

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. 32527 of 27 August 2009)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 11—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—

- provide for the allocation of payments;
- amend the Transfer Duty Act, 1949, so as to extend a time period;
- amend the Estate Duty Act, 1955, so as to amend a time period; and to repeal a section;
- amend the Income Tax Act, 1962, so as to insert new provisions; to amend the calculation of interest; to amend a definition; and to effect textual and consequential amendments;
- amend the 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; to 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 amend provisions regulating payment of outstanding amounts and interest; to insert a provision empowering the making of rules for the purposes of modernising customs administration; and to effect textual and consequential amendments;
- amend the Value-Added Tax Act, 1991, so as to insert a definition; to insert new provisions; to amend the calculation of interest; and to effect textual and consequential amendments;
- amend the Skills Development Levies Act, 1999, so as to amend a definition; to insert new provisions; to amend the calculation of interest; and to effect textual and consequential amendments;
- amend the Unemployment Insurance Contributions Act, 2002, so as to amend a definition; to insert new provisions; to amend the calculation of interest; and to effect textual and consequential amendments;
- amend the Diamond Export Levy (Administration) Act, 2007, so as to amend a time period; to amend refunds; to amend the calculation of interest; and to effect textual and consequential amendments;
- amend the Diamond Export Levy Act, 2007, so as to clarify an existing provision;
- amend the Securities Transfer Tax Act, 2007, so as to extend a time period;

- **amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to amend effective dates; to provide for nonbinding private opinions; and 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:—

Allocation of payments received in terms of Acts administered by Commissioner of South African Revenue Service

1. (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), the Commissioner may, subject to subsection (5), allocate any payment made in terms of these Acts against the oldest amount of tax, duty, levy, penalty or interest outstanding at the time of the payment, other than amounts for which payment has been suspended in terms of any of those Acts. 5 10

(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. 15

(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 the applicable Act.

(5) This section does not apply to any payment by any person in respect of the clearance of goods for home consumption in terms of the Customs and Excise Act, 1964, where such a person designates that such payment must be allocated to the duty and other charges due in terms of that Act and value-added tax due in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), on the goods concerned. 20

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 of 2004, section 1 of Act 9 of 2005, section 1 of Act 31 of 2005 and section 14 of Act 9 of 2006 25 30

2. 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.”. 35

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 40

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

“(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,]—** 45

(aa) three years from the date of a notice of assessment issued in terms of section 9(3) or 9(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) or 9(4)(b), 50

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 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. 5

Amendment of section 12 of Act 45 of 1955

4. (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 or her capacity as executor only and for an amount not exceeding the available assets in the estate, unless the liability is due to fraud.” 10

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

Repeal of section 19 of Act 45 of 1955

5. (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. 15

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, 20

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

- (a) by the addition to subsection (1)(c)(iii) of the word “or”; and
 (b) by the addition to subsection (1)(c) of the following subparagraph: 25

“(iv) disclosing to an employer (as defined in the Fourth Schedule) of an employee (as defined in the Fourth Schedule), the income tax reference number, identity number, physical or postal address of that employee and such other non-financial information in relation to that employee, as that employer may require in order to comply with its obligations in terms of this Act;” 30

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, and amended by section 5 of Act 8 of 1997, 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 and section 7 of Act 35 of 2007 35

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

- (a) by the substitution for subsection (4) of the following subsection: 40

“(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 45

- (b) by 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 62 of Act 45 of 2003 and amended by section 8 of Act 34 of 2004

8. Section 69 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(a) for item (i) of the following item:

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

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

9. 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

10. (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 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 and within such time and containing such information 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

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

Insertion of section 73C in Act 58 of 1962

12. (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 for purposes of dividends tax

73C. Any person that submits, receives or relies on any written declaration contemplated in Part VIII of Chapter II must retain a copy of that declaration for a period of five years from the date on which that declaration 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, comes into operation.

Substitution of section 88 of Act 58 of 1962

13. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 88 of the following section:

“Payment of tax pending objection and appeal

88. (1) Unless the Commissioner otherwise directs in terms of subsection (4)—
- (a) the obligation to pay any tax chargeable under this Act; and
 - (b) the right to receive and recover any tax chargeable under this Act, shall not be suspended by any objection or appeal or pending the decision of a court of law under section 86A.
- (2) A taxpayer may request the Commissioner to suspend the payment of any tax or a portion thereof due under an assessment where the liability to pay that tax is disputed.
- (3) The Commissioner may suspend payment of the disputed tax 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 is able to provide adequate security for the payment of the amount involved;
 - (e) whether payment of the amount involved would result in irreparable financial hardship to the taxpayer;
 - (f) whether sequestration or liquidation proceedings are imminent;
 - (g) whether fraud is involved in the origin of the dispute; or
 - (h) whether the taxpayer has failed to furnish any information requested by the Commissioner in terms of this Act for purposes of a decision under this section.
- (4) The Commissioner may deny a request in terms of subsection (3) or revoke a decision to suspend payment in terms of that subsection with immediate effect whenever he or she is satisfied that—
- (a) after the lodging of the objection or appeal, the objection or appeal is frivolous or vexatious;
 - (b) the taxpayer is employing dilatory tactics in conducting the objection or appeal;
 - (c) on further consideration of the factors contemplated in subsection (3), the suspension should not have been given; or
 - (d) there is a material change in any of the factors described in subsection (3), upon which the decision to suspend the amount involved was based.
- (5) 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 or 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 from the date that excess was received by the Commissioner to the date the refunded tax is paid, and amounts short-paid being recoverable with interest calculated as provided in section 89.
- (6) 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.
- (7) The provisions of section 102(3) apply *mutatis mutandis* in respect of any amount refundable and any interest payable by the Commissioner under this section.”.
- (2) Subsection (1) shall come into operation on a date to be determined by the Minister of Finance in the *Gazette* and will apply to all amounts payable by or to the Commissioner on such date, and where payment was already suspended on such date,

that suspension will lapse on the earlier of the expiry date thereof or six months from the date so determined by the Minister.

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

14. (1) Section 88A of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “dispute” of the following definition: 5

“**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;”.

