1962, is hereby amended by—

“(2) The Commissioner may determine that any interest payable under this Act be compounded daily, and such compound interest will apply to such tax types and from such date as the Commissioner may prescribe.”.

Insertion of section 89oct of Act 58 of 1968

17. The Income Tax Act, 1962, is hereby amended by the insertion after section 89sept of the following section:

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“89oct. If any amount of tax, penalty or interest payable in terms of this Act includes a number of cents that is less than one rand, that amount must be rounded off to the nearest rand.”.

Amendment of section 105A of Act 58 of 1968 as inserted by section 23 of Act 65 of 1986

18. Section 105 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any taxpayer, including that person’s affairs, done or omitted to do anything which in the opinion of the Commissioner—

(a) was intended to enable or assist such taxpayer to avoid or unduly postpone the performance of any duty or obligation imposed on such taxpayer by or under this Act, or by reason of negligence on the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation;
[and] or

(b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by that body,
the Commissioner may lodge a complaint with the said controlling body.”.

Amendment of paragraph 5 of the Fourth Schedule to Act 58 of 1962

19. Paragraph 5 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by—

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(a) the substitution for subparagraph (1) in paragraph 5 of the following paragraph:

“(1) Subject to the provisions of sub-paragraph (6) any employer who fails to deduct or withhold the full amount of employees’ tax as provided in paragraph 2 shall be personally liable for the payment to the Commissioner of the amount of employees’ tax which he fails to deduct or withhold, and shall, subject to the provisions of sub-paragraph (2), pay that amount to the Commissioner not later than the date on which payment should have been made if the employees’ tax had in fact been deducted or withheld in terms of paragraph 2.”; and

(b) the insertion after paragraph 5 of the following paragraph:

“(1A) The liability of the employer as contemplated in paragraph 2 will be fulfilled where the employer made payment of the outstanding employees’ tax in terms of subparagraph (1).”; and

(c) the deletion of subparagraph (5).

Amendment of paragraph 14 of the Fourth Schedule to Act 58 of 1968 as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 22 of Act 4 of 2008 and section 16 of Act 61 of 2008

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

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

“14. (1) Every employer shall in respect of each employee maintain a record showing—

(a) the amounts of remuneration paid or due by him to such employee,
[and]

(b) the amount of employees’ tax deducted or withheld from **[each such]**
the amounts of remuneration contemplated in paragraph (a)**[,];**

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- (c) the tax reference number of that employee where that employee is registered as a taxpayer in terms of section 67; and
- (d) such further information as the Commissioner may prescribe
such record shall be retained by the employer and shall be available for scrutiny by the Commissioner upon request.”;
- (b) by the substitution for subparagraph (2) of the following paragraph:
“(2) Every employer shall when making any payment of employees’ tax submit to the Commissioner such declaration containing such information as the Commissioner may prescribe.”; and
- (c) the substitution for subparagraph (3) of the following subparagraph:
“(3) Every employer shall—
- (a) **[within 60 days after the end of each] by such date or dates [period] as prescribed by the Commissioner by Notice in the Gazette [contemplated in paragraph 13 (1A)];**
- (b) if **[during any such period he] the employer** ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay remuneration to any employee or otherwise ceases to be an employer, within 14 days after the date on which **[he] the employer** has so ceased to carry on that business or undertaking or to be an employer, as the case may be,
or within such longer time as the Commissioner may approve, render to the Commissioner such return as the Commissioner may prescribe.”; and

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 and section 1 of Act 3 of 2008

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21. (1) Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(d) for subparagraph (iii) of the following subparagraph:

“(iii) will not be derived otherwise than from remuneration, interest, dividends[, **dividends on shares in any mutual building society**] or rental from the letting of fixed property.”.

Amendment of paragraph 20 of the 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

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

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

“(1) If the final or last estimate of his or her taxable income 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) submitted in terms of paragraph 19(1)(b) by a company which is a provisional taxpayer in respect of any year of assessment discloses an estimated amount of taxable income which is less than 80 per cent of the amount of the actual taxable income in respect of which the estimate was made, as finally determined for that year under this Act, the taxpayer shall, subject to the provisions of subparagraphs (1A), (2), (3) and (4), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of his or her taxable income for such year of assessment, an amount by way of additional tax equal to 20 per cent of the difference between the amount of normal tax as calculated in respect of the amount of taxable income as so disclosed and the amount of normal

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tax calculated, at the rates applicable in respect of the said year of assessment, in respect of a taxable income equal to 80 per cent of the said actual taxable income.”; and

(b) the insertion after subparagraph (2) of the following subparagraph:

“(2A)Where the taxpayer has followed the basis prescribed by the Commissioner for determining the estimate referred to in subparagraph (1), which basis must take into account the loss to the State as a result of its adoption, the size of the taxpayers to which it applies, and any other relevant circumstances, the Commissioner must remit the additional taxes.”.

Amendment of section 3 of Act 91 of 1964,as amended by section 114 of Act 60 of 2001, section 42 of Act 30 of 2002 and section 132 of Act 45 of 2003

23. Section 3(2) of the Customs and Excise Act, 1964, is hereby amended by the substitution of subsection (2)(a) of the following subsection:

“(2)(a) (i) Any decision made and any notice or communication signed or issued by such an officer or person may be withdrawn or amended–

(aa) by the officer or person concerned;

(bb) by any supervisor of the officer or person contemplated in item (aa);

(cc) by an officer who withdraws such decision, notice or communication under a delegation from, or under the control or direction of the Commissioner; or

(dd) by the Commissioner,

in each case according to any division of powers to so amend or withdraw as may be prescribed by rule.

(ii) Any rule contemplated in subparagraph (i) may in addition specify the period within which a request for amendment or withdrawal of a

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decision may first be submitted and after which decision no further request shall be considered as contemplated in this section.

- (iii) The provisions of subparagraph (ii) shall not be construed as affecting the powers of any officer, person, supervisor or the Commissioner to amend or withdraw on own initiative any decision, notice or communication as contemplated in subparagraph (i).
- (iv) Any decision, notice or communication may be withdrawn or amended as contemplated in paragraph (i) with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof and shall, until it has been so withdrawn, be deemed, except for the purpose of this subsection, to have been made, signed or issued by the Commissioner.”.

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of act 59 of 1990, section 11 of Act 45 of 1995, section 48 of Act 53 of 199, section 37 of act 19 of 2001, section 119 of act 60 of 2001, section 102 of Act 74 of 2002 and section 21 of Act 34 of 2004

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

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

“(3)(a) Subject to subsection (4), any liability for duty in terms of subsection (2) shall cease if goods destined for a place—

(i) in the common customs area, have been duly entered at that place; or

(ii) beyond the borders of the common customs area, have been duly taken out of that area or have been duly accounted for in the country of destination.

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(b) Any person who is liable for duty as contemplated in subsection (2) must—

(i) obtain valid proof that liability has ceased as specified in paragraph (a)(i) or (ii) within the period and in compliance with such requirements as may be prescribed by rule;

(ii) keep such proof and other information and documents relating to such removal as contemplated in section 101 and the rules made thereunder available for inspection by an officer at any reasonable time;

(iii) submit such proof and other information and documents to the Commissioner at such time and in such form and manner as the Commissioner may require; and

(iv) notify the Commissioner immediately if liability has not ceased as required in terms of paragraph (a)(i) or (ii) or valid proof has not been obtained as contemplated in subparagraphs (a)(i) or

(ii) and submit payment of duty and value-added tax payable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) together with such notification as if the good were entered for home consumption on the date of entry for removal in bond.

(c) Subject to subsection (4), there shall be no liability for duty on any goods where such liability was discovered as a result of, or following upon any inspection by and officer or a request by the Commissioner as contemplated in paragraph (b)(ii) and (iii), respectively, where that liability occurred on a date earlier than two years prior to the date on which such inspection commenced or such request was made.”;

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

“(4) (a) Where liability has not ceased as contemplated in section (3)(a);

or

(b) the goods have been diverted or deemed to have been diverted as contemplated in subsection (13).

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such person shall, except if payment has been made as contemplated in subsection 3(b)(iv), upon demand pay—

- (i) the duty and value added tax due in terms of the Value Added Tax Act 1991 (Act No. 89 of 1991), as if the goods were entered for home consumption on the date of entry for removal in bond;
- (ii) any amount that may be due in terms of section 88(2); and
- (iii) any interest due in terms of section 105.

(d) by the substitution for subsection (13) for paragraph (a) of the following paragraph:

“(a) (i) No person shall, without the permission of the Commissioner, divert any goods removed in bond to a destination other than the destination declared on entry for removal in bond or deliver such goods or cause such goods to be delivered in the Republic except into the control of the Controller at the place of destination.

(ii) Goods shall be deemed to have been so diverted where—

(aa) no permission to divert such goods has been granted by the Commissioner as contemplated in subparagraph (i) and the person concerned fails to submit valid proof to the Commissioner or produce it for inspection to an officer as required in terms of subsection 3(b)(ii) or (iii);

(bb) any such proof is the result of fraud, misrepresentation or non-disclosure of material facts; or

(cc) such person makes a false declaration for the purpose of this section.

