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The draft Tax Administration Laws Amendment Bill, 2016, is hereby published for comment. The draft legislation gives effect to matters presented by the Minister of Finance in the Budget Review 2016, as tabled in Parliament earlier this year.

Members of the public are invited to submit comments on the draft legislation by no later than **8 August 2016** to:

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Tax Administration Laws Amendment Bill, 2016

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GENERAL EXPLANATORY NOTE:

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

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

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To—

- amend the Income Tax Act, 1962, so as to effect amendments and to amend Schedules;
- amend the Customs and Excise Act, 1964, so as to narrow the scope of a section in respect of SEZs; and broaden the scope of a section for cigarette marking, tracking and tracing;
- amend the Value-Added Tax Act, 1991, so as to amend provisions to align with new legislation; effect amendments to provisions and to amend a Schedule;
- amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to streamline its application as a provisional tax;
- amend the Tax Administration Act, 2011, so as to effect amendments;
- amend the Customs Duty Act, 2014, so as to effect amendments;
- amend the Customs Control Act, 2014, so as to effect amendments;

and to provide for matters connected therewith.

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

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of

DRAFT

2008, section 2 of Act 61 of 2008, section 14 of Act 8 of 2010, section 271 of Act 28 of 2011, read with paragraph 25 of Schedule 1 to that Act, section 2 of Act 39 of 2013, section 2 of Act 44 of 2014 and section 1 of Act 23 of 2015

1. Section 3(5) of the Income Tax Act, 1962, is hereby amended by the deletion of the word “and” at the end of paragraph (a), the substitution for the full stop at the end of paragraph (b) of the expression “; and” and the addition of the following paragraph:

“(c) to disclose a list of funds approved in terms of paragraph (a) for purposes of section 69(8)(e) of the Tax Administration Act.”.

Amendment of section 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004 and amended by section 5 of Act 32 of 2005, section 59 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 43 of Schedule 1 to that Act and section 2 of Act 23 of 2015

2. Section 35A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) If the seller does not submit a return in respect of that year of assessment within 12 months after the end of that year of assessment, the payment of [that] the amount in terms of subsection (4) is deemed to be a self-assessment in terms of section [95(3)] 91(3) of the Tax Administration Act, which assessment is not subject to objection and appeal.”.

Amendment of section 64K of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008 and amended by section 53 of Act 17 of 2009, section 84 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 55 of Schedule 1 to that Act, section 14 of Act 21 of 2012, section 5 of Act 39 of 2013 and section 5 of Act 44 of 2014

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

“(b) received a dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D, other than a dividend derived from a tax free

DRAFT

investment contemplated in section 12T, that is exempt or partially exempt from dividends tax in terms of section 64F or 64FA.”.

Amendment of section 102 of Act 58 of 1962, as substituted by section 30 of Act 30 of 2002 and amended by section 35 of Act 20 of 2006 and section 271 of Act 28 of 2011 read with paragraph 70 of Schedule 1 to that Act

4. Section 102 of the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

“Refunds **[and set off]**”.

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

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

(a) by the deletion in the definition of “provisional taxpayer” of the word “and” at the end of paragraph (b), by the substitution at the end of paragraph (c) for the comma of the expression “; and” and by the addition of the following paragraph:

“(d) any category of persons who are notified by the Commissioner by public notice that they are provisional taxpayers,”;

DRAFT

(b) by the substitution in the definition of “remuneration” for item (f) of the following items:

“(f) any amount deemed to be income accrued to that person in terms of section 7(11);

(g) any amount of a dividend received or accrued—

(i) in respect of a restricted equity instrument as defined in section 8C to the extent contemplated in paragraph (dd) of the proviso to section 10(1)(k)(i); or

(ii) to a person in respect of services rendered or to be rendered or in respect of or by virtue of employment or the holding of any office contemplated in paragraph (ii) of the proviso to section 10(1)(k)(i).”;

(c) by the substitution in the definition of “remuneration” for the words in item (ii) of the exclusion preceding the proviso of the following words:

“any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not a resident or an employee contemplated in paragraph (b), (c), (d)~~],~~ or (e) **[or (f)]** of the definition of ‘employee’) in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered.”.

DRAFT

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, section 94 of Act 24 of 2011, section 19 of Act 21 of 2012, section 13 of Act 26 of 2013, section 8 of Act 39 of 2013 and section 68 of Act 44 of 2014

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

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

“(1) Every—

- (a) employer who is a resident; or
- (b) representative employer in the case of any employer who is not a resident, (whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph 2(1)(b) of the Second Schedule, deduct from the **[employees]** employee's benefit or minimum individual reserve as contemplated in that paragraph, by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10[,], or 11 or **[12]** section 95 of the Tax Administration Act, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee's spouse, in respect of such liability of that spouse, and shall, subject to the Employment Tax Incentive Act, 2013, pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case

DRAFT

of a person who ceases to be an employer before the end of such month, within seven days after the day on which that person ceased to be an employer, or in either case within such further period as the Commissioner may approve.”.

