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REPUBLIC OF SOUTH AFRICA

TAXATION LAWS SECOND AMENDMENT BILL

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

(MINISTER OF FINANCE)

[B —2010]

No. of copies printed...1800

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—

- **insert the voluntary disclosure provisions;**
 - **amend the Transfer Duty Act, 1955, so as to provide for electronic submission of returns and electronic payment of duty;**
 - **amend the Income Tax Act, 1962, so as to amend certain provisions;**
 - **amend the Unemployment Insurance Contribution Act, 2002, so as to effect a technical correction;**
 - **amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to amend certain provisions;**
- and to provide for matters connected therewith.**

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

PART A

Voluntary Disclosure Relief

Definitions

1. For the purposes of this section, unless the context otherwise indicates, a term which is assigned a meaning in the relevant tax act has the meaning so assigned, and the following terms have the following meanings —

“**default**” means the submission of inaccurate or incomplete information to the Commissioner, or the failure to submit information or the adoption of a tax position, where such submission, non-submission, or adoption resulted in—

- (a) the taxpayer not being assessed for the correct amount of tax;
- (b) the correct amount of tax not being paid by the taxpayer; or
- (c) an incorrect refund being made by the Commissioner,

“**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962);

“**qualifying person**” means a person as described in section 3;

“**return**” means any return, declaration, bill of entry or other document in terms of which a tax determination is made;

“**tax**” means any tax, duty, levy, penalty and additional tax imposed in terms of a tax act;

“**tax act**” means any legislation administered by the Commissioner;

“**tax position**” means an assumption underlying one or more aspects of a return, including whether or not—

- (a) an amount, transaction, event or item is taxable;
- (b) an amount or item is deductible for tax;
- (c) a lower rate of tax than the maximum applicable to that class of taxpayer or transaction applies; or
- (d) an amount qualifies as a reduction of tax payable.

Administration

2. (1) This Part is administered by the Commissioner.

(2) Any power granted to the Commissioner under this Part may be exercised by the Commissioner personally or any official delegated by the Commissioner for that purpose.

(3) The provisions of section 4 of the Income Tax Act apply with the changes as required by the context of this Part.

Qualifying person

3. (1) A person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief unless that person is aware of—

- (a) a pending audit or investigation into the person's affairs; or
- (b) an audit or investigation that has commenced, but has not yet been concluded.

(2) The Commissioner may direct that a person may apply for voluntary disclosure relief, despite the provisions of subsection (1), where the Commissioner is of the view, having regard to the circumstances and ambit of the audit or investigation, that—

- (a) the default in respect of which the person wishes to apply for voluntary disclosure relief would not otherwise have been detected during the audit or investigation; and
- (b) the application would be in the interest of good management of the tax system and the best use of the Commissioner's resources.

(3) A person is deemed be aware of a pending tax audit or investigation, or that the tax audit or investigation has commenced, if—

- (a) a representative of the person;
- (b) an officer, shareholder or member of the person, if the person is a company;
- (c) a partner in partnership with the person;
- (d) a trustee or beneficiary of the person, if the person is a trust; or
- (e) a person acting for or on behalf of or as an agent or fiduciary of the person, has become aware of the pending audit or investigation, or that tax audit or investigation has commenced.

Requirements for a valid voluntary disclosure

4. The requirements for a valid voluntary disclosure are that the disclosure must—

- (a) be voluntary;
- (b) involve a default;
- (c) be full and complete in all material respects;
- (d) involve the potential application of a penalty or additional tax;
- (e) not result in a refund due by the Commissioner;
- (f) be made in the prescribed form and manner;
- (g) be made within the period prescribed by the Commissioner by notice in the *Gazette*; and
- (h) be in respect of a default which occurred at least 12 months before the commencement of the period contemplated in paragraph (g).

No-name voluntary disclosure

5. The Commissioner may issue a nonbinding private opinion as to a person's eligibility for relief under this Part, if the person provides sufficient information to do so, which information need not include the identity of any party to the default.

Voluntary disclosure relief

6. Despite the provisions in any tax act, the Commissioner must, pursuant to the making of a valid voluntary disclosure by a qualifying person—

- (a) not pursue criminal prosecution for any statutory offence under a tax act or a related common law offence;
- (b) grant 100 per cent relief in respect of any penalty and additional tax (excluding an administrative penalty that may be imposed in terms of regulation 5 of the regulations issued under section 75B of the Income Tax Act); and
- (c) grant, in respect of a person described in—
 - (i) section 3(1), 100 per cent; or
 - (ii) section 3(2), 50 per cent,
 as relief in respect of interest otherwise payable.

Voluntary disclosure agreement

7. The approval by the Commissioner of a voluntary disclosure application and relief granted under section 6, must be evidenced by a written agreement between the Commissioner and the qualifying person who is liable for the outstanding tax in the format as may be prescribed by the Commissioner and must include details of—

- (a) the material facts of the default on which the voluntary disclosure relief is based;
- (b) the amount payable by the person, which amount must separately reflect the tax and interest amount payable;
- (c) the arrangements and dates for payment;
- (d) treatment of the issue in future years or periods; and
- (e) relevant undertakings by the parties.