(iii) Where any person fails to comply with or contravenes any provision of this subsection the goods shall be liable to forfeiture in accordance with this Act.

(e) by the substitution in subsection (13) for subparagraph (b)(i) of the following subparagraph:

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- “(b) (i) Notwithstanding the provisions of paragraph (a), the Commissioner may, in such circumstances and subject to such conditions as he may prescribe by rule permit goods in transit through the Republic or any class or kind of such goods to ensure proper control of the goods and to be delivered to any place approved by him for the purposes of **[sorting or repacking]** :
- (aa) carrying out activities for the purpose of preserving or maintaining, the goods;
 - (bb) inspection of the goods;
 - (cc) cleaning the goods;
 - (dd) sorting the goods;
 - (ee) tallying the goods;
 - (ff) re-packing of the goods;
 - (gg) sealing the goods or the transport unit;
 - (hh) keeping of proper books, accounts and documents to ensure control over the movement of goods in such place; or
- (ii) any other activity that may be necessary to prepare and forward the goods for transit.”.

Amendment of section 18A of Act 91 of 1964, as inserted by section 5 of Act 84 of 1987, amended by section 12 of Act 45 of 1995, section 38 of Act 19 of 2001 and section 120 of Act 120 of 2001

25. Section 18A of the Customs and Excise Act, 1964, is hereby amended—

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

“(1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from a customs and excise warehouse to any place outside the common customs area shall, subject to the provisions of subsections (2), be liable for the duty on all goods which he or she so exports.”;

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

“(2) (a) Subject to the provisions of subsection (3) any liability for duty in terms of subsection (1) shall cease if –

(i) the said goods have been duly taken out of the common customs area; or

(ii) in circumstances and in accordance with procedures which the Commissioner may determine by rule, the goods have been duly accounted for in the county of destination.”;

(b) An exporter who is liable for duty as contemplated in subsection (2) must obtain—

(i) valid proof that liability has ceased as specified in paragraph (a)(i) or (ii) within the period and in compliance with such requirements as may be prescribed by rule;

(ii) keep such proof and other information and documents relating to such export available for inspection by an officer at any reasonable time;

(iii) submit such proof and other information and documents to the Commissioner at such time and in such form and manner as the Commissioner may require; and

(vi) notify the Commissioner immediately if liability has not ceased as required in terms of paragraph (a)(i) or (ii) and submit payment of duty and value-added tax payable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991) together with such notification.

(c) Subject to subsection (3), there shall be no liability for duty on any goods where such liability was discovered as a result of, or following upon any request by the Commissioner or an inspection by an officer as contemplated in paragraph (c) where that liability occurred on a date earlier than two years prior to the date on which such request was made or such inspection commenced.

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

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“(3) (a) Where liability has not ceased as contemplated in section (2)(a);

or

(b) the goods have been diverted or deemed to have been diverted as contemplated in subsection (9),

such person shall upon demand pay—

(i) the duty and value added tax due in terms of the Value Added Tax Act 1991 (Act No. 89 of 1991), as if the goods were entered for home consumption on the date of entry for export;

(ii) any amount that may be due in terms of section 88(2); and

(iii) any interest due in terms of section 105.

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

“(a) (i) No person shall, without the permission of the Commissioner, divert any goods for export to a destination other than the destination declared on entry for export or deliver such goods or cause such goods to be delivered in the Republic or any other country in the common customs area.

(ii) Goods shall be deemed to have been so diverted where—

(aa) no permission to divert such goods has been granted by the Commissioner as contemplated in subparagraph (i) and the person concerned fails to submit valid proof to the Commissioner or produce it for inspection to an officer as required in terms of subsection 2(b)(ii) or (iii);

(bb) any such proof is the result of fraud, misrepresentation or non-disclosure of material facts; or

(cc) such person makes a false declaration for the purpose of this section.

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- (iii) Where any person fails to comply with or contravenes any provision of this subsection the goods shall be liable to forfeiture in accordance with this Act.”.

Insertion of section 38A in Act 91 of 1964

26. The following section is hereby inserted in the Customs and Excise Act, 1964 after section 38:

“Special provisions in respect of the storage and clearance and release of stores and spares and equipment supplied to foreign-going ships and aircraft

“38A (1)(a) This section applies to stores and spares and equipment—

- (i) stored in a licensed special customs and excise storage warehouse and supplied by the licensee, or
- (ii) if goods in free circulation, supplied by any person, including a person who is the licensee of such warehouse (referred to in this section as the “exporter”),
to foreign-going ships or aircraft.

(b) Notwithstanding anything to the contrary contained in this Act, stores and spares and equipment free of duty may be stored in such a warehouse as may be prescribed by rule.

(c) Unless otherwise specified by rule, stores and spares and equipment in such a warehouse may only be removed and delivered by the licensee.

(d) Except as otherwise provided in this section or any rules made thereunder, any provision relating to a special customs and excise storage warehouse contemplated in section 21 and to sections 18A, 38, 59A, 60, 64E and 101 shall, as may be applicable, apply *mutatis mutandis* to the storage in, and the removal of goods from, such warehouse.

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(e) (i) In this section and any provision of any Schedule or rule relating to stores or stores and spares and equipment for foreign-going ships or aircraft, “foreign going ship”, foreign-going aircraft”, “goods in free circulation”, “spares and “equipment”, “stores” and any other expression required to be defined shall, unless the context otherwise indicates, have the meaning assigned thereto in the rules for this section

(ii) In this section, unless the context otherwise indicates, “goods” means collectively the “stores and spares and equipment” as contemplated in this section.

(2)(a)Notwithstanding anything to the contrary contained in this Act, the Commissioner may by rule permit the licensee of such a warehouse or an exporter to supply stores and spares and equipment to foreign-going ships or aircraft on the issuing by that licensee or exporter of a dispatch and delivery note or such other document as the Commissioner may prescribe or approve by rule, if the licensee or exporter—

(i) is accredited in terms of section 64E;

(ii) for the purpose of electronic communication with the Commissioner, is a registered user in accordance with the provisions of section 101A and the rules made thereunder;

(iii) complies with such conditions as the Commissioner may prescribe generally by rule or require in a specific instance;

(iv) keeps such books, accounts or other documents or data created by a computer of goods received, including goods returned, and removals as the Commissioner may prescribe generally by rule or require in a specific instance.

(b) Any document issued by the licensee or exporter as contemplated in paragraph (a) shall, for the purpose of section 20(4) and subject to paragraph (c), be deemed to be due entry for export from the time of removal of such goods from the special customs and excise warehouse or

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the place from where the goods in free circulation are exported, as the case may be.

- (c) (i) Any licensee who removes such goods from such a warehouse, or an exporter who exports such goods, by means of the issuing of a dispatch and delivery note or other document referred to in paragraph (a) shall deliver to the Controller a validating bill of entry export declaring those goods at the time, in the manner and containing such particulars as may be specified by rule in respect of such dispatch and delivery note or other document; and
- (ii) Where any goods for which such a dispatch and delivery note or other document is issued is lost, destroyed, stolen or damaged after removal the licensee must at the same time pay the duty due on the goods.

(3) The Commissioner may—

- (a) permit the return of stores and spares and equipment supplied by the licensee or exporter as contemplated in this section to the licensed premises or other place, as the case may be;
- (b) require the submission of dispatch and delivery notes or other documents electronically by such a person or class of persons in respect of such goods,

in such circumstances and on such conditions and subject to compliance with such procedures as may be prescribed by rule.

(4) The Commissioner may by rule prescribe -

- (a) definitions as contemplated in section 38A(1);
- (b) goods to which this section relates and any requirement to control the storage, removal and return of such goods;
- (c) (i) the form of and the particulars to be stated on the dispatch and delivery note, any invoice or other document;

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- (ii) the documents that must accompany the movement in each case of any stores, spares and equipment when removed for delivery by the licensee or exporter;
- (d) books, accounts and other documents and data to be kept;
- (e) all matters required or permitted by this section to be prescribed by rule;
- (f) any other matter which the Commissioner may consider reasonably necessary and useful for the effective administration of the provisions contained in this section.”.

Insertion of section 75A of Act 91 of 1964

27. (1) The following section is hereby inserted in the Customs and Excise Act, 1964:

“Circumstances in which imported goods free of duty are admissible under a rebate item of Schedule No. 4

75A.(1) Notwithstanding the provisions of section 75, imported goods free of duty that are—

- (a) exempted from value-added tax in terms of any item in Schedule 1 of the Value-Added Tax Act (Act No. 89 of 1991); and
- (b) identified by the item number and description identical to any item in Schedule No. 4 of this Act, may be entered under the item of Schedule 1 of the Value-Added Tax Act, but the goods shall, in addition to any relevant provision of the Value Added Tax Act, be subject to compliance with the provisions of section 75 and the corresponding item of Schedule No. 4 as if the goods were entered thereunder.”.

