

REPUBLIC OF SOUTH AFRICA

TAX ADMINISTRATION LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. 35813 of 22 October 2012)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 35B—2012]

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(2) Any annex or amendment to such agreement shall have the same effect after approval by Parliament in terms of section 231 of the Constitution and on publication in the *Gazette*.

Application of Tax Administration Act to certain matters relating to customs and excise

2. (1) The Tax Ombud appointed in terms of section 14 of the Tax Administration Act, 2011 (Act No. 28 of 2011), must review and address in accordance with the provisions of sections 16 to 21 of that Act and any regulations issued under section 257(2) of that Act, any complaint by a person affected by the application of the Customs and Excise Act, 1964 (Act No. 91 of 1964), regarding a service, procedural or administrative matter.

(2) Chapter 14 of the Tax Administration Act, 2011, applies to the writing off or compromise of an amount owed to the Commissioner in terms of the Customs and Excise Act, 1964.

(3) Subsections (1) and (2) are deemed to have come into operation on 1 October 2012.

Amendment of section 10 of Act 45 of 1955

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

“(1) **[If the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the prescribed rate shall be]** Interest in terms of Chapter 12 of the Tax Administration Act [payable as from a date twelve months after the date of death] must be calculated on the difference (if any) between the duty assessed and any deposit **[(if any)]** made on account of the duty **[payable within the said period of twelve months].”**

(2) Subsection (1) is deemed to have come into operation on the date that paragraph 18 of Schedule 1 to the Tax Administration Act, 2011, comes into operation.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009 and section 6 of Act 7 of 2010, section 7 of Act 24 of 2011 and paragraph 23 of Schedule 1 to Act 28 of 2011

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

“(c) in respect of income which is the subject of any trust or in respect of the income of any minor or mentally disordered or defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or

remitting or paying to or receiving moneys on behalf of such person under disability;”.

Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006 and amended by section 13 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008, section 19 of Act 60 of 2008, section 16 of Act 17 of 2009, section 20 of Act 7 of 2010, section 32 of Act 24 of 2011, section 1 of Act 25 of 2011 and paragraph 34 of Schedule 1 to Act 28 of 2011 5

5. (1) Section 11D of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (19) of the following subsection:

“(19) **[For the purposes of subsection (1), the]** The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment with respect to a deduction in respect of research and development which has been allowed, where approval has been withdrawn in terms of subsection (10).” 10

(2) Subsection (1) is deemed to have come into operation on 1 October 2012 and applies in respect of expenditure incurred in respect of research and development on or after that date but before 1 October 2022. 15

Amendment of section 12I of Act 58 of 1962, as inserted by section 26 of Act 60 of 2008 and amended by section 24 of Act 17 of 2009, section 26 of Act 7 of 2010 and section 37 of Act 24 of 2011 20

6. (1) Section 12I of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11) of the following subsection:

“(11) Within 12 months after the close of each year of assessment, starting with the year in which approval is granted in terms of subsection (8), a company carrying on an industrial policy project must report to the adjudication committee with respect to the progress of the industrial policy project in terms of the requirements of subsections (7) and (8) within such time, in such form and in such manner as the Minister of Finance may prescribe.” 25

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of industrial policy projects approved on or after that date. 30

Amendment of section 18A of Act 58 of 1962 as 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 1998, 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 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010 and section 44 of Act 24 of 2011 35

7. Section 18A of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection: 40

“(7) Any person who is—

- (i) in a fiduciary capacity responsible for the management or control of the income and assets of any public benefit organisation, institution, board or body contemplated in this section; or 45
- (ii) the accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act 1 of 1999), or the Local Government: Municipal Finance Management Act, 2003 (Act 56 of 2003), as the case may be, for any institution in respect of which that Act applies,

who intentionally fails to comply with any provisions of this section, or a provision of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.” 50

Amendment of section 30 of Act 58 of 1962 as amended by section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008, section 24 of Act 20 of 2006, section 22 of Act 3 of 2008, section 41 of Act 60 of 2008, section 41 of Act 17 of 2009, section 53 of Act 7 of 2010 5

8. Section 30 of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (10) of the following subsection:

“(11) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation and who intentionally fails to comply with any provision of this section or of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.”. 10
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Amendment of section 30A of Act 58 of 1962 as amended by section 26 of Act 8 of 2007, section 42 of Act 60 of 2008, section 42 of Act 17 of 2009 and section 54 of Act 7 of 2010

9. Section 30A of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection: 20

“(9) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved recreational club and who intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which such recreational club is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.”. 25

Amendment of section 30B of Act 58 of 1962 as amended by section 56 of Act 24 of 2011

10. Section 30B of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection: 30

“(10) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved association and who intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which such association is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.”. 35

by a date determined by the person making the payment; or

Insertion of sections 37L, 37M, 37N and 37O in Act 58 of 1962 40

11. (1) The following sections are hereby inserted in the Income Tax Act, after section 37K:

“Withholding of withholding tax on interest by payers of interest

37L. (1) Subject to subsections (2) and (3), any person who makes payment of any amount of interest to or for the benefit of a foreign person must withhold an amount as contemplated in section 37J from that payment. 45

(2) A person must not withhold any amount from any payment contemplated in subsection (1)—

(a) to the extent that the interest is exempt from the withholding tax on interest in terms of section 37K(1); or 50

(b) if the foreign person to or for the benefit of which that payment is to be made has—

(i) by a date determined by the person making the payment; or

(ii) if the person making the payment did not determine a date as contemplated in subparagraph (i), by the date of the payment, submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 37K(3), exempt from the withholding tax on interest in respect of that payment. 5

(3) The rate referred to in subsection (1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has—
 (a) by a date determined by the person making the payment; or 10
 (b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment, submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the interest is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation. 15

Payment and recovery of tax

37M. (1) If, in terms of section 37JA, a foreign person is liable for any amount of withholding tax on interest in respect of any amount of interest that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax by the last day of the month following the month during which the interest is paid, unless the tax has been paid by any other person. 20

(2) Any person that withholds any withholding tax on interest in terms of section 37L must pay the tax to the Commissioner by the last day of the month following the month during which the interest is paid. 25

Refund of withholding tax on interest

37N. Notwithstanding chapter 13 of the Tax Administration Act, if—
 (a) an amount is withheld from a payment of an amount of interest as contemplated in section 37L(1); 30
 (b) a declaration contemplated in section 37L(2)(b) or (3) in respect of that interest is not submitted to the person paying that interest by the date of the payment of that interest; and
 (c) a declaration contemplated in section 37L(2)(b) or (3) is submitted to the Commissioner within three years after the payment of the interest in respect of which the declaration is made, 35
 so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the interest was paid. 40

Currency of payments made to Commissioner

37O. If an amount withheld by a person in terms of section 37L(1) is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 37M(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.” 45

(2) Subsection (1) comes into operation on 1 July 2013 and applies in respect of—
 (a) interest that accrues; or 50
 (b) interest that is paid or that becomes due and payable, on or after that date.

Insertion of sections 49E, 49F and 49G in Act 58 of 1962

12. (1) The Income Tax Act, 1962, is hereby amended by the insertion of the following sections after section 49D:

“Withholding of withholding tax on royalties by payers of royalties

49E. (1) Subject to subsections (2) and (3), any person making payment of any royalty to or for the benefit of a foreign person must withhold an amount as contemplated in section 49B from that payment. 5

(2) A person must not withhold any amount from any payment contemplated in subsection (1) if the foreign person to or for the benefit of which that payment is to be made has— 10

(a) by a date determined by the person making the payment; or
 (b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment, submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 49D, exempt from the withholding tax on royalties in respect of that payment. 15

(3) The rate referred to in section 49B(1) must, for the purposes of that subsection, be reduced if the foreign person to or for the benefit of which the payment contemplated in that subsection is to be made has— 20

(a) by a date determined by the person making the payment; or
 (b) if the person making the payment did not determine a date as contemplated in paragraph (a), by the date of the payment, submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the royalty is subject to that reduced rate of tax as a result of the application of an agreement for the avoidance of double taxation. 25

Payment and recovery of tax

49F. (1) If, in terms of section 49C, a foreign person is liable for any amount of withholding tax on royalties in respect of any royalty that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax by the last day of the month following the month during which the royalty is paid, unless the tax has been paid by any other person. 30

(2) Any person that withholds any withholding tax on royalties in terms of section 49E must pay the tax to the Commissioner by the last day of the month following the month during which the royalty is paid. 35

Refund of withholding tax on royalties

49G. Notwithstanding Chapter 13 of the Tax Administration Act, if—

(a) an amount is withheld from a payment of a royalty as contemplated in section 49E(1); 40

(b) a declaration contemplated in section 49E(2) or (3) in respect of that royalty is not submitted to the person paying that royalty by the date of the payment of that royalty; and

(c) a declaration contemplated in section 49E(2) or (3) is submitted to the Commissioner within three years after the payment of the royalty in respect of which the declaration is made, 45

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the royalty was paid.” 50

(2) Subsection (1) comes into operation on 1 July 2013 and applies in respect of royalties that are paid or that become due and payable on or after that date, but only to the extent that the amount of the royalties was not subject to tax in terms of section 35 of the Income Tax Act, 1962. 55

Amendment of section 61 of Act 58 of 1962, as amended by section 25 of Act 90 of 1988 and section 57 of Act 45 of 2003

13. (1) Section 61 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) the reference in paragraphs (b) and (c) of the definition of ‘representative taxpayer’ in section [one] 1 to the income under the management, disposition or control of an agent or to income which is the subject of any trust, as the case may be, shall be deemed to include a reference to any property disposed of under a donation which is under the management, disposition or control of the agent or to property disposed of under a donation which is the subject of the trust, as the case may be;”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 64K of Act 58 of 1962 as inserted by section 56 of Act 60 of 2008, substituted by section 53 of Act 17 of 2009 and amended by section 84 of Act 24 of 2011

14. Section 64K of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) If, in terms of this Part, a person [is required to make payment of any amount of dividends tax] has paid a dividend[,], that person must[, together with that payment,] submit a return to the Commissioner.”.

Amendment of section 64L of Act 58 of 1962 as substituted by section 53 of Act 17 of 2009

15. (1) Section 64L of the Income Tax Act, 1962, is hereby amended—

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

“(c) [a] both the declaration and the written undertaking contemplated in section 64G(2)(a) or (3) [is] are submitted to the company within three years after the payment of the dividend in respect of which [it is] they are made;”;

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

“(1A) If—

- (a) an amount is withheld by a company from the payment of a dividend in terms of section 64G(1); and
- (b) a rebate in respect of foreign taxes paid on that dividend should have been deducted from that amount in terms of section 64N, so much of that amount as would not have been withheld had that rebate been deducted from the amount, is refundable to the person to whom the dividend was paid: Provided such rebate is claimed within three years after the payment of the relevant dividend.”; and

(c) by the substitution for subsections (2), (3) and (4) of the following subsections, respectively:

“(2) Any amount that is refundable in terms of subsection (1) or (1A) must be refunded by the company that withheld that amount to the person to whom the dividend was paid—

- (a) from any amount of dividends tax withheld by that company within a period of one year after the submission of the declaration contemplated in subsection (1)(c) or the claim of a rebate contemplated in subsection (1A); or
- (b) to the extent that the amount that is refundable exceeds the amount of dividends tax withheld as contemplated in paragraph (a), from an amount recovered by the company from the Commissioner in terms of subsection (3).

(3) Subject to subsection (4), if any amount is refundable to any person by a company in terms of subsection (1) or (1A) and that amount exceeds the amount of dividends tax withheld as contemplated in subsection (2)(a), the company contemplated in subsection (2) may recover the excess from the Commissioner.

(4) No amount may be recovered in terms of subsection (3) if the company submits the claim for recovery to the Commissioner after the expiry of a period of four years reckoned from the date of the payment contemplated in subsection (1)(a) or (1A)(a).”

