REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 43830 of 23 October 2020)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 28—2020]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To—

- **amend the Estate Duty Act, 1955, so as to make textual corrections;**
- **amend the Income Tax Act, 1962, so as to delete obsolete wording; to make a decision subject to objection and appeal; to enable a public benefit organisation to provide funds and assets to any department of government of the Republic and effect consequential amendments relating thereto; to align provisions to provide that only approved public benefit organisations can provide certain certificates; to provide that audit certificates must be obtained and retained by certain organisations; to align situations where withholding tax on royalties was due and payable but subsequently becomes irrecoverable with that of withholding tax on interest; to provide that certain entities be excluded from the definition of provisional taxpayer; to align the wording with certain current processes and remove a reference to a deleted provision; to modify the requirement of intent for certain criminal offences; to effect a consequential amendment; and to replace a reverse onus provision with an evidentiary burden;**
- **amend the Customs and Excise Act, 1964, so as to make technical corrections; to extend a provision concerning information sharing and to exclude certain information from the application of the prohibition on disclosure of information; to clarify the movement in bond of containerized goods on the strength of a manifest and without furnishing security to licensed container depots or container terminals appointed or prescribed; to clarify how bills of entry may be adjusted; to broaden provisions relating to the disposal of goods on failure to make due entry on importation to also include failure to make due entry on exportation of goods on which export duty is payable; to provide for the commencement of liability for export duty; to provide for the liability of the master of a ship or pilot of an aircraft or other carrier for duty on goods deemed imported to cease upon delivery of the goods to a licensed remover in bond, for the assumption of such liability by a licensed remover in bond, as well as for the circumstances in which liability of the licensed remover in bond will cease; to clarify the meaning of "free on board" in relation to goods exported; to provide for the limitation of the period for applications for refunds of export duty; and to broaden a provision relating to the production of permits or certificates required in respect of imported goods to apply to exported goods as well;**

- **amend the Value-Added Tax Act, 1991, so as to substitute the requirement to submit a return with the obligation to obtain, complete and retain the form prescribed by the Commissioner; to substitute obsolete wording; and to modify the requirement of intent for certain criminal offences;**
- **amend the Skills Development Levies Act, 1999, so as to provide that the Commissioner may refuse to authorise a refund if a return is outstanding;**
- **amend the Unemployment Insurance Contributions Act, 2002, so as to provide that the Commissioner may refuse to authorise a refund if a return is outstanding;**
- **amend the Tax Administration Act, 2011, so as to provide for a textual correction in order to clarify certain terminology; to provide for consequential and technical amendments; to provide for the issue of assessments based on an estimate where a taxpayer provides relevant information that is incomplete or inadequate or does not respond to a request for relevant material; to amend the period within which a reduced assessment can be requested; to align the period within which an extension may be granted with the period for prescription; to provide for a specific effective date with regards to interest calculated on an erroneous overpayment of tax; to provide for interest on royalties payable in terms of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 and to provide for the interest rate with regards to refunds due under that Act; to provide that a refund does not need to be authorised where a matter is under criminal investigation and to modify the requirement of intent for certain criminal offences,**

and to provide for matters connected therewith.

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

Amendment of section 10 of Act 45 of 1955, as amended by section 271, read with paragraph 18 of Schedule 1 to Act 28 of 2011, section 3 of Act 21 of 2012 and section 2 of Act 13 of 2017

1. Section 10 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If any duty remains unpaid at the expiration of a period of thirty days from the date for payment prescribed in terms of section 9C, there shall be payable, in addition to the unpaid duty, interest at the rate of six per cent**[.]** per annum on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment: Provided that, where the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the rate of six per cent**[.]** per annum shall be payable as from a date twelve months after the date of death on the difference (if any) between the duty assessed and any deposit (if any) made on account of the duty payable within the said period of twelve months.".

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001,

section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, sections 1 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271, read with item 23 of Schedule 1 to Act 28 of 2011, section 4 of Act 21 of 2012, section 2 of Act 22 of 2012section 4 of Act 31 of 2013, section 1 of Act 43 of 2014, section 3 of Act 25 of 2015, section 5 of Act 15 of 2016, section 2 of Act 17 of 2017, section 1 of Act 23 of 2018 and section 2 of Act 34 of 2019

2. Section 1 of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of ''representative taxpayer'' for paragraph *(c)* of the following paragraph:

''*(c)* in respect of income which is the subject of any trust or in respect of the income of any minor or **[mentally disordered or defective person or]** any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving moneys on behalf of such person under disability;''.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of 2008, section 2 of Act 61 of 2008, section 14 of Act 8 of 2010, section 271, read with paragraph 25 of Schedule 1 to Act 28 of 2011, section 2 of Act 39 of 2013, section 2 of Act 43 of 2014, section 2 of Act 44 of 2014, section 1 of Act 23 of 2015, section 1 of Act 16 of 2016, section 2 of Act 23 of 2018 and section 1 of Act 33 of 2019

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

''*(b)* section 8(5)*(b)* and *(b*A*)*, section 10(1)*(c*A*)*, *(e)*(i)*(cc)*, *(j)* and *(n*B*)*, section 10A(8), section 11*(e)*, *(f)*, *(g)*, *(g*A*)*, *(j)* and *(l)*, section 12B(6), section 12C, section 12E, section 12J(6), (6A) and (7), section 13, section 15, section 18A(1)*(a)(cc)*, *(b)* and *(c)*, section 18A(1)*(b*A*)(dd)*, section 22(1) and (3), section 23H(2), section 23K, section 24(2), section 24A(6), section 24C, section 24D, section 24I(1) and (7), section 24J(9), section 24P, section 25A, section 27, section 28(9), section 30, section 30A, section 30B, section 30C, section 31, section 37A, section 38(2)*(a)* and *(b)* and (4), section 44(13)*(a)*, section 47(6)*(c)*(i), section 62(1)*(c)*(iii) and *(d)* and (2)*(a)* and (4), section 80B and section 103(2);''.

Amendment of section 18A of Act 58 of 1962, as substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011, section 7 of Act 21 of 2012, section 52 of Act 31 of 2013, section 29 of Act 43 of 2014, section 3 of Act 44 of 2014, section 24 of Act 25 of 2015, section 31 of Act 17 of 2017, section 35 of Act 23 of 2018 and section 22 of Act 34 of 2019

4. Section 18A of the Income Tax Act, 1962, is hereby amended—

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

''*(b)* any public benefit organisation contemplated in paragraph *(a)*(i) of the definition of ''public benefit organisation'' in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, **[or]** institution, board or body contemplated in paragraph *(a)*, or any department

contemplated in paragraph *(c)* and which has been approved by the Commissioner for the purposes of this section; or'';

(b) by the deletion in subsection (1)*(b*A) of the word ''and'' at the end of item *(bb)*, the substitution at the end of item *(cc)* for the word ''or'' of the word ''and'' and the addition after item *(cc)* of the following item:

''*(dd)* has been approved by the Commissioner for the purposes of this section; or'';

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

''*(c)* any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)*(a)*, which has been approved by the Commissioner for the purposes of this section, to be used for purpose of any activity contemplated in Part II of the Ninth Schedule,

as does not exceed—

(A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

A = B x 0,005

in which formula:

(AA) ''A'' represents the amount to be determined;

(BB) ''B'' represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or

(B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 6*quat*(1C):

Provided that any amount of a donation made as contemplated in his subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.'';

(d) by the substitution in subsection (2A) for item (ii) in paragraph *(b*) of the following item:

''(ii) **[if that public benefit organisation]**which provides funds or assets to public benefit organisations, institutions, boards or bodies or any department that carry on public benefit activities contemplated in **[Part]**Parts I and II of the Ninth Schedule **[and to other entities]**, that donation will be utilised solely to provide funds or assets to a public benefit organisation, institution, board or body contemplated in subsection (1)*(a*), which will utilise those funds or assets solely in carrying on activities contemplated in Part II of the Ninth Schedule or to any department contemplated in subsection (1)*(c)* which will utilise those funds or assets solely for the purpose of any activity contemplated in Part II of the Ninth Schedule; or'';

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

''(2D) Any public benefit organisation contemplated in subsection (1)*(b*), in respect of any amount that is not distributed **[referred to in]** as required by subsection (2A)*(b*)(i), shall distribute or incur the obligation to distribute all amounts received in respect of investment assets held by it, other than amounts received in respect of disposals of those investment assets to any public benefit organisation, institution, board or body contemplated in subsection (1)*(a*) or to any department contemplated in subsection (1)*(c*), no later than six months after—''; and

(f) by the deletion in subsection (5) at the end of paragraph *(b)* of the word ''or'', the substitution at the end of paragraph *(c)* for the comma of a semi-colon and the addition after paragraph *(c)* of the following paragraphs:

''*(d)* failed to obtain and retain an audit certificate as contemplated in subsection (2B); or

(e) failed to submit an audit certificate as contemplated in subsection (2C),''.

Amendment of section 49G of Act 58 of 1962, as inserted by section 12 of Act 21 of 2012

5. Section 49G of the Income Tax Act, 1962, is hereby amended by the renumbering of the current section to become subsection (1) and by the addition of the following subsection:

''(2) Notwithstanding Chapter 13 of the Tax Administration Act, if—

(a) an amount of withholding tax on royalties is paid as contemplated in section 49E(1) in respect of an amount of royalties that became due and payable; and

(b) the amount of royalties subsequently becomes irrecoverable,

so much of that amount as would not have been paid had the royalties not become due and payable is refundable by the Commissioner to the person who paid the tax.''.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008, section 66 of Act 60 of 2008, section 17 of Act 18 of 2009, section 18 of Act 8 of 2010, section 93 of Act 24 of 2011, section 271, read with paragraph 77 of Schedule 1 toAct 28 of 2011, section 7 of Act 44 of 2014, section 6 of Act 23 of 2015, section 5 of Act 16 of 2016, section 8 of Act 13 of 2017 and section 4 of Act 22 of 2018

6. Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in the definition of ''provisional taxpayer'' at the end of paragraph *(ee)* of the word ''and'', the addition at the end of paragraph *(ff)* of the word ''and'' and the addition after paragraph *(ff)* of the following paragraph:

''*(gg)* any entity as defined in section 30B that has been approved by the Commissioner in terms of section 30B(2);''.

Amendment of paragraph 13 of Fourth Schedule to Act 58 of 1962, as amended by section 24 of Act 72 of 1963, section 29 of Act 113 of 1977, section 49 of Act 101 of 1990, section 23 of Act 19 of 2001, section 21 of Act 4 of 2008, section 11 of Act 39 of 2013 and section 12 of Act 23 of 2015

7. Paragraph 13 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 paragraphs 5, 14(5) and 28, every employer who, during any period contemplated in subparagraph (1A), deducts or withholds any amount by way of employees' tax as required by paragraph 2 shall, within the time allowed by subparagraph (2) of this paragraph, deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such employer, an employees' tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the

amounts of employees' tax deducted or withheld by such employer from such remuneration during the said period, excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer, unless such other certificate **[has been surrendered to such employer by the employee or former employee and]** has been cancelled by such employer **[and dealt with by the employer as provided in subparagraph (10)]**.'';

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

''(4) Notwithstanding the provisions of sub-paragraphs (1) and (2), any employer who has deducted or withheld employees' tax from the remuneration of any employee shall, as and when required by the Commissioner, deliver to such employee an employees' tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such employer from such remuneration during any period specified by the Commissioner, but excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer, unless such other certificate **[has been surrendered to such employer by the employee or former employee and]** has been cancelled by such employer **[and dealt with by him as provided in sub-paragraph (10)]**.'';

(c) by the deletion of subparagraphs (8), (9), (10), (11), (13) and (14); and

(d) by the substitution for subparagraph (15) of the following subparagraph:

''(15) For the purposes of this Schedule, any employees' tax certificate on which appears the name or any trade name of any employer shall, until the contrary is proved, be deemed to have been issued by such employer if such certificate is in a form prescribed by the Commissioner **[for general use and was supplied by the Commissioner to such employer for use by him or is in a form approved by the Commissioner under sub-paragraph (12) for use by such employer]**.''.

Amendment of paragraph 30 of Fourth Schedule to Act 58 of 1962, as amended by section 45 of Act 21 of 1995, section 19 of Act 23 of 2015, section 44 of Act 53 of 1999 and section 271, read with paragraph 97 of Schedule 1 to Act 28 of 2011

8. Paragraph 30 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) Any person who—

(a) wilfully uses or applies any amount deducted or withheld by him or her by way of employees' tax for purposes other than the payment of such amount to the Commissioner; or

(b) not being an employer and without being duly authorised by any person who is an employer, wilfully issues or causes to be issued any document purporting to be an employees' tax certificate,

is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.'';

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

''(1A) Any person who—

(a) wilfully or negligently fails to deliver to any employee or former employee any employees' tax certificate as required by paragraph 13;

(b) being a registered employer under paragraph 15(1), wilfully or negligently fails to notify the Commissioner of having ceased to be an employer as required by paragraph 15(3); or

(c) wilfully or negligently fails to submit to the Commissioner any estimate of his or her taxable income as required under paragraph 19,

is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.''; and

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

"(2) For the purposes of item **[*(b)*]***(a)* of subparagraph (1) **[an amount which has been deducted or withheld by any]**the person may, **[from remuneration shall until the contrary is proved be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Commissioner if such amount is not paid to the Commissioner within the period allowed for payment under paragraph 2]** unless he or she proves a reasonable possibility that the amount was not so used or applied, be regarded as having used or applied the amount for purposes other than paying the amount to the Commissioner.".

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 32 of Act 60 of 1989, section 51 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 34 of Act 34 of 1997, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 66 of Act 32 of 2004, section 85 of Act 31 of 2005, section 7 of Act 21 of 2006, section 10 of Act 9 of 2007, section 4 of Act 36 of 2007, section 22 of Act 61 of 2008, section 1 of Act 32 of 2014, section 20 of Act 23 of 2015 and section 11 of Act 33 of 2019

9. Section 1 of the Customs and Excise Act, 1964, is hereby amended by the insertion in the definition of "importer" in subsection (1) of the expression "or" after paragraph *(e)*.