Amendment of section 93 of Act 91 of 1964, as substituted by section 67 of Act 53 of 1999 and section 150 of Act 45 of 2003

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28. Section 93 of the Customs and Excise Act, 1964, is hereby amended—

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

“(2) The Commissioner or an officer,—

(a) may subject to section 3(2), on such conditions as may be considered necessary [**, on good cause shown,];** or

(b) must as a result of the finalisation of any procedure contemplated in Chapter XA,

mitigate or remit any penalty incurred under this Act [**on such conditions as the Commissioner may determine.].”**.

Insertion of section 94 in Act 91 of 1964

29. The following section is hereby inserted into the Customs and Excise Act, 1964:

“Schemes for purposes of avoiding liability for duty or reducing amounts of duty payable

“94. (1)(a) Notwithstanding anything in this Act whenever the Commissioner is satisfied on reasonable grounds that any scheme has been entered into or carried out which has the effect of avoiding liability for duty or reducing the amount of duty payable and having regard to the substance of the scheme—

(i) was entered into or carried out by means or in a manner which would not normally be employed for bona fide business purposes other than avoiding such liability or reducing the amount of duty payable;

(ii) has created rights or obligations which would not normally be created in such transactions under this Act,

the Commissioner shall determine the liability for any duty and the amount thereof in accordance with the provisions of this Act as if the scheme had not been entered into or carried out or in such manner as in the

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circumstances he deems appropriate for ensuring the correct amount of duty is paid;

(b) For the purposes of paragraph (a) the Commissioner may have regard to the intention of the manufacturer, importer or user of the goods as may appear from any relevant information to establish the true characteristics, functions or use of the goods.

(2) For the purposes of this section “scheme” includes –

(a) any transaction, operation, scheme or understanding whether enforceable or not including all steps and transactions by which it is carried into effect; or

(b) where any person makes any arrangement with a supplier, manufacturer, exporter or seller of goods imported or to be imported into or manufactured or to be manufactured in the Republic or with any agent of any supplier, manufacturer or exporter or seller, regarding invoicing packing shipping of goods or any other matter to which this Act relates with the object of evading any provisions of this Act.

(3) Where in any proceeding relating to a decision of the Commissioner under this section, it is proved that the scheme concerned does or would result in avoiding liability for duty or reducing the amount of duty payable, it shall be presumed, in the absence of evidence to the contrary that raises a reasonable doubt, that he scheme was entered into or carried out solely or mainly for the purpose of achieving such a result.”.

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

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30. (1) Section 105 of the Customs and Excise Act, 1964, is hereby amended by the substitution for section 105 of the following section:

“Payment of outstanding amounts and interest and mitigation or remission of interest [Interest on outstanding amounts]”

105. Notwithstanding anything to the contrary in any law contained—

- (a) interest shall be payable from such date and for such period as the Commissioner may **[determine] prescribe by rule** on any outstanding amount payable in terms of this Act[, **other than the outstanding amount of any penalty or forfeiture payable in terms of this Act**];
- (b) interest shall be payable by the Commissioner on any drawback or refund from such date and for such period as the Commissioner may prescribe by rule;
- (c) the interest so payable shall be paid at a rate the Minister of Finance determines in terms of section 80 (1) (b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999): Provided that where the Minister fixes a new rate in terms of that Act, that new rate applies for purposes of this Act from the first day of the second month following the date on which that new rate came into operation;
- (d) the Commissioner –
 - (i) may subject to section 3(2), on such conditions as he may consider necessary; or
 - (ii) must as a result of the finalisation of any procedure contemplated in Chapter XA,
mitigate or remit any interest for which any person is liable by virtue of this section.
- (e) the Commissioner may permit payment of any amount referred to in paragraph (a) by instalments of such amounts and at such times and subject to such conditions as he may determine;
- (f) any such interest –

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- (i) shall be compounded daily; and
- (ii) when recovered shall be paid into the National Revenue Fund.”.
- (g) The Commissioner may prescribe by rule –
 - (i) all matters which by this section are required or permitted to be prescribed by rule;
 - (ii) any other matter which the Commissioner may consider reasonably necessary and useful to achieve the efficient and effective administration of this section.”.

(2) Subsection (1) or any part thereof comes into operation on the date or dates fixed by the President by proclamation in the *Gazette*.

Insertion of section 119A in Act 91 of 1964

31. The following section is hereby inserted into the Customs and Excise Act, 1964:

“Special provisions for customs modernisation

119A. (1) Notwithstanding anything to the contrary contained in this Act, for the purposes of modernising customs administration –

- (a) where enabling provisions for the implementation of any part of a modernisation program are urgently required; and
- (b) it is not possible to effect timeously the necessary amendment to any relevant section of this Act,

the Commissioner may by rule, in respect of any person or class of person or any class or kind of goods, ship or vehicle or any activity regulated by this Act—

- (i) provide for any exemption from any provision of this Act contemplated in subparagraph (a), subject to compliance with any relevant requirement specified in such rule;
- (ii) substitute, adapt, exclude the operation of, or otherwise amend any function prescribed in this Act, including any process or procedure relating to—

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(aa) any electronic communication contemplated in sections 7, 7A, 8, 101A or 101B, or as may be reasonably required in respect of any other activity regulated by this Act;

(bb) the processing of travellers;

(cc) the clearance of goods;

(dd) the import, export or handling of goods;

(ee) the operation of licensed premises;

(ff) the control over the movement of any person, ship, vehicle or goods;

(gg) the manufacture of goods;

(hh) the administration of any international agreement; or

(ii) any other activity regulated by this Act.

(2) Any rule contemplated in subsection (1) must be consistent with the objectives of the provisions of this Act to which it relates.

(3) Any rule made or any amendment or withdrawal of or insertion in such rule under this section in any calendar year shall, unless Parliament otherwise provides, lapse on the last day of the next calendar year, but without detracting from the validity of such rule or any amendment, withdrawal or insertion before it has so lapsed.”.

Amendment of section 64 of Act 56 of 1986

32. Section 64 of the Diamond Act, 1986, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If the exporter of any unpolished diamond that is exported as described in subsection (2) contravenes subsection (3), that exporter shall be subject to—

(a) a fine equal to 25 per cent multiplied by that diamond’s value as released for export in terms of section 69 of the Diamonds Act[.]; and

(b) the levy as described in section 2(1) of the Diamond Export Levy Act, 2007 (Act No. 15 of 2007).”.

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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, section 81 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008 and section 104 of Act 60 of 2008

33. Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the insertion of the following definition:

“biometrical information” means the collection and management of data in biology to authenticate the identity of a natural person, and includes—

- (a) facial recognition;
- (b) fingerprint recognition;
- (c) vocal recognition; and
- (d) iris or retina recognition.”.

Amendment of section 6 of Act 89 of 1991 as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998, section 66 of Act 19 of 2001, section 150 of Act 60 of 2001, section 116 of Act 74 of 2002, section 48 of Act 12 of 2003, section 45 of Act 16 of 2004, section 13 of Act 10 of 2006, section 36 of Act 21 of 2006, section 36 of Act 21 of 2006,

34. Section 6 of the Value-Added Tax Act, 1991, is hereby amended by—

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- (a) the renumbering of subsection (6) to subsection (7); and
- (b) the insertion after subsection (5) of the following subsection:

“(6) Notwithstanding anything to the contrary contained in this section, any **“biometrical information”** of a vendor may not be disclosed by the Commissioner to any person.”; and
- (c) by the substitution for subsection (7) of the following subsection:

“(7) Any person who contravenes the provisions of subsection (1), (3), (4) **[or]** (5) or (6) shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”

Amendment of section 20 of Act 89 of 1991

35. Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (5) of the following subsection:

“(5A) Where the provisions of section 44 of the Income Tax Act are applicable and notwithstanding anything in this section, where a supplier makes a taxable supply and is required to issue a tax invoice, that tax invoice may, for a period of 6 months from the date of the transaction contemplated in section 44 of that Act, contain the name, address and VAT registration number of the person that ceased to be a vendor.”

Or

Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (8) of the following subsection:

“(9) Provided that where the provisions of section 8(25) and section 44 of the Income Tax Act are applicable, a vendor may, for a period of 6 months from the date of the transaction contemplated in the said sections, issue a tax invoice in accordance with subparagraph (4) or (5) reflecting the name,

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address and VAT registration number of the vendor that ceased to be vendor.”.