(2) Subsection (1) comes into operation on a date to be determined by the Minister of Finance by notice in the *Gazette*. 10

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

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

(a) by the renumbering of the current section to section 89quin(1); and 15

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

“(2) The Commissioner may prescribe by notice in the *Gazette* that any interest payable under this Act is calculated on the daily balance owing and compounded monthly, and such method of determining interest will apply to such tax types and from such date as the Commissioner may prescribe.” 20

Amendment of section 105A of Act 58 of 1962, as inserted by section 23 of Act 65 of 1986

16. Section 105A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection: 25

“(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 30

(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, 35

the Commissioner may lodge a complaint with the said controlling body.”.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008 and section 66 of Act 60 of 2008 40
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17. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“**provisional taxpayer**” means—

- (a) any person (other than a company) who derives by way of income any amount which does not constitute remuneration or an allowance or advance contemplated in section 8(1);
- (b) any company; and
- (c) any person who is notified by the Commissioner that he or she is a provisional taxpayer, but shall exclude—
- (aa) any public benefit organisation as contemplated in paragraph (a) of the definition of ‘public benefit organisation’ in section 30(1) that has been approved by the Commissioner in terms of section 30(3);
- (bb) any recreational club as contemplated in the definition of ‘recreational club’ in section 30A(1) that has been approved by the Commissioner in terms of section 30A(2); and
- (cc) any body or association contemplated in section 10(1)(e);”;
- (b) by the substitution in the definition of “remuneration” for paragraph (cA) of the following paragraph:
- “(cA) [60] 80 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under section 8(1)(b)(iii);”;
- (c) by the addition to the definition of “remuneration” of the following paragraph:
- “(f) any amount deemed to be income accrued to that person in terms of section 7(11).”

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of years of assessment ending on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2010 and applies in respect of years of assessment commencing on or after that date.

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

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

- (a) by the substitution in subparagraph (1) for the words following item (b) of the following words:
- “(whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph [2(b)] 2(1)(b) of the Second Schedule, deduct from the employees benefit or minimum individual reserve as contemplated in that paragraph, by way of employees’ tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee’s spouse, in respect of such liability of that spouse, and shall pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount

was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which that person ceased to be an employer, or in either case within such further period as the Commissioner may approve.”;

(b) by the substitution in subparagraph (4) for item (a) of the following item: 5

“(a) any contribution by the employee concerned to any pension fund [or retirement annuity fund] which the employer is entitled or required to deduct from that remuneration, but limited to the deduction to which the employee is entitled under section 11(k) [or (n), as the case may be,] having regard to the remuneration and the period in respect of which it is payable;”;

(c) by the insertion in subparagraph (4) of the following item after item (b):

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

(2) Paragraphs (b) and (c) of subsection (1) come into operation on 1 March 2010 and apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 5 of Fourth Schedule to Act 58 of 1962 20

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

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

“(1) 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 or she 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.”;

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

“(1A) The liability of the employer as contemplated in paragraph 2 must be deemed to have been discharged if the employer made payment of the outstanding employees’ tax in terms of subparagraph (1).”;

(c) by the substitution for subparagraph (5) of the following paragraph:

“(5) Any amount which an employer is required to pay in terms of sub-paragraph (1) and which he is entitled to the employer does not recover from the employee in terms of sub-paragraph (3) shall, insofar as the employer only is concerned, for the purposes of section 23(d), be deemed to be a penalty due and payable by that employer.”.

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 46 of Act 28 of 1977, section 55 of Act 59 of 2000, section 21 of Act 19 of 2001, section 41 of Act 20 of 2006, section 56 Act 8 of 2007, sections 66 and 116 of Act 35 of 2007, section 66 of Act 3 of 2008 and section 68 of Act 60 of 2008 45

20. Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) (a) The amount to be deducted or withheld in respect of employees’ tax from any lump sum to which paragraph (d) or (e) of the definition of ‘gross income’ in section 1 [of this Act] or section 7A [thereof] applies, shall be ascertained by the employer from the Commissioner before paying out such lump sum, and the Commissioner’s determination of the amount to be deducted or withheld shall be final.

(b) Paragraph (a) does not apply to any amount required to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ and paragraph 2(1)(b)(iB) of the Second Schedule as a result of a transaction contemplated in section 14(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), other than an amount that is transferred for the benefit of the person to any provident fund as defined in paragraph 1 of the Second Schedule from any pension fund or pension preservation fund as defined in that paragraph.” 5

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, 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 and section 16 of Act 61 of 2008 10

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

- (a) by the substitution for subparagraph (1) of the following subparagraph: 15
- “(1) Every employer shall in respect of each employee maintain a record showing—
- (a) the amounts of remuneration paid or due by him or her to such employee; **[and]**
- (b) the amount of employees’ tax deducted or withheld from **[each such amount]** the amounts of remuneration contemplated in item (a)[,]; 20
- (c) the income 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, and such record shall be retained by the employer and shall be available for scrutiny by the Commissioner.”; 25
- (b) by the substitution for subparagraph (2) of the following subparagraph: 30
- “(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) by the substitution for subparagraph (3) of the following subparagraph: 30
- “(3) Every employer shall—
- (a) **[within 60 days after the end of each period contemplated in paragraph 13(1A)]** by such date or dates as prescribed by the Commissioner by notice in the *Gazette*; and
- (b) if **[during any such period he]** the employer ceases to carry on any 35
- business or other undertaking in respect of which **[he]** the employer 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 40
- 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.”. 40

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 45

22. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 50

- (a) by the substitution in subparagraph (1)(d) for subitem (i) of the following subitem: 50
- “(i) will not exceed **[R80 000]** R120 000;” and
- (b) by the substitution in subparagraph (1)(d) for subitem (iii) of the following subitem: 55
- “(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 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005, section 46 of Act 3 of 2008 and section 18 of Act 61 of 2008 5

23. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to item (d) of subparagraph (1) of the following proviso:

“: Provided that, if an estimate under item (a) or (b) must be made in respect of a period that ends more than one year after the end of the latest preceding year of assessment in relation to such estimate, the basic amount determined in terms of sub-item (i) and (ii) shall be increased by an amount equal to eight per cent per annum of that amount, from the end of such year to the end of the year of assessment in respect of which the estimate is made.” 10

Amendment of paragraph 20 of Fourth Schedule to Act 58 of 1962, as amended by section 25 of Act 72 of 1963, section 29 of Act 88 of 1965, section 47 of Act 89 of 1969, section 44 of Act 88 of 1971, section 51 of Act 85 of 1974, section 36 of Act 69 of 1975, section 50 of Act 94 of 1983, section 39 of Act 121 of 1984 and section 19 of Act 61 of 2008 15