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, section 3 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, section 34 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006, section 9 of Act 21 of 2006, section 5 of Act 36 of 2007, section 25 of Act 61 of 2008, section 24 of Act 8 of 2010, section 3 of Act 25 of 2011 and section 16 of Act 39 of 2013, repealed by section 4 of Act 32 of 2014, amended by section 21 of Act 23 of 2015, section 11 of Act 13 of 2017 and section 12 of Act 33 of 2019

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

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

"(ivC) disclosing to a public officer, as contemplated in section 246 of the Tax Administration Act, of an authorised dealer in foreign exchange appointed by the Minister of Finance for purposes of the **[Exchange Control]** Regulations **[published under Government Notice No. R1111 of 1 December 1961, as amended,]** issued under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), such information as may be required by the authorised dealer for purposes of verification of applications for advance foreign exchange payments in respect of goods that are to be imported;";

(b) by the insertion in subsection (3) after paragraph (ivC) of the proviso of the following paragraph:

"(ivD) disclosing to the Director-General of the Department of International Relations and Co-operation such information in relation to purchases of goods free of duty, at premises licensed as special customs and excise warehouses in terms of section 21, as may be

required to manage abuses in relation to privileges granted in terms of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);'';

(c) by the insertion in subsection (3A) after paragraph *(h)* of the following paragraph:

''*(h*A*)* the Director-General of the Department of International Relations and Co-operation;''; and

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

''(3D) The prohibition on the disclosure of information by the Commissioner or any officer, referred to in subsection (3), shall not apply in respect of information relating to—

(a) **[information about]** a person licensed or registered in terms of this Act in an anonymised form; **[and]**

(b) **[any information relating to]** any person, where that person has consented that such information may be published or made known to any other person; and

(c) tariff determinations: Provided that publication of such information shall take place in accordance with rules prescribed by the Commissioner which may include the circumstances in which publication may take place, the kind of information that may be published and the manner in which the information must be published.''.

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, section 21 of Act 34 of 2004, section 16 of Act 21 of 2006, section 26 of Act 18 of 2009 and section 5 of Act 32 of 2014

11. Section 18 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph *(d)* of the following paragraph:

''*(d)* a container operator may remove any container in bond to the container depot licensed in terms of section 64A, or to the container terminal contemplated in section 6(1)*(h*A*)*, to which it was consigned, without furnishing the security provided for in subsection (6) of this section, and the manifest of the goods packed in such container shall be deemed to be due entry for removal in bond of that container;''.

Amendment of section 40 of Act 91 of 1964, as amended by section 9 of Act 95 of 1965, section 6 of Act 71 of 1975, section 5 of Act 105 of 1976, section 2 of Act 93 of 1978, section 4 of Act 86 of 1982, section 3 of Act 89 of 1983, section 11 of Act 84 of 1987, section 4 of Act 68 of 1989, section 30 of Act 45 of 1995, section 35 of Act 61 of 2008 and section 29 of Act 32 of 2014

12. Section 40 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (3)*(a)* for subparagraph (i) of the following subparagraph:

''(i) an importer or exporter or a manufacturer of goods shall on discovering that a bill of entry delivered by him or her—

(aa) does not in every respect comply with section 39; or

(bb) is invalid in terms of subsection (1) of this section,

adjust that bill of entry without delay by means of—

(A) a voucher of correction; or

[(B) cancellation of such bill of entry and substitution of a fresh bill of entry; or]

(C) in such other manner as the Commissioner may prescribe; or''; and

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

''Provided that where the purpose for which the goods are entered as specified on a bill of entry is not correct, such bill of entry must be adjusted in terms of subparagraph (ii),
and provided further that acceptance of such voucher or fresh bill of entry shall not indemnify such importer or exporter or manufacturer against any fine or penalty provided for in this Act.''.

Amendment of section 43 of Act 91 of 1964, as amended by section 6 of Act 105 of 1976, section 7 of Act 112 of 1977, section 6 of Act 86 of 1982, section 32 of Act 45 of 1995, section 34 of Act 34 of 1997, section 124 of Act 60 of 2001, section 45 of Act 30 of 2002, section 23 of Act 34 of 2004, section 8 of Act 36 of 2007, section 92 of Act 60 of 2008, section 14 of Act 44 of 2014, and repealed by section 31 of Act 32 of 2014

13. Section 43 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended—

(a) by the substitution in the heading for the words ''goods imported'' of the words ''goods imported or to be exported'';

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

''(1) If entry of any goods imported or goods to be exported on which an export duty is payable has not been made under the provisions of section 38—'';

(c) by the substitution in paragraph *(b)* of subsection (1) for the expression ''subsection (1)'' of the expression ''subsection (1) or (3)*(b)*'';

(d) by the substitution in the words preceding paragraph *(c)*(i)*(aa)* of subsection (2)—

(i) for the word ''importation'' of the words ''importation or intended export''; and

(ii) for the word ''importer'' of the words ''importer or exporter'';

(e) by the substitution in paragraph *(c)*(i)*(ee)* of subsection (2) for the words ''the importer, where the importer and the importer's address are known'' of the words ''the importer or exporter, where the importer or exporter and the address of the importer or exporter are known'';

(f) by the substitution in paragraph *(c)*(ii) of subsection (2) for the word ''importer'' of the words ''importer, exporter'';

(g) by the substitution in the words preceding paragraph *(a)* of subsection (3) for the expression ''section 38(1)'' of the expression ''section 38(1) or (3)*(b)*''; and

(h) by the substitution in paragraph *(c)*(ii)*(cc)* of subsection (5) for the word ''importer'' of the words ''importer, exporter''.

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 3 of Act 89 of 1984, section 5 of Act 52 of 1986, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999, section 136 of Act 45 of 2003, section 67 of Act 32 of 2004, section 12 of Act 9 of 2005, section 91 of Act 35 of 2007, section 93 of Act 60 of 2008 and section 33 of Act 32 of 2014

14. Section 44 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the renumbering of the existing wording of subsection (1) to subsection (1)*(a)* and by the addition of the following paragraph:

''*(b)* Liability for export duty on any goods specified in Part 6 of Schedule No. 1 shall commence—

(i) when the export bill or entry in respect of such goods is submitted before export in terms of section 38(3)*(a)*; or

(ii) in circumstances where no export bill of entry is submitted before export, when the goods are deemed to have been exported in terms of section 38(3)*(b)*.'';

(b) by the addition in subsection (5) after paragraph *(d)* of the following paragraph:

"*(e)* upon delivery of the goods, if containerized, to a licensed remover of goods in bond for transporting the goods for purposes of examination as contemplated in section 4(8A);";

(c) by the insertion after subsection (5A) of the following subsection:

"(5AA) The liability of a licensed remover of goods in bond for duty in terms of subsection (6)*(b*A) shall cease—

(a) in respect of goods which are containerized, upon lawful delivery thereof, after due entry thereof has been made, to the importer or his or her agent; or

(b) in respect of containers delivered to a licensed remover of goods in bond as contemplated in subsection (5)*(e)* and specified in a list to be compiled by the licensed remover of goods in bond concerned, upon delivery thereof, to a depot operator."; and

(d) by the deletion in subsection (6) at the end of paragraph *(b)* of the word "and" and by the insertion of the following paragraph after paragraph *(b)*:

"*(b*A*)* in the case contemplated in subsection (5)*(e)*, on the licensed remover of goods in bond concerned; and".

Amendment of section 72 of Act 91 of 1964, as amended by section 11 of Act 105 of 1976, section 11 of Act 98 of 1980, section 26 of Act 34 of 2004, section 162 of Act 31 of 2013 and repealed by section 62 of Act 32 of 2014

15. Section 72 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended by the addition after paragraph *(c)* of the following paragraph:

"*(c*A*)* For the purpose of this section, "free on board", in relation to goods exported to or to be exported from the Republic, includes—

(i) all profits, costs, charges and expenses incidental to placing goods on board a vessel, aircraft, train or vehicle in which the goods are to be transported across the border of the Republic; or

(ii) if those goods consist of a vessel, aircraft, train or vehicle moving under its own power or on its own wheels, all profits, costs, charges and expenses up to the place where the goods leave the Republic.".