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008 and section 113 of Act 60 of 2008

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

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

“(2) Every person who, in terms of subsection (1) or section 50A, becomes liable to be registered shall not later than 21 days after becoming so liable apply to the Commissioner for registration in such application form as the Commissioner may direct and provide the Commissioner with such further particulars, **[and]** any documentation in the application form, and such biometrical information, as the Commissioner may require **[in such application form]** for the purpose of registering that person.”; and

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

“(3) Notwithstanding the provisions of subsections (1) and (2), every person who satisfies the Commissioner that, on or after the commencement date—

(a) that person is a “municipality” as defined in section 1 or is carrying on any enterprise as contemplated in paragraph (b) (ii), (iii) or (v) of the definition of “enterprise” in section 1; or

(b) that person is carrying on any enterprise other than—

(i) as contemplated in paragraph (b) (ii) or (iii) of the definition of “enterprise” in section 1; or

(ii) as a “municipality” as defined in section 1,

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and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R20 000; or

- (c) that person intends to carry on any enterprise from a specified date, where that enterprise will be supplied to him as a going concern and the total value of taxable supplies made by the supplier of the going concern from carrying on that enterprise or part of the enterprise which will be supplied has exceeded R20 000 in the preceding period of 12 months; or
- (d) that person is continuously and regularly carrying on an activity which, in consequence of the nature of that activity, can reasonably be expected to result in taxable supplies being made for a consideration only after a period of time and where the total value of taxable supplies to be made can reasonably be expected to exceed R20 000 in a period of 12 months,

may apply to the Commissioner for registration in such application form as the Commissioner may direct and provide the Commissioner with such further particulars, [and any] documentation and biometrical information, as the Commissioner may require in such application form for the purpose of registering that person [in the approved form for registration under this Act and provide the Commissioner with such further particulars as the Commissioner may require for the purpose of registering that person].".

Amendment of section 36 of Act 89 of 1991, as amended by section 2 of Act 61 of 1993, section 140 of 1993, section 22 of Act 20 of 1994, section 33 of Act 37 of 1996, section 39 of Act 27 of 1997, section 164 of Act 60 of 2001

37. The Value-Added Tax Act, 1991 is hereby amended by the substitution for section 36 of the following section:

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“36. Payment of tax pending appeal.—(1) Unless the Commissioner otherwise directs in terms of subsection (4), [The]—

(a) the obligation to pay; and

(b) the right to receive and recover,

any tax, additional tax, penalty or interest chargeable under this Act shall not[, **unless the Commissioner so directs,**] be suspended by any objection or appeal or pending the decision of a court of law[, **but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or such court of law, a due adjustment must be made, amounts paid in excess being refunded with interest at the prescribed rate (but subject to the provisions of sections 45 (1) and 45A) and calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with penalty and interest calculated as provided in section 39 (1)**].

(2) A vendor may request the Commissioner to suspend the obligation to pay the amount of tax in dispute under this section.

(3) The Commissioner may request a vendor who has lodged an objection or appeal and requests suspension of payment, to provide information concerning the vendor’s financial position, or to update previously provided information.

(4) The Commissioner may, upon request by the vendor pursuant to the lodging of an objection or appeal, suspend payment of the portion of the tax, chargeable under the assessment, which is in dispute having regard to—

(a) the compliance history of the vendor;

(b) the amount of tax involved;

(c) the risk of dissipation of assets by the vendor concerned during the period of suspension;

(d) whether the vendor has an arguable case;

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- (e) whether payment of the amount involved would result in irreparable financial hardship to the vendor;
- (f) whether fraud is involved in the origin of the dispute; or
- (g) whether the vendor has failed to furnish information requested under subsection (3).
- (5) The Commissioner may revoke a decision to suspend payment in terms of subsection (4) with immediate effect whenever he or she is satisfied that—
 - (a) there is a collection risk;
 - (b) sequestration or liquidation proceedings are imminent; or
 - (c) the vendor has employed dilatory tactics in conducting the objection or appeal; or
 - (d) it appears that the vendor does not have an arguable case.
- (6) Where any assessment is altered in accordance with—
 - (a) an objection or appeal;
 - (b) a decision by a court of law; or
 - (c) a decision by the Commissioner to concede the appeal to the tax board or the tax court of that court of law,
a due adjustment must be made, amounts paid in excess refunded with interest at the prescribed rate (but subject to the provisions of sections 45(1) and 45(A), the interest being calculated to the date the refunded tax is paid and amounts short-paid being recoverable with interest calculated as provided in section 39(1).
- [(2)](7) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the National Revenue Fund.”.

Amendment of section 39 of Act 89 of 1991, as amended by section 37 of Act 136 of 1991, section 30 of Act 136 of 1992, section 3 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997, section 166 of Act 60 of 2001, section 184 of Act 45 of 2003, section 50 of Act 16 of 2004,

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section 105 of Act 32 of 2004, section 22 of Act 9 of 2005 and section 114 of Act 60 of 2008

38. Section 39 of the Value-Added Tax Act, 1991, is hereby amended by—
(a) the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) [where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended,] interest on the said amount of tax[, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day] from such date and for such period as the Minister may prescribe by Regulation.”;

(b) the substitution for subsection (7) of the following subsection:

“(7) [To the extent that] Where the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to make payment of the tax within the period for payment contemplated in subsection (1) (a), (2), (3), (4), (6) or (6A) or on the date referred to in subsection (5), as the case may be—

(a) was due to circumstances beyond the control of the said person

[(i) did, having regard to the output tax and input tax relating to the supply in respect of which interest is payable, not result in any financial loss (including any loss of interest) to the State; or

(ii) such person did not benefit financially (taking interest into account) by not making such payment within the said period or on the said date],

he may remit, in whole or in part, the interest payable in terms of this section; or ”; and

(c) the insertion after subsection (7) of the following section:

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“(8) Notwithstanding anything to the contrary in this section, the Minister may make regulations regarding the imposition of penalty and interest in the Gazette: Provided that where the regulation prescribes any other method in respect of the imposition of penalty and interest, an amendment must be tabled in Parliament within a period of 12 months after date of publication by the Minister of the regulations in the Gazette, for incorporation into this Act.”.

Amendment of section 58 of Act 89 of 1991 as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999, section 72 of Act 19 of 2001, section 173 of Act 60 of 2001, section 119 of Act 74 of 2002, section 43 of Act 34 of 2004 and section 42 of Act 32 of 2005

39. Section 58 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for paragraph (p) of the following paragraph:

“(p) uses an electronic or digital signature of any other person in any electronic communication to the Commissioner for any purpose, without the consent and authority of such person[.,,];”; and

(b) by the insertion after paragraph (p) of the following paragraph:

“(q) makes or causes or allows to be made any false statement or entry in any form rendered in terms of this Act, or signs any statement or form so rendered without reasonable grounds for believing the same to be true.”.

Amendment of section 1 of Act 9 of 1999

40. (1) Section 1 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for the definition of “**levy**” of the following definition:

““levy” means the skills development levy referred to in section 3 and any administrative penalty leviable under this Act;”.

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

Amendment of section 6 of Act 9 of 1999 as amended by section 76 of Act 19 of 2001

41. Section 6 of the Skills Development Levies Act, 1999, is hereby amended by the insertion after subsection (2) of the following subsections:

“(2A) Every employer shall—

(a) by such date or dates as prescribed by the Commissioner by notice in the Gazette; and

(b) if he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay a levy as prescribed in terms of section 3, or otherwise ceases to be an employer, within 14 days after the date on which he has so ceased to carry on that business or undertaking or to be an employer, as the case may be, or within such longer time as the Commissioner may approve, render to the Commissioner such return as the Commissioner may prescribe.”.

Amendment of section 7 of Act 9 of 1999

42. Section 7 of Act 9 of 1999 is hereby amended by the insertion after subsection (4) of the following subsections:

“(4A)Every employer shall—

(a) by such date or dates as prescribed by the Commissioner in the Gazette; and

(b) if he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay a levy as prescribed in terms of section 3, or otherwise ceases to be an employer, within 14

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days after the date on which he has so ceased to carry on that business or undertaking or to be an employer, as the case may be, or within such longer time as the Commissioner may approve, render to the Commissioner such return as the Commissioner may prescribe.”.

Insertion of section 7A in Act 9 of 1999

43. The Skills Development Levy Act, 1999, is hereby amended by the insertion of the following section after section 7:

“ESTIMATED ASSESSMENTS

7A. (1) Where any employer who is required to pay the levy in terms of section 6 or section 7—

(a) has failed to submit a statement as required in terms of section 6(2) or section 7(4);

(b) has submitted a statement as required in terms section 6(2A) or 7(4A) but the Commissioner is not satisfied with the statement; or

(c) has failed to pay such levy,

and such employer has not been absolved from his or her liabilities in terms of the provisions of this Act, the Commissioner or the SETA as the case may be, may make a reasonable estimate of the amount of any levy due in terms of this Act and issue to the employer a notice of assessment for the unpaid amount.

(2) Any estimate of the amount of the levy payable by an employer in terms of the provisions of subparagraph (1), shall be subject to objection and appeal.”.

Amendment of section 11 of Act 9 of 1999 as amended by section 123 of Act 74 of 2002

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44. Section 11 of the Skills Development Levies Act, 1999, is hereby amended by—

- (a) the renumbering of the current section to subsection (1); and
- (b) the insertion after subsection (1) of the following subsection:

“(2) The Commissioner may determine that any interest payable in terms of this section be compounded daily, and such compound interest will apply from such date as the Commissioner may prescribe.”.

