DRAFT MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2015

1. PURPOSE OF BILL

The Bill proposes to amend the Transfer Duty Act, 1949, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Value-Added Tax Act, 1991, the Skills Development Levies Act, 1999, the Unemployment Insurance Contributions Act, 2002, the Taxation Laws Second Amendment Act, 2008, the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, the Tax Administration Act, 2011, the Customs Duty Act, 2014, the Customs Control Act, 2014 and the Tax Administration Laws Amendment Act, 2014.

2. OBJECTS OF BILL

2.1. *Transfer Duty Act, 1949: Amendment of section 4*

For historical reasons, the "penalty" provision in section 4(1) is in fact a time value of money provision (i.e. 10% per annum per completed month) and not a true late payment penalty (e.g. section 39 of the Value-Added Tax Act, 1991). Once the provisions of section 187 of the Tax Administration Act, 2011, come into operation, interest will be calculated on a daily basis and compounded monthly at the prescribed rate. This will in essence amount to a double-interest charge which is not the intention of the legislature. Furthermore, section 4(1A) is a mirror image of section 4(1) with the only difference that section 4(1A) deals with transactions entered into on or after 1 March 2005. This separation is no longer considered essential and only one interest provision needs to apply. Section 4(1A) will be repealed and replaced by section 187 of the Tax Administration Act, 2011, once this section is brought into effect. The proposed amendment aims to align the wording of section 4(1) to that of a once-off late payment penalty which in effect is an administrative non-compliance penalty referred to in section 213 of the Tax Administration Act, 2011, and not a "time-value of money" penalty as currently worded.

2.2. Income Tax Act, 1962: Amendment of section 3

International research done as part of the study on the transition to income tax self-assessment, confirms that the international trend is to move away from administrative income tax assessment towards self-assessment and voluntary compliance. Various developed countries (e.g. Australia, New Zealand, Canada, UK and USA) and developing countries (e.g. Brazil and Chile) have already successfully implemented an income tax system based on self-assessment and voluntary compliance.

The countries that have replaced administrative assessment procedures with self-assessment systems have done so with the objective of improving revenue performance through better compliance and more efficient administration. The added benefit of a move to self-assessment is the reduction of compliance costs to help promote business sector growth.

Various developments in the South African tax administration system have already taken place which effectively brought South Africa to the point where it, in practice, has a system of self-assessment. Examples of these reforms are the automatic processing of tax returns submitted by taxpayers, the introduction of a system of advance tax rulings, a new dispute resolution process and a revised penalty regime for administrative non-compliance. Hence, to a great extent the South African income tax assessment system may already be regarded as a self-assessment system based upon voluntary compliance.

However, it has also become clear that the legislative framework of South Africa's income tax self-assessment system still contains remnants of administrative assessment. These remnants include the various discretionary powers to be exercised by the Commissioner in the context of assessment contained in the Income Tax Act. To formalise income tax self-assessment in South Africa, thereby complying with international best practice, the remnants of administrative assessment must be removed.

2.3. Income Tax Act, 1962: Amendment of section 35A

This amendment seeks to resolve an impasse under the current wording of section 35A where the non-resident does not submit a return. For example:

> Mr. X (non-resident seller) sells his property in Hermanus in July 2015. SARS determines that R50 000 "advance" payment must be made in terms of section 35A, which Mr. X then pays into SARS's bank account. The payment is allocated to the *provisional account* of Mr. X. The legislation requires that the amount withheld from any payment to the seller, Mr. X, is *an advance* in respect of his liability for normal tax for the year of assessment during which that property is disposed of by him. However, Mr. X does not submit a return for that year. Accordingly, the amount stays in the provisional account as section 35A is silent on what happens to this amount if no return is submitted.

In practice, this apparently happens in the majority of such transactions. Accordingly, amendments are proposed to permit SARS to regard the amount allocated to the provisional account as a final payment. This will happen by operation of law one year after the due date of the return for the relevant tax period, which extended period is proposed in order to afford the non-resident seller sufficient time to submit the return.

2.4. Income Tax Act, 1962: Amendment of section 61

Section 61 provides that, for the purposes of donations tax, the reference in section 96(2) to the taxable income of any deceased person shall be deemed to include a reference to the value of property disposed of by such person under any donation. Section 96(2) has been repealed and incorporated in the provisions of section 160(1) of the Tax Administration Act, 2011, hence this section is now redundant.

2.5. Income Tax Act, 1962: Amendment of heading of Fourth Schedule

The Fourth Schedule only applies to withholding in respect of normal tax and the wording of the heading should reflect that. Section 89*bis* was repealed by paragraph 6 of Schedule 1 to the Tax Administration Act, 2011, and thus the reference to it is redundant. The Fourth Schedule is directly connected to section 5, which imposes normal tax.

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

Ad para (a): This is a technical correction to clarify the meaning of the definition of “employee” for purposes of the Fourth Schedule.

Ad para (b): The proposed amendment changes the reference to a "member" of a trust to that of a "settlor or beneficiary" as a matter of style consistency.

Ad para (c): The additional reference to "liability for normal tax" in the definition of "provisional tax" is a clarification as to which payment is referred to.

Ad para (d): Paragraph 18 presently deals with exemptions from provisional tax, whereas the definition of "provisional taxpayer" also contains exceptions. It is proposed to consolidate the two, with the substance of paragraph 18 being added to the exclusion in the definition, and the consequential repeal of paragraph 18.

Ad para (e): The proposed amendment is of a consequential nature. The Taxation Laws Amendment Act, 2014, amended paragraph (c*A*) of the definition of “gross income”, by deleting references to restraint payments derived by natural persons. Restraint payments to natural persons were then inserted in paragraph (c*B*) of that definition. This amendment should have flowed through to paragraph *(a)* of the definition of “remuneration” in the Fourth Schedule by the insertion after the term (c*A*) of the term (c*B*).

Ad para (f): Amounts referred to in section 8C(1A) are returns of capital “received or accrued”, and not “amounts included in income upon vesting of an equity instrument” as is the case with the rest of section 8C. The Fourth Schedule general “remuneration” definition is not wide enough to include returns of capital. Paragraph *(e)* of the special inclusions in remuneration only includes a “gain” determined under 8C, and not a return of capital. Paragraph 11A refers back to the special inclusion contained in paragraph *(e)* and also refers to a “gain from the vesting of an equity instrument” and not a return of capital. There is thus no pay-as-you-earn (PAYE) withholding obligation on returns of capital, even though these are “profits” relating to the instruments acquired due to employment. As there is no

good reason why these amounts should be excluded from the PAYE net it is proposed that paragraph *(e)* of the definition of "remuneration" and paragraph 11A both be widened to include amounts received or accrued as contemplated in section 8C(1A). Also see page 142 of the Budget Review under employee share schemes which states that *"the employees' tax provision related to the return of capital, will be reviewed to remove anomalies"*.

2.7. Income Tax Act, 1962: Amendment of paragraph 5 of Fourth Schedule

See the entry for the amendment to section 3 in paragraph 2.2.

2.8. Income Tax Act, 1962: Amendment of paragraph 9 of Fourth Schedule

Ad para (a): The proposed amendment is of a consequential nature. The definition of "Pension Funds Act, 1956" was amended to make full citations unnecessary and this amendment removes the redundant citation.

Ad para (b): During the 2015 Budget Review the Minister of Finance indicated that *"[e]mployees over 65 are experiencing a decrease in their take-home pay as a result of the move to medical tax credits, although they may claim back some of these amounts on assessment after the end of the tax year. To alleviate this burden, it [was] proposed that medical tax credits related to medical scheme contributions be taken into account for both PAYE and provisional tax purposes."*

Under section 6B(3)*(a)*(i) of the Income Tax Act over 65s are entitled to an additional tax credit for medical scheme fees in excess of three times the ordinary medical scheme fees tax credit. The intention of the Budget announcement was to allow the additional tax credit to be taken into account for PAYE purposes.

No legislative change is required for provisional tax, as "tax liability" in paragraph 21 of the Fourth Schedule already takes account of the medical tax credits, i.e. they are included by implication. The IRP6 forms also make provision for the medical tax credits.