Withdrawal of voluntary disclosure relief

8. (1) In the event that, subsequent to the conclusion of a voluntary disclosure agreement under section 7, it is established that the qualifying person failed to disclose a matter that was material for purposes of making a valid voluntary disclosure under section 4, in the discretion of the Commissioner—

- (a) any relief granted under section 6 may be withdrawn;
- (b) any amount paid in terms of the voluntary disclosure agreement will be regarded to constitute part payment of any further outstanding tax in respect of the relevant default; and
- (c) criminal prosecution for any statutory offence under a tax act or a related common law offence may be pursued.

(2) Any decision by the Commissioner under subsection (1) is subject to objection and appeal or internal review.

Assessment of determination to give effect to agreement

9. (1) Where a voluntary disclosure agreement has been concluded under section 7, the Commissioner may, notwithstanding anything to the contrary contained

in any Act, issue an assessment or make a determination for purposes of giving effect to the agreement.

(2) Any assessment issued or determination made to give effect to an agreement under section 7 is not subject to objection and appeal or internal review.

Reporting

10. The Commissioner must within 12 months after the conclusion of the period prescribed by the Commissioner under section 4(*g*) provide to the Auditor-General and to the Minister of Finance a summary of all voluntary disclosure agreements concluded in respect of applications received during the period, which summary must—

- (*a*) be in such format which does not disclose the identity of the qualifying person concerned, and be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and
- (*b*) contain details of the number of voluntary disclosure agreements, the amount of tax and interest assessed and the relief granted in terms of section 6(*b*) and (*c*), which must be reflected in respect of main classes of taxpayers or sections of the public.

Regulations

11. The Minister may make regulations regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Part, including to address any unintended consequences, anomalies or incongruities that may arise.

PART B

Amendment of section 3 of Act 40 of 1949, as amended by section 6 of Act 88 of 1974, section 1 of Act 99 of 1981, section 4 of Act 97 of 1993, section 10 of Act 37 of 1996, section 6 of Act 60 of 2001, section 3 of Act 74 of 2002, section 1 of Act 35 of 2007 and section 2 of Act 17 of 2009

12. (1) Section 3 of the Transfer Duty Act, 1949, is hereby amended—

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

“(2) Pending the completion of the declarations referred to in section **[fourteen] 14**, or the determination of the amount of duty payable under this Act, a deposit on account of the duty payable **[may] must** be made, **[manually or electronically, to the office of the South African Revenue Service to which the duty is payable in terms of subsection (3)] by way of an electronic payment.**”

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

“(3) The payment of any duty, **[and any] penalty and interest payable under section 4 [and any transfer duty and interest payable under any law repealed by this Act shall be paid, manually or electronically, to the office of the South African Revenue Service where payments are accepted, for the area in which the property in question is situated or, if the property is situated in the area of more than one office of the South African Revenue Service where payments are accepted, to any one of those offices, or, in either case, to the office of the South African Revenue Service or the area where the deeds registry in which the property is registered is situated] must be made by way of an electronic payment.**”

(2) Subsection 1 shall come into operation on 1 January 2011 and will apply to any payments made on or after that date.

Amendment of section 14 of Act 40 of 1949, as amended by section 6 of Act 88 of 1974, section 1 of Act 34 of 2004 and section 1 of Act 36 of 2007

13. (1) Section 14 of the Transfer Duty Act, 1949, is hereby amended—

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

“**14. Declarations to be furnished to Commissioner.**—(1) Declarations appropriate to the manner of the acquisition of property in any particular case shall, **in substance as near as possible to the wording of the] be submitted electronically, in the form and manner and containing such information [forms] as prescribed by the Commissioner, [be completed and submitted in such manner (including electronically) and at such place as may be prescribed by the Commissioner,**] by the parties to the transaction whereby the property has been acquired and, if the Commissioner so directs, also by the agent, auctioneer, broker or other person who

acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.”;

(b) by the deletion of subsection (1A);

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

“(3) An estate agent as contemplated in section 1 of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), who is entitled to any remuneration or other payment in respect of services rendered in connection with a transaction in terms of which a person acquired property contemplated in paragraphs (d), (e) or (f) of the definition of “property”, must within six months of the date of acquisition of that property submit details of that transaction to the Commissioner in a form and in such manner as prescribed by the Commissioner.”;

(d) by the substitution for subsection (4) of the following subsection;

“(4) Any person required to complete a declaration in terms of this section must **[sign the declaration and furnish it to the Commissioner]** affix an electronic or digital signature as a valid signature to such declaration, and the person **[signing]** affixing such signature to the declarations is deemed for all purposes in connection with this Act to know and understand the meaning of all statements made in that declaration.”;

(e) by the deletion of subsection (5);

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

“(6) The Minister may make rules and regulations prescribing the procedures for submitting any declaration in electronic format and the requirements for an electronic or digital signature contemplated in subsection **[(5)] (4)**.”; and

(g) by the substitution for subsection (7) of the following subsection:

“(7) Where in any proceedings or prosecution under this Act or in any dispute to which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a person affixed to any declaration as contemplated in subsection **[(6)] (4)** was used with or without the consent and authority of that person, it shall, in the absence of proof to the contrary, for the purposes of this Act be presumed that such signature was so used with the consent and authority of that person.”.

(2) Subsection 1 shall come into operation on 1 January 2011 and will apply to any payments made on or after that date.

