

DRAFT

The draft Taxation Laws Second Amendment Bill, 2008, is hereby published for comment. This Bill, together with the draft Taxation Laws Amendment Bill, 2008, and the Revenue Laws Amendment Bills, 2008 which should be promulgated later this year, will give effect to the tax proposals presented by the Minister of Finance in the 2008 National Budget as tabled in Parliament.

The National Treasury will brief the Parliamentary Committee on Finance on this Bill on 4 March, 2008, and the Committee will hold public hearings on this Bill on 5 March 2008.

Members of the public are invited to submit comments on this Bill to:

Jeanne Viljoen:

jeanne.viljoen@treasury.gov.za

Members of the public may also submit comments directly to the Parliamentary Committee on Finance.

It will not be possible to respond to all comments but National Treasury will acknowledge receipt of all comments.

Once the comments have been considered and the Committee hearings finalised the Bill will be submitted to Parliament for tabling and formal consideration.

DRAFT

REPUBLIC OF SOUTH AFRICA

**TAXATION LAWS SECOND
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory memorandum published in Government Gazette No. xxxx of xx February 2008)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B – 2008]

Number of copies printed ...1800

ISBN

DRAFT

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—

- **Income Tax Act, 1962, so as to delete certain obsolete definitions; to amend certain definitions; to delete certain obsolete provisions; to effect consequential amendments;**
- **Value-Added Tax Act, 1991;**
- **Diamond Export Levy (Administration) Act, 2007;**
- **Securities Transfer Tax Administration Act, 2007,**

and to provide for matters connected therewith.

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

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of Act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993,

section 11 of Act 46 of 1996, section 22 of Act 53 of 1999, section 20 of Act 59 of 2000, section 13 of Act 19 of 2001 and section 30 of Act 60 of 2001

1. Section 13 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If in any year of assessment there falls to be included in a taxpayer’s income in terms of paragraph (a) of section 8(4) an amount which has been recovered or recouped in respect of any allowance made under subsection (1) or the corresponding provisions of any previous Income Tax Act in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer **[to be notified by him in writing to the Commissioner when submitting his return of income for the year of assessment during which the recovery or recoupment occurred,]** and provided **[he]** the taxpayer purchases or erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (1) apply, not be included in his income for **[such]** that year of assessment, but shall be set off against so much of the cost to **[him]** the taxpayer of **[such]** that further building purchased or erected by **[him]** the taxpayer as remains after the deduction of any portion of such cost in respect of which an allowance has been granted to the taxpayer under section 11(g), whether in the current or any previous year of assessment.”.

Amendment of section 13bis of Act 58 of 1962, as amended by section 15 of Act 88 of 1965, section 18 of act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986, section 13 of Act 90 of 1988,

section 13 of Act 113 of 1993, section 12 of Act 21 of 1994 and section 21 of Act 59 of 2000

2. Section 13*bis* of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) If in any year of assessment there falls to be included in a taxpayer’s income in terms of paragraph (a) of subsection (4) of section eight an amount which has been recovered or recouped in respect of any allowance made under the preceding provisions of this section or the provisions of subsection (1) of section thirteen, as applied by subsection (4) of that section, or the corresponding provisions of any previous Income Tax Act, in respect of any building or portion thereof or any improvements or portion thereof, so much of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer **[to be notified by him in writing to the Commissioner when submitting his return of income for the year of assessment during which the recovery or recoupment occurred,]** and provided **[he]** the taxpayer erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building in respect of the cost of which an allowance is made under the preceding provisions of this section, not be included in his income for **[such]** that year of assessment, but shall be set off against so much of the cost to **[him]** the taxpayer of such further building erected by him as remains after the deduction of any portion of **[such]** that cost in respect of which an allowance has been granted to the taxpayer under paragraph (g) of section eleven, whether in the current or any previous year of assessment.”.

Amendment of section 13*quat* of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19

of Act 32 of 2004, section 23 of Act 31 of 2005 and section 16 of Act 8 of 2007

3. Section 13*quat* of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“No deduction shall be allowed under this section, unless the taxpayer has **[together with the tax return for the year of assessment in which the deduction is claimed under subsection (3)(a)(i) or (b)(i), provided to the Commissioner]** obtained or determined the following for submission to the Commissioner in the form and within the time as may be prescribed by the Commissioner—”.