To effect this change as regards PAYE, a reference to the amount of additional medical expenses tax credit in section 6B(3)*(a)*(i) needs to be added to paragraph 9(6) of the Fourth Schedule.

2.9. Income Tax Act, 1962: Amendment of paragraph 11A of Fourth Schedule

See the entry for the amendment to paragraph *(e)* of the definition of "remuneration" in paragraph 2.6.

2.10. Income Tax Act, 1962: Repeal of paragraph 11B of Fourth Schedule

The discontinuation of the standard income tax on employees (SITE) was announced in the 2010 Budget Review and was implemented in a phased approach from 1 March 2011. The final year of assessment during which this was applied has been reached and the provision for SITE in paragraph 11B is therefore repealed.

2.11. Income Tax Act, 1962: Amendment of paragraph 11C of Fourth Schedule

When paragraph 11C was inserted with effect from 1 March 2002, paragraph (i) of the proviso to subparagraph (1) provided for a transitional rule for years of assessment that ended on or before 28 February 2002. This provision is now obsolete and is accordingly being deleted.

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

Ad para (a): Subparagraph (5) of paragraph 11C was deleted by section 10 of the Tax Administration Laws Amendment Act, 2013, and the reference to it is therefore obsolete and must be deleted.

Furthermore, a subparagraph (5) was added to paragraph 14 by section 22(1)*(b)* of the Taxation Laws Second Amendment Act, 2008 (substituted by section 16(1)*(a)* of the Revenue Laws Second Amendment Act, 2008, as from 29 August 2008). The addition of a reference to this subparagraph in the wording of paragraph 13(1) (embodied in section 21(1)*(a)* of Taxation Laws Second Amendment Act, 2008) was, however, tied to the original effective date in Taxation Laws Second Amendment Act, 2008 and

has not yet come into effect. The present amendment proposes to insert the reference as from the date of promulgation of the Tax Administration Laws Amendment Bill, 2015, and to repeal the pending provision in section 21(1)*(a)* of Taxation Laws Second Amendment Act, 2008.

Ad para (b): The extension of a time period from seven to 14 days was similarly envisaged in section 21(1)*(b)* of Taxation Laws Second Amendment Act, 2008, with effect from a date to be announced. It is now proposed to effect this amendment as from the date of promulgation of the Tax Administration Laws Amendment Bill, 2015, and to accordingly delete the pending amendment in section 21(1)*(b)* of the Taxation Laws Second Amendment Act, 2008.

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

The whole of subparagraph (3) deals with returns, while paragraphs *(a)* and *(b)* refer to different times for submission of returns. This is a minor correction to make the wording more accurate.

2.14. Income Tax Act, 1962: Amendment of paragraph 17 of Fourth Schedule

Ad para (a): Subparagraph (2) of paragraph 25 was deleted by paragraph 94 of Schedule 1 to the Tax Administration Act, 2011. The reference to it is accordingly deleted.

Ad para (b): Subparagraph (8) provided that every person who is a provisional taxpayer must apply to SARS for registration as a provisional taxpayer. This registration requirement is no longer required as pparagraph 19 of the Fourth Schedule imposes an obligation to submit a return of an estimate for each year of assessment and section 25 of the Tax Administration Act, 2011, specifies that the return must be in the prescribed form and manner. The subparagraph can therefore be deleted.

2.15. *Income Tax Act, 1962: Repeal of paragraph 18 of Fourth Schedule*

As the exempt entities that were listed in paragraph 18 are now listed as exclusions in the definition of "provisional taxpayer", paragraph 18 has become redundant and is therefore repealed.

2.16. *Income Tax Act, 1962: Amendment of paragraph 19 of Fourth Schedule*

Ad para (a): SARS no longer informs taxpayers individually that they should submit returns and the obligation to submit returns in paragraph 19 applies to all provisional taxpayers.

Ad para (b): As part of the consequential amendments effected by Schedule 1 to the Tax Administration Act, 2011, paragraph 19(3) was amended by removing the words *"and the estimate as increased shall be final and conclusive"*. The reason for this was the concern that the words might be regarded as excluding the constitutional right of access to court, for example a review application under the Promotion of Administrative Justice Act, 2000, of the Commissioner's decision to adjust the estimate. However, as a result of this amendment, it became arguable that increasing the estimate may be regarded as an "assessment" as defined in the Tax Administration Act, 2011, and consequently subject to objection under section 104(1).

This was never the intention, as a provisional payment is not a final payment of the normal tax due for the relevant year of assessment. In the event of an overpayment resulting from an increased estimate, this will be taken into account in the annual assessment. In addition, interest from the effective date is payable on overpayments by the taxpayer under the Income Tax Act. If one or more provisional payments, whether adjusted or not, are objected to and potentially suspended during the year of assessment for purposes of which these provisional payments are made, it would summarily defeat the objective of the provisional tax scheme given the time frames for lodging and dealing with objections and appeals.

Ad para (c): The proposed amendment clarifies that both an estimate and an increase made by SARS under subparagraph (2) or (3) shall be deemed to take

effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax. Furthermore, subparagraph (2) of paragraph 25 was deleted by paragraph 94 of Schedule 1 to the Tax Administration Act, 2011. The reference to it is accordingly deleted.

2.17. *Income Tax Act, 1962: Amendment of paragraph 20 of Fourth Schedule*

Ad para (a): The amendment proposes a clarification of the existing subparagraph (1) by adjusting the format and the wording.

The penalty envisaged in subparagraph (1)*(b)* is made subject to the reduction and remittance envisaged in subparagraphs (2B) and (2C), inserted by section 10(1)*(d)* and *(e)* of the Tax Administration Laws Amendment Act, 2014.

The reference to subparagraph (3) is deleted because that subparagraph was deleted by section 10(1)*(f)* of the Tax Administration Laws Amendment Act, 2014.

Ad para (b): The liability to pay provisional tax (the "charging provision") is contained in paragraph 17. Liability to pay under paragraph 17 is premised on the amount of taxable income estimated by such taxpayer in terms of paragraph 19(1). Paragraph 19(1)*(a)* and *(b)* are the paragraphs that dictate that provisional taxpayers must submit estimates of taxable income. These estimates are therefore a pre-requisite before liability to pay under paragraph 17 can arise. Liability to pay provisional tax is thus premised on a taxpayer first submitting to SARS an estimate of taxable income.

The recently promulgated paragraph 20(2A) deems a provisional taxpayer who has failed to submit a second provisional tax estimate (at all, or failed to submit on time) to have submitted a NIL estimate. The paragraph is silent as to the extent of that provision's operation (it does not limit its operation to paragraph 20 only) and therefore the NIL submission must be considered to be a NIL submission for all purposes that estimates are

submitted under the Fourth Schedule. The proposed amendment clarifies that this paragraph will apply for purposes of paragraphs 19 and 20.

Paragraph 27 (the penalty for late payment of provisional tax) may only be levied when a provisional taxpayer fails to pay an amount of provisional tax for which he or she is liable. Thus, in order for the late payment penalty to be capable of being levied, there must be a liability to pay provisional tax. The liability to pay provisional tax is premised on the estimate. If the taxpayer submits the estimate late, that estimate is deemed to be a NIL estimate. As the estimate is NIL, there is no resulting liability to pay provisional tax. Consequently, if there is no liability to pay, there can be no failure to pay on time, and thus no late payment penalty can be charged. The proposed amendment addresses this situation by replacing the words "nil submission" with "an estimate of an amount of nil taxable income". Additionally, a time period has been added to indicate by when a taxpayer will be considered as having submitted an estimate of an amount of nil taxable income.

2.18. *Income Tax Act, 1962: Amendment of paragraph 29 of Fourth Schedule*

The proposed amendment removes the reference to paragraph 11B as this paragraph is being deleted. Furthermore, the spelling of employees' tax is corrected.

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

Paragraph 30(1)*(h)* is applicable to a condition prescribed under paragraph 13(12). Subparagraph (12) was deleted by section 11(1)*(b)* of The Tax Administration Laws Amendment Act, 2013, and the whole of paragraph *(h)* is accordingly deleted.