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 and section 3 of Act 36 of 2007, section 1 of Act 4 of 2008 and section 2 of Act 61 of 2008

14. (1) Section 3 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (4), for paragraph (b) of the following paragraph:

“(b) section 6, section 8 (4) (b), (c), (d) and (e), section 9D, section 10 (1) (e), (iA), (j) and (nB), section 11 (e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12B (6), section 12C, section 12E, section 12G, section 12J(6), (6A) and (7), section 13, section 14, section 15, section 22 (1), (3) and (5), section 24 (2), section 24A (6), section 24C, section 24D, section 24I, section 25D, section 27, section 28 (2) (cA), section 30, section 30A, section 30B, section 31, section 35 (2), section 37A, section 38 (4), section 44 (13) (a), section 47 (6) (c) (i), section 57, section 76A, section 80B and section 80S;”;

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

“(e) paragraphs 14(6), 18, 19 (1), 20, 21, 24 and 27 of the Fourth Schedule;”;

(c) by the substitution for paragraph (f) of the following paragraph:

“(f) paragraphs 10(3) and (4), 11(2) and (7), 12(1) and 13 of the Sixth Schedule;”;

(d) by the substitution in subsection (4) for paragraph (g) of the following paragraph:

“(g) paragraphs 2, 3, 6, 7(6), (7) and (8), 9 and 11 of the Seventh Schedule; and

(e) by the insertion after paragraph (g) of the following paragraph:

“(h) paragraphs 12(5)(c)(i), 29 (2A), 29 (7), 31 (2), 65 (1) (d) and 66 (1) (e) of the Eighth Schedule.”.

(2) Paragraph (a) of subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2011.

(3) Paragraph (c) of subsection (1) comes into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 76E of Act 58 of 1962 as inserted by section 12 of Act 34 of 2004

15. Section 76E of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (l);
- (b) by the addition in subsection (2) after paragraph (m) of the following paragraph:

“(n) a statement confirming that the applicant is registered for tax purposes; and”; and
- (c) by the addition in subsection (2) after paragraph (n) of the following paragraph:

“(o) a statement confirming that all returns required to be rendered by that applicant in terms of this Act, or any other Act administered by the Commissioner, have been rendered and any taxes, duties or levies due to the Commissioner have been paid or arrangements acceptable to the Commissioner have been made for the submission of any outstanding returns or the payment of any outstanding taxes, duties or levies.”;
- (d) by the deletion in subsection (3) of the word “and” at the end of paragraph (a);
- (e) by the insertion in subsection (3) of the word “and” at the end of paragraph (b);
- (f) by the addition in subsection (3) after paragraph (b) of the following paragraph:

“(c) where the class members are identifiable and number less than ten, a statement confirming that each class member has fully complied with its relevant obligations under any tax law administered by the Commissioner.”

Amendment of section 76G of Act 58 of 1958 as inserted by section 12 of Act 34 of 2004, amended by section 4 of Act 9 of 2007, section 8 of Act 61 of 2008

16. Section 76G of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (c);
- (b) by the substitution in subsection (1) for the full stop at the end of paragraph (d) of a semi-colon;
- (c) by the addition in subsection (1) after paragraph (d) of the following paragraph:

“(e) where the applicant is not registered for tax purposes; and;” and
- (d) by the addition in subsection (1) after paragraph (e) of the following paragraph:

“(f) where all returns required to be rendered by that applicant in terms of this Act, or any other Act administered by the Commissioner, have been not been rendered, or where any taxes, duties or levies due to the Commissioner have not been paid and no arrangements acceptable to the Commissioner have been made for the submission of any outstanding returns or the payment of any outstanding taxes, duties or levies.”.

Amendment of section 89quat of Act 58 of 1962, as amended by section 46 of Act 85 of 1974, repealed by section 37 of Act 94 of 1983, inserted by section 34 of Act 121 of 1984, amended by section 22 of Act 65 of 1986, section 18 of Act 70 of 1989, section 15 of Act 140 of 1993, section 42 of Act 113 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 and section 17 of Act 34 of 2004

17. (1) Section 89quat of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (3).

(2) Subsection (1) shall come into operation on 1 November 2010.

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

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

(a) addition after paragraph (cA) of the definition of “**remuneration**” of the following paragraph:

“(cB) 80 per cent of the amount of the fringe benefit as determined in terms of paragraph 7 of the Seventh Schedule:”

(b) addition after paragraph (cc) of the definition of “**provisional taxpayer**” of the following paragraph:

“(dd) a person exempt from payment of provisional tax in terms of paragraph 18.”.

(2) Subsection (1)(a) shall come into operation for years of assessment commencing on or after 1 March 2011.

Amendment of paragraph 11A of Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969 and amended by section 47 of Act 28 of 1997, section 19 of Act 34 of 2004, section 51 of Act 31 of 2005 and section 67 of Act 35 of 2007

19. Paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for the proviso of the following proviso:

“: Provided that where that person is an “associated institution”, as defined in paragraph 1 of the Seventh Schedule, in relation to any employer who pays or is liable to pay to that employee any amount by way of remuneration during the year of assessment during which the gain contemplated in subparagraph (1) arises; and—

(i) is an “associated institution”, as defined in paragraph 1 of the Seventh Schedule, in relation to any employer who pays or is liable to pay to that employee any amount by way of remuneration during the year of assessment during which the gain contemplated in subparagraph (1) arises; and

(ii) is or will be unable, for the reason described in subparagraph (5), to deduct or withhold the amount of employees’ tax or part of it in respect of that gain during that year of assessment,]

(i) is not resident nor has a representative employer , or

(ii) is unable to deduct or withhold the full amount of employees’ tax during the year of assessment during which the gain arises, by reason of the fact that the amount to be deducted or withheld from that employee by way of employees’ tax exceeds the amount from which the deduction or withholding can be made,

that person and that employer must deduct or withhold from the remuneration payable by them to that employee during that year of assessment an aggregate

amount equal to the employee's tax payable in respect of that gain and shall be jointly and severally liable for that [employee's] employees' tax.”.