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

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

“(1) If the actual taxable income, as finally determined under this Act, for the year of assessment in respect of which the final or last estimate of his or her taxable income is submitted in terms of paragraph 19(1)(a) by a provisional taxpayer other than a company, or the estimate of its taxable income in respect of the period contemplated in paragraph 23(b) is submitted in terms of paragraph 19(1)(b) by a company which is a provisional taxpayer, in respect of any year of assessment [**discloses an estimated amount of taxable income which**] is— 25 30

(a) more than R1 million and such estimate 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**] the Commissioner may, if he or she is not satisfied that the amount of such estimate was seriously calculated with due regard to the factors having a bearing thereon or was not deliberately or negligently understated, subject to the provisions of [**subparagraphs (2),**] subparagraph (3), [**and (4), be required to pay to the Commissioner**] impose, in addition to the normal tax chargeable in respect of [**his or her**] the taxpayer’s taxable income for such year of assessment, an amount by way of additional tax [**equal**] up 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**] such estimate and the amount of normal tax calculated, at the rates applicable in respect of [**the said**] such year of assessment, in respect of a taxable income equal to 80 per cent of [**the said**] such actual taxable income; and 35 40 45

(b) in any other case, less than 90 per cent of the amount of such actual taxable income and is also less than the basic amount applicable to the estimate in question, as contemplated in paragraph 19(1)(d), the taxpayer shall, subject to the provisions of subparagraphs (2) and (3), be liable to pay to the Commissioner, in addition to the normal tax chargeable 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 such estimate and the lesser of the following amounts, namely— 50 55

- (i) the amount of normal tax calculated, at the rates applicable in respect of such year of assessment, in respect of a taxable income equal to 90 per cent of such actual taxable income; and
- (ii) the amount of normal tax calculated in respect of a taxable income equal to such basic amount, at the rates applicable in respect of such year of assessment.”;
- (b) by the substitution for subparagraph (2) of the following subparagraph:
 “(2) Where the Commissioner is satisfied that the amount of any estimate referred to in subparagraph (1)(b) was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated [and was seriously calculated with due regard to the factors having a bearing thereon], or if the Commissioner is partly so satisfied, the Commissioner may in his or her discretion remit the additional tax or a part thereof.”; and
- (c) by the substitution for subparagraph (4) of the following subparagraph:
 “(4) Any decision of the Commissioner in the exercise of his or her discretion under [subparagraph] subparagraphs (1)(a) and (2) shall be subject to objection and appeal.”.
- (2) Subsection (1) will apply to years of assessment ending on or after 1 March 2009.

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

25. (1) Section 3 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 “(a) (i) Any decision made and any notice or communication signed or issued by such an officer or person may be withdrawn or amended by—
 (aa) the officer or person concerned;
 (bb) any supervisor of the officer or person contemplated in item (aa);
 (cc) an officer who withdraws or amends such decision, notice or communication under a delegation from, or under the control or direction of, the Commissioner; or
 (dd) the Commissioner,
 in each case according to any division of powers to so withdraw or amend as may be prescribed by rule.
 (ii) Any rule contemplated in subparagraph (i) may in addition specify to whom and the period within which a request for withdrawal or amendment of a decision, notice or communication may first be submitted and after which decision, notice or communication no further request shall be considered for the purposes of this subsection.
 (iii) The provisions of subparagraph (ii) shall not be construed as affecting the powers of any officer, person, supervisor or the Commissioner to withdraw or amend 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 subparagraph (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.”.
- (2) Subsection (1) or any part thereof comes into operation on the date or dates determined by the Minister of Finance by notice in the *Gazette*.

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 1999, 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

26. Section 18 of the Customs and Excise Act, 1964, is hereby amended—
 (a) by the substitution for subsection (3) of the following subsection:

“(3) (a) Subject to [the provisions of] subsection (4), any liability for duty in terms of subsection (2) shall cease [when it is proved by the person concerned] if—

- (i) goods destined for a place in the common customs area, have been duly entered at that place; or 5
- (ii) (aa) goods destined for a place beyond the borders of the common customs area have been duly taken out of that area; or
- (bb) in circumstances and in accordance with procedures which the Commissioner may determine by rule the goods have been duly accounted for in the country of destination. 10

(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; 15
- (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; and
- (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; or 20
- (iv) (aa) 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 subparagraph (i); and 25
- (bb) 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 goods were entered for home consumption on the date of entry for removal in bond. 30

(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 such inspection by an 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.”; 35

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

- “(4) If—
- (a) liability has not ceased as contemplated in subsection (3)(a); or
 - (b) the goods have been diverted or deemed to have been diverted as contemplated in subsection (13),
- 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; 45
 - (ii) any amount that may be due in terms of section 88(2); and
 - (iii) any interest due in terms of section 105: 50

Provided that such payment shall not indemnify a person against any fine or penalty provided for in this Act.”; 50

(c) by the substitution in 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. 55

(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 produce valid proof and other information and documents for inspection to an officer or to submit such proof, 60

- information and documents to the Commissioner as required in terms of subsection (3)(b)(ii) and (iii), respectively;
- (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. 5
- (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.”; and
- (d) by the substitution in subsection (13) for subparagraph (i) of paragraph (b) of the following subparagraph: 10
- “(i) Notwithstanding the provisions of paragraph (a), the Commissioner may, in such circumstances and subject to such conditions as the Commissioner may prescribe by rule permit goods in transit through the Republic or any class or kind of such goods to be delivered to any place approved by him for the purposes of **[sorting or repacking]**— 15
- (aa) carrying out activities for the purpose of preserving or maintaining the goods;
- (bb) inspection of the goods; 20
- (cc) cleaning the goods;
- (dd) sorting the goods;
- (ee) tallying the goods;
- (ff) re-packing the goods;
- (gg) sealing the goods or the transport unit; 25
- (hh) exercising control over the movement of goods into, in and from such place; and
- (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 and amended by section 12 of Act 45 of 1995, section 38 of Act 19 of 2001 and section 120 of Act 60 of 2001 30