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

The proposed amendment expands on the interpretation provisions inserted into the Customs and Excise Act, 1964, by the Customs and Excise Amendment Act, 2014. The aim is to provide general provisions to aid in the interpretation of the Excise Duty Act, 1964, which obviate the need to effect many consequential changes to the text. Because the existing Schedules to the Customs and Excise Act have been split into a "Customs Tariff"

and an “Excise Tariff” to be added to the relevant legislation at a later stage, references in the Excise Duty Act to existing Schedule numbers will all change. The Tariffs have not been finalised and therefore exact references cannot be inserted. The proposed amendment deals with the interpretation of such references. There are also many references in the Act to sections that have been repealed, the proposed amendment provides that these “dead wood” provisions must be disregarded unless the context otherwise indicates. Lastly provision is made for a number of existing provisions that were inserted in the 1964 Act before the 2014 Amendment Act and that have not yet come into effect by the effective date to be regarded as not having been enacted.

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

The proposed amendment aims, when conducting external searches of persons, to make provision for the use of sniffer dogs as well as mechanical, electrical, imaging or electronic equipment as search aids. It also provides that search aids may only be used by officers trained in the use of that particular aid and authorises the Commissioner to prescribe other search aids by means of rule.

2.22. Customs and Excise Act, 1964: Repeal of section 4D

The provision is deleted as the content is covered in section 749 of the Customs Control Act, 2014, which applies across the board to customs and excise matters.

2.23. Customs and Excise Act, 1964: Amendment of section 27

The proposed amendment aims to differentiate, in respect of goods brought into an excise manufacturing warehouse for use in such a warehouse, between locally produced goods which are dutiable under the Excise Duty Act, which must be entered for home consumption under the Excise Duty Act, and imported dutiable goods, which must be cleared for home use in terms of the Customs Control Act, 2014.

2.24. Customs and Excise Act, 1964: Amendment of section 99

The proposed amendment aligns the prescription period for liability in the circumstances prescribed in subsections (1), (2) and (4)*(a)* of section 99 to the general prescription period of three years.

2.25. *Value-Added Tax Act, 1991: Amendment of section 16*

The proposed amendment clarifies the policy as set out in Interpretation Note 49, that the purpose of section 16(2)*(f)* is to substantiate the entitlement to the deduction referred to in section 16(3)*(c)* to *(n)*. Section 16(2)*(g)* provides relief to recipient vendors when they are unable to obtain the correct information or documentation from supplying vendors.

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

The proposed amendment relaxes the particulars required for a tax invoice without compromising the audit trail or policy intent for the requirements of the section.

2.27. *Value-Added Tax Act, 1991: Amendment of section 41*

Section 99 of the Tax Administration Act, 2011, specifies the limited time periods within which the Commissioner may make an additional assessment in terms of Chapter 8 of that Act. For VAT purposes, section 99(1)*(b)* requires the Commissioner to make an additional assessment within 5 years after the date of the original assessment. The prescription period for the raising of additional VAT assessments may be extended by agreement between the vendor and SARS in terms of section 99(2)*(c)* of the Tax Administration Act, 2011.

Section 41*(d)* of the Value-Added Tax Act provides that if any amount of tax chargeable was not included in a return, paid or accounted for and paid or any amount of tax has been incorrectly deducted by a vendor in terms of section 16(3), then that amount of tax shall not be recoverable by the Commissioner after 5 years from the date on which that amount became payable, except in certain circumstances specified in section 41*(d)*(aa) to *(cc)*. The 5-year period specified in section 41*(d)* does not relate to the raising of additional assessments but rather to the recovery of an amount of VAT which has not been paid to the Commissioner. The result is that section 99(2)*(c)* cannot be used to extend the 5-year period prescribed in section 41*(d)*.

Hence, section 41*(d)* creates potential problems or inconsistencies in the application of section 99 of the Tax Administration Act, 2011, where the prescription period for the raising of an additional assessment is calculated from the date of the original assessment and not

the date when the payment of the VAT became due. The proposed amendment aims to align the wording of section 41*(d)* with section 99(2) of the Tax Administration Act, 2011.

2.28. *Skills Development Levy Act, 1999: Amendment of section 1*

Section 1(1) defines a "penalty" as any penalty payable in terms of section 12. Section 6(5) requires the Commissioner to report penalties collected to the Director-General. Section 12(1) refers to late payment penalties. Additional penalties were previously levied under sections 12(3) and (4) on an employer who failed to pay an amount of levy with the intent to evade that employer's obligation under that Act.

However, with the inception of the Tax Administration Act, 2011, the additional penalty provisions under sections 12(3) and (4) were deleted from the Skills Development Levies Act, 1999, and are now dealt with under the understatement penalty regime in Chapter 16 of the Tax Administration Act, 2011. The only penalty therefore remaining in section 12 is the late payment penalty. The effect of the amendment is that the Commissioner's reporting obligation in section 6(5) is limited to penalties as specifically defined in section 12 which refers to late payment penalties only.

Consequently the Commissioner's reporting obligation in section 6(5) is limited to penalties as referred to in section 12 (i.e. late payment penalties). In order for the Commissioner to be able to report on all penalties levied in terms of the Skills Development Levies Act, 1999, a specific reference to the understatement penalty regime in the Tax Administration Act, 2011, needs to be made.

It is therefore proposed that the definition of a "penalty" in section 1(1) of the Skills Development Levies Act, 1999, be amended so as to include an understatement penalty under Chapter 16 of the Tax Administration Act, 2011.

2.29. Skills Development Levy Act, 1999: Amendment of section 6

Ad para (a): As refunds are now dealt with in terms of section 190 of the Tax Administration Act, 2011, this provision can be deleted.

Ad para (b): The proposed amendment is consequential to the above.

2.30. *Taxation Laws Second Amendment Act, 2008: Amendment of section 21*

The amendment of section 21 of the Taxation Laws Second Amendment Act, 2008, is consequential amendment to the amendments to paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, as explained in paragraph 2.12 above.

2.31. *Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Repeal of section 14*

The penalty referred to in section 14 is akin to understatement penalties (based on a shortfall). It is preferred that an understatement penalty under the Tax Administration Act, 2011, should rather be imposed as it provides for *bona fide* inadvertent errors, requires an understatement whereby SARS or the *fiscus* is prejudiced and is based on behaviour of the taxpayer. Similar "additional tax" type penalties as section 14 were deleted in other tax Acts e.g. Diamond Export Levy (Administration) Act, 2007, where they were not unique to the tax type. The non-deletion of section 14 appears to be an oversight. In its current form, a section 14 penalty is an administrative non-compliance penalty pursuant to an amendment affected to section 208 of the Tax Administration Act, 2011 (i.e. definition of "administrative non-compliance penalty"), but by nature default (shortfall) is more akin to understatement penalty. Given the mandatory nature of understatement penalties, imposing an understatement penalty as well as a section 14 penalty would be unduly harsh.

2.32. *Tax Administration Act, 2011: Amendment of section 1*

Ad para (a): This amendment proposed a common term including all customs and excise legislation to avoid having to refer to each Act separately.

Ad para (b): Greater transparency and the automatic exchange of information between tax administrations is an important step forward in countering cross border tax evasion and aggressive tax avoidance. This amendment is required to implement a scheme under which SARS may require South African financial institutions to collect information under an international tax standard, such as the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters, which encompasses the

Common Reporting Standard (CRS) that was endorsed by G20 Finance Ministers in 2014. In order to implement the standard on a consistent and efficient basis, certain financial institutions must report on all account holders and controlling persons, irrespective of whether South Africa has an international tax agreement with their jurisdiction of residence or whether the jurisdiction is currently a CRS participating jurisdiction.

This will substantially ease the compliance burden on reporting financial institutions as they would otherwise have to effect system changes and collect historical information each time a jurisdiction is added to the CRS or South Africa concludes a new international tax agreement. The reporting financial institutions will, pursuant to this amendment, be obliged by statute to obtain the information and provide it to SARS and should not contravene any relevant data protection laws.