Amendment of section 76B of Act 91 of 1964, as inserted by section 67 of Act 30 of 1998, substituted by section 29 of Act 34 of 2004, and amended by section 20 of Act 32 of 2005, section 100 of Act 60 of 2008 and section 66 of Act 32 of 2014

16. Section 76B of the Customs and Excise Act, 1964, is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) Where any person becomes entitled to a refund of export duty, such refund shall be limited to an application received by the Controller within a period of two years from the date of entry for export of the goods to which the application relates.".

Amendment of section 113 of Act 91 of 1964, as amended by section 14 of Act 57 of 1966, section 11 of Act 103 of 1972, section 5 of Act 68 of 1973, section 49 of Act 42 of 1974, section 25 of Act 86 of 1982, section 7 of Act 89 of 1983, section 31 of Act 84 of 1987, section 17 of Act 68 of 1989, section 14 of Act 105 of 1992, section 12 of Act 98 of 1993, section 71 of Act 45 of 1995, section 73 of Act 30 of 1998, section 22 of Act 16 of 2016 and section 82 of Act 32 of 2014

17. Section 113 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Goods which purport to have been imported or exported under a permit, certificate or other authority in terms of any provision of this Act or any other law shall be deemed to have been imported or exported in contravention of such provision, unless the permit, certificate or other authority in question is produced to the Controller.".

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990, section 11 of Act 19 of 1994, section 73 of Act 45 of 1995, section 74 of Act 30 of 1998, section 24 of Act 36 of 2007, section 40 of Act 61 of 2008, section 86 of Act 32 of 2014 and section 18 of Act 33 of 2019

18. Section 120 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1)*(m*C*)* for the words preceding subparagraph (i) of the following words:

''as to matters relating to the making of certain advance foreign exchange payments in relation to goods that are to be imported, through authorised dealers in foreign exchange appointed by the Minister of Finance for purposes of the **[Exchange Control]** Regulations**[, published under Government Notice No. R1111 of 1 December 1961, as amended]** issued under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), including rules prescribing—''.

Amendment of section 14 of Act 89 of 1991, as amended by section 171 of Act 45 of 2003, section 101 of Act 32 of 2004, section 28 of Act 8 of 2010, section 136 of Act 24 of 2011 and section 271, read withparagraph 113 of Schedule 1 to Act 28 of 2011

19. Section 14 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

''*(a)* **[furnish]** obtain, complete and retain the form prescribed by the Commissioner **[with a return]**; and''.

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009, section 30 of Act 8 of 2010, section 29 of Act 21 of 2012, section 176 of Act 31 of 2013, section 99 of Act 43 of 2014, section 26 of Act 23 of 2015, section 7 of Act 22 of 2018 and section 19 of Act 33 of 2019

20. Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (8)*(a)*(i) for item (A) of the proviso of the following item:

''(A) shall verify such name and identity number of any such natural person with reference to his **[identity document]** identity card, as contemplated in section 1 of the Identification Act, 1997 (Act No. 68 of 1997), and retain a photocopy of such name and identity number appearing in such **[identity document]** identity card; or''.

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, section 42 of Act 32 of 2005, section 41 of Act 18 of 2009, section 142 of Act 24 of 2011 and section 271, read with paragraph 142 of Schedule 1 to Act 28 of 2011

21. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for section 58 of the following section:

''**Offences**

58. (1) Any person who—

(a) being an auctioneer or supplier of goods or services wilfully—

(i) declares to any person to whom goods or services are supplied by such auctioneer or supplier that tax has been included in, or will be added to, the price or amount chargeable in respect of such supply, where in fact no tax is payable in terms of this Act;

(ii) includes in, or adds to, the price or amount charged to the recipient in relation to such supply any tax, where in fact no tax is payable in terms of this Act; or

(iii) includes in, or adds to, the price or amount charged to the recipient in relation to such supply any tax in excess of the tax properly leviable under this Act in respect of the value of such supply; or

(b) wilfully fails to comply with the provisions of paragraph (i) of the proviso to section 20(1) or item (A) of the proviso to section 21(3),

is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.

(2) Any person who—

(a) wilfully or negligently fails to comply with the provisions of section 14, 28(1) or (2) or 29;

(b) wilfully or negligently contravenes the provisions of section 65; or

(c) being an agent or an auctioneer as contemplated in section 54, wilfully or negligently fails to comply with any of the requirements of section 54(3) or the proviso to section 54(5),

is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.''.

Amendment of section 6 of Act 9 of 1999, as amended by section 76 of Act 19 of 2001, section 43 of Act 18 of 2009, section 271, read with paragraph 150 of Schedule 1 to Act 28 of 2011, section 23 of Act 39 of 2013, section 30 of Act 23 of 2015 and section 18 of Act 13 of 2017

22. Section 6 of the Skills Development Levies Act, 1999, is hereby amended by the addition after subsection (5) of the following subsection:

''(6) The Commissioner may refuse to authorise a refund under section 190 of the Tax Administration Act, if the employer has failed to submit a return, as required in terms of subsection (2), until the employer has submitted such return.''.

Amendment of section 8 of Act 4 of 2002, as amended by section 81 of Act 30 of 2002, section 48 of Act 18 of 2009, section 32 of Act 8 of 2010, section 271, read with paragraph 159 of Schedule 1 to Act 28 of 2011, and section 24 of Act 39 of 2013

23. Section 8 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the addition after subsection (4) of the following subsection:

''(5) The Commissioner may refuse to authorise a refund under section 190 of the Tax Administration Act, if the employer has failed to submit a return, as required in terms of subsection (2), until the employer has submitted such return.''.

Amendment of section 12 of Act 28 of 2011, as amended by section 28 of Act 33 of 2019

24. Section 12 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) Despite any law to the contrary, a senior SARS official may, on behalf of SARS or the Commissioner in proceedings referred to in a tax Act, appear *ex parte* in a judge's chambers, in the tax court or in a High Court.''.

Amendment of section 70 of Act 28 of 2011, as amended by section 13 of Act 26 of 2013, section 42 of Act 39 of 2013, section 48 of Act 23 of 2015 and section 18 of Act 22 of 2018

25. Section 70 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

''*(a)* the Governor of the South African Reserve Bank, or other person to whom the Minister delegates powers, functions and duties under the **[Exchange Control]** Regulations**[, 1961,]** issued under section 9 of the Currency and Exchange Act, 1933 (Act No. 9 of 1933), the information as may be required to exercise a power or perform a function or duty under the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), or those Regulations;''.

Amendment of section 86 of Act 28 of 2011

26. Section 86 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) If the 'advance ruling' is a 'binding private ruling' or 'binding class ruling', SARS must first provide the 'applicant' with notice of the proposed withdrawal or modification and a reasonable opportunity to **[object]** make representations prior to the decision whether to withdraw or modify the 'advance ruling'.''.

Amendment of section 91 of Act 28 of 2011, as amended by section 58 of Act 21 of 2012 and section 32 of Act 33 of 2019

27. Section 91 of the Tax Administration Act, 2011, is hereby amended by the deletion of subsections (4), (5) and (6).

Amendment of section 93 of Act 28 of 2011, as amended by section 45 of Act 39 of 2013 and section 49 of Act 23 of 2015

28. Section 93 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in subsection (1) for the full stop at the end of paragraph *(e)* of the expression ''; and''; and

(b) by the addition in subsection (1) after paragraph *(e)* of the following paragraph:

''*(f)* the taxpayer in respect of whom an assessment has been issued under section 95(1), requests SARS to issue a reduced assessment under section 95(6).''.