(2) Subsection (1)(a) is deemed to have come into operation on 1 April 2012. 5

Amendment of section 64M of Act 58 of 1962 as inserted by section 53 of Act 17 of 2009

16. Section 64M of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (c) of the following paragraph: 10

“(c) [a] both the declaration and the written undertaking contemplated in section 64H(2)(a) or (3) [is] are submitted to the regulated intermediary within three years after the payment of the dividend in respect of which [it is] they are made.”;

(b) by the insertion after subsection (1) of the following subsection: 15

“(1A) If—

(a) an amount is withheld by a regulated intermediary from the payment of a dividend in terms of section 64H(1); and

(b) a rebate in respect of foreign taxes paid on that dividend should have been deducted from that amount in terms of section 64N, so much of that amount as would not have been withheld had that rebate been deducted from the amount, is refundable to the person to whom the dividend was paid: Provided such rebate is claimed within three years after the payment of the relevant dividend.”; and 20

(c) by the substitution for subsection (2) of the following subsection: 25

“(2) Any amount that is refundable in terms of subsection (1) or (1A) must be refunded by the regulated intermediary contemplated in subsection (1)(a) or (1A)(a) from any amount of dividends tax withheld by the regulated intermediary after the submission of the declaration as contemplated in subsection (1)(c) or the claim of a rebate contemplated in subsection (1A).” 30

(2) Subsection (1)(a) is deemed to have come into operation on 1 April 2012.

Amendment of section 64N of Act 58 of 1962 as inserted by section 54 of Act 17 of 2009

17. (1) Section 64N of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection: 35

“(5) A company or regulated intermediary must obtain proof of any tax paid to any sphere of government of any country other than the Republic and deducted from the dividend tax payable in terms of this section, in the form and manner prescribed by the Commissioner.” 40

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

Amendment of section 72A of Act 58 of 1962, as substituted by section 65 of Act 45 of 2003 and amended by section 11 of Act 32 of 2005 and section 13 of Act 4 of 2008

18. (1) Section 72A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection: 45

“(2) A resident must have available for submission to the Commissioner when so requested, a copy of the financial statements of the controlled foreign company for the relevant foreign tax year[, as defined in section 9D,] of that controlled foreign company.”

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of foreign tax years ending during years of assessment commencing on or after that date. 50

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 30 of Act 103 of 1976, section 28 of Act 113 of 1977, section 29 of Act 104 of 1980, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007, section 65 of Act 35 of 2007, section 18 of Act 18 of 2009 and section 94 of Act 24 of 2011

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

(a) by the insertion after subparagraph (1A) of the following subparagraph:

“(1B) Notwithstanding the provisions of subparagraph (1), a person shall deduct or withhold employees’ tax in respect of any amount payable in respect of variable remuneration, as defined in section 7B(1), on the date on which the amount is paid to the employee by the employer as contemplated in section 7B(2).”;

(b) by the deletion in subparagraph (4) of item (d); and

(c) by the substitution in subparagraph (4)(f) for subitem (i) of the following subitem:

“(i) as does not exceed 5 per cent of that remuneration after deducting therefrom the amounts contemplated in items (a) to [(d)](cA); and”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2013 and applies in respect of amounts received or accrued on or after that date.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 March 2014 and apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962 as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 16 of Act 61 of 2008, section 21 of Act 18 of 2009, section 22 of Act 8 of 2010 and paragraph 85 of Schedule 1 to Act 28 of 2011

20. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (6) for the following subparagraph:

“(6) If an employer fails to render to the Commissioner a return referred to in subparagraph (3) within the period prescribed in that subparagraph, the Commissioner may impose [under Chapter 15 of the Tax Administration Act] on that employer a [percentage based] penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, for each month that the employer fails to submit a complete return which in total may not exceed 10 per cent of the total amount of employees’ tax deducted or withheld or which should have been deducted or withheld by the employer from the remuneration of employees for the period described in that subparagraph.”.

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 58 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 24 of Act 19 of 2001, section 58 of Act 74 of 2002, section 34 of Act 30 of 2002, section 24 of Act 16 of 2004, section 47 of Act 32 of 2004, section 53 of Act 31 of 2005, section 1 of Act 3 of 2008, section 22 of Act 18 of 2009 and section 96 of Act 24 of 2011

21. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (1) of the following subparagraph:

“(2) Any taxable capital gain of a company resulting from the application of the deemed disposal rules under section 29B of the Act for years of assessment ending on or after 29 February 2012 but not later than 31 October 2012, is exempt from provisional tax.”.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962 as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005, section 46 of Act 3 of 2008, section 18 of Act 61 of 2008, section 23 of Act 18 of 2009 and paragraph 90 of Schedule 1 to Act 28 of 2011 5

22. Paragraph 19 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) Every provisional taxpayer (other than a company) shall, during every period within which provisional tax is or may be payable by that provisional taxpayer as provided in this Part, submit to the Commissioner (should the Commissioner so require) a return of an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is or may be payable by the taxpayer: Provided that such estimate will not include any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or any severance benefit received by or accrued to or to be received by or accrue to the taxpayer during the relevant year of assessment.” 10 15

Amendment of paragraph 20 of Fourth Schedule to Act 58 of 1962 as amended by section 25 of Act 72 of 1963, section 29 of Act 88 of 1965, section 47 of Act 89 of 1969, section 44 of Act 88 of 1971, section 51 of Act 85 of 1974, section 36 of Act 69 of 1975, section 50 of Act 94 of 1983, section 39 of Act 121 of 1984, section 19 of Act 61 of 2008, section 24 of Act 18 of 2009 and paragraph 91 of Schedule 1 to Act 28 of 2011 20

23. Paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 25

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

“(a) more than R1 million and such estimate is less than 80 per cent of the amount of the actual taxable income the Commissioner [**may, if he or she is not satisfied that the amount of such estimate was seriously calculated with due regard to the factors having a bearing thereon or was not deliberately or negligently understated, subject to the provisions of subparagraph (3),**] must impose, in addition to the normal tax chargeable in respect of the taxpayer’s taxable income for such year of assessment, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between [the amount of normal tax as calculated in respect of such estimate and]— 30 35

(i) the amount of normal tax calculated, at the rates applicable in respect of such year of assessment, in respect of a taxable income equal to 80 per cent of such actual taxable income; and 40

(ii) the amount of employees’ tax and provisional tax in respect of such year of assessment paid by the end of the year of assessment;” 45

(b) by the substitution in subparagraph (1) for item (b) of the following item:

“(b) in any other case, less than 90 per cent of the amount of such actual taxable income and is also less than the basic amount applicable to the estimate in question, as contemplated in paragraph 19(1)(d), the taxpayer shall, subject to the provisions of subparagraphs (2) and (3), be liable to pay to the Commissioner, in addition to the normal tax chargeable in respect of his or her taxable income for such year of assessment, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between [**the amount of normal tax as calculated in respect of such estimate and**] the lesser of [**the following amounts, namely**]— 50 55

(i) the amount of normal tax calculated, at the rates applicable in respect of such year of assessment, in respect of a taxable

- income equal to 90 per cent of such actual taxable income;
and
- (ii) the amount of normal tax calculated in respect of a taxable income equal to such basic amount, at the rates applicable in respect of such year of assessment, 5
and the amount of employees' tax and provisional tax in respect of such year of assessment paid by the end of the year of assessment.";
- (c) by the insertion of the following proviso to subparagraph (1) at the end of item (e): 10
"Provided that any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or any severance benefit received by or accrued to or to be received by or accrue to the taxpayer during the relevant year of assessment shall not be taken into account for purposes of this subparagraph;"; and
- (d) by the substitution for subparagraph (2) of the following paragraph: 15
"(2) Where the Commissioner is satisfied that the amount of any estimate referred to in subparagraph (1)[(b)] was seriously calculated with due regard to the factors having a bearing thereon and was not deliberately or negligently understated, or if the Commissioner is partly so satisfied, the Commissioner may in his or her discretion remit the 20
penalty or a part thereof."

Amendment of paragraph 20A of Fourth Schedule to Act 58 of 1962 as amended by section 25 of Act 52 of 1970, section 45 of Act 88 of 1971, section 52 of Act 85 of 1974, section 40 of Act 121 of 1984, section 88 of Act 45 of 2003 and paragraph 92 of Schedule 1 to Act 28 of 2011 25

24. Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by that provisional taxpayer during any year of assessment and the estimate of [his or her] the taxpayer's taxable income for that year required to be submitted by [him or her] the taxpayer under paragraph 19(1) during the period contemplated in paragraph 21(1)(b), 22(1) or 23(b), as the case may be, was not submitted by [him or her] the taxpayer on or before the last day of that year the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 19(2) or has increased the amount thereof under paragraph 19(3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the amount by which the normal tax payable by [him or her] the taxpayer in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by [him or her] the taxpayer in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part and any amounts of employees' tax deducted or withheld from [his or her] the taxpayer's remuneration by [his or her] the taxpayer's employer during such year." 45

Amendment of paragraph 27 of Fourth Schedule to Act 58 of 1962 as amended by section 43 of Act 121 of 1984, section 29 of Act 65 of 1986, section 48 of Act 32 of 2004 and paragraph 95 of Schedule 1 to Act 28 of 2011

25. Paragraph 27 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph: 50

"(1) If any provisional taxpayer fails to pay any amount of provisional tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 21 or 23, or paragraph 25(1), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty, which is deemed to be a 55

percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to ten per cent of the amount not paid.”.

Amendment of paragraph 11 of Sixth Schedule to Act 58 of 1962 as amended by paragraph 99 of Schedule 1 to Act 28 of 2011

26. Paragraph 11 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended— 5

(a) by the insertion of the following subparagraph after subparagraph (4):

“(4A) For purposes of paragraph 2(1) of the Fourth Schedule and section 89bis (2), a registered micro business may elect to pay the amounts deducted or withheld in terms of that paragraph or section to the Commissioner— 10

- (i) with regard to amounts deducted or withheld during the first six calendar months from the first day of the year of assessment, by the end of such period; and
- (ii) with regard to amounts deducted or withheld within the next six calendar months following the period in item (i), by the last day of the year of assessment.”; 15

(b) by the substitution for subparagraph (6) of the following subparagraph:

“(6) Where the estimate described in subparagraph 4(a) is less than 80 per cent of the taxable turnover for the year of assessment, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the difference between the tax payable on 80 per cent of the taxable turnover for the year of assessment and the tax payable on that estimate must be charged.”; and 20 25

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

“(7) Where the Commissioner is satisfied that the estimate described in subparagraph (4)(a) was not deliberately or negligently understated and was seriously made based on the information available, or is partly so satisfied, the Commissioner must waive the [additional tax] penalty charged in terms of subparagraph (6) in full or in part.”. 30

Amendment of section 3 of Act 91 of 1964 as amended by section 114 of Act 60 of 2001, section 42 of Act 30 of 2002, section 132 of Act 45 of 2003 and section 25 of Act 18 of 2009

27. Section 3 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 35

“(a) Any decision made and any notice or communication signed or issued by [any] such officer or person may be withdrawn or amended by—

- (i) the officer or person concerned;
- (ii) the branch manager to whom the officer or person in (i) reports;
- (iii) the officer or person in charge of customs operations or excise operations; or
- (iv) the Commissioner personally, 40

[the Commissioner or by the officer or person concerned (] with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof [)] and shall, until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made, signed or issued by the Commissioner.”. 45

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

28. Any rule made under section 119A of the Customs and Excise Act, 1964, or any amendment or withdrawal of or insertion in such rule during the period 1 August 2011 up to and including 31 July 2012 shall not lapse by virtue of section 119A(3) of that Act. 50

Amendment of section 20 of Act 89 of 1991 as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009 and section 30 of Act 8 of 2010 5

29. Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (5) of the words preceding paragraph (a) of the following words:

“Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed [R3 000] R5 000, a tax invoice (abridged tax invoice) shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars:” 10