This amendment will come into operation on the date of promulgation of this Act.

Ad para (c): The definition of "tax Act" is amended to include the new definition "customs and excise legislation".

2.33. *Tax Administration Act, 2011: Amendment of section 3*

Ad para (a): See the note on paragraph 2.32 above.

Ad para (b): The proposed amendment is a technical correction to align the current provision with the definition of "international tax agreement" in section 1. See also the note on paragraph 2.32 above.

2.34. *Tax Administration Act, 2011: Amendment of section 6*

The proposed amendment is a technical correction to clarify that a SARS official may execute a task authorised by a person delegated by the Commissioner.

2.35. *Tax Administration Act, 2011: Amendment of section 11*

Section 11(1) was essentially intended to deal with civil proceedings where the authority to institute the proceedings are not otherwise prescribed in the specific sections of the Tax Administration Act, as well as other matters such as Promotion of Administrative Justice Act ("PAJA") review applications etc.

Recent arguments surfaced that each SARS deponent in litigation must have a section 11(1) authorisation from the Commissioner. This amendment aims to clarify that an additional authorisation of a deponent by the Commissioner or the SARS official duly authorised by the Commissioner under section 11(1) to approve the institution or defending of civil proceedings, is not required. The deponent merely executes the authorisation as provided for in section 6(4).

This is also the case with most of the Tax Administration Act's payment or recovery proceedings, even if they are judicial and not only administrative in nature, for example section 163 (High Court), section 172 (including obtaining judgment in the High Court), section 177 (institution of proceedings for liquidation) and section 186 (High Court). These sections specifically prescribe who may institute the proceedings, for example a senior SARS official in the case of a section 163 application. An additional authorisation under section 11 is not required for proceedings under these sections based on the *expression unius est exclusion alterius* principle – i.e. the mention of one matter (e.g. section 163) excludes the other (e.g. section 11(1)). This is given express effect by the words *"except where otherwise regulated in this Act"* included in the proposed amendment.

2.36. Tax Administration Act, 2011: Amendment of section 22

See paragraph 2.37.

2.37. Tax Administration Act, 2011: Amendment of section 26

In order to ensure that the relevant financial institutions comply with international tax standards, such as the CRS, the proposed amendment will require them to register with SARS for this purpose. This registration will assist SARS in the administration and enforcement of international tax standards, such as the CRS. A registration process currently exists for purposes of the inter-governmental agreement concluded with the

United States of America and the associated Foreign Account Tax Compliance Act (FATCA).

2.38. Tax Administration Act, 2011: Amendment of section 34

The proposed amendment aims to include any person who is a party to an arrangement listed in a public notice by the Commissioner in terms of section 35(2) in the definition of a participant thereby imposing a reporting obligation on such persons.

2.39. *Tax Administration Act, 2011: Amendment of section 36*

The proposed amendment is a technical correction. This section still refers to the Securities Services Act, 2004 (Act No. 36 of 2004), that was repealed with effect from 3 June 2013 and replaced by the Financial Markets Act, 2012 (Act No. 19 of 2012).

2.40. *Tax Administration Act, 2011: Insertion of section 42A*

In the context of information requests, interviews and field audits, legal professional privilege is often asserted in respect of information required by SARS. This section seeks to clarify the requirements that must be met for such assertion and provides for a procedure for matters where SARS does not accept the assertion of legal professional privilege.

2.41. *Tax Administration Act, 2011: Amendment of section 46*

Ad para (a): The proposed amendment clarifies that a request by SARS for relevant material from third parties is limited to information maintained or kept or that should reasonably be maintained or kept by the person in relation to the taxpayer.

Ad para (b): The obtaining and use of information under oath or solemn declaration is a fairly common practice in most civil and criminal investigations. Under the scheme of the Tax Administration Act, only impactful decisions are reserved for senior SARS officials. Here the request is by a SARS official duly authorised by a senior SARS official to conduct an audit or criminal

investigation under section 41, who is then tasked with the execution of the audit or criminal investigation as contemplated in section 6(4).

Ad para (c): This amendment deals with foreign information requests. During the course of an audit of a South African member of a multinational group it may be necessary to obtain relevant material that is held by other members of the group located outside South Africa. While the South African members of some groups are willing to obtain and furnish such material to SARS, others assert that they are they are not in a position to do so. In Practice Note 6 of 1999 SARS noted that "taxpayers may face difficulties obtaining information from foreign connected persons. Such difficulties would not be encountered if taxpayers were required to produce only their own documents. However, due to the relationship between the parties the Commissioner considers it reasonable to expect taxpayers to obtain such information where necessary."

An amendment is proposed to ensure that taxpayers do not assert that they are unable to obtain and provide relevant material, only to provide it at a later stage, for tactical reasons. A minimum period for requesting relevant material held by a group member that is not in South Africa is proposed, together with a prohibition of a taxpayer's subsequent use of that material if it was not produced when requested. This prohibition may be relaxed by a competent court in subsequent proceedings but only in exceptional circumstances, which do not include the fact that the relevant material was held by a person outside South Africa.

2.42. *Tax Administration Act, 2011: Amendment of section 47*

The proposed amendment aims to clarify which persons may be interviewed or requested to submit relevant material where the person whose tax affairs is under verification or audit is a company or other legal entity. Hence, the proposed amendments provides that a senior SARS official may require—

- a current employee of the entity; or
- a person who holds an office in that entity;

to attend in person at a time and place designated in the notice for the purpose of being interviewed by a SARS official concerning the tax affairs of the relevant taxpayer, where the interview is intended to obtain relevant material to clarify issues of concern to SARS regarding a verification or audit. The person so interviewed may also be required to submit relevant material under his or her control and to clarify issues of concern related to the relevant material.

2.43. Tax Administration Act, 2011: Amendment of section 49 of Act, 28 of 2011

This amendment allows SARS to request a person being questioned during a field audit to provide information under oath or solemn declaration, similar to SARS's power to do so under section 46(7)*(a)*. See further discussion in paragraph 2.41.

2.44. Tax Administration Act, 2011: Amendment of section 51

The proposed amendments will allow SARS to use inquiry proceedings under this Part to trace assets that may be executed against to satisfy an outstanding tax debt without having to first sequestrate or liquidate a taxpayer and then follow the insolvency enquiry route, which generally takes a very long time to conclude and is not under the control of SARS.

2.45. *Tax Administration Act, 2011: Amendment of section 68*

Section 21 of the Customs Control Act, 2014, is broadened to include a similar provision to that of section 68(1)*(g)*, hence the reference to the "Customs and Excise Act" in the section 68 of the Tax Administration Act, 2011, can be deleted.

2.46. Tax Administration Act, 2011: Amendment of section 69

The proposed amendment provides that taxpayer information obtained by a current or former SARS official in the course of performance of duties under a tax may be disclosed by that official for purposes of the administration of the Customs and Excise Act, 1964, the Customs Duty Act, 2014 and the Customs Control Act, 2014.

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

The proposed amendment is a technical correction.

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

Section 93(1)(*d*) was inserted to allow taxpayers a less formal mechanism to request corrections to their returns and so reduced assessments. Experience has demonstrated that the overwhelming majority of taxpayers request a correction to their returns within six months of assessment. Other taxpayers have, however, attempted to use requests for correction to raise substantive issues that would more properly be the subject of an objection under section 104, so as to bypass the timeframes and procedures for an objection. Taxpayers and unregistered tax practitioners have also attempted to use the requests for correction to obtain fraudulent refunds for multiple years. It is therefore proposed to limit the period during which a request for correction may be submitted to six months from date of assessment, with the possibility of an extension to a year under exceptional circumstances. Matters that fall outside these timeframes will have to be subject of an objection.

2.49. *Tax Administration Act, 2011: Amendment of section 98*

Finality in a tax assessment is important for both taxpayers and SARS, which is why there is a period within which a SARS may revise an assessment to the benefit or otherwise of a taxpayer. This period, which is commonly known as the prescription period, is either three years for taxes assessed by SARS or five years for taxes that are self-assessed by taxpayers. Limited exceptions to prescription apply where fraud, misrepresentation or material non-disclosure exist in a tax return, in order to give effect to the outcome of a dispute resolution process – such as an objection or appeal to a court..