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

- (a) by the substitution for subsection (1) of the following subsection: 35
- “(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 subsection (2), be liable for the duty on all goods which he or she so exports.”; 40
- (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 **[when it is proved by the exporter that]** if— 45
- (i) the said goods have been duly taken out of the common customs area; or[,] 45
- (ii) in circumstances and in accordance with procedures which the Commissioner may determine by rule, **[that]** the goods have been duly accounted for in the **[county]** country of destination.
- (b) An exporter who is liable for duty as contemplated in subsection (1) must— 50
- (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 export as contemplated in section 101 and the rules made thereunder available for inspection by an officer; and 55
- (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; or 60

- (iv) (aa) 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 subparagraph (i); and
- (bb) 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 goods were entered for home consumption on the date of entry for export.
- (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 such inspection by an 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 (3) of the following subsection: 15
- “(3) If—
- (a) the liability has not ceased as contemplated in subsection (2)(a); or
- (b) the goods have been diverted or deemed to have been diverted as contemplated in subsection (9),
- such person shall, except if payment has been made as contemplated in subsection (2)(b)(iv), upon demand pay— 20
- (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 25
- (iii) any interest due in terms of section 105:
- Provided that such payment shall not indemnify a person against any fine or penalty provided for in this Act.”; and
- (d) by the substitution for subsection (9) of the following subsection: 30
- “(9) (a) 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.
- (b) Goods shall be deemed to have been so diverted where— 35
- (i) no permission to divert such goods has been granted by the Commissioner as contemplated in paragraph (a) and the person concerned fails to produce valid proof and other information and documents for inspection to an officer or to submit such proof, information and documents to the Commissioner as required in terms of subsection (2)(b)(ii) and (iii), respectively; 40
- (ii) any such proof is the result of fraud, misrepresentation or non-disclosure of material facts; or
- (iii) such person makes a false declaration for the purpose of this section. 45
- (c) 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

28. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 38: 50

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

- “38A. (1) (a) This section applies to stores or spares and equipment— 55
- (i) stored in a licensed special customs and excise storage warehouse contemplated in section 21(1) 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 or 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 or 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(1) and of 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.
- (e) (i) In this section and any provision of any Schedule or rule relating to stores or stores or 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 the 'stores or spares and equipment' 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 goods 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; and
 - (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 storage warehouse or 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.
- (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 or exporter must at the same time pay the duty due on the goods.
- (3) The Commissioner may—
- (a) permit the return of stores or 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 for the purposes of this section or section 21(1)—
- (a) definitions as contemplated in subsection (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;
 - (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 in Act 91 of 1964

29. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 75:

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

- 75A.** Notwithstanding section 75, imported goods free of duty that are—
- (a) exempt from value-added tax in terms of any item in paragraph 8 to Schedule 1 to 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 to this Act,
- may be entered under the item in paragraph 8 of Schedule 1 to the Value-Added Tax Act, 1991, but the goods shall, in addition to any relevant provision of the Value-Added Tax Act, 1991, be subject to compliance with the provisions of section 75 of this Act 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

30. (1) Section 93 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Commissioner or an officer—
- (a) may subject to section 3(2), on [good cause shown] such conditions as may be considered necessary; 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].”.

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

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

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

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

- 105.** (1) 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 prescribe by rule on any outstanding amount payable in terms of this Act; 5
 - (b) interest shall be payable by the Commissioner on any drawback or refund contemplated in section 75 or 76 from such date and for such period as the Commissioner may prescribe by rule; 10
 - (c) the interest so payable shall be paid at a rate the Minister 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; 15
 - (d) the Commissioner—
 - (i) may subject to section 3(2), on such conditions as the Commissioner may consider necessary; or
 - (ii) must as a result of the finalisation of any procedure contemplated in Chapter XA, 20
 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 the Commissioner may determine; 25
 - (f) any such interest—
 - (i) shall be calculated on the daily balance owing and compounded monthly; and
 - (ii) when recovered, shall be paid into the National Revenue Fund; 30
 - (g) the Commissioner may prescribe by rule—
 - (i) all matters which by this section are required or permitted to be prescribed by rule; 35
 - (ii) any other matter which the Commissioner may consider reasonably necessary and useful to achieve the efficient and effective administration of this section. 40
- (2) (a) Interest contemplated in paragraph (b), shall be payable in respect of any such drawback or refund for which a duly completed application is received by the Commissioner after the date this section comes into operation.
- (b) Interest shall not be compounded on outstanding amounts in respect of which the Commissioner on a date before this section comes into operation permitted payment by instalments in terms of subsection (1)(e).”

(2) Subsection (1) or any part thereof comes into operation on the date or dates determined by the Minister of Finance by notice in the *Gazette*.

Insertion of section 119A in Act 91 of 1964 45

32. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 119:

“Special provisions for customs modernisation

- 119A.** (1) Notwithstanding anything to the contrary contained in this Act, for the purposes of modernising customs administration where— 50
- (a) 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, 55
- the Commissioner may by rule, in respect of any person or class of persons or any class or kind of goods, ship or vehicle or any activity regulated by this Act—

- (i) adapt any existing power, duty or function contemplated in this Act for purposes of establishing alternative or revised administrative policies and procedures that will give effect to the modernisation program;
 - (ii) include in such rules any requirement, process or procedure relating to—
 - (aa) any electronic communication contemplated in sections 7, 7A, 8, 101A or 101B, or as may be reasonably necessary in respect of any other activity which is required to be regulated by this Act;
 - (bb) the processing of travellers;
 - (cc) the clearance of goods;
 - (dd) the import, export or handling of goods;
 - (ee) the licensing and 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; and
 - (ii) any other activity regulated by this Act.
- (2) Any rule contemplated in subsection (1)—
- (a) must be consistent with the objectives of this Act;
 - (b) may exempt any person or class of persons or any class or kind of goods, ship or vehicle or any activity regulated by this Act from the application of such rule in the circumstances and for the period as may be specified in such rule.
- (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 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. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the insertion before the definition of “business day” of the following definition:

‘biometrical information’ means the biological data 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.”.