Amendment of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970 and amended by section 16 of Act 88 of 1971, section 13 of Act 90 of 1972, section 14 of Act 65 of 1973, section 16 of Act 69 of 1975, section 13 of Act 104 of 1980, section 16 of Act 96 of 1981, section 14 of Act 91 of 1982, section 16 of Act 94 of 1983, section 16 of Act 121 of 1984, section 15 of Act 90 of 1988, section 17 of Act 101 of 1990, section 20 of Act 129 of 1991, section 11 of Act 36 of 1996, section 24 of Act 30 of 2000, 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 and section 31 of act 35 of 2007

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

“(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must **[together with its annual return for a year of assessment submit to the Commissioner]** obtain and retain an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of

DRAFT

subsection (2), were utilised in the manner contemplated in subsection (2A).”.

Amendment of section 27 of Act 58 of 1962, as amended by section 17 of Act 113 of 1977, section 11 of Act 101 of 1978, section 19 of Act 104 of 1980, section 21 of Act 96 of 1981, section 15 of Act 96 of 1985, section 18 of Act 85 of 1987, section 22 of Act 90 of 1988, section 28 of Act 129 of 1991, section 23 of Act 141 of 1992, section 23 of Act 113 of 1993, section 15 of Act 36 of 1996, section 34 of Act 59 of 2000 and section 29 of Act 74 of 2002

5. Section 27 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If in any year of assessment there falls to be included in an agricultural co-operative’s income in terms of paragraph (a) of section 8(4) an amount, which has been recovered or recouped, in respect of any allowance made under subsection (2)(b) in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of **[such] that** co-operative[, **to be notified by it in writing to the Commissioner when submitting its return of income for the year of assessment during which the recovery or recoupment occurred,**] and provided it erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (2)(b) apply, not be included in its income for **[such] that** year of assessment, but shall be set off against so much of the cost to it of **[such] that** further building erected by it as remains after the deduction of any portion of **[such] that** cost in respect of which an

DRAFT

allowance has been granted to **[such]** that co-operative under section 11(g), whether in the current or any previous year of assessment.”.

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001, section 26 of Act 30 of 2002, section 38 of Act 74 of 2002, section 61 of Act 45 of 2003, section 18 of Act 16 of 2004, section 7 of Act 34 of 2004 and section 9 of Act 32 of 2005

6. Section 66 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (7A) of the following subsection:

“(7A) The Commissioner may, in the case of any return furnished by a taxpayer or a taxpayer’s authorised agent in electronic format, accept electronic or digital signatures as valid signatures **[for the purposes of subsection (7)]**.”; and

(b) by the substitution for subsection (13B) of the following subsections:

“(13B) For the purposes of subsections (13), (13A), (13C) and (14), the word ‘**income**’ must be construed as including any aggregate capital gain or aggregate capital loss.

(13C) Where—

(a) a company does not close its accounts on the last day of its financial year, the Commissioner may accept accounts in respect of the taxpayer’s income drawn to a fixed day approved by the Commissioner, which day shall fall within 10 days before or after the last day of the financial year;

(b) such accounts are drawn to a date later than the last day of the year of assessment, no further regard shall be had to the income

disclosed by those accounts for purposes of a subsequent year of assessment.”.

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 and section 63 of Act 45 of 2003

7. Section 70 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Every company which has after 31 December 1973 transferred from its reserves (excluding any share premium account) or unappropriated profits to its share capital or share premium account any amount which is in whole or part deemed by the first proviso to the definition of “dividend” in section 1 to be a profit available for distribution to shareholders of the company[, **shall, when rendering the annual return of the company’s income,**] must furnish the Commissioner with a statement **[(which may be included in the accounts or statements accompanying such return)]** at the time as may be prescribed by the Commissioner showing the profits of a capital nature and those not of a capital nature so deemed to be available for distribution on the last day of the year of assessment in question.”.

Amendment of section 72 of Act 58 of 1962, as amended by section 45 of Act 59 of 2000

8. Section 72 of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Every person who makes a return of his own income or in a representative capacity makes a return of the income of some other

DRAFT

person, **[shall attach to such return]** must furnish a statement in **[such]** the form and at the time as may be prescribed by the Commissioner **[may require]**, showing fully—”.

Amendment of section 72A of Act 58 of 1962, as inserted by section 46 of Act 59 of 2000, amended by section 42 of Act 74 of 2002, substituted by section 65 of Act 45 of 2003 and amended by section 11 of Act 32 of 2005

9. Section 72A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every resident who on the last day of the foreign tax year of a controlled foreign company or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissioner **[together with the return contemplated in section 66 in respect of that year of assessment]** a return in the form and within the time [and containing such information] as may be prescribed by the Commissioner.”.