The original purpose of the insertion of section 98(1)*(d)* was to address problems with erroneous assessments which are often only discovered after all prescription periods and remedies have expired and it becomes apparent that it would be inequitable to recover the tax due under such assessments. An example would be that of a retiree who was assessed in error based on incorrect information supplied by an employer or a retirement fund, who fell below the tax threshold after retirement and thus ceased to submit returns to SARS and was only traced some years later in order to recover the outstanding tax debt as a result of the incorrect assessment. The insertion of the new paragraph aimed to address this problem by allowing for the withdrawal of assessments in specified narrow circumstances, which were the following:

- The assessment must be based on an undisputed factual error by the taxpayer in a return; a processing error by SARS; or a return fraudulently submitted by a person not authorised by the taxpayer;
- The assessment imposes an unintended tax debt in respect of an amount that the taxpayer should not have been taxed on;
- The recovery of the tax debt under the assessment would produce an anomalous or inequitable result;
- There is no other remedy available to the taxpayer; and
- It is in the interest of the good management of the tax system.

However, it immediately became apparent that taxpayers interpreted the section as a general mechanism to address their "old mistakes" in assessments that were final, where the taxpayer could no longer request a reduced assessment or where the objection process as well as appeals to the tax and higher courts had been exhausted. In respect of most of these matters there was no unintended tax debt the recovery of which would be inequitable. In actual fact, if most of the assessments sought to be withdrawn were given effect to, SARS would have had to pay refunds.

The insertion of section 98(1)(*d*) was not intended as a substitute to the above procedures nor as a "post-appeal appeal" remedy, including in one memorable case an attempt to reverse an adverse judgment by the Supreme Court of Appeal. The true intention was to address adverse assessments resulting from factors beyond the control of the taxpayer, for example the failure to submit a return or submission of an incorrect return by a third party under section 26 or by an employer under a tax Act, where the right of the taxpayer to object or seek an extension within the period referred to in section 104(3) has expired. This happens where a taxpayer only becomes aware of the problem after three years and can no longer object against the assessment, which has become final.

Accordingly, amendments are proposed to give effect to the true purpose of section 98(1)(*d*). In addition, were an assessment is withdrawn SARS may issue a revised original, additional or reduced assessment if satisfied it is required for the relevant tax period in issue. If this assessment is an agreed assessment between SARS and the taxpayer, it is not subject to objection and appeal.

2.50. *Tax Administration Act, 2011: Amendment of section 99*

Too many of SARS's resources are currently spent on information entitlement disputes, as opposed to conducting the audit within the period that additional assessments, if required, may be issued. This results in insufficient time to ensure SARS has all relevant information at its disposal to ensure correct assessment. In some cases, taxpayers, particularly large corporates, take more than six months to provide information required by SARS by disputing SARS's right to obtain the information, attempting to impose conditions on access to the information and attempting to require specific mechanisms for accessing the information. Information entitlement disputes, particularly if pursued in the High Court, can take more than one year to resolve. These failures to provide information or information entitlement disputes are often tactical or even vexatious, given the fact that taxpayers are very much aware of the period within which SARS must finalise the audit and issue additional assessments, if required.

Information entitlement disputes based on often convoluted or strained interpretations of the relevant provisions of the Tax Administration Act, have led to legislative changes over the past few years. As an example last year the Tax Administration Laws Amendment Act, 2014, had to clarify that a taxpayer cannot unilaterally decide the relevance of "relevant material" and refuse to even show it to SARS.

Additionally, some matters subject to audit may be so complex that it is impossible to meet the prescription deadline, particularly in the context of audits requiring SARS to consider the application of a general anti-avoidance rule (GAAR), or transfer pricing audits. Transfer pricing audits are fundamental to counteracting the erosion of the South African tax base and the shifting of profits to other jurisdictions – generally referred to as BEPS.

It is, therefore proposed that prescription be extended for a period appropriate to cater for a failure to provide information within a reasonable period, the time required to resolve a dispute as to SARS' entitlement to information or for up to three years if the application of a GAAR, transfer pricing or similarly complex matter is involved. The extension must take place before the existing prescription period has come to an end.

2.51. *Tax Administration Act, 2011: Amendment of section 105*

The current wording of section 105 creates the impression that a dispute arising under Chapter 9 may either be heard by the tax court *or* a High Court for review. This section is intended to ensure that internal remedies, such as the objection and appeal process and the resolution thereof by means of alternative dispute resolution or before the tax board or the tax court, be exhausted before a higher court is approached and that the tax court deal with the dispute as court of first instance on a trial basis. This is in line with both domestic and international case law.

The proposed amendment makes the intention clear but preserves the right of a High Court to direct otherwise should the specific circumstances of a case require it.

2.52. *Tax Administration Act, 2011: Amendment of section 109*

A situation may arise where there is more than one period on appeal and the combined value of the appeals over the periods is beyond the tax board threshold (currently set at R500 000). Had the appeal for each period occurred one at a time, there would be no difficulty in referring the appeal to the tax board. In order to preserve this possibility when the appeals occur at the same time it is proposed that the tax board may hear all the appeals, if SARS and the taxpayer so agree and the amount of tax in dispute in each appeal does not exceed the tax board threshold.

2.53. *Tax Administration Act, 2011: Amendment of section 111*

The proposed amendment aligns this provision with similar requirements for members of the tax court under section 120(2). There appears to be no apparent rationale for the differentiation between the members of the tax court under section 120(2) and persons appointed as chairpersons of the tax board.

2.54. *Tax Administration Act, 2011: Amendment of section 135*

The Supreme Court Act, 1959 (Act No. 59 of 1959) was repealed by the Superior Courts Act, 2013 (Act No. 10 of 2013): Section 55 read with Item No. 1 of Schedule 1 to that Act. Section 135(3) refers to section 21 of the repealed Supreme Court Act. The right to appeal

is now covered by section 17 of the Superior Courts Act, 2013 and the proposed amendment inserts the correct reference.

2.55. *Tax Administration Act, 2011: Amendment of section 146*

It is proposed that section 146*(b)*(ii) and (iii) be deleted in the context of settlement as those aspects relate to debt write-off.

2.56. *Tax Administration Act, 2011: Amendment of section 177*

The proposed amendment aligns section 177 with the institution of other High Court proceedings and impactful recovery proceedings e.g. sections 163, 179, 185 and 186, which proceedings require the authorisation of senior SARS officials.

2.57. *Tax Administration Act, 2011: Amendment of section 179*

Ad para (a): Section 179 provides that SARS may by notice to a person who holds or owes (or will hold or owe) money for or to a taxpayer, require that person to pay the money to SARS in satisfaction of the taxpayer's tax debt. The current wording requires a senior SARS official to issue notices of third party appointments (Form IT88). In line with other amendments proposed in this Bill, it is proposed that the senior SARS official approve the issue of the notices. In view of SARS's substantial debt book, the issue of these notices may be automated. The proposed amendment will make it clear that if a senior SARS official has approved the system criteria for issuing the notices their issue may be automated. This only occurs under prescribed circumstances, in particular where there is an outstanding tax debt and letters of demand have been issued.

Ad para (b): Section 179(2) and (4) provide remedies for the person required to pay the money to SARS as well as the relevant taxpayer. If the person who receives the notice of payment is unable to comply with the notice that person must advise SARS of the reasons for the inability to comply within the period specific in the notice and SARS may withdraw or amend the notice as is appropriate under the circumstances. Furthermore, a taxpayer affected by the notice may request SARS to amend the notice to extend

the period over which the amount must be paid to SARS so as to allow the taxpayer to pay his or her basic living expenses or that of his or her dependents. The amendment seeks to ensure that the relevant person or taxpayer is able to exercise their respective remedies before the amount is paid to SARS. The new subsection (2) would allow for a process and system in this regard.

Ad para (c): The proposed amendment moves the content of subsection (4) to a new subsection (2).