(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 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 and section 36 of Act 21 of 2006,

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

(a) by the insertion after subsection (5) of the following subsection:

“(5A) 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 except to the National Commissioner

of the South African Police Service or the National Director of Public Prosecutions where such information relates to, and constitutes material information for, the proving of any offence in terms of this Act or a related common law offence.”; and

(b) by the substitution for subsection (6) of the following subsection: 5

“(6) Any person who contravenes the provisions of subsection (1), (3), (4) [or] (5) or (5A) 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.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*. 10

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) Notwithstanding anything to the contrary in subsections (4) and (5), where a vendor acquires an enterprise from another vendor and as a result of that acquisition, the supplying vendor immediately ceases to be a vendor, and the purchasing vendor, within a period of six months from the date of the acquisition, issues or receives a tax invoice in respect of the acquired enterprise, that tax invoice may reflect the name, address and VAT registration number of the supplying vendor.”. 15 20

Amendment of section 21 of Act 89 of 1991, as amended by section 26 of Act 136 of 1992, section 34 of Act 97 of 1993, section 176 of Act 45 of 2003 and section 48 of Act 16 of 2004

36. Section 21 of the Value-Added Tax Act, 1991, is hereby amended by the addition after subsection (7) of the following subsection: 25

“(8) Notwithstanding anything to the contrary in subsection (3), where a vendor acquires an enterprise from another vendor and as a result of that acquisition, the supplying vendor immediately ceases to be a vendor, and the purchasing vendor, within a period of six months from the date of acquisition, issues or receives a credit note or debit note, as the case may be, in respect of the acquired enterprise, that credit note or debit note may reflect the name, address and VAT registration number of the supplying vendor.”. 30

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

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37. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (2) for the words preceding the proviso of the following words: 40

“(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 as the Commissioner may require in such **[application]** form for the purpose of registering that person.”; 45

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

“may apply to the Commissioner **[in the approved form for registration under this Act]** for registration in such form as the Commissioner may direct and provide the Commissioner with such further particulars and any documentation as the Commissioner may require in such form for the purpose of registering that person.”; and 50

(c) by the insertion of the following subsection after subsection (3):

“(3A) For the purposes of subsections (2) and (3), the Commissioner may require a person to submit biometrical information, in such manner and form as may be prescribed by the Commissioner, to ensure—
 (a) the proper identification of the person; or
 (b) the counteracting of identity theft or fraud.”

5

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

Substitution of section 36 of Act 89 of 1991

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

“Payment of tax pending objection and appeal

36. (1) Unless the Commissioner otherwise directs in terms of subsection (4)—

(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 be suspended by any objection or appeal or pending the decision of a court of law.

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(2) A vendor may request the Commissioner to suspend the payment of any tax or a portion thereof due under an assessment where the liability to pay that tax is disputed.

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(3) The Commissioner may suspend payment of the disputed tax 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 is able to provide adequate security for the payment of the amount involved;
 (e) whether payment of the amount involved would result in irreparable financial hardship to the vendor;
 (f) whether sequestration or liquidation proceedings are imminent;
 (g) whether fraud is involved in the origin of the dispute; or
 (h) whether the vendor has failed to furnish any information requested by the Commissioner in terms of this Act for purposes of a decision under this section.

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(4) The Commissioner may deny a request in terms of subsection (3) or revoke a decision to suspend payment in terms of that subsection with immediate effect whenever he or she is satisfied that—

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(a) after the lodging of the objection, the objection or appeal is frivolous or vexatious;
 (b) the vendor is employing dilatory tactics in conducting the objection or appeal;
 (c) on further consideration of the factors contemplated in subsection (3), the suspension should not have been given; or
 (d) there is a material change in any of the factors described in subsection (3), upon which the decision to suspend the amount involved was based.

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

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(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 from the date that excess was received by the Commissioner to the date the refunded tax is paid, and

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amounts short-paid being recoverable with penalty and interest calculated as provided in section 39(1).

(6) 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.”.

(2) Subsection (1) shall come into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of all amounts payable by or to the Commissioner on such date, and where payment was already suspended on such date, that suspension will lapse on the earlier of the expiry date thereof or six months from the date so determined by the Minister.

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

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

(a) by 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 (8) 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 or she may remit, in whole or in part, the interest payable in terms of this section; or

(b) was not due to an intent not to make payment or to postpone liability for the payment of the tax, he or she may remit, in whole or in part, any penalty payable in terms of this section.”; and

(b) by the addition after subsection (7) of the following subsection:

“(8) Notwithstanding anything to the contrary in this section, the Commissioner may prescribe, by notice in the *Gazette*, that any interest on any outstanding amount payable in terms of this Act, is calculated on the daily balance owing and compounded monthly from such date and for such period as the Commissioner may prescribe.”.

(2) Subsection (1)(a) comes into operation on 1 April 2010, and applies to interest imposed in terms of section 39 of the Value-Added Tax Act, 1991, on or after that date.

Amendment of section 41B of Act 89 of 1991, as inserted by section 40 of Act 21 of 2006, section 17 of Act 9 of 2007 and section 42 of Act 61 of 2008

40. Section 41B of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subparagraph (aa) of paragraph (ii) of the proviso in subsection (1) of the following subparagraph:

“(aa) is for an **[advanced]** advance tax ruling that qualifies for acceptance in terms of section 41A; and”.

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

41. Section 58 of the Value-Added Tax Act, 1991, is hereby amended— 5
- (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: 10
- “(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 15

42. (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;”.
- (2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*. 20

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

43. Section 6 of the Skills Development Levies Act, 1999, is hereby amended by the insertion after subsection (2) of the following subsection: 25
- “(2A) Every employer shall—
- (a) by such date or dates as prescribed by the Commissioner by notice in the *Gazette*; and
- (b) if the employer ceases to carry on any business or other undertaking in respect of which the employer 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 30
- after the date on which 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.”. 35

Insertion of section 7A in Act 9 of 1999 35

44. The Skills Development Levies 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— 40
- (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, 45
- 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. 50
- (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 or appeal.”.

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

45. The Skills Development Levies Act, 1999, is hereby amended by the substitution for section 11 of the following section:

“Interest on late payment

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11. (1) If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of ‘prescribed rate’ in section 1 of the Income Tax Act, calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be. 10

(2) The Commissioner may prescribe by notice in the *Gazette* that any interest payable in terms of this section be calculated on the daily balance owing and compounded monthly, and such method of determining interest will apply from such date as the Commissioner may prescribe.”. 15

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

46. (1) Section 12 of the Skills Development Levies Act, 1999, is hereby amended—
(a) by the deletion of subsection (1); and 20
(b) by the addition 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*. 25

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

47. (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: 30

“‘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*. 35

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

48. 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 40

(b) if during any such period the employer ceases to carry on any business or other undertaking in respect of which the employer 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 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.”. 45

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 subsection (1), shall be subject to objection or appeal.”.