Amendment of section 12 of Act 9 of 1999 as amended by section 113 of Act 53 of 1999 and section 197 of Act 45 of 2003

45. Section 12 of the Skills Development Levy Act, 1999, is hereby amended—

- (a) by the deletion of subsection (1); and
- (b) by the insertion after subsection (4) of the following subsection:

“(5) Any decision by the Commissioner not to remit any penalty under subsection (2) or to impose any penalty under subsection (3), shall be subject to objection and appeal as contemplated in section 13(1)(d).”.

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

Amendment of section 1 of Act 4 of 2002, as amended by section 207 of Act 45 of 2003

46. (1) Section 1 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for the definition of “**contribution**” of the following definition:

““**contribution**” means the contribution determined in terms of section 6 and any administrative penalty levied in terms of this Act;”;

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

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Amendment of section 8 of Act 4 of 2002 as amended by section 81 of Act 30 of 2002

47. Section 8 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) Every employer shall—

(a) by such date or dates as prescribed by the Commissioner by notice in the Gazette; and

(b) if during any such period he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay a contribution as determined in terms of section 6, or otherwise ceases to be an employer, within 14 days after the date on which he has so ceased to carry on that business or undertaking or to be an employer, as the case may be,

or within such longer time as the Commissioner may approve, render to the Commissioner such return as the Commissioner may prescribe.”.

Insertion of section 9(2A) in Act 4 of 2002

48. Section 9 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) Every employer shall—

(a) by such date or dates as prescribed by the Commissioner by notice in the Gazette; and

(b) if during any such period he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay a contribution as determined in terms of section 6, or otherwise ceases to be an employer, within 14 days after the date on which he has so ceased to carry on that business or undertaking or to be an employer, as the case may be,

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or within such longer time as the Commissioner may approve, render to the Commissioner such return as the Commissioner may prescribe.”.

Insertion of section 9A in Act 4 of 2002

49. The Unemployment Insurance Contributions Act, 2002 is hereby amended by the insertion of the following section after section 9:

“ESTIMATED ASSESSMENTS

9A. (1) Where any employer who is required to pay the amount of all employees’ contributions and the employer’s contributions in respect of every employee in the employment of that employer to the Commissioner in terms of section 8 or to the Unemployment Insurance Commissioner in terms of section 9—

(a) has failed to submit a statement as required in terms of section 8(2) or section 9(2);

(b) has furnished a return as required in terms of section 8(2A) or section 9(2A) but the Commissioner is not satisfied with the return;

(c) has failed to deduct or withhold employees’ contributions; or

(d) has failed to pay over any contributions deducted or withheld,

and such employer has not been absolved from his or her liabilities in terms of the provisions of this Act., the Commissioner or the Unemployment Insurance Commissioner, as the case may be, may make a reasonable estimate of the amount of any contributions due in terms of section 6 and issue to the employer a notice of assessment for the unpaid amount.

(2) An employer shall be liable to the Commissioner for the payment of the amount of any employees’ contribution so estimated as if such amount was deducted or withheld as contemplated in section 7.

(3) Any estimate of the contribution payable by an employer in terms of the provisions of subparagraph (1), shall be subject to objection and appeal.”.

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Amendment of section 12 of Act 4 of 2002 as amended by section 82 of Act 30 of 2002

50. Section 12 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by—

- (a) renumbering the current section to subsection (1); and
- (b) the insertion after subsection (1) of the following subsection:

“(2) The Commissioner may determine that any interest payable in terms of this section be compounded daily, and such compound interest will apply from such date as the Commissioner may prescribe.”.

Amendment of section 13 of Act 4 of 2002 as amended by section 83 of Act 30 of 2002

51. Section 13 of Unemployment Insurance Contributions Act, 2002 is hereby amended—

- (a) by the deletion of subsection (1); and
- (b) by the insertion after subsection (3) of the following subsection:

“(4) Any decision by the Commissioner not to remit any penalty under subsection (1) or to impose any penalty under subsection (2), shall be subject to objection and appeal as contemplated in section 14(1)(c).”.

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

Repeal of section 87 of Act 31 of 2005

52. (1) Section 87 of the Revenue Laws Amendment Act, 2005 is hereby repealed.

Amendment of section 1 of Act 14 of 2007

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

- (a) the deletion of the definition of “**Income Tax Act**”; and
- (b) the insertion, after the definition of “**Commissioner**” of the following definition:

“**Customs and Excise Act**” means the Customs and Excise Act, 1964 (Act No. 91 of 1964);”.

Amendment of section 2 of Act 14 of 2007

54. The Diamond Export Levy (Administration Act), 2007, is hereby amended—

- (a) by the deletion of subsection (2);
- (b) by the substitution for subsection (3) of the following subsection:

“(3) A person who qualifies for registration on or after the promulgation date of this Act but prior to 1 March 2009 must apply to register with the Commissioner within 60 days of qualifying for registration.”;
- (c) by renumbering subsection (4) to subsection (5); and
- (d) by insertion after subsection (3) of the following subsection:

“(4) A person who qualifies for registration on or after 1 March 2009 must apply to register with the Commissioner within 7 days of qualifying for registration.”.

Amendment of section 4 of Act 14 of 2007

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

“4. Returns and assessment periods.—(1) A registered person must submit a return within a period of 30 days [of] after the ending date of each assessment period described in subsection (2), but where the last day of the

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30 day period falls on a Friday, payment must be made not later than the penultimate business day of that period.”.

Amendment of section 5 of Act 14 of 2007 as inserted by section 26 of Act 4 of 2008

56. Section 5 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) To the extent a value described in section 2 (2) of the Levy Act in respect of an unpolished diamond is denominated in a foreign currency, that value will be translated into the currency of the Republic **[at the selling rate on the date of shipment of that unpolished diamond]** on such date and at such rate as determined by the Commissioner, in consultation with the South African Reserve Bank, or if no such rate is determined for such date, the latest rate determined before that date.”.

Amendment of section 14 of Act 14 of 2007

57. Section 14 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended by—

(a) the renumbering of paragraph (b) of subsection (3) to paragraph (c);

(b) the insertion after paragraph (a) of the following paragraph:

“(b) has failed to furnish the Commissioner with such forms, documents and information in support of such refund as the Commission may prescribe by rule; or”; and

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

“(5) If the amount that would be refunded under subsection (1) is determined to be less than **[R100 or less than such other amount as the Commissioner may determine by Notice in the Gazette]** R5, the

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amount so determined shall not be refunded **[in respect of that assessment period but shall be carried forward to the immediately succeeding assessment period]** unless the Commissioner is satisfied that exceptional circumstances exists that warrant such refund.”.

Amendment of section 15 of Act 14 of 2007

58. Section 15 of the Diamond Export Levy (Administration) Act, 2007 is hereby amended by—

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

“(1) The Commissioner must pay interest **[calculated on a monthly basis]** in respect of any amount paid in respect of an assessment period to the extent that amount—

- (a) exceeds the amount assessed or properly chargeable under the Levy Act for that assessment period, as the case may be; and
- (b) is not refunded within 30 days after receipt of a refund claim in respect of that excess.”;

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

“(2) A registered person must pay interest **[calculated on a monthly basis]** in respect of any amount due in respect of an assessment period that is not paid within 30 days after the ending date of that assessment period.”;

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

“(3) Interest required under this section must be compounded daily and calculated at [the rate described in paragraph (b) of the definition of prescribed rate in section 1 of the Income Tax Act] a rate as determined from time to time by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).”;

(d) the insertion after subsection (3) of the following subsection:

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“(4) Where the Minister fixes a rate as described in subsection (3), that rate will apply, for purposes of this Act, from the first day of the second month following the date on which that rate came into operation.”.

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

Amendment of section 17 of Act 14 of 2007

59. Section 17 of the Diamond Export Levy (Administration) Act, 2007 is hereby amended by—

- (a) the substitution for the heading of the following heading:
“Applicability of **[Income Tax Act]** Customs and Excise Act.—”; and
- (b) the substitution for subsection (1) of the following subsection:
“(1) The provisions of the **[Income Tax Act]** Customs and Excise Act relating to—
- (a) the exercise of powers and performance of duties;
 - (b) preservation of secrecy;
 - (c) the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
 - (d) **[objections and]** appeals;
 - (e) settlement of disputes;
 - (f) the payment and recovery of **[tax]**duty, expenses, charges, interest and penalties;
 - (g) offences;
 - (h) **[reporting of unprofessional conduct]** electronic communication; and
 - (i) jurisdiction of courts as contained in section **[105]** 95, apply, with changes required by the context, to the levy in terms of this Act and the Levy Act.”.

Amendment of section 5 of Act 15 of 2007

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60. The Diamond Export Levy Act, 2007, is hereby amended by the substitution for subsection (5) of the following subsection:

“5. Relief for temporary exports.—Subject to section 64(4)(b) of the Diamond Act, [Notwithstanding section 2 (1),] the levy described in section 2(1), does not apply to any unpolished diamond covered by a temporary exemption certificate described in section 64 of the Diamonds Act.”.