Amendment of section 73 of Act 58 of 1962

10. Section 73 of the Income Tax Act, 1962, is hereby amended by the substitution of subsection (1) for the following subsection:

“(1) If **[any person submits in support of]** any return furnished by a person **[him]** under this Act is supported by any balance sheet, statement of assets and liabilities or account prepared by any other person, **[he]** that person shall, if the Commissioner so requires, submit a certificate or statement by **[such]** that other person recording the extent of the examination by **[such]** that other person of the books of account and of the

documents from which the books of account were written up, and recording in so far as may be ascertained by **[such]** the examination, whether or not the entries in **[such]** those books and documents disclose the true nature of any transaction, receipt, accrual, payment or debit.”.

Insertion of section 75B into Act 58 of 1962

11. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 75A of the following section:

“Administrative penalty in respect of non-compliance

75B. (1) To ensure the widest possible compliance with the provisions of this Act and to achieve the effective administration of the tax system, the Commissioner may impose administrative penalties as prescribed in terms of subsection (3) in respect of non-compliance with any procedural or administrative action or duty imposed or requested in terms of this Act.

(2) In imposing administrative penalties the Commissioner must ensure that administrative penalties for non-compliance with tax obligations are imposed impartially, consistently and proportionately to the seriousness of the non-compliance.

(3) The Minister may make regulations prescribing—

- (a) the administrative penalties that the Commissioner may impose;
- (b) the procedures to be followed by the Commissioner in imposing an administrative penalty;
- (c) what procedures are available to any person in respect of whom an administrative penalty has been imposed to obtain any relief thereof;
- (d) under what circumstances the Commissioner may remit any administrative penalty imposed; and
- (e) any other matter which is necessary to achieve an effective administrative penalty regime.

DRAFT

(4) In prescribing the administrative penalties, the Minister may have regard to one or more of the following:

(a) The nature and seriousness of the non-compliance;

(b) the period of non-compliance; and

(c) the incidence of any recurrence or repeat thereof.

(5) In prescribing the circumstances under which the Commissioner may remit the administrative penalty, the Minister must as far as possible limit the circumstances to exceptional circumstances.

(6) Before the regulations contemplated in this section are published, the Minister must publish the draft regulations in the *Government Gazette* for public comment and submit the draft regulations to Parliament for parliamentary scrutiny at least 30 days before any regulations contemplated in this section are published.”.

(2) Subsection (1) comes into effect on a date determined by the President by proclamation in the *Government Gazette*.

Amendment of section 76 of Act 58 of 1962, as amended by section 24 of Act 5 of 2001

12. (1) Section 76 of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (1)(a).

(2) Subsection (1) comes into effect on a date determined by the President by proclamation in the *Government Gazette*.

Amendment of section 88 of Act 58 of 1962, as amended by section 12 of Act 6 of 1963, substituted by section 44 of Act 85 of 1974, amended by section 25 of Act 103 of 1976 and section 24 of Act 91 of 1982, substituted by section 30 of Act 121 of 1984, section 17 of Act 70 of 1989 and section 40 of Act 113 of 1993 and amended by section 14 of Act 140 of 1993, section 60 of Act 60 of 2001 and section 14 of Act 32 of 2005

DRAFT

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

“(1) The—

- (a) obligation to pay any tax chargeable under this Act shall not; and
- (b) the right to receive and recover any tax chargeable under this Act, shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law under section 86A, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or **[such]** that court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate, **[such]** the interest being calculated from the date proved to the satisfaction of the Commissioner to be the date on which **[such]** that excess was received and amounts short-paid being recoverable with interest calculated as provided in section 89.”.

Amendment of section 89quat of Act 58 of 1962, as inserted by section 46 of Act 85 of 1974, amended by section 37 of Act 94 of 1983, section 34 of Act 121 of 1984, section 22 of Act 65 of 1986, section 18 of Act 70 of 1989, section 42 of Act 113 of 1993, section 15 of Act 140 of 1993, section 33 of Act 21 of 1995, section 24 of Act 36 of 1996, section 50 of Act 59 of 2000, section 29 of Act 5 of 2001, section 49 of Act 74 of 2002, section 17 of Act 34 of 2004 and section 43 of Act 8 of 2007

14. Section 89quat of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“**Interest on underpayments and overpayments of [provisional] tax**”;
- (b) by the substitution in subsection (1) for the phrase “provisional taxpayer” of the phrase “taxpayer” wherever it occurs;
- (c) by the substitution in subsection (1) for paragraph (b) of the definition of “effective date” of the following paragraph:

DRAFT

“(b) in any other case, the date falling six months after the last day of **[such] that year [as applicable for the purposes of the provisions of paragraph 21 or 23 of the Fourth Schedule];**”;

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

“(2) If the normal tax payable by any taxpayer in respect of that taxpayer’s taxable income for a year of assessment exceeds the credit amount in relation to that year of assessment, interest shall, subject to the provisions of subsection (3), be payable by the taxpayer at the prescribed rate on the amount by which that normal tax exceeds the credit amount, that interest being calculated from the effective date in relation to the said year until the date of assessment of that normal tax.”.

Amendment of paragraph 13A of First Schedule to Act 58 of 1962, as inserted by section 44 of Act 94 of 1983 and amended by section 46 of Act 113 of 1993

15. Paragraph 13A of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

“(2) Every farmer who desires that the proceeds derived by him or her from the disposal of livestock **[shall]** be dealt with under the provisions of this paragraph **[shall with his return of income for the year of assessment during which such livestock was disposed of, or within such period as the Commissioner may allow,]** must notify the Commissioner **[accordingly and submit a certificate containing such information in connection with the disposal as]** in the form and within the time prescribed by the Commissioner **[may require]**.”.

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 28 of Act 113 of 1977, 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 40 of Act 20 of 2006, section 55 of Act 8 of 2007 and section 65 of Act 35 of 2007

16. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for items (d) and (e) of subparagraph (4) of the following items:

- “(d) **[at the option of the employer,]** any contribution by the employee to a medical scheme as contemplated in section 18(1)(a) in respect of which proof of payment has been furnished to the employer, if the employee is entitled to a rebate under section 6(2)(b); and
- (e) **[at the option of the employer,]** so much of any contribution made by the employee (other than an employee contemplated in paragraph (d)) to a medical scheme as contemplated in section 18(1)(a) as does not exceed the amount contemplated in section 18(2)(c)(i) and in respect of which proof of payment has been furnished to the employer.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2008 and applies in respect of years of assessment commencing on or after that date.

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 and section 23 of Act 19 of 2001

17. Paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (6).

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 and section 57 of Act 74 of 2002

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

(a) by the substitution for subparagraphs (2) and (3) of the following subparagraphs:

“(2) Every employer shall when making any payment of employees’ tax submit to the Commissioner **[a] such declaration **[in such form]**** as the Commissioner may prescribe.

(3) Every employer shall—

(a) within 60 days after the end of each period contemplated in paragraph 13 (1A); and

(b) if during any such period he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay remuneration to any employee or otherwise ceases to be an employer, within 14 days after the date on which he has so ceased to carry on **[such] 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 a return in **[such] the form** as the Commissioner may prescribe **[showing the names and addresses of all the persons who during such period were employees in relation to such employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees tax deducted or withheld from the remuneration of each such employee during such period].”**; and

(b) by the addition of the following subparagraph after subparagraph (4):

“(5) If an employer fails to render to the Commissioner a return as referred to in subparagraph (3) within the period prescribed in that

DRAFT

subparagraph, that employer shall be required to pay a penalty equal to 10 per cent of the total amount of employees' tax deducted or withheld from the remuneration of employees during the period described in that subparagraph: Provided that the Commissioner may remit that penalty if he or she is satisfied that the circumstances warrant it."

Amendment of paragraph 23A of Fourth Schedule to Act 58 of 1962, as inserted by section 42 of Act 121 of 1984 and substituted by section 28 of Act 65 of 1986

19. Paragraph 23A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution of subparagraph (1) for the following subparagraph:

"(1) Any **[provisional]** taxpayer may for the purpose of avoiding or reducing **[his]** liability for any interest which may become payable **[by him]** in respect of any year of assessment under section 89*quat*, elect to make **[an additional]** a payment of **[provisional]** tax in respect of **[such]** that year, which payment must be treated as an additional payment of provisional tax ."

Amendment of paragraph 28 of Fourth Schedule to Act 58 of 1962, as amended by section 90 of 1964, section 30 of Act 95 of 1967, section 48 of Act 89 of 1969, section 48 of Act 88 of 1971, section 23 of Act 90 of 1972, section 55 of Act 85 of 1974, section 53 of Act 94 of 1983, section 44 of Act 121 of 1984, section 30 of Act 65 of 1986 and section 40 of Act 32 of 2004

20. (1) The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 28 of the following paragraph:

"28. Notwithstanding paragraph 28(1), no employees' tax deducted or withheld by an employer may be set off against the liability for normal tax levied under this Act of employees of that employer, unless that employer

DRAFT

has rendered a return as required in paragraph 14(3) and that return has been found acceptable by the Commissioner Provided that the Commissioner may allow the employees' tax to be deducted or set off if he or she is satisfied that the circumstances warrant it."