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, section 50 of Act 9 of 2006, section 1 of Act 3 of 2008, section 25 of Act 4 of 2008 and paragraph 120 of Schedule 1 to Act 28 of 2011 15

30. (1) Section 27 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) A vendor shall fall within Category D if— 20

(a) (i) the vendor’s enterprise consists solely of agricultural, pastoral or other farming activities or the vendor is a branch, division or separate enterprise which is deemed by subsection (5) of section 23 to be a separate person for the purposes of that section and is as such registered under that section or the vendor is a branch, division or a separate enterprise registered as a separate vendor under section 50(2); 25

[(b)](ii) the activities of any such branch, division or separate enterprise consist solely of agricultural, pastoral or other farming activities and activities of that kind are not carried on in any other branch, division or separate enterprise of the vendor or the association not for gain, as the case may be, by whom a written application referred to in [paragraph (e)] subparagraph (v) is made; 30

[(c)](iii) the total value of the taxable supplies of the vendor from agricultural, pastoral or other farming activities—
[(i)](aa) has in the period of 12 months ending on the last day of any month of the calendar year not exceeded R1,5 million; and 35
[(ii)](bb) is not likely to exceed that amount in the period of 12 months commencing at the end of the period referred to in [subparagraph (i)] item (aa);

[(d)](iv) the vendor does not fall within Category C; and 40

[(e)] (v) the vendor whose enterprise consists solely of agricultural, pastoral or other farming activities or the vendor referred to in section 50(2) or the association not for gain referred to in section 23(5), as the case may be, has made a written application to the Commissioner, in such form as the Commissioner may prescribe, for such first-mentioned vendor or the branch, division or separate enterprise in question, as the case may be, to be placed within Category D[,]; or 45

(b) the vendor is a micro business that is registered in terms of the Sixth Schedule to the Income Tax Act and has made written application in such form as the Commissioner may prescribe, to be placed in Category D, 50

and the Commissioner has directed that, with effect from the commencement date or such later date as may be appropriate, the vendor shall fall within Category D: Provided that a vendor falling within Category D shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if written application is made by the person who made the application referred to in [paragraph (e)] subparagraph (v) for the vendor to be placed within Category A, B, C, E or F or the Commissioner is satisfied that by reason of a change in circumstances that vendor should be placed within Category A, B, C, E or F.”. 55

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001, section 158 of Act 60 of 2001, section 118 of Act 74 of 2002, section 179 of Act 45 of 2003, section 37 of Act 32 of 2005, section 32 of Act 36 of 2007, section 41 of Act 61 of 2008, section 31 of Act 8 of 2010 and paragraph 121 of Act 28 of 2011

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31. Section 28 of the Value-Added Tax Act, 1991, is hereby amended—

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

“**[Subject to subsection (4) every]** Every vendor shall, within the period ending on the twenty-fifth day of the first month commencing after the end of a tax period relating to such vendor or, where such tax period ends on or after the first day and before the twenty-fifth day of a month, within the period ending on such twenty-fifth day—”; and

(b) by the substitution in subsection (1) for paragraph (iii) of the proviso of the following paragraph:

“(iii) a vendor registered with the Commissioner to submit returns electronically is deemed to have submitted the return and made payment within the period contemplated in subsection (1) if the vendor submits the returns and makes full payment of the amount of tax electronically in the prescribed form and manner within the period ending on the last business day of the month during which that twenty-fifth day falls;”.

Amendment of section 10 of Act 4 of 2002

32. Section 10 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“**[The] Each employer contemplated in sections 8 and 9, must, before the seventh day of each month, submit to the [Commissioner or the] Unemployment Insurance Commissioner[, whichever is applicable to such employer in terms of section 8 or 9,]** such information relating to its employees as the Minister may prescribe by regulation, including details relating to—”.

Amendment of section 19 of Act 29 of 2008, as amended by section 39 of Act 8 of 2010

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

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

“In respect of a year of assessment an extractor must annually submit to the Minister of Finance a report in the form and manner that the Minister may prescribe advising the Minister of—”;

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

“(g) the amounts of the royalty imposed in terms of section 2 of the Royalty Act in respect of refined minerals and unrefined minerals, respectively;

(h) the amount of earnings before interest and taxes determined in accordance with section 5(1) and (2) of the Royalty Act, respectively;

(i) the amount of the royalty that would have been imposed on an extractor in respect of mineral resources transferred had that extractor not been exempt from the royalty in terms of section 7(1)(a) of the Royalty Act;

(j) the amount of the royalty that would have been imposed on an extractor in respect of mineral resources transferred had that extractor not been exempt from the royalty in terms of section 7(1)(b) of the Royalty Act; and

(k) the amount of the royalty that would have been imposed on an extractor had that extractor not been exempt from the royalty in terms of section 8 of the Royalty Act.”.

(2) Subsection (1) comes into operation on 1 January 2013.

Repeal of section 1 of Act 18 of 2009

34. Section 1 of the Taxation Laws Second Amendment Act, 2009, is hereby repealed.

Amendment of section 1 of Act 25 of 2011

35. (1) Section 1 of the Taxation Laws Second Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection: 5

“(2) Subsection (1) comes into operation on **[1 April 2012 unless a later date is determined by the Minister by notice in the Gazette] 1 October 2012** and applies in respect of research and development on or after **[1 April 2012, or such later date determined by the Minister by notice in the Gazette] 1 October 2012**, but on or before 1 **[April] October 2022**.”. 10

(2) Subsection (1) is deemed to have come into operation on 14 December 2011.

Amendment of section 1 of Act 28 of 2011

36. Section 1 of the Tax Administration Act, 2011, is hereby amended—

(a) by the insertion of the following definition after the definition of “assessment”: 15

“**‘asset’** includes—

(a) property of whatever nature, whether movable or immovable, corporeal or incorporeal; and

(b) a right or interest of whatever nature to or in the property;”;

(b) by the substitution for the definition of “effective date” of the following definition: 20

“**‘effective date’** is the date described in section 187(3), (4) and (5) of this Act, or the date from when interest is otherwise calculated under a tax Act;”;

(c) by the insertion of the following definition after the definition of “reduced assessment”: 25

“**‘registered tax practitioner’** means a person registered under section 240;”;

(d) by the substitution for paragraph (c) of the definition of “SARS official” of the following paragraph: 30

“(c) a person contracted or engaged by SARS for purposes of the administration of a tax Act and who carries out the provisions of a tax Act under the control, direction or supervision of the Commissioner;”;

(e) by the substitution for the definition of “shareholder” of the following definition: 35

“**‘shareholder’** means a person who holds a beneficial interest **[in a share]** in a company as defined in the Income Tax Act;”.

Amendment of section 3 of Act 28 of 2011

37. Section 3 of the Tax Administration Act, 2011, is hereby amended— 40

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

“(f) investigate whether **[an] a tax** offence has been committed **[in terms of a tax Act]**, and, if so—

(i) to lay criminal charges; and 45

(ii) to provide the assistance that is reasonably required for the investigation and prosecution of the tax [offences or related common law offences]offence;”;

(b) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 50

“(a) information, SARS may obtain the information requested for transmission to the competent authority of the other country as if it were relevant material required for purposes of a tax Act and must treat the information obtained as **[if it were]** taxpayer information;”.

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Amendment of section 6 of Act 28 of 2011

38. Section 6 of the Tax Administration Act, 2011, is hereby amended—

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

“(c) a SARS official occupying a post designated by the Commissioner in writing for this purpose.”; 5

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

“(a) **[an]** a SARS official under the control of the Commissioner or a senior SARS official; or”; and 10

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

“(5) Powers and duties not specifically required by this Act to be exercised by the Commissioner or by a senior SARS official, may be exercised by a SARS official **[employed or contracted to exercise or perform powers or duties for purposes of the administration of a tax Act]**.”. 15

Amendment of section 8 of Act 28 of 2011

39. Section 8 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) SARS **[must]** may issue an identity card to each SARS official exercising powers and duties for purposes of the administration of a tax Act. 20

(2) When a SARS official exercises a power or duty for purposes of the administration of a tax Act in person outside SARS premises, the official must produce the identity card upon request by a member of the public.”.

Amendment of section 11 of Act 28 of 2011

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40. Section 11 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A **[senior SARS official may lay a criminal charge relating to a tax offence described in section 235]** cost order in favour of SARS resulting from any civil proceedings under this Act constitutes funds of SARS within the meaning of section 24 of the SARS Act.” 30

Amendment of section 26 of Act 28 of 2011

41. The Tax Administration Act, 2011, is hereby amended by the substitution for section 26 of the following section:

“**Third party returns** 35

26. (1) The Commissioner may by public notice require a person who employs, pays amounts to, receives amounts on behalf of or otherwise transacts with another person, or has control over assets of another person, to submit a return **[with the required information in the prescribed form and manner and]** by the date specified in the notice. 40

(2) A person required under subsection (1) to submit a return must do so in the prescribed form and manner and the return must contain the information prescribed by the Commissioner and must be a full and true return.”.

Amendment of section 27 of Act 28 of 2011

42. The Tax Administration Act, 2011, is hereby amended by the substitution for section 27 of the following section:

“Other returns required

27. (1) SARS may require a person to submit further or more detailed returns regarding any matter for which a return is required or prescribed by a tax Act. 5

(2) A person required under subsection (1) to submit a return must do so in the prescribed form and manner and the return must contain the information prescribed by SARS and must be a full and true return.” 10

Amendment of section 29 of Act 28 of 2011

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

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

“(b) are specifically required under a tax Act or by the Commissioner by public notice; and”; 15

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The requirements of this Act to keep records, books of account or documents for a tax period apply to a person who—”; and 20

(c) by the substitution for the words in subsection (3) that precede paragraph (a) of the following words:

“Records, books of account or documents need not be retained by the person described in—”. 25

Amendment of section 32 of Act 28 of 2011

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

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

“(a) records, books of account or documents are relevant to an audit or investigation under Chapter 5 which the person, subject to the audit or investigation has been notified of or is aware of; or”; and 30

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

“the person must retain the records, books of account or documents relevant to the audit, investigation, objection or appeal until the audit or investigation is concluded or the assessment or the decision becomes final.” 35

Amendment of section 34 of Act 28 of 2011

45. Section 34 of the Tax Administration Act, 2011, is hereby amended by the inclusion of single quotes around the word ‘arrangement’ where they do not appear;”.

Amendment of section 36 of Act 28 of 2011

46. Section 36 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1)(a) for the words preceding item (i) of the following words:

“a [**loan, advance or**] debt in terms of which—”.

Amendment of section 37 of Act 28 of 2011

47. Section 37 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 45

“A ‘participant’ need not disclose the information [**in respect of the ‘arrangement’**] if the ‘participant’ obtains a written statement from—”.

Amendment of section 42 of Act 28 of 2011

48. Section 42 of the Tax Administration Act, 2011, is hereby amended—

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

“(1) A SARS official involved in or responsible for an audit under this **[Part] Chapter** must, in the form and in the manner as may be prescribed by the Commissioner by public notice, provide the taxpayer with a report indicating the stage of completion of the audit.”; and

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

“(6) SARS may under the circumstances described in subsection (5) issue the assessment or make the decision referred to in section 104(2) resulting from the audit and the grounds of the assessment or decision must be provided to the taxpayer within 21 business days of the assessment or the decision **[referred to in section 104(2)]**, or the further period that may be required based on the complexities of the audit or the decision.”.

Amendment of section 43 of Act 28 of 2011

49. Section 43 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) If at any time before or during the course of an audit it appears that a **[person] taxpayer** may have committed a serious tax offence, the investigation of the offence must be referred to a senior SARS official responsible for criminal investigations for a decision as to whether a criminal investigation should be pursued.

(2) Relevant material **[gathered during an audit]** obtained under this Chapter from the taxpayer after the referral, must be kept separate from the criminal investigation **[and may not be used in criminal proceedings instituted in respect of the offence]**.”.