Amendment of paragraph 11B of the Fourth Schedule to Act 58 of 1962, as amended by section 41 of Act No 90 of 1988, and section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997, section 53 of Act 30 of 1998, section 56 of Act 59 of 2000, section 33 of Act 30 of 2002, section 56 of Act 74 of 2002, section 22 Act 16 of 2004, section 43 of Act 20 of 2006, section 105 of Act 8 of 2007, section 44 of Act 3 of 2008,

20. Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following paragraph:

“(2) Notwithstanding the provisions of paragraphs 9 and 10, the amount of employees tax required to be deducted or withheld from any net remuneration paid or payable by an employer to an employee during any tax period shall—

- (a) to the extent that the annual equivalent of all such net remuneration so paid or payable during the tax period does not exceed R60 000; or
- (b) where such net remuneration includes any annual payment (being an amount of net remuneration which in terms of the employee's service conditions or in accordance with the employer's practice is payable to the employee once annually or which is determined without reference to any period), to the extent that the sum of all such annual payments and the annual equivalent of all other net remuneration so paid or payable during the tax period does not exceed R60 000,

be an amount (to be known as Standard Income Tax on Employees) which shall, subject to the provisions of subparagraphs (2A) and (4), be **[finally]** determined by the employer at the end of the tax period under the provisions of subparagraph (3).”.

Amendment of paragraph 12 of the Fourth Schedule to Act 58 of 1962, as amended by section 42 of Act 90 of 1988, section 48 of Act 101 of 1990, section 47 of Act 129 of 1991, deleted by section 41 of Act 21 of 1995, inserted by section 43 of Act 53 of 1999 and amended by section 15 of Act 61 of 2008

21. Paragraph 12 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (a) of the following item:

“(a) has failed to furnish a return as required in terms of paragraph [14 (1)]14(2).”

Amendment of paragraph 14 of the Fourth Schedule to Act 58 of 1962, as amended by

22. Section 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (6) with the following subsection:

“(6) If an employer fails to render to the Commissioner a return referred to in subparagraph (3) within the period prescribed in that 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 for [during] the period [described] relating to the return required in terms of [in] that subparagraph: Provided that the Commissioner may remit that penalty or portion thereof if he or she is satisfied that the circumstances warrant it.”

Amendment of paragraph 3 of the Seventh Schedule to Act 58 of 1962

23. Paragraph 3 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

“(2) The Commissioner may, if such determination appears to him to be incorrect, re-determine such cash equivalent—
 (a) and issue the employer with a notice of assessment for the unpaid amount of employees’ tax that is required to be deducted or withheld from such cash equivalent; or
 (b) upon the assessment of the liability for normal tax of the employee to whom such taxable benefit has been granted.”

Amendment of section 4 of Act 91 of 1964

24. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended—

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

(b) by the addition in the proviso to subsection (3) of the following paragraph:

“(vi) disclosing to the Chief Commissioner of the International Trade Administration Commission such information in relation to imports and exports and importers and exporters as may be required by that Chief Commissioner for purposes of exercising any power or performing any function in accordance with the provisions of the International Trade Administration Act, 2002 (Act No. 71 of 2002).”; and

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

“(3A) The Statistician General or the Director-General of the Department of Trade and Industry or the National Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or any person acting under the direction and control of such Statistician-General or Director-General of the Department of Trade and Industry or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury or Chief Commissioner of the International Trade Administration Commission shall not disclose any information supplied under the proviso to subsection (3) to any person or permit any person to have access thereto, except in the exercise of his powers or the carrying out of his duties under any Act from which such powers or duties are derived.”.

(2) Subsection is deemed to have come into operation on 1 June 2003.

Continuation of amendments made under section 119A of Act 91 of 1964

25. Any rule made under section 119A of the Customs & Excise Act, 1964 or any amendment or withdrawal of or insertion in such rule during the period 1 October

2009 up to and including 31 May 2010 shall not lapse by virtue of section 119A(3) of that Act.

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, section 81 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008 and section 104 of Act 60 of 2008

26. Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in the definition of “**designated entity**” for paragraph (iii) of the following paragraph:

“(iii) which is a party to a “Public Private Partnership Agreement” as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the extent that that party supplies goods or services in terms of that Agreement to the “institution” defined in that Regulation;”.

Amendment of section 9 of Act 89 of 1991 as amended by section 25 of Act 136 of 1991, section 25 of Act 97 of 1993, section 21 of Act 46 of 1996, section 26 of Act 27 of 1997, section 167 of Act 45 of 2003, section 96 of Act 32 of 2004, section 103 of Act 31 of 2005, section 172 of Act 34 of 2005 and section 28 of Act 36 of 2007

27. Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) where the supply is for a consideration in money received by the supplier by means of any machine, meter or other device operated by a coin, paper currency or token—

(i) in the case of such supplier, at the time any such coin, paper currency or token is taken from that machine, meter or other device by or on behalf of the supplier; and

- (ii) in the case of the recipient of such supply at the time the coin, paper currency or token is inserted into that machine, meter or other device by or on behalf of the recipient;”.