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

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 and section 14 of Act 10 of 2006

21. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in the proviso to subsection (1) for the words preceding item (i) of the following words:

“Provided that the total value of the taxable supplies of the vendor within the period of 12 months referred to in subparagraph (a) or the period of 12 months referred to in subparagraph (b) shall not be deemed to have exceeded or be likely to exceed the amount **[of R300 000]** contemplated in paragraph (a), where the Commissioner is satisfied that the said total value will exceed or is likely to exceed such amount solely as a consequence of—”.

(2) Subsection (1) comes into operation on 1 July 2008 and applies in respect of a tax period commencing on or after that date.

Amendment of section 27 of Act 89 of 1991, as amended by section 34 of Act 136 of 1991, section 28 of Act 136 of 1992, section 78 of Act 30 of 2000, section 11 of Act 10 of 2005 and section 50 of Act 9 of 2006

DRAFT

22. (1) Section 27 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection 5(b) for the words preceding subparagraph (i) of the following words:

“the total value of the taxable supplies of a vendor within any period of 12 months referred to in subsection (3)(a) or (4)(c) shall not be deemed to have exceeded or be likely to exceed the amount **[of R30 million]** referred to in subsection (3)(a) or the amount of **[R1,2 million]** referred to in subsection (4)(c), as the case may be, where that total value exceeds or is likely to exceed that amount, as the case may be, solely as a consequence of—”.

(2) Subsection (1) comes into operation on 1 July 2008 and applies in respect of a tax period commencing on or after that date.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001 and section 88 of Act 20 of 2006

23. Section 44 of the Value-Added Tax Act, 1991, is hereby amended by the deletion in subsection (3) of the proviso to paragraph (d).

Amendment of section 5 of Act 14 of 2007

24. Section 5 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended by the insertion of the following subsection:

“(1A) Notwithstanding section 5(1), the Commissioner may require a registered person that is liable to pay a levy due under the Levy Act during an assessment period that—

(a) is not ordinarily resident in the Republic; or

DRAFT

(b) in the course of the registered person's trade does not, in the opinion of the Commissioner, engage in processes that are directly related to unpolished diamond beneficiation or production in the Republic, to submit payment of that levy due in the form, manner (including electronically) and place as determined by the Commissioner."

Amendment of section 3 of Act 26 of 2007

25. Section 3 of the Securities Transfer Tax Administration Act, 2007, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

"(c) section 6 of the Securities Transfer Tax Act, 2007, which becomes payable during a month in respect of **[the] any** transfer of an unlisted security, must be paid by the company, which issued **[the unlisted]** that security, to the Commissioner within two months from the **[date of the transfer]** end of that month."

Short title and commencement

26. (1) This Act is called the Taxation Laws Second Amendment Act, 2007.

(2) Save in so far as is otherwise provided for in this Act or the context indicates otherwise, 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 2009.

MEMORANDUM ON THE OBJECTS OF THE TAXATION LAWS SECOND AMENDMENT BILL, 2008

1. PURPOSE OF BILL

- 1.1 The Bill seeks to amend administrative provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Diamond Levy (Administration) Act, 2007 (Act No. 14 of 2007) and the Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007).

2. OBJECTS OF BILL

2.1: *Amendment of section 13 of the Income Tax Act, 1962*

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

2.2: *Amendment of section 13bis of the Income Tax Act, 1962*

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

2.3: *Amendment of section 13quat of the Income Tax Act, 1962*

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax

return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

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

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

2.5: *Amendment of section 27 of the Income Tax Act, 1962*

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

2.6: *Amendment of section 66 of the Income Tax Act, 1962*

Subclause (a): The proposed amendment deletes a cross reference.

Subclause (b): The proposed amendment allows taxpayer's to align the year assessment to the day on which the accounts of the taxpayer are closed.