2.58. *Tax Administration Act, 2011: Amendment of section 185*

This proposed amendment clarifies that the senior SARS official referred to in section 185 only needs to authorise the application while the execution thereof can be done by a person referred to in section 6(4).

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

Ad para (a): The proposed amendment is a technical correction to clarify that interest accrues and is also payable.

Ad para (b): Under section 190(5) a refund paid by SARS which was not properly payable, for example as a result of fraud, is regarded as an outstanding tax debt summarily recoverable by SARS. As with any other tax debt, interest must also accrue and be payable on this amount in respect of the time taken to recover the amount of the refund not properly payable. This requires an effective date under section 187(3) from which date the interest will accrue.

Ad para (c): The right to request interest remittance cannot be open ended or finality will never be achieved. This limitation did apply in terms of repealed provisions of some of the tax Acts other than the Tax Administration Act.

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

Ad para (a): The proposed amendment clarifies that a taxpayer is entitled to a refund and interest thereon as provided for in a tax Act.

Ad para (b): The current wording of section 190(4) leads to the perception that a taxpayer must, in addition, also *claim* an assessed refund, and that the taxpayer then only has 3 years for an administrative assessment or 5 years for self-assessment, within which to claim the refund. Paragraph *(b)* of subsection was incorrectly deleted as the limitation periods only apply where an erroneous overpayment of tax was made. A refund properly refundable and payable under a tax Act in terms of section 190(1)*(a)* must be paid by SARS and there is no limitation period for such payment.

If a refund of an amount erroneously paid in respect of an assessment in excess of the amount payable in terms of the assessment, is not claimed within this period, it is regarded a payment to the National Revenue Fund, as is the case with any other claim that has prescribed and may be regarded as a final payment.

Ad para (c): The proposed amendment clarifies that interest accrues and is payable on the amount of a refund that was not properly payable from the date of such payment.

Ad para (d): SARS and banks have an arrangement whereby banks report suspicious refunds to SARS. This is pursuant to a bank's common law duty to report suspected fraud through the use of bank accounts. Under this arrangement, the banks agreed to hold the funds for a short period to allow SARS to investigate the circumstances around the refund. If the refund is false, SARS recovers the refund directly from the bank by appointing the bank as a responsible third party under section 179 of the Tax Administration Act, 2011, as the amount under section 190(5) is regarded as an outstanding tax debt form the date of payment thereof.

In view of the high incidence of refund fraud, in particular the payment of refunds of relatively small amounts that fall under SARS's "stopper"

threshold *as well as* VAT refunds generated by fictitious transactions or inflated input tax claims, there is a clear and pressing need to preserve the arrangement between the banks and SARS. The preservation of the account is of particular importance in view of the practice to dissipate or transfer the amounts to various other accounts or the withdrawal thereof as soon as or shortly after the fraudulent refunds are deposited.

As a result of the possibility that the Protection of Personal Information Act, 2013 (POPI), now supersedes or limit the common law reporting duty of banks, the potential exposure by banks to damages claims by client for damages resulting from the temporary "freezing" of accounts and the disclosure of personal information to SARS potentially contrary to POPI, this amendment will ensure that such preservation will be lawful and the reporting by banks to SARS will remain lawful and not subject to criminal sanctions under POPI. Although it is not absolutely clear that POPI supersedes or limit the common law reporting duty of banks, it is submitted that the proposed amendment is necessary to ensure certainty in this regard.

The Financial Intelligence Centre Act, 2001 (FICA), imposes a reporting a reporting duty on banks of certain suspicious transactions to the FIC. Currently, section 29(1)*(b)*(i) of FICA imposes a reporting duty in respect of a transaction that "may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service". It is not clear that these provisions cover the reporting of fraudulent tax refunds and it is similarly submitted that the proposed amendment is necessary to ensure certainty in this regard.

Ad para (e): The refusal of a refund under an assessment referred to in section 1*(a)* involves many factors, calculations and other aspects of determining the amount of tax or a refund. Accordingly, the whole of such assessment must be disputed under the general objection provision in section 104, and not just the decision not to authorise a refund. The amendment clarifies that the remedy under subsection (6) only applies to a decision not to

refund an amount erroneously paid in respect of an assessment and a decision that acceptable security is not tendered for purposes of payment of the refund amount subject to audit.

2.61. Tax Administration Act, 2011: Amendment of section 191

Technical amendment to correct spelling of “write off” and amendment to include new defined term “customs and excise legislation”.

2.62. Tax Administration Act, 2011: Amendment of section 212

A proposed amendment to section 34 aims to include any person who is a party to an arrangement listed in a public notice by the Commissioner in terms of section 35(2) in the definition of a participant thereby imposing a reporting obligation on such persons. As this is a third party reporting obligation i.e. these persons do not directly or indirectly derive or are assumed to derive a tax benefit or a financial benefit by virtue of an arrangement, it would be unreasonable to subject them to the stricter reportable arrangement penalties contained in section 212(1) and (2). Hence the new subsection (3) inserts a separate penalty provision for this category of persons.

2.63. *Tax Administration Act, 2011: Amendment of section 213*

The proposed amendment is a technical correction to cater for a non-compliance penalty imposable under a tax Act other than the Tax Administration Act.

2.64. *Tax Administration Act, 2011: Amendment of section 226*

The proposed amendment aims to clarify that an audit, unrelated to the default being disclosed by an applicant, will not disqualify an applicant for full voluntary disclosure relief. As an example, an audit of a taxpayer related to a PAYE issue is in progress. The same taxpayer may wish to submit a disclosure for an amount of VAT. There may be no correlation between these two tax issues and, as such, the enforcement action on the PAYE issue may not be a cause to restrict the relief in respect of the VAT disclosure. The proposed amendment clarifies that the audit or investigation must be related to the default the person seeks to disclose.

2.65. *Tax Administration Act, 2011: Amendment of section 227*

Currently one of the requirements for a valid voluntary disclosure is that the disclosure must involve a "default" which has not previously been disclosed by the applicant. The proposed amendment now requires that the "default" must not be a default that occurred within five years of the disclosure of a similar 'default' by the applicant, thereby widening the scope of the voluntary disclosure regime.

Furthermore, the potential imposition of an understatement penalty as a requirement for a valid voluntary disclosure has been interpreted by SARS as meaning that in the absence of voluntary disclosure relief, an understatement penalty would be leviable. On this interpretation, a *bona fide* inadvertent error as contemplated in section 222(1) does not qualify for voluntary disclosure relief. Furthermore, a default that does not constitute a substantial understatement and where the other behaviours contemplated in section 223 are also not present would also not qualify for voluntary disclosure relief, notwithstanding that SARS may take a contrary view with regard to the assessment of the relevant behaviour. The proposed amendment aims to resolve this issue by amending the requirement to rather refer to the behaviour in Column 2 of the understatement penalty percentage table in section 223.

2.66. *Tax Administration Act, 2011: Amendment of section 229*

The proposed amendment is of a textual nature and furthermore broadens the voluntary disclosure relief to include 100% relief in respect of administrative non-compliance penalties imposed under Chapter 15 of the Tax Administration Act, or another tax Act for the late payment of a tax.

2.67. *Tax Administration Act, 2011: Amendment of section 236*

The proposed amendment is a technical correction.

2.68. *Tax Administration Act, 2011: Amendment of section 251*

The proposed amendment aims to clarify that a delivery may also be made to a registered user's electronic filing page. A registered user is a person who has registered for a SARS electronic filing service such as eFiling, e@syFile, a third party data submission channel or

such like and their electronic filing page is akin to a web based e-mail used exclusively by SARS and the person to whom the page belongs.

2.69. *Tax Administration Act, 2011: Amendment of section 252*

See paragraph 2.68.

2.70. *Tax Administration Act, 2011: Amendment of section 256*

SARS is often approached to verify the Tax Compliance Status of an entity for periods before the current date of the request. The proposed amendment enables SARS to provide the tax compliance status of a taxpayer irrespective of the period to which the request relates in order to assist in the review of past transactions by the taxpayer's auditors and regulatory authorities.