Amendment of section 14 of Act 89 of 1991 as amended by section 171 of Act 45 of 2003 and section 101 of Act 32 of 2004

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

“(1) Where tax is payable in terms of section 7 (1) (c) in respect of the supply of imported services the recipient shall within 30 days of the date referred to in subsection (2)—

- (a) furnish the Commissioner with a declaration (in such form as the Commissioner may prescribe) containing such information as may be required; and
- (b) calculate the tax payable on the value of the imported services at the rate of tax in force on the date of supply of the imported services and pay such tax to the Commissioner;

Provided that where the recipient is a vendor, that vendor must calculate the tax payable on the value of the imported service at the rate of tax in force on the date of supply of the imported services and may include such information and pay such tax to the Commissioner in accordance with section 28.”.

Amendment of section 16 of Act 89 of 1991 as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007 and section 30 of Act 36 of 2007

29. Section 16 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

- “(b) (i) a tax invoice or other document as is acceptable to the Commissioner, is in terms of section 20 (6) [**or (7) not**] required to be issued[.];
- (ii) a tax invoice is in terms of section 20(7) not required, or a debit note or credit note is in terms of section 21 not required to be issued; or”.

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 94 of Act 30 of 1998, section 35 of Act 27 of 1997, 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 and section 35 of Act 18 of 2009

30. Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(6) Notwithstanding any other provision of this Act, a supplier shall not be required to provide a tax invoice if the total consideration for a supply is in money and does not exceed R50: Provided that the supplier shall provide a document as is acceptable to the Commissioner.

(b) by the substitution for subsection (8) of the following subsection:

“(8) Notwithstanding anything in this section, where a supplier makes a supply (not being a taxable supply) of second-hand goods or of goods as contemplated in section 8(10) to a recipient, being a registered vendor, the recipient shall in the form as the Commissioner may prescribe, where the value of the supply is **[R1 000]**R50 or more, obtain and maintain a declaration by the supplier stating whether the supply is a taxable supply or not and shall further maintain sufficient records to enable the following particulars to be ascertained:

(a) (i) The name of the supplier and—

(aa) where the supplier is a natural person, his identity number; or

(bb) where the supplier is not a natural person, the name and identity number of the natural person representing the supplier in respect of the supply and any legally allocated registration number of the supplier:

Provided that the recipient—

(A) shall verify such name and identity number of any such natural person with reference to his identity document, as contemplated in section 1 of the Identification Act, 1997 (Act No. 68 of 1997), and, where the value of the supply is R1 000 or more, retain a photocopy of such name and identity number appearing in such identity document; or

- (B) shall verify such name and registration number of any supplier other than a natural person with reference to its business letterhead or other similar document and, where the value of the supply is R1 000 or more, retain a photocopy of such name and registration number appearing on such letterhead or document; and
- (ii) the address of the supplier;
- (b) the date upon which the second-hand goods were acquired or the goods were repossessed, as the case may be;
- (c) a description of the goods;
- (d) the quantity or volume of the goods;
- (e) the consideration for the supply[:]; and
- (f) proof and date of payment

[Provided that this subsection shall not require that recipient to keep such records where the total consideration for that supply is in money and does not exceed R50 or an amount determined by the Commissioner].

Amendment of section 8 of Act 4 of 2002, as amended by section 81 of Act 30 of 2002 and section 48 of Act 19 of 2009

31. (1) Section 8 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for subsection (2A) of the following subsection:

“(2A) Every employer shall—

- (a) by such date or dates as prescribed by the Commissioner by notice in the Gazette; and
- (b) if during any such period the employer ceases to carry on any business or other undertaking in respect of which the employer has paid or becomes liable to pay a contribution as determined in terms of section 6, or otherwise ceases to be an employer, within 14 days after the date on which the employer has so ceased to carry on that business or undertaking or to be an employer, as the case may be, or within such longer time as the Commissioner may approve,

render to the Commissioner such return as the Commissioner may prescribe.”.

(2) Subsection (1) is deemed to have come into operation on 30 September 2009.

Amendment of section 1 of Act 29 of 2008, as amended by section 61 of Act 18 of 2009

32. (1) Section 1 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—

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

“‘**person**’ includes—

(a) an insolvent estate, the estate of a deceased person and a trust; or

(b) an unincorporated body of which the members made an election in terms of section 4(1) of this Act;”;

(b) by the substitution in subsection (1) for paragraph (b) of the definition of “year of assessment” of the following paragraph:

“(b) in the case of any other person[,]=

(i) the period commencing on 1 March 2010 and ending on the last day of the financial year in which that period falls; or

(ii) the period commencing on the first day of that person’s financial year and ending on the last day of that financial year, and if any financial year begins on any day other than the first day of a month, that financial year is deemed to begin on the first day of that month.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010.

Amendment of section 2 of Act 29 of 2008, as amended by section 62 of Act 18 of 2009

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

“(ii) must apply to register with the Commissioner by **[31 January]** 28 February 2010; or”.