Amendment of section 46 of Act 28 of 2011

50. Section 46 of the Tax Administration Act, 2011, is hereby amended—

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

“(3) A request by SARS for relevant material from a person other than the taxpayer is limited to relevant information related to the records maintained or that should reasonably be maintained by the person in relation to the taxpayer.”; and

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

“(5) If reasonable grounds for an extension are submitted by the person, SARS may extend the period within which the relevant material must be submitted **[on good cause shown]**.”.

Amendment of section 49 of Act 28 of 2011

51. Section 49 of the Tax Administration Act, 2011, is hereby amended—

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

“The person on whose premises an audit or criminal investigation is carried out and any other person on the premises, must provide such reasonable assistance as is required by SARS to conduct the audit or investigation, including—”; and

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

“(3) The person may recover from SARS after completion of the audit or criminal investigation (or, at the person’s request, on a monthly basis) the cost for the use of photocopying facilities in accordance with the fees prescribed in section 92(1)(b) of the Promotion of Access to Information Act.”.

Amendment of section 61 of Act 28 of 2011

52. Section 61 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A SARS official exercising a power under a warrant referred to in section 60 must produce the warrant, and if the owner or person in control of the premises is not present, the SARS official must affix a copy of the warrant to the premises in a prominent and visible place.”. 5

Amendment of section 63 of Act 28 of 2011

53. Section 63 of the Tax Administration Act, 2011, is hereby amended by the addition of the following subsection: 10

“(5) If the owner or person in control of the premises is not present, the SARS official must inform such person of the circumstances referred to in subsection (2) as soon as reasonably possible after the execution of the search and seizure.”.

Amendment of section 71 of Act 28 of 2011

54. Section 71 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph: 15

“(b) the information will likely be [critical] material to the prosecution of the offence or avoidance of the risk; and”.

Amendment of section 72 of Act 28 of 2011

55. The Tax Administration Act, 2011, is hereby amended by the substitution for section 72 of the following section: 20

“Self incrimination

72. (1) A taxpayer may not refuse to comply with his or her obligations in terms of legislation to complete and file a return or an application on the grounds that to do so might incriminate him or her, and an admission by the taxpayer contained in a return, application, or other document submitted to SARS by a taxpayer is admissible in criminal proceedings against the taxpayer for [an] a tax offence [under a tax Act], unless a competent court directs otherwise. 25

(2) An admission by the taxpayer of the commission of [an] a tax offence [under a tax Act] obtained from a taxpayer under Chapter 5 is not admissible in criminal proceedings against the taxpayer, unless a competent court directs otherwise.”. 30

Amendment of section 79 of Act 28 of 2011

56. Section 79 of the Tax Administration Act, 2011, is hereby amended— 35

- (a) by the deletion in subsection (4) of the word “and” after paragraph (l); and
(b) by the addition in subsection (4) of the following paragraphs:

“(n) a statement confirming that the ‘applicant’ complied with any registration requirements under a tax Act, with regard to any tax for which the ‘applicant’ is liable, unless the ‘application’ concerns a ruling to determine if the ‘applicant’ must register under a tax Act; and 40

(o) a statement confirming that all returns required to be rendered by that ‘applicant’ in terms of a tax Act have been rendered and any tax has been paid or arrangements acceptable to SARS have been made for the submission of any outstanding returns or for the payment of any outstanding tax.”. 45

Amendment of section 80 of Act 28 of 2011

57. Section 80 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1)(a) for item (vi) of the following item:

- “(vi) a matter which can be resolved by SARS issuing a directive under the Fourth Schedule or the Seventh Schedule to the Income Tax Act;” 5

Amendment of section 91 of Act 28 of 2011

58. Section 91 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution for subsection (5) of the following subsection:
 “(5) If a tax Act requires a taxpayer to submit a return—
 (a) the making of an assessment under subsection (4) does not detract 10
 from the obligation to submit a return; **[and]**
 (b) the taxpayer in respect of whom the assessment has been issued
 may, within **[the period described in section 104]** 30 business days
from the date of assessment, request SARS to issue a reduced
 assessment or additional assessment by submitting a complete and 15
 correct return[.]; and
 (c) an assessment under subsection (4) is not subject to objection or
 appeal unless the taxpayer submits the return and SARS does not
 issue a reduced or additional assessment.”; and
 (b) by the addition of the following subsection: 20
 “(6) A senior SARS official may extend the period referred to in
 subsection (5)(b) within which the return must be submitted, for a period
 not exceeding the period for which a penalty may be automatically
 increased under section 211(2).”.

Amendment of section 99 of Act 28 of 2011 25

59. Section 99 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1)(d)(i) for item (aa) of the following item:

- “(aa) amount which should have been assessed to tax under the preceding assessment was, in accordance with the practice generally prevailing at the date of the preceding assessment, not assessed to tax; or” 30

Amendment of section 107 of Act 28 of 2011

60. Section 107 of the Tax Administration Act, 2011, is hereby amended by the addition of the following subsection:

- “(7) SARS may concede an appeal in whole or in part before—
 (a) the matter is heard by the tax board or the tax court; or 35
 (b) an appeal against a judgment of the tax court or higher court is heard.”.

Amendment of section 130 of Act 28 of 2011

61. Section 130 of the Tax Administration Act, 2011, is hereby amended by the deletion of subsection (3).

Amendment of section 135 of Act 28 of 2011 40

62. Section 135 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) If an intending appellant wishes to appeal against a decision of the tax court to the Supreme Court of Appeal, the ‘registrar’ must submit the notice of intention to appeal lodged under section 134(1) to the president of the tax court, who must 45
 make an order granting or refusing leave to appeal having regard to the grounds of the intended appeal as indicated in the notice.”.

Amendment of section 142 of Act 28 of 2011

63. Section 142 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of 'settle' of the following definition:

“**'settle'** means[, **after the lodging of an appeal under this Chapter,**] to resolve a 'dispute' by compromising a disputed liability, otherwise than by way of either SARS or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts or of both the facts and the law, and **'settlement'** must be construed accordingly.” 5

Amendment of section 164 of Act 28 of 2011

64. Section 164 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (5) for paragraph (d) of the following paragraph: 10

“(d) there is a material change in any of the factors referred to in subsection (3), upon which the decision to suspend payment of the amount involved was based.”.

Amendment of section 166 of Act 28 of 2011

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65. Section 166 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Despite anything to the contrary contained in a tax Act, SARS may allocate payment made in terms of a tax Act against an amount of penalty or interest or the oldest amount of outstanding tax at the time of the payment, other than amounts—”.

Amendment of section 187 of Act 28 of 2011

66. Section 187 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (d) of the following paragraph: 25

“(d) a fixed amount penalty referred to in section 210, is the date **[for payment specified in the notice]** of assessment of the penalty, and in relation to an increment of the penalty under section 211(2), the date of the increment.”.

Amendment of section 189 of Act 28 of 2011

67. Section 189 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (5) of the following subsection: 30

“(5) If interest is payable under this Chapter and the rate at which the interest is payable has with effect from any date been altered, and the interest is payable in respect of any **[tax]** period or portion thereof which commenced before the said date, the interest to be determined in respect of— 35

- (a) the**[tax]** period or portion thereof which ended immediately before the said date; or
- (b) the portion of the **[tax]** period which was completed before the said date, must be calculated as if the rate had not been altered.”.

Amendment of section 192 of Act 28 of 2011

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68. Section 192 of the Tax Administration Act, 2011, is hereby amended by the deletion of the definition of “asset”.

Amendment to Chapter 14 of Act 28 of 2011

69. Chapter 14 of the Tax Administration Act, 2011, is hereby amended by the deletion of single quotes from the word 'asset'. 45

Amendment of section 210 of Act 28 of 2011

70. The Tax Administration Act, 2011, is hereby amended by the substitution for section 210 of the following section:

“Non-compliance subject to penalty

210. (1) If SARS is satisfied that non-compliance by a person referred to in subsection (2) exists, **[excluding the non-compliance referred to in section 213,]** SARS must impose the appropriate ‘penalty’ in accordance with the Table in section 211. 5

(2) Non-compliance is failure to comply with an obligation that is imposed by or under a tax Act and is listed in a public notice issued by the Commissioner, other than— 10

(a) the failure to pay tax subject to a percentage based penalty under Part C; **[or]**

(b) non-compliance **[subject to]** in respect of which an understatement penalty under Chapter 16 has been imposed; or 15

(c) the failure to disclose information subject to a reportable arrangement penalty under section 212.”.

Amendment of section 211 of Act 28 of 2011

71. Section 211 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 20

“(a) the date of **[the delivery of the ‘penalty’]** assessment^[’] of the penalty, if SARS is in possession of the current address of the person and is able to deliver the assessment, but is limited to 35 months from the date of the **[delivery]** assessment; or”.

Amendment of section 217 of Act 28 of 2011 25

72. Section 217 of the Tax Administration Act, 2011, is hereby amended—

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

“(a) a ‘first incidence’ of **[the]** non-compliance **[described in section 210, 212 or 213];** or”; and 30

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

“(3) **[In the case of a penalty]** If a ‘penalty’ has been imposed under section 213, SARS may remit the ‘penalty’ or a portion thereof, if SARS is satisfied that—

(a) the ‘penalty’ has been imposed in respect of a ‘first incidence’ of **[the]** non-compliance **[described in section 210, 212 or 213],** or involved an amount of less than R2 000; 35

(b) reasonable grounds for the non-compliance exist; and

(c) the non-compliance in issue has been remedied.”.

Amendment of section 223 of Act 28 of 2011 40

73. Section 223 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) was in possession of an opinion by a registered tax practitioner^[, as defined in section 239,] that—

(i) was issued by no later than the date that the relevant return was due; 45

(ii) **[took account of the specific facts and circumstances of the arrangement]** was based upon full disclosure of the specific facts and circumstances of the arrangement and, in the case of any opinion regarding the applicability of the substance over form doctrine or the anti-avoidance provisions of a tax Act, this requirement cannot be met unless the taxpayer is able to demonstrate that all of the steps in or parts of the arrangement were fully disclosed to the tax practitioner, whether or not the taxpayer was a direct party to the steps or parts in question; and 50

- (iii) confirmed that the taxpayer's position is more likely than not to be upheld if the matter proceeds to court.”.

Amendment of section 224 of Act 28 of 2011

74. The Tax Administration Act, 2011, is hereby amended by the substitution for section 224 of the following section: 5

“Objection and appeal against decision not to remit understatement penalty

224. A decision by SARS not to remit an understatement penalty under section 223(3) is subject to objection and appeal under Chapter 9.”.

Amendment of section 229 of Act 28 of 2011 10

75. Section 229 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) not pursue criminal prosecution for a **[statutory] tax offence [under a tax Act]** arising from the ‘default’ **[or a related common law offence]**.”.

Amendment of section 231 of Act 28 of 2011 15

76. Section 231 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) pursue criminal prosecution for a **[statutory] tax offence [under a tax Act or a related common law offence]**.”.

Amendment of section 234 of Act 28 of 2011 20

77. Section 234 of the Tax Administration Act, 2011, is hereby amended—

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

“(g) issues an erroneous, incomplete or false document required to be issued under a tax Act **[to be issued]** to another person;”;

(b) by the addition after paragraph (o) of the following paragraph: 25

“(p) fails or neglects to withhold and pay to SARS an amount of tax as and when required under a tax Act;”.

Amendment of section 235 of Act 28 of 2011

78. Section 235 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection: 30

“(3) A senior SARS official may lay a complaint with the South African Police Service or the National Prosecuting Authority regarding an offence **[contemplated in subsection (1)]** under this section.”.

Amendment of section 237 of Act 28 of 2011

79. The Tax Administration Act, 2011, is hereby amended by the substitution for section 237 of the following section: 35

“Criminal offences relating to filing return without authority

237. A person who—

(a) submits a return or other document to SARS under a forged signature;

(b) uses an electronic or digital signature of another person in an electronic communication to SARS without the person's consent and authority; or 40

(c) otherwise submits to SARS a communication on behalf of another person without the person's consent and authority,

[without the person's consent and authority, is guilty of an offence and, upon conviction, is subject to a fine or to imprisonment for a period not exceeding two years.”. 45

Amendment of heading of Chapter 18 of Act 28 of 2011

80. (1) Chapter 18 of the Tax Administration Act, 2011, is hereby amended by the substitution for the heading of the following heading:

“**REGISTRATION OF TAX PRACTITIONERS AND REPORTING OF UNPROFESSIONAL CONDUCT**”.