2.7: *Amendment of section 70 of the Income Tax Act, 1962*

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

2.8: *Amendment of section 72 of the Income Tax Act, 1962*

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

2.9: *Amendment of section 72A of the Income Tax Act, 1962*

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

2.10: *Amendment of section 73 of the Income Tax Act, 1962*

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

2.11: *Insertion of section 75B into the Income Tax Act, 1962*

The current penalty tax regime relating to the imposition and remittance of additional tax and other penalties in the tax acts differs from one act to another, and does not appropriately cater for less serious procedural and administrative non-compliance. It is proposed that the administrative penalty regime be revamped and that a more objective penalty system be introduced which would be administered in accordance with a defined set of criteria. This would create more certainty for taxpayers.

2.12: Amendment of section 76 of the Income Tax Act, 1962

The proposed amendment effects a consequential change.

2.13: Amendment of section 88 of the Income Tax Act, 1962

An amendment is proposed to make it clear that the exercise of the discretion by the Commissioner to not receive and recover any taxes chargeable does not affect the obligation of a taxpayer to pay any tax chargeable and the imposition of interest on the unpaid tax.

2.14: Amendment of section 89quat of the Income Tax Act, 1962

Interest on the late payment of income tax in respect of taxpayers that are not provisional taxpayers is currently charged only subsequent to the taxpayer's assessment. Equally unjust, the current interest dispensation does not permit for the payment of interest where such a taxpayer overpaid employee's tax during the tax year. The proposed amendment seeks to charge interest where the total taxes paid by a taxpayer as at a particular date (typically 30 September each year in the case of individuals) in respect of his or her taxable income is insufficient. At the same time, the proposed amendment makes provision for the payment of interest to a taxpayer who overpaid tax during the same period.

A taxpayer can avoid paying interest by making an additional tax payment to SARS on or before the date from which interest is charged.

2.15: Amendment of paragraph 13A of the First schedule of the Income Tax Act, 1962

DRAFT

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendments remove the requirement for supporting documents to be attached to the tax return.

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

Currently, an employer can choose whether to take contributions of this nature into account for employees' tax purposes. Where these contributions are not taken into account a taxpayer that would otherwise not be required to submit a tax return is forced to submit a tax return in order to claim the expense as a tax deduction. The proposed amendment seeks to make it compulsory for an employer to take these expenses into account where the employee submitted the necessary proof of payment to the employer.

2.17: Amendment of paragraph 13 of the Fourth Schedule of the Income Tax Act, 1962

The tax return filing requirements in the case of individuals no longer requires a taxpayer to attach supporting documents to his or her tax return. The proposed amendment deletes the requirement for employees' tax certificates to be attached to a tax return.

2.18: Amendment of paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962

The data that is currently prescribed by the Fourth Schedule for employees' tax reconciliation purposes is insufficient. Added to this, employers are frequently failing in their duty to reconcile properly and to

DRAFT

submit their reconciliations to SARS on time. Without a proper reconciliation submitted on time it is not possible to accurately verify a taxpayer's employee's tax credit on assessment. The proposed amendment seeks to permit the Commissioner to prescribe the information and data that an employer is required to submit for reconciliation purposes, and further seeks to penalise an employer that fails to submit a reconciliation on time to SARS.

2.19: *Amendment of paragraph 23A of the Fourth Schedule of the Income Tax Act, 1962*

In support of the proposed amendment to section 89*quat* to pay or charge interest from the effective date for all taxpayers, all taxpayers are afforded the opportunity to make a voluntary payment of tax by the effective date in order to avoid paying interest from that date. The effective date for individuals is 30 September (i.e. 7 months after the end of a tax year).

2.20: *Amendment of paragraph 28 of the Fourth Schedule of the Income Tax Act, 1962*

Currently, employees' tax that is withheld by an employer and in respect of which an employees' tax certificate was issued to the taxpayer is allowed as a credit on assessment of the taxpayer whether or not the employees' tax was actually paid over to SARS by the employer. The proposed amendment seeks to permit the employees' tax credit only if the employer properly accounted for the employees' tax paid to SARS.

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

The proposed amendment effects a textual change.

2.22 Amendment of section 27 of the Value-Added Tax Act, 1991

The proposed amendment effects a consequential change.

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

The proposed amendment deletes the option for VAT refunds to be paid to a third party bank account.

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

The proposed consequential amendment addresses avoidance concerns regarding persons that are not ordinarily resident or do not have a diamond business nexus in South Africa.

2.25: Securities Transfer Tax: Amendment of section 3 of the Securities Transfer Tax Administration Act, 2007

The proposed amendment effects a textual change.

2.26: Short title and commencement

This clause provides for the name and commencement of the Bill.

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 2008 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.