(b) 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 (cA)]** (a), (b) and (bA); and”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2015 and applies in respect of donations paid on or after that date.

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 46 of Act 28 of 1997, section 55 of Act 59 of 2000, section 21 of Act 19 of 2001, section 41 of Act 20 of 2006, section 56 of Act 8 of 2007, sections 66 and 116 of Act 35 of 2007, section 66 of Act 3 of 2008, section 68 of Act 60 of 2008, section 20 of Act 18 of 2009, section 95 of Act 24 of 2011 and section 8 of Act 23 of 2015

7. Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his budget statement **[or as varied by the Minister under section 5(3) of this Act, to the rebates applicable in terms of section 6 and section 6quat of this Act]** and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe—

(a) deduction tables applicable to such classes of employees as **[he]** the Commissioner may determine~~[,]~~; and

(b) the manner in which such tables shall be applied, taking into account the rebates applicable in terms of sections 6, 6A, 6B and 6quat.

DRAFT

and the amount of employees' tax to be deducted from any amount of remuneration shall, subject to the provisions of subparagraphs (3), (4) and (5) of this paragraph and paragraphs 10[,] and 11 and **[12]** section 95 of the Tax Administration Act, be determined in accordance with such tables or where subparagraph (3), (4) or (5) is applicable, in accordance with that subparagraph.”;

(b) by the substitution for subparagraph (2) of the following paragraph:

“(2) Any tables prescribed by the Commissioner in accordance with subparagraph (1) shall come into force on **[such]** a date **[as may be notified]** prescribed by the Commissioner **[in the Gazette]**, and shall remain in force until withdrawn by the Commissioner.”; and

(c) by the deletion in subparagraph (3) of item (b).

Amendment of paragraph 10 of Fourth Schedule to Act 58 of 1962

8. Paragraph 10 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) If the Commissioner is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer **[he]** the Commissioner may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of **[paragraphs]** paragraph 11 and **[12]** section 95 of the Tax Administration Act, be determined accordingly.”.

Amendment of paragraph 11A of Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969 and amended by section 47 of Act 28 of 1997, section 19 of Act 34 of 2004, section 51 of Act 31 of 2005, section 67 of Act 35 of 2007, section 19 of Act 8 of 2010 and section 9 of Act 23 of 2015

9. Paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

DRAFT

“11A. (1) Where by virtue of the provisions of paragraph (b), (d) or (e) of the definition of ‘remuneration’ in paragraph 1, the remuneration of an employee includes—

- (a) any gain made by the exercise, cession or release of any right to acquire any marketable security as contemplated in section 8A;
- (b) any gain made from the disposal of any qualifying equity share as contemplated in section 8B; or
- (c) any amount referred to in section 8C which is required to be included in the income of that employee,

[the amount of that gain or that amount must for the purposes of this Schedule be deemed to be an amount of remuneration which is payable to that employee by] the person by whom that right was granted or from whom that equity instrument or qualifying equity share was acquired, as the case may be, is deemed to be a person who pays or is liable to pay the amount of the gain referred to in paragraph (a) or (b) or the amount referred to in paragraph (c) to that employee.

(2) Employees’ tax in respect of the amount of remuneration contemplated in subparagraph (1) must, unless the Commissioner has granted authority to the contrary, be deducted or withheld by **[that]** the person referred to in subparagraph (1) from—

- (a) any consideration paid or payable by **[him or her]** that person to that employee in respect of the cession, or release of that right or the disposal of that **[equity instrument or]** qualifying equity share, as the case may be~~;~~ or
- (b) **[from]** any cash remuneration paid or payable by that person to that employee after that right has to the knowledge of that person been exercised, ceded or released or that equity instrument has to the knowledge of that person vested or that qualifying equity share has to the knowledge of that person been disposed of:

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

DRAFT

- (i) is not resident nor has a representative employer; or
- (ii) is unable to deduct or withhold the full amount of employees' tax during the year of assessment during which the gain or the amount arises, by reason of the fact that the amount to be deducted or withheld from that **[employee] remuneration** by way of employees' tax exceeds the amount from which the deduction or withholding can be made,

that person and that employer must deduct or withhold from the remuneration payable by them to that employee during that year of assessment an aggregate amount equal to the **[employee's] employees'** tax payable in respect of that gain or that amount and shall be jointly and severally liable for that aggregate amount of [employee's] employees' tax.