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

Amendment of section 239 of Act 28 of 2011

81. (1) Section 239 of the Tax Administration Act, 2011, is hereby amended—

(a) by the insertion of the following definition after the definition of ‘controlling body’:

“**‘recognised controlling body’** means a ‘controlling body’ recognised by the Commissioner under section 240A.”; and

(b) by the deletion of the definition of “registered tax practitioner”:

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

Amendment of section 240 of Act 28 of 2011

82. (1) Section 240 of the Tax Administration Act, 2011, is hereby amended—

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

“(b) completes or assists in completing a [**document to be submitted to SARS**] return by another person [**in terms of a tax Act**].”;

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

“must—

(i) register with or fall under the jurisdiction of a ‘recognised controlling body’ by the later of 1 July 2013 or 21 business days after the date on which that person for the first time provides the advice or completes or assists in completing the return; and

(ii) register with SARS as a tax practitioner[,] in [**such**] the prescribed form and manner [**as the Commissioner may determine**], within [**30**] 21 business days after the date on which that person for the first time provides the advice or completes or assists in completing [**any such document**] the return.”;

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

“(a) provides the advice or completes or assists in completing a [**document**] return solely for no consideration to that person or his or her employer or a connected person in relation to that employer or that person.”;

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

“(d) provides the advice or completes or assists in completing a [**document**]return solely—

(i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of [**that**] the employer and connected persons in relation to [**that**] the employer; or

(ii) under the direct supervision of a person who is a registered [**as a**] tax practitioner [**in terms of subsection (1)**].”;

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

“(a) during the preceding five years has been removed from a related profession by a ‘controlling body’ for serious misconduct; [**and**] or”.

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

Insertion of section 240A in Act 28 of 2011

83. (1) The Tax Administration Act, 2011, is hereby amended by the insertion of the following section after section 240:

“Recognition of controlling bodies

240A. (1) The Commissioner must recognise as a ‘recognised controlling body’— 5

- (a) the Independent Regulatory Board for Auditors established in terms of section 3 of the Auditing Professions Act, 2005 (Act No. 26 of 2005);
- (b) a Law Society established in terms of Chapter 3 of the Attorneys Act, 1979 (Act No. 53 of 1979); 10
- (c) the General Council of the Bar of South Africa, a Bar Council and a Society of Advocates referred to in section 7 of the Admission of Advocates Act, 1964 (Act No. 74 of 1964); and
- (d) a statutory body that the Minister is satisfied is similar to the statutory bodies in this subsection and the details of which are published in the *Gazette*. 15

(2) The Commissioner may recognise a ‘controlling body’, for natural persons that provide advice with respect to the application of a tax Act or complete returns, as a ‘recognised controlling body’ if the body—

- (a) maintains relevant and effective— 20
 - (i) minimum qualification and experience requirements;
 - (ii) continuing professional education requirements;
 - (iii) codes of ethics and conduct; and
 - (iv) disciplinary codes and procedures;
- (b) is approved in terms of section 30B of the Income Tax Act for purposes of section 10(1)(d)(iv) of the Act; and 25
- (c) has at least 1 000 members when applying for recognition or reasonable prospects of having 1 000 members within a year of applying. 30

(3) A body recognised under subsection (2) must submit a report on its members and compliance with this Chapter within the time period and in the form and manner as prescribed by the Commissioner. 30

(4) The Minister may appoint a panel of retired judges or persons of similar stature and competence one or more of whom may decide, on behalf of a body recognised under subsection (2), complaints lodged under section 241— 35

- (a) at the request of the body; or
- (b) if the Minister is satisfied that the body’s disciplinary process is ineffective. 40

(5) The costs of the panel in deciding complaints will be borne equally by such a body and SARS. 40

(6) If a body recognised under subsection (2) no longer meets the listed requirements, the Commissioner must notify it that if it does not take corrective steps within the period specified in the notice, its recognition will be withdrawn at the end of the period.” 45

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

Substitution of section 241 of Act 28 of 2011

84. (1) The Tax Administration Act, 2011, is hereby amended by the substitution for section 241 of the following section:

“Complaint to controlling body [of tax practitioner] 50

241. (1) A senior SARS official may lodge a complaint with a ‘controlling body’ if a [**‘registered tax practitioner’ or**] person who carries on a profession governed by the ‘controlling body’, did or omitted to do anything with respect to the affairs of a taxpayer, including that person’s affairs, that in the opinion of the official— 55

- (a) was intended to assist the taxpayer to avoid or unduly postpone the performance of an obligation imposed on the taxpayer under a tax Act;
 - (b) by reason of negligence on the part of the person resulted in the avoidance or undue postponement of the performance of an obligation imposed on the taxpayer under a tax Act; **[or]**
 - (c) constitutes a contravention of a rule or code of conduct for the profession which may result in disciplinary action being taken against the **['registered tax practitioner' or]** person by the body[.]; or
 - (d) constitutes conduct under subsection (2) by a registered tax practitioner.
- (2) A senior SARS official may lodge a complaint with a 'recognised controlling body' if a registered tax practitioner has, in the opinion of the official—
- (a) without exercising due diligence prepared or assisted in the preparation, approval or submission of any return, affidavit or other document relating to matters affecting the application of a tax Act;
 - (b) unreasonably delayed the finalisation of any matter before SARS;
 - (c) given an opinion contrary to clear law, recklessly or through gross incompetence, with regard to any matter relating to a tax Act;
 - (d) been grossly negligent with regard to any work performed as a registered tax practitioner;
 - (e) knowingly given false or misleading information in connection with matters affecting the application of a tax Act or participated in such activity; or
 - (f) directly or indirectly attempted to influence a SARS official with regard to any matter relating to a tax Act by the use of threats, false accusations, duress, or coercion, or by offering gratification as defined in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004)."
- (2) Subsection (1) comes into operation on the date of promulgation of this Act.

Amendment of section 244 of Act 28 of 2011

85. Section 244 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

- “(a) reasonable grounds exist for the delay and the application is submitted within 21 business days of the deadline; or”.

Amendment of section 246 of Act 28 of 2011

86. Section 246 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) A company **[covered by this section]** that has not appointed a public officer is subject to a tax Act, **[the same]** as if a tax Act did not require the public officer to be appointed.”.

Amendment of section 252 of Act 28 of 2011

87. Section 252 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (a) of the following paragraph:

- “(a) **[delivered]** handed to the public officer of the company;”.

Amendment of section 255 of Act 28 of 2011

88. Section 255 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Commissioner may by public notice make rules prescribing—
- (a) the procedures for submitting a return in electronic format, electronic record retention and **[for]** other electronic communications between SARS and other persons; **[and]**
 - (b) requirements for an electronic or digital signature of a return or communication; and
 - (c) the procedures for electronic record retention by SARS.”.

Substitution of section 256 of Act 28 of 2011

89. (1) The Tax Administration Act, 2011, is hereby amended by the substitution for section 256 of the following section:

“Tax clearance certificate

256. (1) A taxpayer may apply to SARS for a tax clearance certificate in the prescribed form and manner. 5

(2) SARS must issue or decline to issue the certificate within 21 business days from the date the application is **[duly filed]** submitted or such longer period as may reasonably be required if a senior SARS official is satisfied that the issuing of a tax clearance certificate may prejudice the efficient and effective collection of revenue. 10

(3) A senior SARS official may provide a taxpayer with confirmation of the taxpayer’s tax compliance status and may confirm that the taxpayer is tax compliant by issuing a tax clearance certificate only if satisfied that the taxpayer is registered for tax and does not have any— 15

- (a) tax debt outstanding, excluding a tax debt contemplated in section 167 or 204 or a tax debt that has been suspended under section 164 or does not exceed the amount referred to in section 169(4); or
- (b) outstanding return unless an arrangement acceptable to SARS has been made for the submission of the return. 20

(4) A tax clearance certificate must be in the prescribed form and include at least—

- (a) the original date of issue of the tax clearance certificate **[reference number assigned to the certificate and reflected in the records of SARS]**; 25
- (b) the name, taxpayer reference number, address and identity number or company registration number of the taxpayer;
- (c) the date of the application for a certificate;
- (d) a statement that the taxpayer **[has no outstanding tax debts]** is tax compliant as **[at]** determined on the original date of issue of the certificate; and 30
- (e) the expiry date of the certificate.

(5) Despite the provisions of Chapter 6, SARS may confirm the taxpayer’s tax compliance status **[validity and expiry date of the certificate upon]** as at the date of a request by a sphere of government, [or] parastatal or other person to whom the taxpayer has presented the certificate. 35

(6) SARS may withdraw a certificate with effect from the date of the issue thereof if the certificate—

- (a) was issued in error; or 40
- (b) was obtained on the basis of fraud, misrepresentation or non-disclosure of material facts.

(7) A certificate is invalid for the period commencing on the date that the taxpayer no longer complies with a requirement under subsection (3) and ending on the date that the taxpayer remedies the non-compliance.” 45

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

Amendment of section 257 of Act 28 of 2011

90. Section 257 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words: 50

“the limitations on the **[jurisdiction]**mandate of the Tax Ombud, having regard to—”;

- (b) by the insertion of the following subsection after subsection (2):

“(2A) For purposes of the issue of a tax clearance certificate under section 256, the Minister may make regulations regarding— 55

- (a) the circumstances when a tax clearance certificate may be required from a person or be issued by SARS;

- (b) the period of validity of a tax clearance certificate; or
- (c) any procedure to further regulate the issue or withdrawal of a tax clearance certificate.”.

Amendment of section 269 of Act 28 of 2011

91. Section 269 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) Rules, notices and regulations issued under the provisions of a tax Act repealed by this Act that are in force immediately before the commencement date of this Act, remain in force as if they were issued under **[section 103 or 257, respectively,]** the equivalent provisions of this Act, to the extent consistent with this Act, until new rules, notices and regulations are issued under such provisions.”. 10

Deletion of paragraph 78 of Schedule 1 to Act 28 of 2001

92. Paragraph 78 of Schedule 1 to the Tax Administration Act, 2011, is hereby deleted.

Amendment of paragraph 167 of Schedule 1 to Act 28 of 2011 15

93. Paragraph 167 of Schedule 1 to the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution for paragraph (c) of the following paragraph:
 - “(c) by the addition after subsection [(1)](2) of the following subsection:
 - ‘[(2)] (3) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.’ ”; and 20
- (b) by the deletion of paragraph (d).

Short title and commencement 25

94. (1) This Act is called the Tax Administration Laws Amendment Act, 2012.

(2) Save in so far as is otherwise provided for in this Act, amendments to the Tax Administration Act, 2011, will be deemed to have come into operation on 1 October 2012.

(3) Subject to subsection (2), and 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. 30

MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2012

1. PURPOSE OF BILL

The Bill provides for the enactment into law of an international agreement contemplated in terms of the Constitution of the Republic of South Africa, 1996, into law, insertion of a provision providing for the application of the Tax Administration Act, 2011 (Act No. 28 of 2011), to certain matters relating to customs and excise, amends administrative provisions of the Estate Duty Act, 1955 (Act No. 45 of 1955), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008), the Taxation Laws Second Amendment Act, 2009 (Act No. 18 of 2009), the Taxation Laws Second Amendment Act, 2011 (Act No. 25 of 2011), and the Tax Administration Act, 2011 (Act No. 28 of 2011).