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

50. The Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for section 12 of the following section:

“Interest on late payment

12. (1) An employer who fails to pay the full amount of any contribution within the period for payment prescribed by this Act, must pay interest on the outstanding amount at the rate contemplated in paragraph (b) of the definition of 'prescribed rate' in section 1 of the Income Tax Act, calculated from the day following the last day for payment to the day that payment is received by the Commissioner or Unemployment Insurance Commissioner, as the case may be.
- (2) The Commissioner may prescribe by notice in the *Gazette* that any interest payable in terms of this section be calculated on the daily balance owing and compounded monthly, and such method of determining 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. (1) Section 13 of Unemployment Insurance Contributions Act, 2002, is hereby amended—
- (a) by the deletion of subsection (1); and
 - (b) by the addition 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 or 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. Section 87 of the Revenue Laws Amendment Act, 2005, is hereby repealed.

Amendment of section 1 of Act 14 of 2007

53. Section 1 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended by the insertion after the definition of “Commissioner” of the following definition: 5

“‘**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. Section 2 of the Diamond Export Levy (Administration Act), 2007, is hereby amended— 10

(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 must apply to register with the Commissioner within [60] seven days of qualifying for registration.” 15

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:

“(1) (a) A registered person must submit a return and payment as contemplated in subsection (5) to reach any office designated by the Commissioner by rule made under section 18 during the hours of business prescribed by the Commissioner by rule under the Customs and Excise Act, 1964, within a period of 30 days after the ending date of each assessment period described in subsection (2), but not later than the penultimate business day of that period. 20 25

(b) For the purposes of subsection (1)(a), ‘business day’ means any day which is not a Saturday, Sunday or public holiday.”.

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: 30

“(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.” 35

Amendment of section 14 of Act 14 of 2007

57. Section 14 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended— 40

(a) by the insertion in subsection (3) after paragraph (a) of the following paragraph:

“(aA) has failed to furnish the Commissioner with such forms, documents and information in support of such refund as the Commissioner may prescribe by rule; or” 45

(b) by 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 amount so determined shall not be refunded **[in respect of that assessment period but shall be carried forward to the immediately** 50

succeeding assessment period] unless the Commissioner is satisfied that exceptional circumstances exist 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— 5

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

“(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—”; 10

(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.”; 15

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

“(3) Interest required under this section must be calculated on the daily balance owing and compounded monthly 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).”; and 20

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

“(4) Where the Minister fixes a new rate as described in subsection (3), 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.”. 25

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

Amendment of section 17 of Act 14 of 2007 30

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

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

“Applicability of **[Income Tax Act]** Customs and Excise Act”; and

(b) by the substitution for subsection (1) of the following subsection: 35

“(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; 40

(d) **[objections and]** appeals;

(e) settlement of disputes;

(f) the payment and recovery of **[tax]** duty, expenses, charges, interest and penalties; 45

(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.”. 50

Amendment of section 2 of Act 25 of 2007

60. Section 2 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for 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 1 of Act 29 of 2008

61. Section 1 of 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: 5

“**‘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;”. 10

Amendment of section 2 of Act 29 of 2008

62. 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)— 15
 (a) on 1 November 2009—
 (i) may apply to register with the Commissioner on or after 1
 November 2009; and
 (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.” 20

Amendment of section 4 of Act 29 of 2008

63. (1) The following section is hereby substituted for section 4 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008: 25

“Election for unincorporated body of persons

4. (1) Notwithstanding subsection (2), if an unincorporated body of persons—
 (a) consists of two or more members; and
 (b) holds a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted pursuant to the Mineral and Petroleum Resources Development Act (or a lease or sublease mentioned in section 11 of the Mineral and Petroleum Resources Development Act in respect of such a right) in the name of that unincorporated body, 30
 all the members of that unincorporated body may elect that the unincorporated body [becomes] is deemed to be a person [that qualifies for registration in terms of section 2] for the purposes of this Act and the Royalty Act. 35

(2) On the day on which the members of an unincorporated body [qualifies for registration] make an election as mentioned in subsection (1)— 40

(a) all the members of that unincorporated body must elect a year of assessment in respect of that unincorporated body and that year of assessment must be the same year of assessment as that of a member of that unincorporated body; and 45
 (b) section 10 of the Royalty Act applies to that unincorporated body for as long as that unincorporated body is registered in terms of section 2].

(3) If [subsection (2) applies to] the members of an unincorporated body made an election mentioned in subsection (1)— 50

(a) the liabilities and duties imposed under this Act and the Royalty Act in respect of that unincorporated body must be applied and performed by that unincorporated body separately from the members of that unincorporated body; [and] 55

- (b) any other actions that are permitted by a person registered under this Act in respect of that unincorporated body must be performed by that unincorporated body separately from the members of that unincorporated body; and
- (c) section 10 of the Royalty Act applies to that unincorporated body for as long as that unincorporated body is deemed to be a person by virtue of the election made in terms of subsection (1). 5
- (4) Each member of an unincorporated body **[mentioned in subsection (2)]** that made an election mentioned in subsection (1) is liable jointly and severally with the other members of that unincorporated body for— 10
- (a) the duties of that unincorporated body under this Act and the Royalty Act;
- (b) the royalty imposed under the Royalty Act on that unincorporated body in respect of all mineral resources transferred by that unincorporated body, while the member was a member of that unincorporated body. 15
- (5) If—
- (a) an unincorporated body of which the members made an election mentioned in subsection ~~[(2)]~~ (1) is dissolved solely as a result of— 20
- (i) the retirement, withdrawal or death of one or more members of that unincorporated body; or
- (ii) the admission of a new member to that unincorporated body; and
- (b) the new unincorporated body which is brought into being as a result of the dissolution mentioned in paragraph (a) satisfies the requirements of subsection (1)(a) and (b), 25
- the **[registration]** election made by the members of the dissolved unincorporated body as mentioned in subsection (1) remains in effect for purposes of the new unincorporated body notwithstanding that dissolution.
- (6) All the members of an unincorporated body that made an election mentioned in subsection (1) may at any time elect to terminate the registration of that unincorporated body with effect from the day after the last day of the year of assessment in which that election was made.”. 30
- (2) Subsection (1) comes into operation on 1 November 2009.