2.71. *Tax Administration Act, 2011: Amendment of section 257*

The proposed amendment aims to align this provision with the amended wording of section 256 and furthermore enables the Minister to prescribe by regulation when SARS must report updates of or a change in the tax compliance status of certain taxpayers, for example taxpayers with government contracts.

2.72. *Tax Administration Act, 2011: Amendment of section 270*

The proposed amendment aims to further alleviate unintended consequences of the retrospective application of an understatement penalty. Section 187(3)*(f)* provides that the effective date for purposes of the calculation of interest in relation to an understatement penalty, is the effective date for the tax understated. As Chapter 12 (together with the accompanying amendments to the interest provisions of the various tax Acts as contained in Schedule 1 to this Act) will only come into effect upon a date to be determined by the President by proclamation, the payment of interest on an understatement penalty under section 222 would have to calculated in the manner that interest on additional tax [the predecessor to understatement penalties] was calculated under the relevant interest provisions of the specific tax Act. The proposed amendment inserts a transitional provision to this effect with a specific effective date i.e. the effective date as referred to in section 187(3)*(f)*, for tax understated before the implementation date of the Tax

Administration Act, will be regarded as the commencement date of the Act, i.e. 1 October 2012.

Once Chapter 12 (together with the accompanying amendments to the interest provisions of the various tax Acts as contained in Schedule 1 to this Act) has been promulgated, the accrual and payment of interest on an understatement penalty will be calculated in the manner prescribed by Chapter 12 in respect of an understatement penalty imposed after such date.

2.73. Customs Duty Act, 2014: Amendment of section 1

The proposed amendments correct incorrect references.

2.74. Customs Duty Act, 2014: Amendment of section 24

As not all persons liable for the payment of duty should be allowed to apply for a deferment benefit, the proposed amendment aims to empower the Commissioner to determine the persons that may apply for a deferment benefit by rule. The proposed amendment is also intended to provide clarity by expressly stating that a customs broker who manages his or her own deferment benefit for purposes of section 39(2)*(a)* may apply for a deferment benefit.

2.75. Customs Duty Act, 2014: Amendment of section 25

The proposed amendments in paragraphs *(a)* to *(f)* are required to provide for a compulsory suspension of a duty deferment benefit in the event of non-payment of deferred duty or other tax or amount payable within a three working day grace period, pending payment of the amount payable. Immediate suspension of the benefit is required to protect the *fiscus* against any further imminent risk. In order to comply with the constitutional requirement of fairness, provision is made for *ex post facto* consideration of representations regarding the reasons for the failure to pay. To provide flexibility, provision is also made for compulsory suspension of a duty deferment benefit as described in the proposed amendment to constitute a ground for withdrawal of the benefit.

2.76. Customs Duty Act, 2014: Amendment of section 39

The proposed amendment broadens the circumstances in which a customs broker will not be relieved of liability for payment of a duty. A customs broker may only act on authority of a clearance instruction of his or her principal containing the customs broker's mandate, and should not be relieved of liability in terms of section 39(1) of the Customs Duty Act if that customs broker was not in possession of such a clearance instruction.

2.77. Customs Duty Act, 2014: Amendment of section 67

The current Note 7 to Schedule 5 to the Customs and Excise Act, 1964, has a broader application than section 67 of the Customs Duty Act and the proposed amendment is aimed at broadening the provision to bring it in line with Note 7. The proposed amendment provides flexibility to enable the Commissioner to authorise payments of refunds or drawbacks to persons other than the person who made the payment or that person's representative. Such an authorisation can in terms of section 918 of the Customs Control Act, 2014, be granted subject to conditions.

2.78. Customs Duty Act, 2014: Amendment of section 88

The proposed amendment is a technical correction.

2.79. Customs Duty Act, 2014: Amendment of section 182

The proposed amendment enables the registration of importers, exporters, producers and suppliers for purposes of international trade agreements to be done directly in terms of Chapter 28 of the Customs Control Act, 2014, rather than to replicate that Chapter by means of rules under the Customs Duty Act as currently envisaged by section 182.

2.80. Customs Duty Act, 2014: Amendment of section 185

The proposed amendment enables the registration of exporters, producers and suppliers for purposes of non-reciprocal generalised systems of preferences to be done directly in terms of Chapter 28 of the Customs Control Act, 2014, rather than to replicate that Chapter by means of rules under the Customs Duty Act as currently envisaged by section 185.

2.81. Customs Duty Act, 2014: Amendment of section 201

The proposed amendment aligns this section with section 876(4) of the Customs Control Act, 2014.

2.82. Customs Duty Act, 2014: Amendment of section 202

The proposed amendment aligns this section with section 877(3) of the Customs Control Act, 2014.

2.83. Customs Duty Act, 2014: Amendment of section 221

The proposed amendment aims to align this section with similar wording contained in the Customs Control Act, 2014.

2.84. Customs Control Act, 2014: Amendment of section 1

The proposed amendment corrects an incorrect cross-reference.

2.85. Customs Control Act, 2014: Amendment of section 21

The proposed amendment broadens the scope of the confidentiality provision and aligns these provisions with the confidentiality provisions in the Tax Administration Act, 2011.

2.86. Customs Control Act, 2014: Amendment of section 49

The proposed amendment is a grammatical correction.

2.87. Customs Control Act, 2014: Amendment of section 65

The proposed amendment aims to provide more flexibility in relation to the reporting requirements for on-board operators in respect of the arrival of busses.

2.88. Customs Control Act, 2014: Amendment of section 67

Proposed amendment aims to provide more flexibility in relation to the reporting requirements for on-board operators in respect of the departure of busses.

2.89. Customs Control Act, 2014: Amendment of section 69

The proposed amendment aims to provide more flexibility in relation to the reporting requirements for on-board operators in respect of the arrival of trucks.

2.90. Customs Control Act, 2014: Amendment of section 71

The proposed amendment aims to provide more flexibility in relation to the reporting requirements for on-board operators in respect of the departure of trucks.

2.91. Customs Control Act, 2014: Amendment of section 110

The proposed amendment is required to align this provision with other similar provisions in the Act in relation to measuring of time limits, e.g. sections 465(1) and 305.

2.92. Customs Control Act, 2014: Amendment of section 112

The proposed amendment broadens the heading to reflect the full effect of the text in this section.

2.93. Customs Control Act, 2014: Amendment of section 113

The proposed amendment broadens the heading to reflect the full effect of the text in this section.

2.94. Customs Control Act, 2014: Amendment of section 115

The proposed amendment corrects an incorrect cross-reference.

2.95. Customs Control Act, 2014: Amendment of section 171

The proposed amendment deletes the acceptance validation criterion which is part of the next tier of validation of a clearance declaration.

2.96. Customs Control Act, 2014: Amendment of section 205

The proposed amendment clarifies that the transit operation must start at licensed premises at the seaport or airport and ensures consistency with subsection (3) of this section.

2.97. Customs Control Act, 2014: Amendment of section 211

The proposed amendment ensures that the provision covers electronic inclusion of information in transport documents or road manifests.

2.98. Customs Control Act, 2014: Repeal of section 214

The proposed amendment deletes an unnecessary requirement.

2.99. Customs Control Act, 2014: Amendment of section 233

The proposed amendment ensures that the provision covers electronic inclusion of information in transport documents or road manifests.

2.100. Customs Control Act, 2014: Repeal of section 235

The proposed amendment deletes an unnecessary requirement.

2.101. Customs Control Act, 2014: Amendment of section 259

The proposed amendment ensures that this section will apply whether the transhipment goods are loaded or not.

2.102. Customs Control Act, 2014: Amendment of section 299

The proposed amendment provides more flexibility concerning the manner in which customs may be advised of contractual relationships between customs clients.

2.103. Customs Control Act, 2014: Amendment of section 313

The proposed amendment aims to ensure that all transports under the warehousing procedure and not only those to a warehouse are covered. The proposed amendment also

broadens the provision to enable the Commissioner to prescribe requirements and conditions for such transport.

2.104. Customs Control Act, 2014: Amendment of section 332

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of goods under the tax free shop procedure by persons other than carriers.