2. OBJECTS OF BILL

2.1 Enactment into law of an international agreement contemplated in section 231 of the Constitution of the Republic of South Africa, 1996 into law

The Republic of South Africa and the Republic of Mozambique have entered into an agreement on combined border control posts on the Mozambique-South African Border. The aim of the agreement is to provide for the implementation of one-stop border posts between South Africa and Mozambique, which as defined in the agreement, means “the joint control and management of border crossing activities by officers of the Parties, using shared facilities”. The agreement provides for the adoption of annexes as necessary to facilitate implementation of the agreement. Presently, three annexes have been adopted. These annexes enter into force after approval by the Parties in accordance with their constitutional requirements and form an integral part of the agreement. The South African Revenue Service and other organs of state must implement and administer the agreement and it is accordingly necessary that the agreement should be enacted into law. The clause will also serve as the enactment clause for similar agreements with neighbouring countries in future.

2.2 Application of Tax Administration Act to certain matters relating to customs and excise

The proposed amendment is a transitional provision that makes certain provisions currently contained in the Tax Administration Act, 2011, applicable to customs and excise matters. These are the provisions relating to the write-off or compromise of tax debts not presently covered in the Customs and Excise Act, 1964, and the Tax Ombud provisions. Provision for the write-off and compromise of debts has been made in the Customs Duty and Customs Control Bills that are in an advanced stage of drafting. Applying the Tax Ombud provisions of the Tax Administration Act to customs and excise matters means that the Tax Ombud must also deal with complaints by persons affected by the application of the Customs and Excise Act. Upon enactment of the aforementioned Bills, these transitional provisions will no longer be necessary and will be repealed.

2.3 Estate Duty Act, 1955: Amendment of section 10

The payment of interest across all tax types is now regulated by Chapter 12 of the Tax Administration Act, 2011. The proposed amendment aligns interest due in terms of the Estate Duty Act with Chapter 12 of the Tax Administration Act.

2.4 *Income Tax Act, 1962: Amendment of section 1*

The proposed amendment is of a textual nature.

2.5 *Income Tax Act, 1962: Amendment of section 11D*

Like the additional discretionary allowance of section 12I, SARS may raise an additional assessment in respect of additional deductions for research and development if the approval for those deductions has since been withdrawn (see section 12I(14)).

2.6 *Income Tax Act, 1962: Amendment of section 12I*

The proposed amendment clarifies the time-period within which the company carrying on an industrial policy project must report to the adjudication committee with respect to the progress of the project.

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

The provisions of section 75(k) were deleted by paragraph 64 of Schedule 1 to the Tax Administration Act, 2011. Section 75(k)(i) and (ii) provided that—

- (a) if a person in a fiduciary capacity, responsible for the management and control of the income and assets of a public benefit organisation fails to comply with the provisions of section 30 or section 18A or of the constitution, will or other instrument under which the organisation is established; and
- (b) if an accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999, or the Local Government: Municipal Finance Management Act, 2003, for any institution in respect of which that Act applies who intentionally fails to comply with any provision of section 18A, that person will be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

As a general drafting rule for purposes of the Tax Administration Act, a decision was taken that all tax type specific offences must be retained in the relevant tax Acts and not in the general criminal offences contained in section 234 of the Tax Administration Act which apply across tax types contained. Hence the relevant provisions of section 75(k) have been moved to the applicable sections in the Income Tax Act, being section 18A and section 30 as set out above.

2.8 *Income Tax, 1962: Amendment of section 30*

See paragraph 2.7 above.

2.9 *Income Tax Act, 1962: Amendment of section 30A*

A person responsible for the management or control of the income and assets of any approved recreational club acts in a similar fiduciary capacity to that of a person responsible for the management and control of an approved public benefit organisation as discussed in paragraph 2.7 above. The proposed amendment aims to introduce the same criminal offence and penalty on such person as is the case with an approved public benefit organisation, if this person intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which such recreational club is established.

2.10 *Income Tax Act, 1962: Amendment of section 30B*

A person responsible for the management or control of the income and assets of any approved association acts in a similar fiduciary capacity to that of a person responsible for the management and control of an approved public benefit organisation as discussed in paragraph 2.7 above. The proposed

amendment aims to introduce the same criminal offence and penalty on such person as is the case with an approved public benefit organisation, if this person intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which such approved association is established.

2.11 Income Tax Act, 1962: Insertion of Part IA of Chapter II

The current system of withholding taxes relating to dividend, interest and royalties differ as to rates, timing, refunds and other procedures. While some of these differences can be justified, many of these differences arose simply due to the dates in which these provisions were enacted. The amendment coordinates and streamlines the rates, liability, timing and procedure withholding taxes in the case of dividends tax, royalties and interest. See notes on “Rationalisation of withholding taxes on payments to foreign persons” in the Explanatory Memorandum to the Taxation Laws Amendment Bill, 2012.

2.12 Income Tax Act, 1962: Insertion of Part IVA of Chapter II

The current system of withholding taxes relating to dividend, interest and royalties differ as to rates, timing, refunds and other procedures. While some of these differences can be justified, many of these differences arose simply due to the dates in which these provisions were enacted. The amendment coordinates and streamlines the rates, liability, timing and procedure withholding taxes in the case of dividends tax, royalties and interest. See notes on “Rationalisation of withholding taxes on payments to foreign persons” in the Explanatory Memorandum to the Taxation Laws Amendment Bill, 2012.

2.13 Income Tax Act, 1962: Amendment of section 61

The proposed amendment is of a textual nature consequential to the amendment of the definition of ‘representative taxpayer’ in paragraph 2.4 above.

2.14 Income Tax Act, 1962: Amendment of section 64K

The submission of returns is linked to payments of dividends tax to the Commissioner only. Where no payment of tax is required, but a payment of a dividend occurred, there is no requirement to submit a return.

The above can be illustrated by the following examples:

Example 1:

A listed company declares and pays a dividend, and transfers the administration to a “regulated intermediary” and hence the liability to withhold dividends tax is also transferred to the latter. The company has no obligation to submit a return to this effect to the Commissioner.

Example 2:

A regulated intermediary facilitates the payment of a dividend on behalf of a listed company, and withholds the correct amount due, but due to claims for refunds on earlier dividends facilitated on behalf of other companies (see section 64K(1)(c)), there is nothing left and it need not make payment to the Commissioner, and hence need not submit a return to this effect to the Commissioner.

As can be seen from the above examples it will be impossible to properly administer the tax as a complete picture of the dividend flows through the chain (from the originating company through various levels of regulated intermediaries to the eventual beneficial owner) will not be available.

The proposed amendment links the submission of a return to the payment of a dividend instead of to the payment of tax, by amending section 64K(1)(d) accordingly.

2.15 Income Tax Act, 1962: Amendment of section 64L

Paragraph (a):

Section 64L (refunds by companies) make provision for refunds only where a late declaration is submitted (i.e. no withholding or reduced rate withholding). Thus, if a rebate is not allowed for some reason, the full dividends tax is withheld and proof is submitted later that a qualifying foreign tax was withheld and should have reduced the dividend tax, the rebate cannot be claimed in terms of section 64L. The proposed amendments provide that a late rebate can be claimed if claimed within three years from the payment of the relevant dividend.

Paragraph (b):

In order for a company or regulated intermediary to withhold either nothing or at a reduced rate, the beneficial owner has to submit both a declaration and a written undertaking. If he fails to do so at the required time and more is withheld he only needs to submit the declaration in order to get a refund (see section 64L(1)(c)). In other words less strict requirements apply when the taxpayer is delinquent than when the taxpayer is compliant.

However, if SARS requires the undertaking in the normal course of business SARS would also require it when the taxpayer is in default (especially since it could lead to a recovery claim from SARS under a section 64L scenario).

It is proposed that section 64L(1)(c) be amended to require submission of both the declaration and the written undertaking.

Paragraph (c):

The proposed amendments are consequential to the insertion of the new subsection (1A).

2.16 Income Tax Act, 1962: Amendment of section 64M

Paragraph (a):

Section 64M (refunds by regulated intermediaries) make provision for refunds only where a late declaration is submitted (i.e. no withholding or reduced rate withholding). Thus, if a rebate is not allowed for some reason, the full dividends tax is withheld and proof is submitted later that a qualifying foreign tax was withheld and should have reduced the dividend tax, the rebate cannot be claimed in terms of section 64M. The proposed amendments provide that a late rebate can be claimed if claimed within three years from the payment of the relevant dividend.

Paragraph (b):

In order for a regulated intermediary to withhold either nothing or at a reduced rate, the beneficial owner has to submit both a declaration and a written undertaking. If he fails to do so at the required time and more is withheld he only needs to submit the declaration in order to get a refund (see section 64M(1)(c)). In other words less strict requirements apply when the taxpayer is delinquent than when the taxpayer is compliant.

However, if SARS requires the undertaking in the normal course of business SARS would also require it when the taxpayer is in default (especially since it could lead to a recovery claim from SARS under a section 64M scenario).

It is proposed that section 64M(1)(c) be amended to require submission of both the declaration and the written undertaking.

Paragraph (c):

The proposed amendments are consequential to the insertion of the new subsection (1A).

2.17 Income Tax Act, 1962: Amendment of section 64N

The proposed amendment, amends section 64N(5) in order to require a company or regulated intermediary to obtain proof of the foreign tax paid and deducted from dividends tax payable in the prescribed form and manner, to enable SARS to verify it.

2.18 Income Tax Act, 1962: Amendment of section 72A

The amendment is consequential upon the deletion of the definition of “foreign tax year” in section 9D and the insertion of the same definition in section 1.

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

Paragraph (a):

A new section 7B is proposed to be inserted in the Income Tax Act, 1962, by means of the Taxation Laws Amendment Bill, 2012. The new section provides for the date of accrual of “variable remuneration” to be the date on which the remuneration is paid to the relevant employee. The proposed amendment in this Bill stipulates that the deduction or withholding of employees’ tax by the employer should take place on the same date.

Paragraphs (b) and (c):

A proposed amendment in the Taxation Laws Amendment Bill, 2012, will remove persons of 65 years and older from the current provisions of section 18, and place them under the provisions of section 6A. From 1 March 2014 they will also become entitled to a medical scheme fees tax credit and the additional medical expenses tax credit proposed to be inserted in section 6B. Paragraph 2(4)(d) of the Fourth Schedule, which allows the deduction of contributions to medical schemes when determining the amount of employees’ tax will, therefore, no longer apply from that date and its deletion is proposed. A consequential correction of a reference in paragraph 2(4)(f) is required.

2.20 Income Tax Act, 1962: Amendment of paragraph 14 of Fourth Schedule

The proposed amendment aligns the relevant provisions of the Income Tax Act, with those of the Tax Administration Act, 2011, and provides clarity that the imposition of a penalty under paragraph 14(6) of the Fourth Schedule must be in accordance with the procedures referred to in Chapter 15 of the Tax Administration Act.

2.21 Income Tax Act, 1962: Amendment of paragraph 18 of Fourth Schedule

This amendment proposes that taxable capital gains resulting from the deemed disposal rules under section 29B, are exempt from provisional tax for purposes of the second provisional tax payments of companies for years of assessment ending on or after 29 February 2012 but not later than 31 October 2012. Accordingly, these amounts must be excluded from the estimates of taxable income by a company under paragraph 19 of the Fourth Schedule as well as the calculation of a penalty under paragraph 20 or 20A of the Fourth Schedule.

2.22 Income Tax Act, 1962: Amendment of paragraph 19 of Fourth Schedule

Paragraph (a):

Paragraph 19(1)(a) of the Fourth Schedule, provides that a taxpayer (other than a company) should submit an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment for purposes of determining provisional tax liability. “Taxable income” is defined as the amount remaining after deducting from the “income” of any person the deductions allowable under the Act. Income includes a retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit.

Based on the above, the taxpayer must include these benefits in the total taxable income estimates for purposes of provisional tax, even though these amounts are taxed using separate tax tables and the tax deducted using these tables is final.

It is proposed to exclude these benefits from the estimate of total taxable income, as these benefits are separately taxed.