Amendment of section 95 of Act 28 of 2011

29. Section 95 of the Tax Administration Act, 2011, is hereby amended—

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

''(1) SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate, if the taxpayer—

(a) **[fails to]** does not submit a return **[as required]**; **[or]**

(b) submits a return or **[information]** relevant material that is incorrect or inadequate; or

(c) does not submit a response to a request for relevant material under section 46, in relation to the taxpayer, after delivery of more than one request for such material.''; and

(b) by the addition after subsection (3) of the following subsections:

''(4) The making of an assessment under subsection (1) does not detract from the obligation to submit a return or the relevant material.

(5) An assessment under subsection (1) is not subject to objection or appeal, unless the taxpayer—

(a) submits the return referred to in subsection (1)*(a)*; or

(b) submits the response to the request referred to in subsection (1)*(c)*, and SARS does not issue a reduced or additional assessment.

(6) The taxpayer in relation to whom the assessment under subsection (1) has been issued may, within 40 business days from the date of assessment, request SARS to issue a reduced assessment or additional assessment by submitting a true and full return or the relevant material.

(7) A senior SARS official may extend the period referred to in subsection (6) within which the return or relevant material must be submitted, for a period not exceeding the relevant period referred to in section 99(1).''.

Amendment of section 100 of Act 28 of 2011, as amended by section 56 of Act 16 of 2016 and section 33 of Act 33 of 2019

30. Section 100 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1)*(a)* for subparagraph (i) of the following subparagraph:

''(i) in section 95(1)*(a)* or *(c)*, and no return or response described in section **[91(5)*(b)*]** 95(6) has been received by SARS; or''.

Amendment of section 187 of Act 28 of 2011, as amended by section 66 of Act 21 of 2012, section 52 of Act 44 of 2014 and section 59 of Act 23 of 2015

31. Section 187 of the Tax Administration Act, 2011, is hereby amended—

(a) by the deletion in subsection (3) at the end of paragraph *(f)* of the word ''and'';

(b) by the deletion in subsection (3) at the end of paragraph *(g)* of the full stop and the insertion of the expression ''; and''; and

(c) by the addition in subsection (3) after paragraph *(g)* of the following paragraph:

''*(h)* an erroneous payment referred to in section 190(1)*(b)*, is the date 30 days after the date that the payment was made.''.

Amendment of section 188 of Act 28 of 2011

32. Section 188 of the Tax Administration Act, 2011, is hereby amended—

(a) by the deletion in subsection (2) at the end of paragraph *(a)* of the word ''and'';

(b) by the substitution in subsection (2) at the end of paragraph *(b)* for the full stop of a semi-colon; and

(c) by the addition in subsection (2) after paragraph *(b)* of the following paragraphs:

''*(c)* the first payment under section 5(1) or 5A of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008), is imposed from the effective date for the first payment until the earlier of the date on which the payment is made or the effective date for the second payment under section 5(2) or 5A of that Act for the relevant year of assessment; and

(d) the second payment under section 5(2) or 5A of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008), is imposed from the effective date for the second payment until the earlier of the date on which the payment is made or the effective date for mineral and petroleum resources royalty under section 6(2) of that Act for the relevant year of assessment.''.

Amendment of section 189 of Act 28 of 2011, as amended by section 67 of Act 21 of 2012

33. Section 189 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) In the case of interest payable with respect to refunds on assessment of provisional tax and employees' tax for purposes of final assessment of income tax or of mineral and petroleum resources royalty paid for the relevant year of assessment, the rate payable by SARS is four percentage points below the prescribed rate.''.

Amendment of section 190 of Act 28 of 2011, as amended by section 71 of Act 39 of 2013, section 53 of Act 44 of 2014, section 60 of Act 23 of 2015, section 28 of Act 13 of 2017 and section 21 of Act 22 of 2018

34. Section 190 of the Tax Administration Act, 2011, is hereby amended—

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

''(2) SARS need not authorise a refund as referred to in subsection (1) until such time that a verification, inspection, **[or]** audit or criminal investigation of the refund in accordance with Chapter 5 has been finalised.''; and

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

''(3) SARS must authorise the payment of a refund before the finalisation of the verification, inspection, **[or]** audit or criminal investigation if security in a form acceptable to a senior SARS official is provided by the taxpayer.''.

Amendment of section 234 of Act 28 of 2011 as substituted by section 77 of Act 21 of 2012 and section 43 of Act 33 of 2019

35. Section 234 of the Tax Administration Act, 2011, is hereby substituted for the following section:

"**Criminal offences relating to non-compliance with tax Acts**

234. (1) Any person who wilfully—

(a) submits a false certificate or statement under Chapter 4;

(b) issues an erroneous, incomplete or false document required to be issued under a tax Act to SARS or another person;

(c) fails to—

(i) reply to or answer truly and fully any questions put to the person by a SARS official, as and when required in terms of this Act; or

(ii) take an oath or make a solemn declaration as and when required in terms of this Act;

(d) obstructs or hinders a SARS official in the discharge of the official's duties;

(e) refuses to give assistance required under section 49(1);

(f) holds himself or herself out as a SARS official engaged in carrying out the provisions of this Act; or

(g) dissipates that person's assets or assists another person to dissipate that other person's assets in order to impede the collection of any taxes, penalties or interest,

is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.

(2) Any person who wilfully or negligently fails to—

(a) register or notify SARS of a change in registered particulars as required in Chapter 3

(b) appoint a representative taxpayer or notify SARS of the appointment or change of a representative taxpayer as required under section 153 or 249;

(c) register as a tax practitioner as required under section 240;

(d) submit a return or document to SARS or issue a document to a person as required under a tax Act;

(e) retain records as required under a tax Act;

(f) furnish, produce or make available any information, document or thing, excluding information requested under section 46(8), as and when required under this Act;

(g) attend and give evidence, as and when required under this Act;

(h) comply with a directive or instruction issued by SARS to the person under a tax Act;

(i) disclose to SARS any material facts which should have been disclosed under a tax Act or to notify SARS of anything which the person is required to so notify SARS of under a tax Act;

(j) comply with the provisions of sections 179 to 182, if that person was given notice by SARS to transfer the assets or pay the amounts to SARS as referred to in those sections or

(k) in the event where that person becomes liable to make a payment for withholding any tax, deduct or withhold or pay to SARS the amount of tax, as and when required under a tax Act,

is guilty of an offence and is liable, upon conviction, to a fine or to imprisonment for a period not exceeding two years.".

Short title and commencement

36. (1) This Act is called the Tax Administration Laws Amendment Act, 2020.

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

MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2020

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2020 (the ''Bill''), proposes to amend the Estate Duty Act, 1955 (Act No. 45 of 1955), 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), and the Tax Administration Act, 2011 (Act No. 28 of 2011).

2. OBJECTS OF BILL

2.1. *Estate Duty Act, 1955: Amendment of section 10*

The proposed amendment effects textual corrections.

2.2. *Income Tax Act, 1962: Amendment of section 1*

The terms ''mentally disordered'' and ''defective person'' are inappropriate. It is proposed that both terms be deleted as they fall under the existing concept of a ''person under legal disability''.

2.3. *Income Tax Act, 1962: Amendment of section 3*

The proposed amendment to section 18A(1)*(b*A) seeks to specify that the approval for purposes of section 18A is subject to the discretion of the Commissioner. This discretion should be subject to objection and appeal. Section 3(4)*(b)* should therefore be amended to include section 18A(1)*(b*A*)(dd)*.