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

Amendment of section 4 of Act 29 of 2008, as amended by section 63 of Act 18 of 2009

34. (1) Section 4 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding subsection (2), if an unincorporated body of persons—

- (a) consists of two or more members; **[and]**
- (b) **[holds]** one or more members of that unincorporated body hold a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted pursuant to the Mineral and Petroleum Resources Development Act (or a lease or sublease mentioned in section 11 of the Mineral and Petroleum Resources Development Act in respect of such a right) [in the name of that unincorporated body]; and
- (c) wins or recovers a mineral resource originating from within the Republic, all the members of that unincorporated body may elect that the unincorporated body is deemed to be a person for the purposes of this Act **[and]**, the Royalty Act and the Income Tax Act as applied to the Royalty Act.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010.

Amendment of section 5 of Act 29 of 2008

35. (1) Section 5 of the Mineral and Petroleum Resources (Administration) Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A registered person must—

- (a) submit an estimate of the royalty payable in respect of a year of assessment if that person is registered less than six months before the last day of that year; and
- (b) make a payment equal to—
 - (i) one-half of the amount of the royalty so estimated; or
 - (ii) if the number of months in that year is less than 12, an amount which bears to the amount so estimated the same ratio as the number of

months that have elapsed in that year bear to the total number of months in that year.

together with such return for that payment as the Commissioner may prescribe.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010.

Amendment of section 14 of Act 29 of 2008

36. (1) Section 14 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If the royalty mentioned in section 6(1) in respect of a year of assessment exceeds the amount paid as mentioned in section 5 in respect of that year and that excess is greater than ~~[10]~~ 20 per cent of the royalty mentioned in section 6(1), the Commissioner may impose a penalty that may not exceed 20 per cent of that excess.”

(2) Subsection (1) is deemed to have come into operation on 1 March 2010.

Amendment of section 19 of Act 29 of 2008

37. (1) Section 19 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—

(a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b);

(b) by the addition to subsection (1) of the following paragraphs:

“(d) the methodology employed to adjust the amount allowed to be deducted in respect of the use of assets or expenditure incurred in terms of section 5 of the Mineral and Petroleum Resources Royalty Act;

(e) the methodology employed to adjust the amount of gross sales determined in terms of section 6 of the Mineral and Petroleum Resources Royalty Act; and

(f) the allocation of the amount in respect of assets used or expenditure incurred contemplated in section 5 of the Royalty Act per mineral resource.”; and

(c) by the substitution for subsection (7) of the following subsection:

“(7) The provisions of this section **[may]** must not be construed as preventing—

- (a) the Minister of Finance from disclosing to the Commissioner; and
- (b) the Commissioner from disclosing to the Director General of the Department of Mineral Resources,

any information submitted under this subsection.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010.

Short title and commencement

38. (1) This Act is called the Taxation Laws Second Amendment Act, 2010.

(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.

(3) Notwithstanding subsection (2), and save in so far as is otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act are deemed for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, to have come into operation as from the commencement of years of assessment ending on or after 1 January 2011.

MEMORANDUM ON THE OBJECTS OF THE TAXATION LAWS SECOND AMENDMENT BILL, 2010

1. PURPOSE OF BILL

1.1 The Bill amends administrative provisions of the Transfer Duty Act, 1949 (Act No. 40 of 1949), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No 91 of 1964), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Unemployment Insurance Contributions Act, 2002 (Act No 4 of 2002), and the Mineral and Petroleum Resources Royalty (Administration) Act (Act No. 29 of 2008).

2. OBJECTS OF BILL

2.1-2.11: Voluntary Disclosure Programme

To encourage taxpayers to come forward and avoid the future imposition of interest, a voluntary disclosure programme (“VDP”) will be instituted from 1 November 2010 to 31 October 2011. Taxpayers may come forward during this period to disclose their defaults and regularise their tax affairs. In line with greater international cooperation over bank secrecy and enhanced measures to prevent money laundering, the VDP will also enable taxpayers with unreported banking accounts overseas to fully disclose such untaxed revenue. Although penalties and interest will be waived for successful applicants, the full amount of tax will remain due.

A defaulting taxpayer will be granted relief under the programme, provided:

- The disclosure is complete;
- SARS was not aware of the default;
- A penalty or additional tax would have been imposed had SARS discovered the default in the normal course of business.

In light of this step, government proposes to do away with SARS’s discretion in terms of section 89*quat*(3) of the Income Tax Act, 1962, to waive interest charged on unpaid provisional tax once the application period commences.

The proposed legislation to give effect to the VDP–

- Introduces the concept of “voluntary disclosure”;
- Prescribes the relief that may be provided under the VDP;
- States who qualifies to may make a disclosure; and
- Prescribes when, where and how to apply for the VDP.

2.12: Transfer Duty Act, 1949: Amendment of section 3

SARS’s strategic focus is on the replacement of manual with electronic processes and the phasing out of cash payments by taxpayers in favour of the electronic transfer of funds. In order to achieve this result in the administration of Transfer Duty, the proposed amendment will have the effect that SARS will only process transfer duty

returns that have been submitted electronically and that taxpayers may only pay transfer duty by electronic transfer of funds.

2.13: Transfer Duty Act, 1949: Amendment of section 14

See paragraph 2.12 above.

2.14: Income Tax Act, 1962: Amendment of section 3

The proposed amendment provides for the relevant sections of the Act to be made subject to objection and appeal.

2.15: Income Tax Act, 1962: Amendment of section 76E

Since 2006, SARS has been issuing binding advance tax rulings to taxpayers. It is proposed that this service only be available to compliant taxpayers. Therefore, the proposed amendment contains a requirement that the tax affairs of applicants for an advance tax ruling must be in order (submission of returns and payment of outstanding tax) for SARS to accept an application and issue an advance tax ruling.