Paragraph (b):

Paragraph 19(1)(d)(i)(aa) of the Fourth Schedule, specifically excludes the taxable portion of any lump sum contemplated in section 7A(4A) and paragraph (d) of the definition of gross income from the basic amount applicable to any estimate submitted by a provisional taxpayer under this paragraph. However, section 7A(4A) was deleted with effect from 1 March 2011. It is proposed that the reference to section 7A(4A) be deleted. A severance benefit is covered by paragraph (d) of the definition of gross income.

2.23 Income Tax Act, 1962: Amendment of paragraph 20 of Fourth Schedule

Paragraph 20(1) of the Fourth Schedule, does not provide relief if the actual tax paid is higher than the tax on estimated taxable income. Currently, a penalty may be imposed in some instances where actual tax paid exceeds the tax on the required estimated amount for provisional tax purposes. The reason for this unintended outcome is that payment of employees’ tax and provisional tax paid before the end of the relevant tax year is not properly taken into account in determining the penalty.

Accordingly, a change in the determination of the penalty on the underestimation of provisional tax is proposed. The amendment to the provisional tax understatement penalty rules has the effect that a penalty will be imposed only where the full amount of the tax on the required estimated taxable income is not paid by the end of the tax year. The proposal will eliminate the possibility that an underestimation penalty may be levied if the required provisional tax has been paid.

The proposed amendment also aligns the provisions of paragraph 20 of the Fourth Schedule with that of the Tax Administration Act, 2011, and provides clarity that a penalty under paragraph 20 is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, and must, therefore, be imposed in accordance with the procedures referred to in Chapter 15.

2.24 Income Tax Act, 1962: Amendment of paragraph 20A of Fourth Schedule

The proposed amendment aligns the relevant provisions of the Income Tax Act, with that of the Tax Administration Act, 2011, and provides clarity that a penalty under paragraph 20A of the Fourth Schedule is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration

Act, and must, therefore, be imposed in accordance with the procedures referred to in Chapter 15.

2.25 Income Tax Act, 1962: Amendment of paragraph 27 of Fourth Schedule

The proposed amendment aligns the relevant provisions of the Income Tax Act, with that of the Tax Administration Act, 2011, and provides clarity that a penalty under paragraph 27 of the Fourth Schedule is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, and must, therefore, be imposed in accordance with the procedures referred to in Chapter 15.

2.26 Income Tax Act, 1962: Amendment of paragraph 11 of Sixth Schedule

Paragraph (a):

The proposed amendment gives effect to the turnover tax and employees' tax aspects of the 2012 Budget proposal to provide micro-businesses with the option of making payments for turnover tax, VAT and employees' tax at twice-yearly intervals from date of promulgation.

Paragraph (b):

The proposed amendment aligns the relevant provisions of the Income Tax Act with those of the Tax Administration Act, 2011, and provides clarity that a penalty under paragraph 11 of the Sixth Schedule is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, and must, therefore, be imposed in accordance with the procedures referred to in Chapter 15.

Paragraph (c):

The proposed amendment is a technical correction.

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

Section 3(1) provides for the delegation of any duty imposed or power conferred on the Commissioner to an officer or any other person. In terms of subsection (2)(a), any decision made and any notice or communication signed or issued by such officer or person may be withdrawn or amended by the Commissioner or by the officer or the person concerned. It is arguable that if, for instance, the officer or person is no longer in service, the Commissioner must personally withdraw or amend the decision, notice or communication.

The proposed amendment moves away from a broad approach to a specific one that provides that the decision, notice or communication may be withdrawn or amended by the officer or person concerned, branch manager to whom the relevant officer or person reports, the officer or person in charge of customs operations or excise operations, or the Commissioner personally.

2.28 Customs and Excise Act, 1964: Continuation of amendments made under section 119A

This clause provides, as contemplated in section 119A of the Act, for the continuation of any rule made under that section or any amendment or withdrawal of or insertion in such rule during the period 1 August 2011 to 31 July 2012.

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

The proposed amendment increases the threshold within which an abridged tax invoice may be supplied by a vendor from R3 000 to R5 000.

2.30 Value-Added Tax, 1991: Amendment of section 27

The proposed amendment gives effect to the VAT aspect of the 2012 Budget proposal to provide micro-businesses with the option of making payments for turnover tax, VAT and employees' tax at twice-yearly intervals from 1 March 2014.

2.31 Value-Added Tax, 1991: Amendment of section 28

Paragraph (a):

The proposed amendment is a technical correction as section 28(4) was deleted by paragraph 121 of Schedule 1 to the Tax Administration Act, 2011.

Paragraph (b):

The decision given effect to in the Tax Administration Act was that eFiling vendors should submit returns on the same date as other vendors and only payment may be made by month-end and if not, the vendor is regarded to have been obliged to pay by the 25th to align the effective date for interest for purposes of the new interest regime under the Tax Administration Act. Accordingly, such amendment was effected in paragraph 121 of Schedule 1 to the Tax Administration Act. However, there has subsequently been major concerns expressed by the taxpayer representative bodies as a result of the new onerous obligation to submit electronic returns by the 25th instead of by the end of the month, and an amendment is proposed to alleviate these concerns.

2.32 Unemployment Insurance Contributions Act, 2002: Amendment of section 10

Employee information required to be submitted by employers in terms of section 10(3) is submitted by all employers directly to the Unemployment Insurance Commissioner and not to the Commissioner for SARS. It was agreed with the Unemployment Insurance Commissioner that the relevant database facilitating the employment detail of employees and the calculation of benefits, would be established and maintained by the Unemployment Insurance Fund ("UIF"). The UIF utilises the employee information to establish and maintain an employment record for each registered employee which facilitates the validation and calculation of employee benefits immediately when benefits are claimed. This proposed amendment will align the Unemployment Contributions Act, with what is done in practice.

2.33 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 19

Paragraph (a):

In terms of section 19(1), an extractor is duly obliged to submit certain information in a report to the Minister of Finance on an annual basis, in respect of a year of assessment. This amendment determines that the report must in the form and manner that the Minister may prescribe in order to facilitate and streamline the disclosure of the information by the Minister under this section to the Commissioner for SARS (who carries out the administration of the Mineral and Petroleum Resources Royalty Administration Act).

Paragraph (b):

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:

- The amounts of the royalty imposed in terms of the Mineral and Petroleum Resources Royalty Act, 2008, in respect of refined and unrefined minerals;
- The quantum of earnings before interest and tax calculated per the Mineral and Petroleum Resources Royalty Act;
- The amount of the royalty that would have been payable if the gross sales of that extractor (in respect of all mineral resources) does not exceed R10 million during that year;
- The royalty (in respect of all mineral resources) imposed on an extractor if the extractor was not subject to the R100 000 exemption per year of assessment;
- The amount of the royalty that would have been payable if the rollover relief for transfers between extractors, did not apply.

2.34 Taxation Laws Second Amendment Act, 2009: Repeal of section 1

The proposed amendment is a technical correction as section 1 should have been repealed together with sections 12, 13, 14, 33, 34 and 38 under paragraph 196 of Schedule 1 of the Tax Administration Act, 2011.

2.35 Taxation Laws Second Amendment Act, 2011: Amendment of section 1

The proposed amendment defers the effective date for the new research and development provisions from 1 April 2012 to 1 October 2012.

2.36 Tax Administration Act, 2011: Amendment of section 1

Paragraph (a):

The proposed definition of “asset” is inserted in the general definitions as it is used in more than one Chapter of the Act.

Paragraph (b):

The proposed definition of “registered tax practitioner” is inserted in the general definitions as it is used in more than one Chapter of the Act.

Paragraph (c):

The proposed amendment to the definition of “SARS official” aims to include, within the ambit of the definition of a ‘SARS official’, persons from other organs of state whose services are obtained by SARS, for example under section 5(1)(c) of the SARS Act, but with whom no commercial contracts are concluded.

Paragraph (d):

The proposed amendment to the definition of “shareholder” ensures that the definition does not exclude shareholders who hold beneficial interests in a company otherwise than through shares.

2.37 Tax Administration Act, 2011: Amendment of section 3

Paragraph (a):

The proposed amendment is a technical correction in order to apply the defined term “tax offence” for purposes of the Act.

Paragraph (b):

The proposed amendment is a technical correction in order to remove unnecessary words.

2.38 Tax Administration Act, 2011: Amendment of section 6**Paragraph (a):**

This amendment clarifies that the authorisation of a SARS official occupying a designated post as a senior SARS official must be in writing and is aligned with the similar requirement when a specific SARS official is so authorised.

Paragraph (b):

This amendment is of a textual nature.

Paragraph (c):

The proposed amendment aims to include within the ambit of the definition of a 'SARS official' persons from other organs of state whose services are obtained by SARS, for example under section 5(1)(c) of the SARS Act, but with whom no commercial contracts are concluded.

2.39 Tax Administration Act, 2011: Amendment of section 8

The proposed amendment provides SARS with the discretion to issue identity cards and clarifies that a SARS official must only produce an identity card when exercising a power or duty for purposes of the administration of a tax Act outside SARS premises.

2.40 Tax Administration Act, 2011: Amendment of section 11

The proposed amendment incorporates the provisions of section 235(3), and makes it clear that where a cost order is granted in favour of SARS in any civil proceedings under the Act, whether by the tax court, Magistrate's Court, any higher court or otherwise, such amounts would constitute funds of SARS within the meaning of section 24 of the South African Revenue Service Act, 1997, as these funds are intended to reimburse SARS for its legal costs.

2.41 Tax Administration Act, 2011: Amendment of section 26

The proposed amendment clarifies that the return must be in the prescribed form and manner and that the information to be contained in a return need not be prescribed by public notice.

2.42 Tax Administration Act, 2011: Amendment of section 27

The proposed amendment aligns section 27 with the proposed amendment to section 26.

2.43 Tax Administration Act, 2011: Amendment of section 29

The Tax Administration Act, 2011, imposes a general record keeping requirement and some tax Acts, in addition, specify records that must be kept. The proposed amendment is to enable the Commissioner to further specify, in certain circumstances, what records are specifically required to be kept. The further amendments to section 29 are of a textual nature.

2.44 Tax Administration Act, 2011: Amendment of section 32

These amendments are of a textual nature.

2.45 Tax Administration Act, 2011: Amendment of section 34

The proposed amendment to the definition of 'promoter' is a technical correction in order to insert the defined term 'arrangement' in single quotation marks.

2.46 Tax Administration Act, 2011: Amendment of section 36

This amendment is to align section 36 with the meaning of 'debt' used in the Income Tax Act, 1962, as a result of amendment proposed in the Taxation Laws Amendment Bill, 2012.

2.47 Tax Administration Act, 2011: Amendment of section 37

This is a textual amendment to clarify that the information referred to in subsection (3) is the information referred to in subsection (1).

2.48 Tax Administration Act, 2011: Amendment of section 42

These amendments are technical corrections to clarify that an audit referred to in subsection (1) is an audit under Chapter 5 and not just Part A of Chapter 5, and to align the wording of subsection (6) with subsection (2)(b).

2.49 Tax Administration Act, 2011: Amendment of section 43

The proposed amendments clarify that the section applies to relevant material obtained from the taxpayer and not third parties, and remove the part of subsection (2) that overlaps with section 72(2), which section protects the taxpayer against self-incrimination.

2.50 Tax Administration Act, 2011: Amendment of section 46**Paragraph (a):**

The proposed amendment clarifies that only a request for relevant material from a third party is limited to relevant information related to records maintained or that should reasonably be maintained by the third party.

Paragraph (b):

The proposed amendment is a technical correction in order to effect consistency regarding the basis of the exercise of a discretion by SARS for an extension of a time period under the Act.

2.51 Tax Administration Act, 2011: Amendment of section 49**Paragraph (a):**

The proposed amendment is a technical correction to enhance clarity regarding which persons may be questioned by SARS during a field audit or investigation.

Paragraph (b):

The proposed amendment is a technical correction to ensure photocopying costs may also be claimed by a person where SARS uses the photocopying facilities of that person during a criminal investigation.