Amendment of section 9 of Act 29 of 2008 35

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;”. 40

Insertion of section 18A in Act 29 of 2008

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

“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. 45

(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.”. 50

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. 5
- (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.” 10
- (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, comes into operation on 1 November 2009; and 15
- (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. 20

**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 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 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 Bill seeks to enable SARS to apply a new payment allocation rule that generally sets payments off against the oldest outstanding debt.
- 2.2: *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 assumes that the set of tax bills (i.e. Taxation Laws Amendment Bills) is to be promulgated by the President within 12 months of the Ministerial announcement of rate changes during the Budget.
- 2.3: *Estate Duty Act, 1955: Amendment of section 9A***
The time period for additional assessments 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 assessment rules apply (because these rules have a similar effect to a self-assessment system).
- 2.4: *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 underlying principle that the executor should only be liable to the extent the assets in the estate are subject to the executor's control. 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 Estates Act, 1965.
- 2.5: *Estate Duty Act, 1955: Repeal of section 19***
The proposed repeal is consequential to the amendment of section 12 as described above.
- 2.6: *Income Tax Act, 1962: Amendment of section 4***
The proposed amendment permits SARS to provide to an employer, an employee's income tax reference number, identity number, physical or postal address and such other non-financial information as the employer may require in order to comply with its obligations in terms of the Income Tax Act, 1962.

- 2.7: *Income Tax Act, 1962: 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.
- 2.8: *Income Tax Act, 1962: 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.
- 2.9: *Income Tax Act, 1962: Amendment of section 70***
The proposed amendment deletes provisions that have become obsolete.
- 2.10: *Income Tax Act, 1962: Amendment of section 70A***
The proposed amendment is consequential to the insertion of the definition of ‘portfolio of a collective investment scheme in securities’ in section 1 of the Income Tax Act, 1962.
- 2.11: *Income Tax Act, 1962: Repeal of section 72***
The proposed amendment deletes provisions that have become obsolete.
- 2.12: *Income Tax Act, 1962: Insertion of section 73C***
Provision is made for record keeping in relation to declarations for purposes of dividends tax.
- 2.13: *Income Tax Act, 1962: Amendment of section 88***
The Income Tax Act, 1962, 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, in circumstances where the objection is subsequently 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, 1962, 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 is made pending consideration of an objection that is ultimately allowed.
- 2.14: *Income Tax Act, 1962: Amendment of section 88A***
When the section 88A settlement procedures were introduced 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.
- 2.15: *Income Tax Act, 1962: 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, 1962, 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.

2.16: Income Tax Act, 1962: Amendment of section 105A

The proposed amendment confirms 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.

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

Subclause (1) (a): Public benefit organisations, recreational clubs and bodies and associations contemplated in section 10(1)(e) of the Income Tax Act are all subject to partial taxation. This taxation typically falls on trading activities and (in some cases) on investment income. Due to this system of partial taxation, it was initially believed that these entities should be subject to provisional tax as is the case with any other taxable entity. The treatment of these entities as provisional taxpayers was delayed because of the administrative complications of taxing these entities in this way. One serious difficulty not initially envisioned was the manner in which the provisional tax should apply to amounts subject to exemption only up to a specified threshold. The required compliance systems for these entities are also too expensive and burdensome to expect timely payments. It is therefore proposed that the decision to impose provisional tax on these entities should be reversed indefinitely. Hence, even if an entity of this kind has taxable trading or investment income, no provisional tax will be payable with any tax due arising only upon the year of assessment.

Subclause (1) (b): In view of the amendments proposed by the Taxation Laws Amendment Bill, 2009 (in terms of which the "deemed kilometre" method for the claiming of deductions against vehicle travel allowances is to be repealed), it is proposed that the percentage of the vehicle travel allowance that will be subject to employees' tax be increased from 60 per cent to 80 per cent. The purpose of this increased percentage is to address the reality that taxpayer claims of costs relating to actual business travel will often be less than the costs based on the deemed business travel. This shortfall would result in those taxpayers having to pay tax on assessment. The 80 per cent rule prevents significant under-withholding should these circumstances arise.

Subclause (1) (c): The proposed amendment explicitly requires monthly withholding for maintenance payments deducted from minimum individual reserves of retirement funds.

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

Subclause (1) (a): The proposed amendment is consequential to changes in the numbering of paragraph 2 of the Second Schedule to the Income Tax Act as a result of amendments proposed by the Taxation Laws Amendment Bill, 2009.

Subclauses (1) (b) and (1) (c): The proposed amendment provides a deduction for any retirement annuity fund contribution in the hands of an employee even if paid by the employer on the employee's behalf. In effect, the tax system will be neutral as to who makes the retirement contribution. If the employee receives a salary and makes a contribution, the salary is part of gross income with an allowable deduction for employee contributions. If the employer directly pays the contribution on the employee's behalf, the contribution is again part of gross income (as a taxable fringe benefit) for the employee, and the employee will remain eligible to deduct the contribution. Moreover, it is proposed that such contributions be fully taken into account for pay-as-you-earn withholding.

2.19: Income Tax Act, 1962: Amendment of paragraph 5 of the Fourth Schedule

Subclause (a): The proposed amendment clarifies existing wording.

Subclause (b): Where an employer settles the outstanding employees' tax in terms of paragraph 5(1), that employer's personal liability is extinguished. The proposed insertion of paragraph (1A) makes it clear that the employer's liability (agent liability) in terms of paragraph 2(1) is extinguished by the payment made by the employer in terms of paragraph 5(1) and effectively eliminates any dual liability i.e. ensures that the principal liability is extinguished if employer pays in terms of personal liability. Hence a payment made in terms of paragraph 5(1) relates back to the principal liability in terms of par 2(1) which bears interest from due date to date of payment.

Subclause (c): The proposed amendment clarifies that the payment made by the employer in terms of paragraph 5(1) and which is not recovered from the employee is, as far as the employer is concerned, regarded as a penalty for purposes of section 23(d) and hence not deductible by that employer.

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

Transfers between retirement savings vehicles in terms of section 14 of the Pension Funds Act are generally exempt from pay-as-you-earn withholding. However, transfers from pension (or from pension preservation) to provident funds are subject to pay-as-you-earn withholding because funds are moving to less restrictive forms of savings.

2.21: *Income Tax Act, 1962: Amendment of paragraph 14 of the Fourth Schedule*

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

Subclause (b): The proposed amendment requires an employer, together with payment of any amount of PAYE, to submit a declaration containing such information as the Commissioner may prescribe.

Subclause (c): 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.