2.16: Income Tax Act, 1962: Amendment of section 76G

See paragraph 2.15 above.

2.17: Income Tax Act, 1962: Amendment of section 89quat

See paragraph 2.1 above

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

Subclause (a): The proposed amendment provides that only 80 per cent of the value of the fringe benefit as calculated in terms of paragraph 7 of the Seventh Schedule will be included in the definition of ‘remuneration’ of the Fourth Schedule and hence subject to the deduction of employees’ tax. Further relief based on actual distance travelled for business purposes and qualifying expenditure incurred by the taxpayer is granted on assessment. This amendment forms part of the proposed amendments to paragraph 7 of the Seventh Schedule of the Tax Act, 1962. A more detailed explanation with regard to Employer-provided motor vehicles is contained in the explanatory memorandum to the Taxation Laws Amendment Bill, 2010.

Subclause (b): Technically, persons who are exempt from the payment of provisional tax are still provisional taxpayers. Although the practice of SARS is not to treat those exempt persons as provisional taxpayers, it is proposed that the definition of “provisional taxpayer” be amended to clarify that those exempt persons are not provisional taxpayers.

2.19: Income Tax Act, 1962: Amendment of paragraph 11A of the Fourth Schedule

Paragraph 11A deals with the withholding or deduction of employees' tax from remuneration in the form of gains contemplated in sections 8A, 8B and 8C which is deemed to become payable to employees. It deems that the person who granted the right to acquire the marketable security or from whom the employee acquired the equity instrument or qualifying equity share, to have paid remuneration equal to the amount of the gain to the employee.

In the majority of cases rights to acquire marketable securities, qualifying equity shares and equity instruments are granted by or acquired by employees from trusts established by employers to provide these benefits. As these trusts only provide benefits in the form of gains they do not pay the employees cash remuneration and as a result the employees' tax liability is not paid during the year of assessment when the gain arises. The same position occurs where the employees are employed by a subsidiary of an international company and the shares are granted or awarded by a body outside the Republic.

It is proposed that in the circumstances where—

- a gain arises in the hands of an employee in a year of assessment;
- the entity granting the right to acquire a marketable security or from whom the employee acquired the equity instrument or qualifying equity share is an associated institution as defined in paragraph 1 of the Seventh Schedule in relation to an employer of the employee;
- the associated institution is not resident nor has a representative employer in the Republic; or
- the associated institution is unable to deduct all or part of the employees' tax due because it does not pay cash remuneration to the employee from which the full amount of tax can be withheld

the associated institution and the employer are jointly and severally liable for the tax and must withhold the employees' tax from the remuneration payable to the employee.

There was some doubt as to whether the paragraph achieved its purpose and it is proposed to redraft it to clarify the position.

2.20: Income Tax Act, 1962: Amendment of paragraph 11B of the Fourth Schedule

The proposed amendment forms part of the discontinuation of standard income tax on employees (SITE) administrative provisions. A detailed explanation of the proposed discontinuation is contained in the explanatory memorandum to the Taxation Laws Amendment Bill, 2010. The proposed amendment makes it clear that Standard Income Tax on Employees (SITE) is no longer a final withholding tax by an employer, as is currently the case.

2.21 Income Tax Act, 1962: Amendment of paragraph 12 of the Fourth Schedule

Paragraph 12(1)(a) of the Fourth Schedule provides that the Commissioner may make a reasonable estimate of the amount of employees' tax required to be deducted if the employer has failed to furnish a return as required in terms of paragraph 14(1) of the

Schedule. It is paragraph 14(2) that provides that the employer shall submit a declaration to the Commissioner when paying employee's tax and not paragraph 14(1) (which only provides for the information to be kept by the employer in respect of each employee). The proposed amendment substitutes the reference to paragraph 14(1) in paragraph 12(1)(a) of the Schedule with paragraph 14(2).

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

The proposed amendment clarifies the period (and hence the amount of employees' tax) in respect of which the 10 per cent penalty shall be levied in terms of this paragraph.

2.23: *Income Tax Act, 1962: Amendment of paragraph 3 of the Seventh Schedule*

Employers have an obligation to deduct or withhold employees' tax from the value of fringe benefits granted to employees. A recent judgment has created the impression that an incorrect determination by an employer of PAYE on fringe benefits can only be remedied on assessment of the individual employees. To enable SARS to effectively administer employees' tax in these situations, the proposed amendment enables SARS to raise an assessment on an employer where it was found that the value of a fringe benefit has not been taken into account or undervalued for employees' tax purposes.

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

Section 4(3) allows the disclosure of information relating to a person, firm or business acquired by the Commissioner or an officer in the performance of his or her duties to Directors-General of certain departments, The National Commissioner of the South African Police Service and the Governor of the South African Reserve bank subject to certain conditions. Information regarding imports and exports and importers and exporters is provided to the Director-General of the Department of Trade and Industry as may be required for the determination of any trade policy.

The proposed amendment provides for the furnishing of information to the Chief Commissioner of the International Trade Administration Commission for exercising powers and performing functions in accordance with the provisions of the International Trade Administration Act, 2002 (Act No. 71 of 2002), the commencement date of that Act.

2.25: *Customs and Excise Act, 1964: Continuation of rules made under section 119A*

Provision is made that any rule made under section 119A of the Customs and Excise Act, 1964 or any amendment of or withdrawal of or insertion in such rule during the period 1 October 2009 up to and including 31 May 2010 must not lapse by virtue of section 119A(3) of that Act.