Amendment of section 2 of Act 25 of 2007

61. (1) Section 2 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution in subsection (3) of the following subsection:

“(3) If the Minister makes an announcement referred to in subsection (2), that reduction or change comes into effect on the date announced and continues to apply for a period of **[six]** 12 months from that date, unless Parliament passes legislation giving effect to that announcement within that period of **[six]** 12 months.”.

Amendment of section 2 of Act 29 of 2008

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

“(2) A person that qualifies for registration as mentioned in subsection (1)—
(a) on 1 November 2009—
(i) may apply to register with the Commissioner on or after 1
November 2009; and”

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- (ii) must apply to register with the Commissioner by 31 January 2010; or
- (b) after 1 November 2009 must apply to register with the Commissioner within 60 days after the day on which that person qualifies for registration.”.

Amendment of section 1 of Act 29 of 2008

63. The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the insertion after the definition of “**financial year**” of the following definition:

“**nonbinding private opinion**” means a written statement issued by the Commissioner in response to an inquiry by a person in order to provide the person with informal guidance in respect of the tax treatment of a particular set of facts and circumstances or transaction;”.

Amendment of section 9 of Act 29 of 2008

64. Section 9 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) a registered person [**defaults in furnishing**] fails to furnish a return mentioned in subsection (1) or any information in respect of that return;”.

Insertion of section 18A in Act 29 of 2008

65. (1) The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the insertion of the following subsection:

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“Nonbinding private opinions and other written statements

18A. (1) The Commissioner may issue a nonbinding private opinion to a person regarding the tax treatment of a particular set of facts and circumstances or a particular transaction.

(2) A nonbinding private opinion does not have any binding effect upon the Commissioner.

(3) A nonbinding private opinion may not be cited in any proceeding before the Commissioner or the courts other than a proceeding involving the person to whom the nonbinding private opinion was issued.”.

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

Substitution of section 21 of Act 29 of 2008

66. (1) The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for section 21 of the following section:

“Short title and commencement

21. (1) This Act is called the Mineral and Petroleum Resources Royalty (Administration) Act, 2008.

(2) This Act comes into operation—

(a) in respect of sections 1, 2, 3, 4, 7, 17, 18 and 20 on 1 November 2009;

and

(b) in respect of sections 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 19 on 1 March 2010.”.

(2) Subsection (1), to the extent that it relates to—

(a) section 21(2)(a) of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is deemed to have come into operation on 1 November 2009; and

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(b) section 21(2)(b) of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, comes into operation on 1 March 2010.

Short title and commencement

67. (1) This Act is called the Taxation Laws Second Amendment Act, 2009.
(2) Save in so far as is otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act are deemed for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, to have come into operation as from the commencement of years of assessment ending on or after 1 January 2010.

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MEMORANDUM ON THE OBJECTS OF THE TAXATION LAWS SECOND AMENDMENT BILL, 2009

1. PURPOSE OF BILL

1.1 The Bill amends administrative provisions of the Transfer Duty Act, 1949 (Act No. 40 of 1949), the Estate Duty Act, 1955 (Act No 45 of 1955), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No 91 of 1964), the Diamond Act, 1985 (Act No 56 of 1985), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Skills Development Levies Act, 1999 (Act No 9 of 1999), the Unemployment Insurance Contributions Act, 2002 (Act No 4 of 2002), the Diamond Levy (Administration) Act, 2007 (Act No 14 of 2007), the Diamond Levy Act, 2007 (Act No 15 of 2007), the Securities Transfer Tax Act, 2007 (Act No. 2 of 2007), and the Mineral and Petroleum Resources Royalty (Administration) Act (Act No. 29 of 2008).

2. OBJECTS OF BILL

2.1: Allocation of payments received in terms of Acts administered by the Commissioner for the South African Revenue Service

The proposed amendment enables SARS to apply a new payment allocation rule that generally sets payments off against the oldest outstanding debt, where the taxpayer does not designate the purpose of any payment made in terms of the applicable tax act.

2.2: Special zero-rating in respect of goods or services supplied by Cricket South Africa

The proposed amendment provides that the funds flowing into the country to host the Indian Premier League event be zero-rated for purposes of the Value-Added Tax Act, 1991.

2.3: Transfer Duty Act, 1949: Amendment of section 2

In 2009, the legislative process will change from producing a dual set of tax bills (i.e., Taxation Laws Amendment Bills & Revenue Laws Amendment Bills) to a single set of tax bills (i.e., Taxation Laws Amendment Bill and Taxation Laws Second Amendment Bill). Current law assumes that the first set of tax bills (i.e. Taxation Laws Amendment Bills) is promulgated by the President within 6 months of the Ministerial announcement of rate changes during the Budget. However, the new legislative process requires that the 6 month period mentioned above be extended. The proposed amendment provides that the first set of tax bills (i.e. Taxation Laws Amendment Bills) be promulgated by the President within 12 months of the Ministerial announcement of rate changes during the Budget.

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2.4: Estate Duty Act, 1955: Amendment of section 9A

The time period for additional assessment will be reduced from five years down to three years to the extent that SARS issues actual assessments (i.e. falling outside a self-assessment system). The five-year rule will remain where the deemed initial assessment rules apply (because these rules are akin to a self-assessment system).

2.5: Estate Duty Act, 1955: Amendment of section 12

The rule imposing personal as well as joint and several liability on every executor who pays over (or parts with) the possession or control of any property under his administration is hereby repealed. This rule is inconsistent with the notion that the executor should only be liable for assets in the estate. Executor liability will only extend beyond the available assets in the estate if the executor is engaged in fraud. The exception for fraud is consistent with the rules relating to fraud contained in the Administration of Deceased Estates Act

2.6: Estate Duty Act, 1955: Repeal of section 19

The proposed repeal is part of the same amendment of section 12 as described above.

2.7: Income Tax Act, 1958: Amendment of section 4

The proposed amendment permits SARS to provide employees' tax reference numbers and certain other non-financial data to the employees' employers.

2.8: Income Tax Act, 1958: Amendment of section 6quat

The proposed amendment aims to further simplify the income tax return process, by allowing for the rounding off of foreign tax credits to the nearest rand.

2.9: Income Tax Act, 1958: Amendment of section 69

The proposed amendment requires third-party data providers to include taxpayer income tax reference numbers, which will be available in many cases due to requirements of the Financial Intelligence Centre Act, 2001, with the information they provide to SARS.

2.10: Income Tax Act, 1958: Amendment of section 70

The proposed amendment deletes provisions that have become obsolete.

2.11: Income Tax Act, 1958: Amendment of section 70A

The proposed amendment is consequential upon the insertion of the definition of a 'portfolio of a collective investment scheme in securities' in section 1 of the Income Tax Act, 1962.

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2.12: Income Tax Act, 1958: Repeal of section 72

The proposed amendment deletes provisions that have become obsolete.

2.13: Income Tax Act, 1958: Insertion of section 73BA

Provision is made for record keeping in relation to declarations and undertakings for purposes of dividends tax to be implemented in future.

2.14: Income Tax Act, 1958: Amendment of section 88

The Income Tax Act, 1991, and the Value-Added Tax Act, 1991, do not require SARS to pay interest on the overpayment of tax when a taxpayer is required to pay a disputed amount while the amount is subject to objection – with the objection subsequently being allowed. This non-payment of interest is arguably contrary to one of the core principles on which the constitutionality of the “pay now argue later” principle is based. In order to address these concerns, it is proposed that the Income Tax Act, 1958, and Value-Added Tax Act, 1991, be amended to: (i) clarify that payment is not suspended due to objection, (ii) formalise the circumstances where payment will be required despite objection, and (iii) provide for interest where a payment made pending consideration of an objection is refunded.

2.15: Income Tax Act, 1958: Amendment of section 88A

When the section 88A settlement procedures were introduced into legislation in 2003, the underlying assumption was that the settlement of disputes would only commence after the relevant assessment. Operational uncertainty now exists as to whether settlements may be concluded prior to assessments. It is therefore proposed that section 88A be clarified to ensure that settlement procedures are limited to post-assessment.

2.16: Income Tax Act, 1958: Amendment of section 89quin

As part of the modernisation agenda of SARS, the imposition of interest on all administered revenue will be aligned. The decision has been taken to move to the charging of compound interest instead of simple interest across all tax types. As part of the first stage of this alignment process it is proposed that the Commissioner be given the discretion to determine the method of calculation of interest in terms of the Income Tax Act, 1958, the tax types to which this new method will apply and date of implementation of this new method. It is expected that during the first phase of implementation compound interest will be made applicable to all payroll taxes (i.e. PAYE, SDL and UIF) and customs and excise with the other taxes to follow.

2.17: Income Tax Act, 1958: Insertion of section 89oct

The proposed amendment aims to further simplify the income tax return process, by the rounding off of employees' tax, provisional tax, and tax calculated to the nearest rand.