2.22: *Income Tax Act, 1962: Amendment of paragraph 18 of the Fourth Schedule*

Subclause (a): The proposed amendment provides that a person over the age of 65 is exempt from provisional tax where that person's taxable income for a particular year of assessment does not exceed the amount of R120 000.

Subclause (b): The proposed amendment deletes wording that has become obsolete.

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

The basic amount (for both first and second provisional tax payments) will be increased by 8% a year if the basic amount is in respect of a year of assessment that ended more than a year before the provisional tax estimate is due.

2.24: *Income Tax Act, 1962: 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, a two tier model is proposed for the short to medium term.

Tier one—Smaller taxpayers

This tier largely reverts to the pre-2008 basis whereby an estimate of taxable income for the second provisional tax payment will not attract a penalty if the estimate is at least equal to the lesser of the basic amount or 90% of actual taxable income for the year. If the estimated amount does not reach this level, an automatic penalty of 20% of the shortfall is imposed. The taxpayer may approach SARS for a full or partial reduction of the penalty if the estimate “was seriously calculated with due regard to the factors having a bearing thereon or was not deliberately or negligently understated”.

Tier two—Larger taxpayers

This tier retains the current basis whereby an estimate of taxable income for the second provisional tax payment will not attract a penalty if it is at least equal to 80% of actual taxable income for the year. If the estimate does not reach this level, SARS may impose a penalty of up to 20% of the shortfall if SARS is not satisfied that the estimate was “seriously calculated with due regard to the factors having a bearing thereon or was not deliberately or negligently understated”. In other words the penalty becomes a discretionary penalty to address concerns that have been expressed about the impact of an automatic penalty on financial disclosure.

In order to determine in which tier a particular taxpayer will fall, the taxable income of that taxpayer for the current year will be used. Taxpayers with a taxable income up to R1 million will fall into tier one and taxpayer with a taxable income over R1 million will fall into tier two.

2.25: *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 period to be specified by rule. If such request is not received within the specified period the aggrieved person must, for the purpose of reconsideration of the matter concerned in terms of this Act, 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.

The amendment or any part thereof comes into operation on a date or dates determined by the Minister by notice in the *Gazette*.

2.26: *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).

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.

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

See paragraph 2.26 above.

2.28: 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 allows such documents to be deemed due entry and followed up with a validating bill of entry. This amendment also empowers the Commissioner to prescribe by rule any matters reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.

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

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.

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

Section 93 provides, amongst other matters, for the mitigation or remission of penalties. In terms of the proposed amendment the Commissioner may, subject to section 3(2), mitigate or remit a penalty, or must do so as a result of the finalisation of any procedure contemplated in Chapter XA. (Chapter XA provides for internal administrative appeals, alternative dispute resolution and dispute settlement).

The amendment comes into operation on a date determined by the Minister by notice in the *Gazette*.

2.31: 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; and
- the deletion of the exclusion in respect of the payment of interest on penalty and forfeiture.

In terms of a further amendment proposed to section 105 the Commissioner may, subject to section 3(2), mitigate or remit interest or must do so as a result of the finalisation of any procedure contemplated in Chapter XA. The proposed amendment or any part thereof comes into operation on a date or dates determined by the Minister by notice in the *Gazette*.

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

The insertion of section 119A seeks to facilitate the implementation of SARS' customs modernisation programme 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.

Subsection (2) of the proposed amendment requires that any rule made in terms of the section must be consistent with the objectives of the Act and the Commissioner may exempt the application of any rule made under the section. Subsection (3) provides that rules made under the section lapse on a specified date unless Parliament otherwise provides.

- 2.33: *Value-Added Tax Act, 1991: Amendment of section 1***
The proposed amendment inserts a definition of biometrical information. See paragraph 2.34 below.
- 2.34: *Value-Added Tax Act, 1991: Amendment of section 6***
The proposed amendment provides that biometrical information may not be disclosed to any person except where such biometrical information relates to, and constitutes material information for, the proving of any offence in terms of the Value-Added Tax Act, 1991, or a related common law offence. In these circumstances the Commissioner is permitted to disclose the information to the National Commissioner for the South African Police Service or the National Director of Public Prosecutions.
- 2.35: *Value-Added Tax Act, 1991: Amendment of section 20***
The proposed amendment provides a transitional arrangement for vendors who have acquired a business from a supplying vendor that has subsequently deregistered as a vendor. In this regard, the requirement that a tax invoice, debit or credit note 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, debit or credit note may reflect the name, address and VAT registration number of the supplying vendor. This transitional arrangement allows vendors to comply with the provisions of sections 20, 21 and 16 of the VAT Act.
- 2.36: *Value-Added Tax Act, 1991: Amendment of section 21***
See paragraph 2.35 above.
- 2.37: *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.
- 2.38: *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 in circumstances where the objection is subsequently 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 is made pending consideration of an objection that is ultimately allowed.
- 2.39: *Value-Added Tax Act, 1991: Amendment of section 39***
Subclause 1 (a): Prior to the proposed amendment, a person could elect to use one of two 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.

Subclause 1(b): 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 date from which and the period for which the compound interest will be payable on any outstanding amounts payable in terms of the Value-Added Tax Act, 1991.

2.40: Value-Added Tax Act, 1991: Amendment of section 41B

The proposed amendment aligns the wording with the wording of section 41A of the Value-Added Tax Act, 1991.

2.41: 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.

2.42: 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.

2.43: 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.

2.44: 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.

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

As part of the modernisation 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.

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

The proposed amendment aligns the penalty 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.

2.47: 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.

2.48: *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.

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 modernisation 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 penalty 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 paragraph 2.24 above.

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.

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*

In 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*

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

Subclause (b): The proposed 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 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 by notice in the *Gazette*.

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: *Securities Transfer Tax Act, 2007: 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 Ministerial announcement. However, the new legislative process requires that the 6 month period mentioned above be extended. The proposed amendment assumes that the set of tax bills (i.e. Taxation Laws Amendment Bills) is to be promulgated by the President within 12 months of Ministerial announcement.

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

The proposed amendment inserts a definition of a nonbinding private ruling for purposes of the new section 18A. See paragraph 2.62 below.

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 4*

The registration of an unincorporated body of persons for the purposes of the Mineral and Petroleum Resources Royalty Act, 2008, was too narrow. The proposed amendment deems the unincorporated body of persons (if so elected by all its members) to be a person for the entirety of both the Royalty Act and the Royalty Administration Act.

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 Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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

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