2.52 Tax Administration Act, 2011: Amendment of section 61

The proposed amendment gives effect to the notice requirement where the owner or person in control of the premises is not present during a search and seizure by SARS.

2.53 Tax Administration Act, 2011: Amendment of section 63

The proposed amendment gives effect to the notice requirement where the owner or person in control of the premises is not present during a search and seizure by SARS.

2.54 Tax Administration Act, 2011: Amendment of section 71

The proposed amendment is a technical correction in order to use a more appropriate term.

2.55 Tax Administration Act, 2011: Amendment of section 72

The proposed amendment is a technical correction in order to apply the defined term “tax offence”.

2.56 Tax Administration Act, 2011: Amendment of section 79

The proposed amendments are technical corrections in order to include the requirements for an application for a ruling effected by section 15(a) of Act No. 8 of 2010, but omitted in the Act.

2.57 Tax Administration Act, 2011: Amendment of section 80

Section 80(1)(a)(vi), currently provides that SARS may reject an application for an advance ruling if the matter can be resolved by SARS issuing a directive under the Fourth Schedule. The proposed amendment extends this provision to include directive issued under the Seventh Schedule of the Income Tax Act, 1962.

2.58 Tax Administration Act, 2011: Amendment of section 91**Paragraph (a):**

The proposed amendment clarifies the applicable time period within which a return must be submitted after an assessment based on an estimation as a result of the failure by a taxpayer to submit a return, and that the assessment is not subject to objection and appeal unless the return is submitted or the return is submitted but SARS does not issue a revised assessment.

Paragraph (b):

The proposed amendment enables SARS to extend the period within which the return must be submitted for the period referred to in section 211(2). For example, if SARS has the current address of the taxpayer who failed to submit a return which resulted in the issue of the assessment based on an estimation, the period within which the taxpayer must submit the return may be extended by SARS for up to 35 months.

2.59 Tax Administration Act, 2011: Amendment of section 99

The proposed amendment is a technical correction in order to enhance clarity regarding the particular assessment in issue.

2.60 Tax Administration Act, 2011: Amendment of section 107

The proposed amendment clarifies that SARS may concede an appeal similar to its power to allow an objection under section 106(2), but limits SARS's ability to concede an appeal to before the appeal is heard by the tax court or a higher court dealing with an appeal against the judgment of the tax court.

2.61 Tax Administration Act, 2011: Amendment of section 130

Amendment consequential upon amendment to section 11. (See the notes to paragraph 2.39 above).

2.62 Tax Administration Act, 2011: Amendment of section 135

The proposed amendment is a technical correction in order to clarify that this section only applies to appeals against tax court judgments to the Supreme Court of Appeal.

2.63 Tax Administration Act, 2011: Amendment of section 142

The proposed amendment is a technical correction to align the Chapter definition of 'settle' with the definition of 'dispute' to clarify that a settlement may be concluded at any time after the issue of an assessment or the making of a 'decision' which is 'disputed', and not only after an appeal is lodged.

2.64 Tax Administration Act, 2011: Amendment of section 164

The proposed amendment is a technical correction in order to enhance clarity.

2.65 Tax Administration Act, 2011: Amendment of section 166

The proposed amendment is a technical correction to enable SARS to allocate a payment against an amount of interest or penalty before capital, particularly where payment is made in respect of a tax type where interest is not yet calculated on a daily basis and compounded monthly under section 187(2).

2.66 Tax Administration Act, 2011: Amendment of section 187

The proposed amendment is a technical correction to ensure the correct application of the interest regime under the Tax Administration Act, 2011, i.e. if a penalty is not paid by the payment date specified in the penalty assessment interest runs from the liability date which is the date of assessment.

2.67 Tax Administration Act, 2011: Amendment of section 189

The proposed amendment is a technical correction to delete a incorrect reference to a defined term.

2.68 Tax Administration Act, 2011: Amendment of section 192

The definition of 'asset' has been moved to the general definitions in section 1.

2.69 Tax Administration Act, 2011: Amendment to Chapter 14

The proposed amendment is consequential upon the deletion of the definition of 'asset' in section 192.

2.70 Tax Administration Act, 2011: Amendment of section 210

The proposed amendments seek to avoid administrative 'double jeopardy' by providing that a fixed amount administrative penalty may not be imposed for non-compliance which is subject to a percentage based penalty, in respect of

which an understatement penalty has been imposed or constitutes failure to disclose information subject to a reportable arrangement penalty.

2.71 Tax Administration Act, 2011: Amendment of section 211

The proposed amendment is a technical correction to effect an ascertainable increment commencement date and a consistent period before each increment of an administrative non-compliance penalty.

2.72 Tax Administration Act, 2011: Amendment of section 217

Paragraph (a):

The proposed amendment is a technical correction in order to remove unnecessary cross-references.

Paragraph (b):

The proposed amendment is a technical correction in order to enhance clarity.

2.73 Tax Administration Act, 2011: Amendment of section 223

The proposed amendment aims to make it clear that a taxpayer cannot rely upon an opinion regarding the GAAR or the substance over form doctrine unless there has been full disclosure of all steps in or parts of the arrangements (whether or not the taxpayer is a direct party to those steps and arrangements), as well as any other material facts.

2.74 Tax Administration Act, 2011: Amendment of section 224

The proposed amendment is a technical correction in order to clarify the application of the remittal remedy.

2.75 Tax Administration Act, 2011: Amendment of section 229

The proposed amendment is a technical correction in order to apply the defined term “tax offence” for purposes of the Act.

2.76 Tax Administration Act, 2011: Amendment of section 231

The proposed amendment is a technical correction in order to apply the defined term “tax offence” for purposes of the Act.

2.77 Tax Administration Act, 2011: Amendment of section 234

Paragraph (a):

See the notes on paragraph 2.79 below. The proposed amendment is a consequential amendment in order to give effect to the first phase of the regulation of tax practitioners.

Paragraph (b):

The proposed amendment is a technical correction in order to clarify an offence.

Paragraph (c):

The proposed amendment criminalises the failure to withhold and pay to SARS any amount of tax as and when required under a tax Act.

2.78 Tax Administration Act, 2011: Amendment of section 235

The proposed amendment is a technical correction.

2.79 Tax Administration Act, 2011: Amendment of section 237

The proposed amendment is a technical correction in order to clarify that a signature cannot be used without the consent and authority of the person whose signature it is.

2.80 Tax Administration Act, 2011: Registration of Tax Practitioners

It is proposed that the regulation of tax practitioners be divided into two phases. The first phase will be the compulsory registration of tax practitioners with a recognised controlling body, which is discussed in more detail below. The second phase will be the establishment of an independent regulatory board for tax practitioners. The second phase will begin with a review of the success or otherwise of the first phase eighteen months after its implementation.

The proposed recognised controlling body model is a middle way between a lack of regulation and a statutory regulator, which will leverage existing bodies. It is intended to provide a framework to ensure that tax practitioners are appropriately qualified and that a mechanism is available, both to taxpayers and SARS, to ensure that misconduct is addressed.

This proposal hinges on two requirements. The first is the existing requirement that tax practitioners register with SARS, which was brought into force in 2005. The Tax Administration Act, 2011, already modifies this requirement to provide that a tax practitioner may not be registered if he or she has been removed from a professional body or convicted for a crime involving dishonesty in the preceding five years. The second is a new requirement for all tax practitioners to belong to a recognised tax practitioners' association or fall under the authority of a directly relevant statutory regulator, such as the Independent Regulatory Board for Auditors (IRBA).

SARS would review the minimum qualifications and experience requirements, continuing professional education requirements, codes of ethics and conduct and disciplinary procedures of a professional association seeking recognition. It would ensure that members are required to have knowledge of tax that is kept up to date, are subject to codes of ethics and conduct that are relevant to the tax field and require members to act ethically and professionally and that an effective disciplinary mechanism exists to deal with members who contravene the codes of ethics and conduct.

To ensure sustainability and credibility, associations should have a minimum of 1 000 members upon either application or within a year to cater for new associations. To cater for associations that lack the capacity or willingness to deal with SARS's complaints of members' misconduct adequately, it is proposed that the Minister be empowered to appoint a panel of retired judges or persons of similar stature and competence to hear these complaints on an association's behalf. The costs of the appointment will be borne equally by the association and SARS. A process for revoking an association's recognition if it does not follow through on its commitments is also proposed.

In order to recognise the status of statutory regulators, recognition of the relevant bodies would be automatic.

Finally, the range of misconduct that may be reported by SARS to a professional association or statutory regulator in terms of section 241, the successor to section 105A of the Income Tax Act, 1962, is expanded to cover additional tax specific misconduct.

2.81 Tax Administration Act, 2011: Amendment of section 239**Paragraph (a):**

See the notes on paragraph 2.79 above.

Paragraph (b):

The definition of “registered tax practitioner” is used in other Chapters of the Act, and thus serves as a global definition that should be included in section 1.

2.82 Tax Administration Act, 2011: Amendment of section 240**Paragraphs (a), (c) and (d):**

The proposed amendments are technical corrections in order to clarify what ‘document’ is referred to namely a return as defined in the Act.

Paragraph (b):

See the notes on paragraph 2.79 above. The proposed amendments are consequential amendments in order to give effect to the first phase of the regulation of tax practitioners.

Paragraph (e):

The proposed amendments clarify that removal from a professional association only bars a person from registering as a tax practitioner if the removal is for serious misconduct and corrects the conjunction between paragraphs (a) and (b).

2.83 Tax Administration Act, 2011: Insertion of section 240A

See the notes on paragraph 2.79 above.

2.84 Tax Administration Act, 2011: Amendment of section 241

See the notes on paragraph 2.79 above.

2.85 Tax Administration Act, 2011: Amendment of section 244

The proposed amendment is a technical correction to give effect to the general approach in the Act that business days are used in the context of time periods other than time periods for payment.

2.86 Tax Administration Act, 2011: Amendment of section 246

The proposed amendment is a technical correction in order to enhance clarity.

2.87 Tax Administration Act, 2011: Amendment of section 252

The proposed amendment is a technical correction in order to align section 252(a) with section 251(a).

2.88 Tax Administration Act, 2011: Amendment of section 255

The proposed amendment enables the Commissioner to make rules, by public notice, with regard to the procedures for electronic record retention by SARS.

2.89 Tax Administration Act, 2011: Amendment of section 256

The proposed amendments are required to cater for the modernisation of the tax clearance certificate procedure, which will essentially enable both taxpayers and third parties to verify the tax compliance status of a taxpayer online. Also, the proposed amendments—

- enable SARS to extend the 21 business day period within which a certificate must be issued where more time is required to ensure that the taxpayer is compliant, for example where it appears that the taxpayer intends to make offshore transfers of large amounts; and
- invalidate a tax clearance certificate from the period from the date that a taxpayer becomes non-compliant until such time that the taxpayer remedies the non-compliance.

2.90 Tax Administration Act, 2011: Amendment of section 257

The proposed amendment enables the Minister to determine by regulation the circumstances when a tax clearance certificate may be required from a person for governmental purposes, for example when tendering for procurement contracts with an organ of state, or issued by SARS, and to prescribe additional procedural requirements for the issue and withdrawal of tax clearance certificates.

2.91 Tax Administration Act, 2011: Amendment of section 269

The proposed amendment is a technical correction in order to apply the transitional rule to electronic communication rules and regulations issued under provisions of the tax Acts repealed by the Act.

2.92 Amendment of Tax Administration Act, 2011: Paragraph 78 of Schedule 1

There was a duplication as section 94 of the Taxation Laws Amendment Act, 2011, also inserted item (cA) in paragraph 2(4) of the Fourth Schedule. The two amendments serve the same purpose and hence paragraph 78 is obsolete.

2.93 Amendment of Tax Administration Act, 2011: Paragraph 167 of Schedule 1

The proposed amendment is a technical correction.

2.94 Short title and commencement

Clause 93 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 2012 Budget Review.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers, South African Revenue Service and National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act. No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.

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