2.4. *Income Tax Act, 1962: Amendment of section 18A*

Paragraph *(a)*: Currently a conduit public benefit organisation (PBO) approved under section 18A(1)*(b)*, can only provide funds and assets to a PBO or an institution, board or body approved by the Commissioner under section 18A(1)*(a)* carrying on public benefit activities (PBAs) in Part II of the Ninth Schedule, in South Africa. The proposed amendment aims to ensure that a conduit PBO can also provide funds and assets to any department of government of the Republic contemplated in section 10(1)*(a)* which has been approved by the Commissioner under section 18A(1)*(c)*.

Paragraph *(d)*: The amendment intends to align section 18A(1)*(b*A) with section 18A(1)*(a)*, *(b)* and *(c)* to clarify that an application for approval by the Commissioner is required.

Paragraph *(e)*: The proposed amendment is a textual correction to ensure that the proviso to section 18A(1)*(c)* is applicable to both paragraphs (A) and (B).

Paragraphs *(f)* and *(g)*: The proposed amendments to sections 18A(1)(2A)*(b)*(ii) and 18A(2D) are consequential to the amendment to section 18A(1)*(b)* allowing a conduit PBO to also provide funds or assets to a department contemplated in section 18A(1)*(c)*. The proposed amendment furthermore, affects some textual changes, clarifies existing wording and aligns the current wording with that of section 18A(1)*(b)* that provides for a conduit PBO to provide funds as well as assets.

Paragraph *(h)*: The proposed amendment is a consequential amendment for purposes of adding a new paragraph *(d)*.

Paragraph *(i)*: It is a requirement that a public benefit organisation, an institution, board or body or a department approved by the Commissioner for purposes of section 18A carrying on a combination of PBAs in Parts I and II of the Ninth Schedule, must obtain and retain an audit certificate confirming that all donations received or accrued in the year of assessment for which section 18A receipts were issued were used solely in carrying on PBAs in Part II in South Africa. In the case of a department the audit certificate must be submitted annually to the Commissioner.

In the case of a conduit PBO, it is a requirement to obtain and retain an audit certificate to confirm that at least 50% of the donations will be distributed within 12 months and that the funds or assets will be used to fund a PBO, institution, board or body or a department carrying on PBAs in Part II.

It is proposed that the audit certificate requirement be added to the listed requirements where non-compliance may give rise to the taxation of donations and ultimately the invalidity of section 18A receipts.

2.5. ***Income Tax Act, 1962: Amendment of section 49G***

The withholding tax on interest provisions provide for a refund of excess withholding tax on interest withheld, if the required declaration was not submitted in time (a refund to the person entitled to the interest) or the interest subsequently proves to be irrecoverable (a refund to the person who withheld and paid over the tax when it became due and payable). However, the withholding tax on royalties provisions only provide for a refund if the declaration is not submitted. It is proposed that provision be made for a situation where the withholding tax on royalties that was due and payable (in other words, it triggered a withholding tax on royalties) subsequently becomes irrecoverable, to be aligned with the withholding tax on interest provisions.

2.6. ***Income Tax Act, 1962: Amendment of paragraph 1 of Fourth Schedule***

Although receipts and accruals of entities as defined in section 30B(1) and approved by the Commissioner under section 30B(2) are currently fully exempt from payment of income tax, there may be instances where such entities fall within the ambit of the definition of ''provisional taxpayer'' by virtue of them being companies. It is proposed that these entities be excluded from the definition of ''provisional taxpayer''.

2.7. ***Income Tax Act, 1962: Amendment of paragraph 13 of Fourth Schedule***

Many provisions of the Fourth Schedule still cater for the manual process that was in place prior to the modernisation of the employees' tax system. In order to ensure that the Act keeps up to date with the system changes the proposed amendments aim to align the Act with the modernised process of employees' tax between SARS and employers. The proposed amendment furthermore removes the reference to a deleted provision.

2.8. ***Income Tax Act, 1962: Amendment of paragraph 30 of Fourth Schedule***

Paragraph *(a)*: See the note on the proposed amendment to section 234 of the Tax Administration Act, 2011.

It should further be noted that in the revised wording of paragraph 30, the offence listed in the current subpara-

graph (1)*(a)* has been deleted as it essentially duplicates the current section 234*(p)* of the Tax Administration Act, 2011. It is proposed that this subparagraph be deleted for purposes of clarity and consistency between the two Acts. It is further proposed to delete the current subparagraph (1)*(g)*. The proposed deletion is consequential to the deletion of paragraph 13(11) of the Fourth Schedule.

Paragraph *(b)*: Paragraph 30(2) of the Fourth Schedule contains a reverse onus provision in terms of which a taxpayer who fails to make payment of employees' tax (PAYE) deducted or withheld, to the Commissioner, within the prescribed period for payment, is deemed to have used or applied the amounts for purposes other than the payment thereof to the Commissioner.

Reverse onus provisions of this nature have been held by our courts to be unconstitutional and to conflict with, amongst others, the right to a fair trial, previously enshrined in section 25 of the Interim Constitution and subsequently in section 35 of the Constitution.

It is proposed that paragraph 30(2) be amended in order to align the wording of the provision with the views expressed by our courts, as well as section 235(2) of the Tax Administration Act, 2011, in order to replace the reverse onus with an evidentiary burden upon the taxpayer in these circumstances.

2.9. ***Customs and Excise Act, 1964: Amendment of section 1***

The proposed amendment is a technical correction.

2.10. ***Customs and Excise Act, 1964: Amendment of section 4***

Paragraph *(a)*: The proposed amendment caters for the possible replacement of the regulations in order to deal with the new capital flow management framework announced in the 2020 Budget.

Paragraphs *(b)* and *(c)*: The proposed amendment of section 4(3) and (3A) provides the authorisation for the sharing of information regarding purchases of goods free of duty at licensed special customs and excise warehouses (duty free shops), with the Director-General of the Department of International Relations and Co-operation (DIRCO), and the protection of such information. Tax evasion through these kinds of duty free purchases has become an increasing problem and because diplomats must be dealt with through diplomatic channels, DIRCO must be involved in managing the abuse of privileges granted in terms of the Diplomatic Immunities and Privileges Act, 2001.

Paragraph *(d)*: The proposed amendment of section 4(3D) provides for the publication of tariff determinations with a view to enhancing consistency and transparency in respect of the classification of goods. The Commissioner is furthermore authorised to prescribe rules dealing with the circumstances in which such publication may take place, the kind of information that may be published, as well as the manner of publication.

2.11. ***Customs and Excise Act, 1964: Amendment of section 18***

Section 18(1)*(d)* provides for containerized goods to be moved in bond under cover of a manifest and without payment of security, to a container depot or container terminal to which the goods were consigned. The proposed amendment clarifies that such a depot or terminal must be licensed in terms of section 64A or appointed or prescribed by the Commissioner as contemplated in section 6(1)*(h*A), as the case may be. The amendment removes any doubt that the container depot or terminal must be situated in the Republic. A container operator will therefore only be able to move goods under cover of a manifest for national transit movements; an international transit bill of entry is required for delivery of goods beyond the borders of the Republic.