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2.18: Income Tax Act, 1958: Amendment of section 105

The proposed amendment provides that the Commissioner may lay a complaint with the controlling body to which a particular tax practitioner belongs, if that tax practitioner's own tax affairs are not in order.

2.19: Income Tax Act, 1958: Amendment of paragraph 5 of the Fourth Schedule

The proposed amendment provides that payment by the employer of the outstanding PAYE in terms of paragraph 5 will extinguish the principal liability of that employer to pay PAYE in terms of paragraph 2 and that the payment will no longer be treated as a penalty.

2.20: Income Tax Act, 1958: Amendment of paragraph 14 of the Fourth Schedule

Sub clause (a): The proposed amendment requires the employer to maintain certain employee data and to report this data as required.

Sub clause (b): The proposed amendment enables the Commissioner to request employer reconciliations of employees' tax more frequently than once a year. The obligation to provide employer reconciliations will also be extended to skills development levies and UIF contributions.

2.21: Income Tax Act, 1958: Amendment of paragraph 18 of the Fourth Schedule

The proposed amendment deletes wording that has become obsolete.

2.22: Income Tax Act, 1958: Amendment of paragraph 20 of the Fourth Schedule

A concern has arisen that less sophisticated taxpayers may not always be able to adequately estimate their taxable income for purposes of the second provisional tax payment as contemplated in paragraph 20 of the Fourth Schedule. These taxpayers will then be subject to a 20% penalty on underestimates unless they can satisfy the Commissioner that the estimates were not negligently or deliberately understated and were seriously calculated. In order to address this concern, provision is now made to allow the Commissioner to prescribe a method for determining an estimate of taxable income. If a designated taxpayer follows the prescribed method the 20% penalty will be waived automatically. This will assist a large number of smaller taxpayers, while continuing to require larger taxpayers to prepare accurate estimates.

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2.23: Customs and Excise Act, 1964: Amendment of section 3

The Customs and Excise Act, 1964 currently empowers only the Commissioner or an officer or person to withdraw or amend a decision made by such officer or person. The amendment extends the power to withdraw or amend any decision made by such officer to the supervisor of that officer.

The amendment also provides that an aggrieved person must submit a request to withdraw or amend a decision within a specified period. If such request is not received within the specified period the aggrieved person has to follow the procedure provided for in Chapter XA. Provision is also made that SARS may reconsider any decision on its own initiative at any time.

2.24: Customs and Excise Act, 1964: Amendment of section 18

The Customs and Excise Act currently requires that proof of export or removal as the case may be in respect of every transit bill of entry be submitted to the Commissioner for the duty liability of the client to cease. SARS Operations are now employing a risk based methodology by identifying high risk transit entries in respect of which proof of export or removal as the case may be must be submitted upon request. The amendments provide that proof be submitted only upon request by the Commissioner.

Currently the only interruptions allowed while goods are in transit are for sorting and repacking in terms of section 18(13)(b) of the Customs and Excise Act, 1964.

The change in trade environment required an improved provision for interruptions in transit. This amendment extends the circumstances for interruptions while goods are in transit to include; tallying, cleaning, inspecting and sealing the goods, and the carrying out of activities directed at preserving the condition of the goods

2.25: Customs and Excise Act, 1964: Amendment of section 18A

See notes in paragraph 2.24 above.

2.26: Customs and Excise Act, 1964: Insertion of section 38A

The insertion of the new section 38A allows the supply of stores, spares and equipment to foreign-going ships and aircraft under cover of the issuing of a certificate, invoice or other document prescribed or approved by the Commissioner and also allow such documents to be deemed due entry and followed up with a validating bill of entry. This amendment also empowers the Commissioner to prescribe any matters reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.

2.27: Customs and Excise Act, 1964: Insertion of section 75A

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Section 75 of the Customs and Excise Act, 1964 does not provide for the clearance of imported goods under rebate of duty where such goods are free of duty and as a result thereof the goods could also not be entered in terms of Schedule 1 of the Value Added Tax act, 1991 to qualify for the VAT exemption. A new section 75A of the Act has now been inserted to allow the clearance of imported goods free of duty under the relevant item of Schedule 1 of the Value Added Tax Act, 1991.

2.28: Customs and Excise Act, 1964: Amendment of section 93

Currently the Customs and Excise Act, 1964 provides for the mitigation and remission of any penalty in section 93 and Chapter XA. This amendment makes it clear that an aggrieved person has to follow the procedure contemplated in Chapter XA in order to remit or mitigate a penalty.

2.29: Customs and Excise Act, 1964: Insertion of section 94

In the Income Tax Act, 1962, and Value-added Tax Act, 1991, provision is made for schemes to avoid liability for tax or reducing amounts of taxes. As a matter of consistency a similar provision dealing with schemes is added to the Customs and Excise Act.

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

Amendments are proposed as part of the SARS modernisation agenda to the accounting system. Section 105 of the Customs and Excise Act, 1964 is amended to provide for—

- the levying of compound interest instead of simple interest;
 - the payment of interest by the Commissioner on refunds and drawbacks;
 - the deletion of the exclusion in respect of the payment of interest on penalty and forfeiture; and
 - a payment allocation rule that generally sets payments off against the oldest outstanding debt.

A further amendment to section 105 allows the Commissioner to mitigate or remit any interest as a consequence of any procedure contemplated in Part A of Chapter XA.

2.31: Customs and Excise Act, 1964: Insertion of section 119A

The insertion of section 119A seeks to facilitate implementation of SARS customs modernisation program by empowering the Commissioner to make rules to provide the necessary regulatory framework where the enabling provisions for the implementation of any part of a modernisation program are urgently required and it is not possible to timeously effect the necessary amendment to any relevant section of the Customs and Excise Act, 1964, as amended.

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2.32: *Diamonds Act, 1985: Amendment of section 64*

The proposed amended makes it clear that contravention of section 64 of the Diamonds Act will trigger the payment of the levy in terms of section 2 of the Diamond Export Levy Act, 2007.

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

The proposed amendment inserts a definition of biometrical information. See notes on clause 2.38

2.34: *Value-Added Tax Act, 1991: Amendment of section 6*

The proposed amendment provides none of the exemptions contained in section 6 of the Value-Added Tax Act, 1991, will apply to biometrical information as defined. Hence biometrical information as defined may not be disclosed to any person.

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

The proposed amendment provides a transitional arrangement for vendors that have entered into an amalgamation transaction as contemplated in section 44 of the Income Tax Act, 1968. In this regard, the requirement that a tax invoice be issued reflecting the name, address and VAT number of the supplier or recipient, as the case may be, will not be applicable for a period of 6 months from the date of the transaction. As a result, the tax invoice may reflect the name, address and VAT registration number of the entity that ceased to be a vendor. This transitional arrangement allows vendors to comply with the provisions of section 20 and 16 of the VAT Act.

2.36: *Value-Added Tax Act, 1991: Amendment of section 23*

In order to combat the exceptionally high levels of fictitious persons applying for VAT registration, the proposed amendment allows the Commissioner to obtain biometrical information when considering the person's application for registration as a vendor.

2.37: *Value-Added Tax Act, 1991: Amendment of section 36*

The Income Tax Act and VAT Act do not require SARS to pay interest on the overpayment of tax when a taxpayer is required to pay a disputed amount while the amount is subject to objection – with the objection subsequently being allowed. This non-payment of interest is arguably contrary to one of the core principles on which the constitutionality of the “pay now argue later” principle is based. In order to address these concerns, it is proposed that the Income Tax Act and VAT Act be amended to: (i) clarify that payment is not suspended due to objection, (ii) formalise the circumstances where payment will be required despite objection, and (iii) provide for interest where a payment made pending consideration of an objection is refunded.

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

Sub clause (a): As part of the modernisation agenda for SARS the imposition of interest on all administered revenue will be aligned. As part of the first stage of this alignment process, it is proposed that the Minister be given the power to determine the method of calculation of interest with regard to the underpayment of VAT collected by Customs and Excise.

Sub clause (b): Prior to the proposed amendment, a person could elect to use one of 2 options that were available in order to convince the Commissioner that the interest imposed on the underpayment of tax should be remitted. The proposed amendment deletes these options. Accordingly, it is proposed that a single test be used to determine whether the interest imposed should be remitted. In this regard, the Commissioner will issue an interpretation note setting out the circumstances under which interest may be remitted.

Sub clause (c): As mentioned in the 2009 Budget speech, a set of incremental changes is set to underpin the SARS modernisation agenda. In light hereof, the manner in which interest and penalties are calculated on outstanding returns and payments will be amended. In order to provide for the aforementioned changes, it is proposed that the Minister may make regulations regarding the imposition of penalties and interest. Furthermore, it is proposed that where any other method is prescribed by the Minister by regulation, an amendment must be tabled in Parliament to amend the relevant subsection within 12 months after the date of publication by the Minister of the regulations in the *Gazette*.