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

The proposed amendment is a textual amendment, correcting a previous incorrect reference.

2.27: Value-Added Tax Act, 1991: Amendment of section 9

The proposed amendment clarifies that the time of supply in this subsection also applies to supplies made or acquired by means of any machine, meter or other device that is operated by paper currency or other payment facility, for example a credit card.

2.28: Value-Added Tax Act, 1991: Amendment of section 14

This amendment will offer a vendor who is required to calculate and pay VAT on imported services to elect to calculate and pay the VAT to the Commissioner in the VAT 210 return corresponding to the tax period in which the supply was made.

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

The proposed amendment is consequential to paragraph 2.33 and requires the vendor acquiring goods or services to be in possession of the documentary proof issued in terms of section 20(6).

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

Subclause (a): This amendment clarifies that a vendor supplying goods or services where the consideration in money is R50 or less, the Commissioner will require that vendor to issue a document which is acceptable to the Commissioner, unless a tax invoice is issued.

Subclause (b): The amendment will require a vendor who wishes to deduct input tax when acquiring second hand goods to obtain and retain documentary proof of payment for the goods and the date on which such payment for the goods was made. Further, the consideration in money of the supply for which documentary proof is required is aligned to the *de-minimis* consideration in money of R50.

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

The proposed amendment corrects a textual error.

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

Subclause (a): The proposed amendment now defines a ‘person’ to include an unincorporated body where the members have elected to deem the unincorporated body to be a person for the purposes of the Income Tax Act and Royalty Act.

Subclause (b): The proposed amendment now defines a year of assessment as—

- (j) 1 March to 28 February for natural persons and trusts; and
- (ii) for any other person (e.g. companies) as that person’s financial year.

The amendment provides special rules for the first year of operation of the Royalty Act. In this first year, every person (other than a natural person or trust) will have a short year that begins on 1 March 2010.

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

Section 2 provides for the required registration of persons in terms of the Royalty Act. These persons presently must register with the Commissioner by 31 January 2010. Due to a few technicalities associated with the Act, it was decided to extend this registration date to 28 February 2010.

2.34: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 4

The proposed amendments provide an election so that an unincorporated body of persons can be deemed to be a person for the Royalty Act and the Royalty Administration Act (if the members of that unincorporated body so elects). This election is available as long as the unincorporated body holds a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted in terms of the Mineral and Petroleum Resources Development Act. However, it is legally impossible for an unincorporated body to hold these rights directly because an unincorporated body is not a juristic person. The pre-conditions for the election will accordingly be revised so that the unincorporated body must instead—

- (i) carry on prospecting or mining operations;
- (ii) consist of two or more members; and
- (iii) have one or more of the members who hold in their own name: a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted in terms of the Mineral and Petroleum Resources Development Act.

2.35: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 5

Section 5 provides for estimated royalty payments by registered persons at two points during the year. These persons must estimate and remit one-half of the royalty amount payable within six months after the first day of that year of assessment. At year end these persons must estimate and remit the full royalty amount payable for a year of assessment at year-end.

At issue is the mid-year payment. The current mid-year calculation fails to account for short-years in general and for short-years caused by the initial 1 March 2010 starting date of the Royalty Act. Firstly, the exact trigger for mid-year estimates should be six months before the last day of the year of assessment (instead of six months after the beginning). Secondly, the procedure for the calculation should be revised so that the registered person applies the mid-year estimate against the months existing in respect of the first estimate period over the total months existing for the year. This revised calculation can best be understood through the following example:

Facts: Company X is expected to generate a R4 million royalty liability during 2010. Company X has a financial year ending 31 December 2010.

Result: Company X has a short-year from 1 March until the close of 31 December 2010 because the Royalty Act begins from 1 March (as opposed to 1 January). The first royalty estimate due for 30 June 2010 accordingly amounts to R1.6 million (the first four months over the total 10 months for the 2010 short-year).

2.36: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Insertion of section 14

If the actual royalty payable for the year of assessment exceeds the estimated royalty payments (i.e. both six-monthly payments) by more than 10 per cent, current law provides that the Commissioner may levy a maximum penalty of 20 per cent of that excess. However, the 10 per cent allowable estimate differential is stringent. The allowable estimate differential is accordingly increased from 10 per cent to 20 per cent (i.e. now allowing for 80 per cent accuracy instead of 90 per cent).

2.37: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Insertion of section 19

In terms of section 19(1), an extractor is duly obliged to submit certain information to the Minister of Finance on an annual basis, in respect of a year of assessment. The Minister may in turn disclose any information disclosed under this section to the Commissioner (who carries out the administration of the Mineral and Petroleum Resources Royalty Administration Act).

An extractor will now be required to submit the following additional information to the Minister on an annual basis, in respect of a year of assessment, per section 19(1):

- methodology to adjust section 5 expenditure in the Mineral and Petroleum Resources Royalty Act, and
- methodology to adjust section 6 gross sales in the Mineral and Petroleum Resources Royalty Act, and
- allocation of expenditure per mineral resource.
- SARS secrecy provisions may be relaxed the extent to which it relates to exchange of information with the DMR. The Commissioner may exchange information with the DMR.

2.38: Short title and commencement

Clause 64 provides for the name and commencement of the proposed Act.

3. CONSULTATION

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

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2010 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.