2.12. ***Customs and Excise Act, 1964: Amendment of section 40***

Paragraph *(a)*: The proposed amendment aims to effect a correction in section 40(3)*(a)*(i) to clarify that a bill of entry may be adjusted in the following ways: The importer, exporter or manufacturer may upon discovery that a bill of entry submitted by him or her does not comply with section 39 or is invalid in terms of section 40(1), amend the bill of entry by way of a voucher of correction or in another manner as the Commissioner may prescribe. The other way to adjust a bill of entry is set out in subsection (3)*(a)*(ii), namely by substitution of a fresh bill of entry and cancellation of the original.

Paragraph *(b)*: Paragraph *(a)* is furthermore subjected to a proviso to the effect that if the purpose for which goods are entered as specified on a bill of entry is incorrect, the adjustment must be made by way of substitution in terms of paragraph *(a)*(ii).

The current wording of subsection (3)*(a)*(i) creates uncertainty as to whether the time periods for substitution referred to in subsection (3)*(b)*(i) and (ii) apply for purposes of a substitution referred to in subsection (3)*(a)*(i)(B). The proposed amendment removes uncertainty in this regard.

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

This is a further amendment relating to the announcement in Budget 2020 concerning the introduction of an export tax on scrap metal. The proposed amendment broadens of the scope of section 43 to provide for the disposal, upon failure to make due entry before export as contemplated in section 38(3)*(b)*, of goods to be exported on which an export duty is payable. Currently, the relevant provisions of section 43 only refer to the failure to make due entry in respect of imported goods.

2.14. ***Customs and Excise Act, 1964: Amendment of section 44***

All but the first amendment proposed to this section relate to the announcement in Budget 2020 that legislative steps would be taken to alleviate difficulties in relation to containerized goods arising due to the prolonged liability of the master of a ship, pilot of an aircraft or other carrier of goods.

Paragraph *(a)*: The proposed amendment of section 44(1) is aimed at providing for the commencement of liability for an export duty on goods specified in Part 6 of Schedule No.1 (to be published). This amendment relates to announcement in Budget 2020 concerning the introduction of an export tax on scrap metal.

Paragraph *(b)*: The proposed amendment of subsection (5) is intended to provide for additional circumstances in which the liability of the master or pilot or other carrier referred to in that subsection will cease, namely upon delivery of the goods to a licensed remover in bond for transport of the goods for purposes of examination. This will encourage competition and afford the importer or the importer's agent a choice to use another transporter onto whom the liability for duty will be transferred.

Paragraph *(c)*: The insertion of subsection (5AA) provides for the circumstances in which the liability of the licensed remover in bond will cease, whilst the proposed amendment of subsection (6) clarifies that the licensed remover in bond assumes liability in circumstances contemplated in proposed subsection (5)*(e)*.

2.15. ***Customs and Excise Act, 1964: Amendment of section 72***

The proposed amendment clarifies the meaning of ''free on board'' in relation to goods for purposes of section 72.

2.16. ***Customs and Excise Act, 1964: Amendment of section 76B***

The proposed amendment aims to limit applications for refunds in relation to export duty to a period of two years calculated from the date of entry for export. This is a further amendment relating to the announcement in Budget 2020 concerning the introduction of an export tax on scrap metal.

2.17. ***Customs and Excise Act, 1964: Amendment of section 113***

The proposed amendment aims to broaden section 113(2) to apply to exported goods for which a certificate or other authority is required to be produced.

2.18. ***Customs and Excise Act, 1964: Amendment of section 120***

The proposed amendment caters for the possible replacement of the regulations in order to deal with the new capital flow management framework announced in the 2020 Budget.

2.19. ***Value-Added Tax Act, 1991: Amendment of section 14***

Where a recipient is required to pay tax in terms of section 7(1)*(c)*, and the exceptions and exclusions listed under section 14(5), *inter alia*, do not apply, the recipient is required to furnish a return to the Commissioner, i.e. a Form VAT215.

However, as a consequence of the VAT modernisation initiative, the channel to furnish the Commissioner with a return, i.e. the VAT215, was removed. Consequently, the recipient of the imported services will not be able to file the return, as required by legislation. It is proposed that this requirement be substituted with a requirement to obtain, complete and retain the VAT215.

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

Section 20(8) refers to an identity document contemplated in section 1 of the Identification Act, 1997 (Act No. 68 of 1997). This Act no longer contains a definition of an ''identity document'', but rather an ''identity card''. It is proposed that section 20(8) be aligned with the terminology in the Identification Act, 1997.

2.21. ***Value-Added Tax Act, 1991: Amendment of section 58***

See the note on the amendment to section 234 of the Tax Administration Act, 2011.

2.22. ***Skills Development Levies Act, 1999: Amendment of section 6***

In terms of the Income Tax Act, 1962, SARS may refuse to authorise a refund until a taxpayer furnishes any returns that are outstanding under the Act. A similar but broader provision exists in the Employment Tax Incentive Act, 2013 (Act No.26 of 2013). In view of the tight integration between the PAYE, skills development levy, unemployment insurance contributions and employment tax incentive systems, it is proposed that this power also apply to the Skills Development Levy Act, 1999.

2.23. ***Unemployment Insurance Contributions Act, 2002: Amendment of section 8***

In terms of the Income Tax Act, 1962, SARS may refuse to authorise a refund until a taxpayer furnishes any returns that are outstanding under the Act. A similar but broader provision exists in the Employment Tax Incentive Act, 2013. In view of the tight integration between the PAYE, skills development levy, unemployment insurance contributions and employment tax incentive systems, it is proposed that this power also apply to the Unemployment Insurance Contributions Act, 2002.

2.24. ***Tax Administration Act, 2011: Amendment of section 12***

The proposed amendment is a technical correction.

2.25. ***Tax Administration Act, 2011: Amendment of section 70***

The proposed amendment caters for the possible replacement of the regulations in order to deal with the new capital flow management framework announced in the Budget 2020.

2.26. ***Tax Administration Act, 2011: Amendment of section 86***

The original wording in section 76M(4) of the Income Tax Act, 1962, was lengthier but concentrated on the ‘‘pre-decision’’ phase with respect to the withdrawal or modification of a binding ruling. The new wording was also intended as affording a prior hearing, and not a post decision ‘‘objection’’, which interpretation is possible under the current wording, although this has not arisen in practice. The taxpayer retains the right to object to the assessment wherein SARS does not follow the original form of the withdrawn or modified binding ruling, which may have an effect that ‘dissatisfies’ the taxpayer.

2.27. ***Tax Administration Act, 2011: Amendment of section 91***

It is proposed that certain provisions that specifically deal with an assessment based on an estimate be deleted in section 91 and relocated to section 95, which section deals with the issue of such assessments by SARS.

2.28. ***Tax Administration Act, 2011: Amendment of section 93***

The proposed amendment is consequential to the amendments to section 95 of the Tax Administration Act, 2011.

2.29. ***Tax Administration Act, 2011: Amendment of section 95***

Paragraph *(a)*: SARS may currently issue an assessment based on an estimate to a taxpayer who does not file a return. The assessment may not be disputed until the relevant return is filed and SARS has failed to revise the assessment in the light of the return. This ensures that all the facts are available when the assessment is revisited and that the dispute resolution timelines that would otherwise apply may be relaxed in appropriate circumstances. It is proposed that this approach be extended to cases where the taxpayer does not submit a response to a request for relevant material in respect of that taxpayer after delivery of more than one request for such material.

Paragraph *(b)*: The proposed amendment aims to relocate the provisions that specifically relate to the issue of an assessment based on an estimate, currently housed in section 91, to section 95, which is the section under which an assessment based on an estimate is issued by SARS. In this way, all the rules relating to the issue of an assessment based on an estimate will be housed together in the same section.