2.39: Value-Added Tax Act, 1991: Amendment of section 58

It is proposed that a false statement made to the Commissioner without reasonable grounds for believing that the statement is true, will be regarded as an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

2.40: Skills Development Levies Act, 1999: Amendment of section 1

The proposed amendment is consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962, that will also apply within the context of the Skills Development Levies Act, from a date to be determined by the Minister of Finance.

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

The proposed amendment provides for the introduction of employer reconciliations for purposes of skills development levies and essentially mirrors the obligation of an employer to submit employer reconciliations of employees' tax as provided for in the Fourth Schedule to the Income Tax Act, 1962.

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2.42: Skills Development Levies Act, 1999: Amendment of section 7

See the notes on paragraph 2.41 above.

2.43: Skills Development Levies Act, 1999: Insertion of section 7A

The proposed amendment enables the Commissioner to estimate the amount of any levy due in terms of the Skills Development Levies Act, 1999 and essentially aligns the provisions of this Act with that of the Fourth Schedule of the Income Tax Act, 1962.

2.44: Skills Development Levies Act, 1999: Amendment of section 11

As part of the modernization agenda for SARS, the imposition of interest on all administered revenue will be aligned. The decision has been taken to move to the charging of compound interest instead of simple interest across all tax types. As part of the first stage of this alignment process it is proposed that the Commissioner be given the discretion to determine the method of calculation of interest in terms of the Act, the tax types to which this new method will apply and date of implementation of this new method. It is expected that during the first phase of implementation compound interest will be made applicable to all payroll taxes (i.e. PAYE, SDL and UIF contributions) and customs and excise with the other taxes to follow.

2.45: Skills Development Levies Act, 1999: Amendment of section 12

The proposed amendment aligns the additional tax provisions in the Skills Development Levies Act, with that of the Fourth Schedule of the Income Tax Act, 1962, by allowing for any decision by the Commissioner to impose any penalty or not to remit any penalty in terms of this section, to be subject to objection and appeal.

2.46: Unemployment Insurance Contributions Act, 2002: Amendment of section 1

The proposed amendment is consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962, that will also apply within the context of the Unemployment Insurance Contributions Act, 2002, from a date to be determined by the Minister of Finance.

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

The proposed amendment provides for the introduction of employer reconciliations for purposes of unemployment insurance contributions and essentially mirrors the obligation of an employer to submit employer reconciliations of employees' tax as provided for in the Fourth Schedule to the Income Tax Act, 1962.

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2.48: Unemployment Insurance Contributions Act, 2002: Amendment of section 9

See notes on paragraph 2.47.

2.49: Unemployment Insurance Contributions Act, 2002: Insertion of section 9A

The proposed amendment enables the Commissioner to estimate the amount of any contribution due in terms of the Unemployment Insurance Contributions Act, 2002 and essentially aligns the provisions of this Act with that of the Fourth Schedule of the Income Tax Act, 1962.

2.50: Unemployment Insurance Contributions Act, 2002: Amendment of section 12

As part of the modernization agenda for SARS, the imposition of interest on all administered revenue will be aligned. The decision has been taken to move to the charging of compound interest instead of simple interest across all tax types. As part of the first stage of this alignment process it is proposed that the Commissioner be given the discretion to determine the method of calculation of interest in terms of the Act, the tax types to which this new method will apply and date of implementation of this new method. It is expected that during the first phase of implementation compound interest will be made applicable to all payroll taxes (i.e. PAYE, SDL and UIF contributions) and customs and excise with the other taxes to follow.

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

The proposed amendment aligns the additional tax provisions in the Unemployment Insurance Contributions Act, with that of the Fourth Schedule of the Income Tax Act, 1962, by allowing for any decision by the Commissioner to impose any penalty or not to remit any penalty in terms of this section, to be subject to objection and appeal.

2.52: Revenue Laws Amendment Act, 2005: Repeal of section 87

The proposed amendment is consequential to the amendment of section 18 of the Customs and Excise Act, 1964. See the notes in paragraph 2.24.

2.53: Diamond Export Levy (Administration) Act, 2007: Amendment of section 1

The proposed amendment inserts a definition of the Customs and Excise Act, 1964, as a consequential amendment to the amendment of section 17 of the Diamond Export Levy (Administration) Act.

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2.54: Diamond Export Levy (Administration) Act, 2007: Amendment of section 2

The proposed amendment shortens the registration period for persons who qualify for registration in terms of the Diamond Export Levy (Administration) Act after 1 March 2009 to 7 days instead of 60 days. The 60 day period will continue to apply to all persons who qualified for registration prior to 1 March 2009.

2.55: Diamond Export Levy (Administration) Act, 2007: Amendment of section 4

The proposed amendment provides that where the last day of the 30 day period within which the levies due in terms of this Act must be paid, falls on a weekend or a public holiday, payment of such levies must be made by no later than the penultimate business day of that period.

2.56: Diamond Export Levy (Administration) Act, 2007: Amendment of section 5

The practice it has become problematic to determine the actual date and time when a transaction in terms of the Diamond Export Levy (Administration) Act, 2007, was effected. The proposed amendment provides for a discretion by the Commissioner to determine the actual date of the transaction as well as the rate that will be applied.

2.57: Diamond Export Levy (Administration) Act, 2007: Amendment of section 14

Sub clause (b): The proposed amendment provides that a registered person can only obtain a refund of any levy overpaid in terms of this Act, if that person submits the necessary forms, documents or information in support of such refund as the Commissioner may prescribe by rule.

Sub clause (c): Subsection (5) seeks to refund amounts of less than R100 by means of a set-off of that amount in the assessment period immediately following the assessment period in which the claim for the refund arose. However, should no levy be payable by a registered person in the period immediately following the assessment period in which the claim arose, it would not be possible to refund the registered person in the manner originally envisaged. The amount of R100 may potentially be carried over for a number of consecutive assessment periods, hence the proposed amendment seeks to reduce the amount that may be thus carried over to R5.

2.58: Diamond Export Levy (Administration) Act, 2007: Amendment of section 15

Section 15 provides that the Commissioner or a registered person must pay simple interest in specific circumstances calculated on a monthly basis. As part of the

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modernization agenda for SARS, the imposition of interest on all administered revenue will be aligned. The decision has been taken to move to the charging of compound interest instead of simple interest across all tax types. This amendment will be implemented from a date to be determined by the Minister of Finance.

2.59: Diamond Export Levy (Administration) Act, 2007: Amendment of section 17

Section 17 provides for the application of certain provision of the Income Tax Act, 1962, to certain diverse matters not specifically dealt with in the Diamond Export Levy (Administration) Act. It is proposed that similar provisions in the Customs and Excise Act, 1964, rather be applied in order to best align the provisions of section 17 of the Diamond Export Levy (Administration) Act, 2007, with the SARS' operational environment of customs and excise.

2.60: Diamond Export Levy Act, 2007: Amendment of section 5

The proposed amended makes it clear that contravention of section 64 of the Diamonds Act will trigger the payment of the levy in terms of section 2 of the Diamond Export Levy Act, 2007.

2.61: Securities Transfer Tax Act, 2007: Amendment of section 2

In 2009, the legislative process at the National Treasury will shift from producing a dual set of tax bills (i.e., Taxation Laws Amendment Bills & Revenue Laws Amendment Bills) to a single set of tax bills (i.e., Taxation Laws Amendment Bill and Taxation Laws Second Amendment Bill). Current law provides that the first set of tax bills (i.e. Taxation Laws Amendment Bills) must be promulgated by the President within 6 months of Ministerial announcement. However, the new legislative process requires that the 6 month period mentioned above be extended. The proposed amendment provides that the first set of tax bills (i.e. Taxation Laws Amendment Bills) be promulgated by the President within 12 months of Ministerial announcement.

2.62: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 2

For administrative efficiency reasons, the proposed amendment allows affected parties that qualify for registration in terms of the Act to pre-register with the Commissioner on 1 November 2009, but by no later than 31 January 2010. Affected parties that qualify for registration in terms of the Act after 1 November 2009 have 60 days from the date of qualifying to register with the Commissioner.

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

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The proposed amendment inserts a definition of a nonbinding private ruling for purposes of the new section 18A. See the notes on clause 2.65 hereunder.

2.64: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 9

The proposed amendment aligns the wording of subsection (2) with that of subsection (1).

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

With the impending implementation of the Mineral and Petroleum Resources Royalty Act, questions of interpretation are starting to emerge. In order to assist in this regard, it is proposed that SARS be empowered to issue nonbinding private opinions and other written statements.

2.66: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 21

The date of coming into operation for both the Mineral and Petroleum Resources Royalty Act, 2008, and the Mineral and Petroleum Resources (Administration) Act, 2008, has been deferred from 1 May 2009 to 1 March 2010. The proposed amendment defers certain sections in both Acts for purposes of administrative efficiency.

2.67: Short title and commencement

Clause 67 provides for the name and commencement of the proposed Act.

3. CONSULTATION

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

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2009 Budget Review.

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.