2.105. Customs Control Act, 2014: Amendment of section 350

The proposed amendment aims to ensure consistency with a similar provision in section 328(1)*(f)* of the Act.

2.106. Customs Control Act, 2014: Amendment of section 359

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of goods under the stores procedure by persons other than carriers.

2.107. Customs Control Act, 2014: Amendment of section 368

The proposed amendment in paragraph *(a)* aims to provide more flexibility with respect to the timeframe for delivery of goods cleared for export to depots and terminals because it is not always practical to prescribe a fixed timeframe. The proposed amendment in paragraph *(b)* is intended to clarify that inspections of the same goods would not take place at the depot as well as at the terminal where the goods are loaded.

2.108. Customs Control Act, 2014: Amendment of section 372

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of goods under the export procedure by persons other than carriers.

2.109. Customs Control Act, 2014: Amendment of section 373

The proposed amendment is of a consequential nature following a proposed amendment to section 368.

2.110. Customs Control Act, 2014: Repeal of section 396

The proposed section is deleted as section 396 does not give effect to the Convention on Temporary Admission.

2.111. Customs Control Act, 2014: Amendment of section 412

The proposed amendment deletes unnecessary requirements.

2.112. Customs Control Act, 2014: Amendment of section 418

The proposed amendment aims to align this provision with other provisions in the Act in relation to measuring of time limits, e.g. sections 465(1) and 305.

2.113. Customs Control Act, 2014: Amendment of section 421

The proposed amendment aims to avoid systems difficulties in relation to the development of multiple data fields due to the fact that multiple inward processing clearance declarations could be involved. Paragraph *(b)* which requires the reference number of each clearance declaration is deleted.

2.114. Customs Control Act, 2014: Amendment of section 432

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of imported goods under the inward processing procedure or products, by-products or waste obtained from such products by persons other than carriers.

2.115. Customs Control Act, 2014: Amendment of section 439

The proposed amendment deletes an unnecessary requirement.

2.116. Customs Control Act, 2014: Amendment of section 444

The proposed amendment aims to align this provision with other provisions in the Act in relation to measuring of time limits, e.g. sections 465(1) and 305.

2.117. Customs Control Act, 2014: Amendment of section 452

The proposed amendment broadens the rule enabling provision to enable the Commissioner to prescribe requirements and conditions for the transport of imported goods under the home use processing procedure or products obtained from such goods before such goods become free circulation goods by persons other than carriers.

2.118. Customs Control Act, 2014: Amendment of section 458

The proposed amendment deletes unnecessary requirements.

2.119. Customs Control Act, 2014: Amendment of section 460

The proposed amendment deletes unnecessary requirements.

2.120. Customs Control Act, 2014: Amendment of section 580

The proposed amendment is a technical correction.

2.121. Customs Control Act, 2014: Amendment of section 581

The proposed amendment provides for the submission of retention notices to the state warehouse where goods are to be accounted for in situations where goods are not physically delivered to the state warehouse but retained on licensed premises as if secured in a state warehouse.

2.122. Customs Control Act, 2014: Amendment of section 590

Paragraph (a): The words of the proposed deletion suggest that the goods must first be published in the state warehouse list before they can be reclaimed, which is unnecessary in the case of goods that can be reclaimed upon compliance with outstanding clearance and other technical

requirements. The amendment will not affect the listing of goods that are sold or otherwise disposed of.

Paragraph (b): The proposed amendment aims to streamline the termination of a detention where goods are successfully reclaimed by complying with outstanding clearance - and other technical requirements.

Paragraph (c): The proposed amendment ensures that the reclaim process also applies to seized or confiscated goods in cases where the seizure or confiscation has been terminated.

2.123. Customs Control Act, 2014: Amendment of section 600

The proposed amendment aims to broaden the rule enabling provision to authorise the issuing of rules for the different situations in which goods are removed from a state warehouse, including from other licensed premises where goods are kept as if the goods are in a state warehouse.

2.124. Customs Control Act, 2014: Amendment of section 626

The proposed amendment broadens the scope of paragraph *(c)* to permit simplified registration procedures in respect of additional categories of persons as may be prescribed by rule.

2.125. Customs Control Act, 2014: Amendment of section 627

The proposed amendment provides for contraventions of section 624(1) of the Act to be an offence.

2.126. Customs Control Act, 2014: Amendment of section 695

The proposed amendment aims to align the Customs Control Act with section 12 of the Public Finance Management Act,1999, which requires SARS to pay into the revenue funds all amounts collected by it for the revenue funds and section 13 which enables SARS as a national public entity to retain all revenue not collected by it for a revenue fund.

2.127. Customs Control Act, 2014: Amendment of section 761

The proposed amendment is a grammatical correction.

2.128. Customs Control Act, 2014: Amendment of section 762

The proposed amendment corrects an incorrect reference.

2.129. Customs Control Act, 2014: Amendment of section 780

The proposed amendment ensures that written proof that the administering authority has no objection to an application for termination of a detention of prohibited goods should only be submitted to the customs authority on request, and not in all cases.

2.130. Customs Control Act, 2014: Amendment of section 789

The proposed amendment ensures that written proof that the administering authority has no objection to an application for termination of a detention of prohibited goods should only be submitted to the customs authority on request, and not in all cases.

2.131. Customs Control Act, 2014: Amendment of section 823

The proposed amendment corrects an incorrect cross-reference.

2.132. Customs Control Act, 2014: Amendment of section 825

The proposed amendment is of a consequential nature.

2.133. Customs Control Act, 2014: Amendment of section 832

The proposed amendment tightens up the internal control over the power of customs officers to reconsider their own decisions.

2.134. Customs Control Act, 2014: Amendment of section 877

The proposed amendment aims to broaden the scope of the provision to cover all non-prosecutable breaches listed in terms of section 876(1) consisting of a failure to submit to the customs authority full or accurate information other than information that may result in

revenue prejudice, and not only such breaches that can be categorised as Category A breaches.

2.135. Customs Control Act, 2014: Amendment of section 896

The term “place of residence” is too narrow and does not cover the situation where the litigant is a juristic entity. This is now replaced by the term “physical address”.

2.136. Customs Control Act, 2014: Amendment of section 913

The proposed amendment provides for an automatic extension of a timeframe for electronic submission of certain documents or communications in the case of a communications breakdown, and also provides for the submission of certain documents or communications in paper format in the event of such breakdown.

2.137. Tax Administration Laws Amendment Act, 2014: Amendment of section 32

Section 45 of the Value-Added Tax Act, 1991, which deals with “Interest on delayed refunds” was introduced in its amended form by paragraph 134 of Schedule 1 to the Tax Administration Act, 2011. Proclamation 51 of 14 September 2014 announced the commencement of the whole Tax Administration Act, 2011, except certain specific sections dealing with interest and “any provision of Schedule 1 to the Act that amends or repeals a provision of a tax Act relating to interest under that Act, to the extent of that amendment or repeal”. All of the exceptions are part of the Tax Administration Act, 2011, or the different tax Acts but they are not in operation. The provisions of the tax Acts relating to interest which had been amended or repealed are applied to calculate interest until the new interest provisions become effective by a future proclamation.

Section 45(2) of the Value-Added Tax Act, 1991, was amended by section 32 of the Tax Administration Laws Amendment Act, 2014. However, this amendment did not mention a specific effective date and hence became effective on promulgation of the Amendment Act. It is proposed that this amendment will take effect when the interest provisions of the Tax Administration Act, 2011, come into operation.

2.138. Tax Administration Laws Amendment Act, 2014: Amendment of section 52

The change to the effective date of section 52 of the Tax Administration Laws Amendment Act, 2014, relates to the effective date of the interest provisions. Instead of referring to a date determined by the Minister, it should read “the date on which section 187(2) of the Tax Administration Act, 2011, comes into operation”. Consequently the amendment will take effect on the same day the original subsection is brought into effect by the President’s proclamation.

2.139. Short title and commencement

The clause makes provision for the short title of the proposed Act and provides that different provisions of the Act may come into effect on different dates.