Although the new proposed subsections (4) and (5), in essence, contain provisions that are similar to the provisions contained in section 91, now being repealed, the following matters can be highlighted:

- SARS has been empowered to make an estimated assessment where no return is required or there is no failure to pay tax to support the auto-assessment initiative launched this year. SARS will thus be able to make estimated assessments where no tax is due or a refund is due to the taxpayer.
- The assessment based on an estimate, as a result of not providing a response to a request for relevant material, is not subject to objection or appeal, unless the taxpayer submits a response.
- The time-period within which the taxpayer may request SARS to issue a reduced or additional assessment, once the outstanding return or response has been provided by the taxpayer, has been extended from 30 to 40 business days;
- The time period within which a senior SARS official may extend the period is aligned with the prescription periods contained in section 99;
- The new wording furthermore contains a technical correction to align the words of the proposed section 95(4)*(c)* with wording used elsewhere in the Act, i.e. to replace the words ‘‘complete and correct return’’ (currently used section 91(5)*(b)*) with the words ‘‘true and full return’’, used in sections 25 and 26 of the Act.

2.30. ***Tax Administration Act, 2011: Amendment of section 100***

The proposed amendment is consequential to the amendments made to section 95 of the Tax Administration Act, 2011.

2.31. ***Tax Administration Act, 2011: Amendment of section 187***

Payments that are not properly allocated by a taxpayer are administratively difficult to allocate correctly. SARS requires a period to determine if the

payment was in fact erroneous or not. If the payment had to be allocated to a specific tax type, but is refunded as an erroneous payment, the taxpayer will be charged interest on the debt that remains. The proposed amendment aims to insert a specific effective date for erroneous payments referred to in section 190(1)*(b)* of the Tax Administration Act, 2011. This provides SARS with a period of 30 days to determine the erroneous nature of the payment prior to such payment attracting interest.

2.32. ***Tax Administration Act, 2011: Amendment of section 188***

Chapter 12 of the Tax Administration Act created a framework to support the modernisation of SARS' accounting system regarding interest. Due to the similarities in relation to the interaction between provisional and income tax on the one hand and the estimation and final payment of royalties for mineral and petroleum resources on the other, it is proposed that Chapter 12 be amended to achieve uniformity with the provisions of the Mineral and Petroleum Resource Royalty (Administration) Act, 2008 (Act No. 29 of 2008). This alignment includes aligning interest payable for royalties, in respect of the first and second payment, with provisional tax interest under Chapter 12.

2.33. ***Tax Administration Act, 2011: Amendment of section 189***

The proposed amendment provides that the current interest rate applicable to refunds of provisional tax and employees' tax paid for the relevant year of assessment, upon final assessment of income tax, will also apply to refunds of mineral and petroleum resources royalties, paid for the relevant year of assessment, in excess of the amount properly chargeable under the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, upon final assessment.

2.34. ***Tax Administration Act, 2011: Amendment of section 190***

The Tax Administration Act provides that SARS may withhold a refund until such time that a verification, inspection or audit of the refund is finalised. It is proposed that this provision be extended to also include criminal investigations. If the taxpayer provides security in a form acceptable to a senior SARS official, SARS must authorise the refund.

2.35. ***Tax Administration Act, 2011: Amendment of section 234***

Currently, this section requires that a taxpayer must have acted ''wilfully and without just cause'' in order to be found guilty of having committed an offence. This is a purely subjective test and there can be no reference to what a reasonable person would have done in the circumstances.

Prior to the introduction of the Tax Administration Act, 2011, the tax Acts made a clear distinction between the so-called ''non-compliance offences'' and those relating to tax evasion that involved an element of misrepresentation. See, for example, sections 58*(d)* and 59 of the Value-Added Tax Act, 1991, and sections 75 and 104 of the Income Tax Act, 1962. Intent was (and still is) specifically required for the more serious offences of tax evasion.

The provisions in respect of non-compliance offences did not explicitly state whether intent or negligence was required for *mens rea* for such tax offences. Section 58 of the Value-Added Tax Act, 1991, section 75 and paragraph 30 of the Fourth Schedule to the Income Tax Act, 1962, as they were before the introduction of the Tax Administration Act, 2011, did not mention wilfulness. Where the courts were satisfied that the legislature intended that negligence was the level of *mens rea* required, prosecutions were conducted and offenders convicted on this basis.

It is imperative to distinguish between the actions listed in section 234 of the Tax Administration Act, 2011, and those listed in section 235 of that Act. The types of conduct listed in section 234 relate to non-compliance and they are comparatively less serious and carry a less severe penalty provision (fine or imprisonment not exceeding 2 years). The conduct that section 234 seeks to enforce is, nonetheless, essential for efficient revenue collection.

By contrast, the actions sanctioned under section 235 relate to the evasion of tax and obtaining undue refunds by fraud or theft. These differ in substance from the actions sanctioned under section 234. In section 235, each subsection prohibits an element of misrepresentation of information and are arguably more serious.

Negligence would be a suitable fault requirement in respect of the types of conduct addressed by section 234, which provisions relate only to the issue of compliance. In the light of the importance of the duties of a taxpayer *vis-à-vis* the *fiscus* enunciated by the Constitutional Court per Kriegler J in *Metcash Trading Limited v Commissioner for the South African Revenue Service and Another* (CCT3/00) [2000] ZACC 21, it is submitted that taxpayers should be held to an objective standard of reasonable care in carrying out those duties. This is especially so when so much of our fiscal management relies on the *bona fides* of taxpayers and truthful self-assessment.

The *fiscus* requires the exercise of reasonable care by taxpayers in complying with those duties imposed on them for the effective management of the tax system. Where the legislature imposes a duty of care, the taxpayer should maintain a standard of reasonable care as would be expected of a reasonable taxpayer in the same circumstances. The corollary is then that the failure to exercise such reasonable care should be matched by culpability in the form of negligence. Accordingly, negligence is the appropriate form of culpability for those offences.

This similarly applies to the issues of non-compliance listed in paragraph 30 of the Fourth Schedule to the Income Tax Act, 1962, and section 58 of the Value-Added Tax Act, 1991.

In an effort to strike a balance between the more and less serious non-compliance offences, a differentiated approach has been adopted in the redraft of paragraph 30 of the Fourth Schedule to the Income Tax Act, 1962, section 58 of the Value-Added Tax Act, 1991, and section 234 of the Tax Administration Act, 2011.

Rather than do away with intent entirely, offences have been categorised into those for which intent or negligence is required and those for which only intent is required.

The first category includes aspects of non-compliance that strike at key duties that the tax system's broad application depends on, such as failing to register, submit returns, pay over tax that has been collected from a third party and so on.

The second category will include aspects of non-compliance where the nature of the non-compliance is such that the requirement of intent is implied, such as issuing a false document, obstructing or hindering a SARS official, assisting another person to dissipate their assets to impede tax collection and so on.

The maximum penalty of a fine or two years imprisonment will remain unchanged and it will be left to the presiding officer to decide what sentence is appropriate on conviction, considering all the aspects of a case.

2.36. ***Short title and commencement***

The clause makes provision for the short title of the proposed Act and provides that the Act comes into operation on the day of promulgation unless otherwise indicated in a provision in the Act.

3. CONSULTATION

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

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2020 Budget Review, tabled in Parliament on 26 February 2020.

5. PARLIAMENTARY PROCEDURE

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

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

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