(3) The provisions of this Schedule apply in relation to the amount of employees' tax deducted or withheld under subparagraph (2) as though that amount had been deducted or withheld from the amount of the gain referred to in subparagraph (1)(a) or (b) or the amount referred to in subparagraph (1)(c).

(4) Before deducting or withholding employees' tax under subparagraph (2) in respect of remuneration contemplated in subparagraph (1)(a) or (c), that person and that employer must ascertain from the Commissioner the amount to be so deducted or withheld.

(5) If that person and that employer are, by reason of the fact that the amount to be deducted or withheld by way of employees' tax exceeds the amount from which the deduction or withholding is to be made, unable to deduct or withhold the full amount of employees' tax during the year of assessment during which the gain referred to in subparagraph (1)(a) or (b) or the amount referred to in subparagraph (1)(c) arises, they must immediately notify the Commissioner of the fact.

(6) Where an employee has—

- (a) under any transaction to which neither that person nor that employer is a party made any gain; or
- (b) **[an employee has]** disposed of any qualifying equity share as contemplated in subparagraph (1),

that employee must immediately inform that person and that employer **[thereof]** of the transaction or the disposal and of the amount of that gain.

DRAFT

(7) Any employee who, without just cause shown by him or her, fails to comply with the provisions of subparagraph (6)[,] shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000.”.

Repeal of paragraph 11C of Fourth Schedule to Act 58 of 1962

10. (1) The Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 11C.

(2) Subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment commencing on or after that date.

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, section 271 of Act 28 of 2011, read with item 90 of Schedule 1 to that Act, section 22 of Act 21 of 2012, section 13 of Act 39 of 2013, section 9 of Act 44 of 2014 and section 16 of Act 23 of 2015

11. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

“(6) Subject to subparagraph (2), if an estimate of a provisional taxpayer’s taxable income in respect of any year of assessment is not submitted in terms of subparagraph (1)(a) or (b) within four months after the last day of the period determined in paragraph 21(1)(b) or 23(b), the provisional taxpayer shall, for the purposes of this paragraph and paragraph 20, be deemed to have submitted an estimate of an amount of nil taxable income.”.

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

DRAFT

61 of 2008, section 24 of Act 18 of 2009, section 271 of Act 28 of 2011, read with paragraph 91 of Schedule 1 to that Act, section 23 of Act 21 of 2012, section 10 of Act 44 of 2014 and section 17 of Act 23 of 2015

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

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

“(1) If in respect of a year of assessment the **[actual]** taxable income of a provisional taxpayer, as **[finally]** determined under this Act, **[for the year of assessment in respect of which the final or last estimate of his or her taxable income is submitted in terms of paragraph 19(1)(a) by a provisional taxpayer other than a company, or the estimate of its taxable income in respect of the period contemplated in paragraph 23(b) is submitted in terms of paragraph 19(1)(b) by a company which is a provisional taxpayer, in respect of any year of assessment]** is—

(a) more than R1 million and **[such]** the estimate of taxable income submitted by that provisional taxpayer in terms of paragraph 19(1)(a) or (b) in respect of the period referred to in paragraph 21(1)(b) or 23(b) is less than 80 per cent of the amount of the **[actual]** provisional taxpayer’s taxable income the Commissioner must impose[, **in addition to the normal tax payable 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—

(i) the amount of normal tax, calculated at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable, in respect of a taxable income equal to 80 per cent of **[such actual]** the provisional taxpayer’s taxable income; and

DRAFT

- (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; or
- (b) R1 million or less and the estimate of taxable income submitted by that provisional taxpayer in terms of paragraph 19(1)(a) or (b) in respect of the period referred to in paragraph 21(1)(b) or 23(b) is less than 90 per cent of the amount of **[such actual] the provisional taxpayer's** taxable income and is also less than the basic amount applicable to **[the] that** estimate **[in question]**, as contemplated in paragraph 19(1)(d), **[the taxpayer shall, subject to the provisions of subparagraphs (2), (2B) and (2C), be liable to pay to]** the Commissioner[, **in addition to the normal tax payable in respect of his or her taxable income for such year of assessment,**] must impose 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—
- (i) the lesser of—
- (aa) the amount of normal tax, calculated at the rates applicable in respect of such year of assessment and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable, in respect of a taxable income equal to 90 per cent of **[such actual] the provisional taxpayer's** taxable income; and
- (bb) 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 and after taking into account any amount of a rebate deductible in terms of this Act in the determination of normal tax payable; and
- (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:

Provided that any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit[, or severance benefit **[or any other amount contemplated in**

DRAFT

paragraph (d) of the definition of ‘gross income’] 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.”;

(b) by the deletion of subparagraph (2A); and

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

“(2C) ~~[The] If—~~

(a) a provisional taxpayer is deemed in terms of paragraph 19(6) to have submitted an estimate of an amount of nil taxable income due to a failure to submit an estimate within four months after the last day of the period contemplated in paragraph 21(1)(b) or 23(b); and

(b) the Commissioner [may, if he or she] is satisfied that the provisional taxpayer’s failure [to submit such an estimate timeously] was not due to an intent to evade or postpone the payment of provisional tax or normal tax, the Commissioner may remit the whole or any part of [the] a penalty imposed under subparagraph (1).”.

Amendment of paragraph 28 of Fourth Schedule to Act 58 of 1962, as amended by section 29 of Act 90 of 1964, section 30 of Act 95 of 1967, section 48 of Act 89 of 1969, section 48 of Act 88 of 1971, section 23 of Act 90 of 1972, section 55 of Act 85 of 1974, section 53 of Act 94 of 1983, section 44 of Act 121 of 1984, section 30 of Act 65 of 1986 and section 49 of Act 32 of 2004

13. Paragraph 28 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (7).

Amendment of paragraph 3 of Seventh Schedule to Act 58 of 1962, as amended by section 23 of Act 8 of 2010

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

“(a) and issue the employer with a notice of the assessment in terms of **[paragraph 12 of the Fourth Schedule]** section 96 of the Tax

DRAFT

Administration Act for the unpaid amount of employees' tax that is required to be deducted or withheld from such cash equivalent; or”.

Amendment of section 21A of Act 91 of 1964, as inserted by section 121 of Act 60 of 2001, amended by section 2 of Act 10 of 2005, section 18 of Act 21 of 2006, section 7 of Act 36 of 2007 and section 18 of Act 39 of 2013 and proposed repeal by section 12 of Act 32 of 2014

15. (1) Section 21A of the Customs and Excise Act, 1964, is hereby amended—

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

“ **‘Customs Controlled Area’** or **‘CCA’** means an area within an **[IDZ] SEZ**, designated by the Commissioner in concurrence with the Director General: Trade and Industry, which area is controlled by the Commissioner;

‘[Industrial Development Zone] Special Economic Zone’ or **‘[IDZ] SEZ’** means—

(a) an area designated by the Minister of Trade and Industry in terms of the Manufacturing Development Act, 1993 (Act No. 187 of 1993), as an industrial development zone and which is in terms of section 39(2) of the Special Economic Zones Act regarded to be an SEZ designated under that Act; or

(b) an area designated as a Special Economic Zone in terms of section 23(6) of the Special Economic Zones Act;

‘[IDZ] SEZ operator’, **‘CCA enterprise’** or any other expression as may be necessary, relating to any activity inside or outside an **[IDZ] SEZ** or a CCA shall have the meaning assigned thereto in any Schedule or rule^[.]”;

‘Special Economic Zones Act’ means the Special Economic Zones Act, 2014 (Act No. 16 of 2014).”.

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

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

DRAFT

“(3) Where any provision of the Manufacturing Development Act, 1993, or the Special Economic Zones Act or any regulation made **[thereunder]** under those Acts for the purpose of the **[IDZ] SEZ** is inconsistent or in conflict with any provision of this Act governing the administration of **[the]** a CCA, including any matter relating to the liability or levying of duty or any rebate, refund or drawback of duty, the **[provisions]** provision of this Act shall prevail over the provision of the Manufacturing Development Act, 1993, or of the Special Economic Zones Act, or the regulations made **[thereunder]** under those Acts.”;

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

(e) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:

“Any person, including, where relevant, a CCA enterprise or an **[IDZ] SEZ** operator, who for the purposes of any activity within a CCA—”;

(f) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:

“The liability for duty in respect of any goods to which this section relates of an **[IDZ] SEZ** operator or a CCA enterprise or such other person shall cease—”;

(g) by the substitution in subsection (9) for paragraph (a) of the following paragraph:

“(a) if the **[IDZ] SEZ** operator or CCA enterprise or such other person proves that, as the case may be—”;

(h) by the substitution in subsection (9)(a) for subparagraph (ii) of the following subparagraph:

“(ii) the goods have been **[duly consumed or otherwise]** used in the manufacture or production of any goods by the CCA enterprise in accordance with any relevant provision of this Act;”;

(i) by the substitution in subsection (9)(a) for subparagraph (iv) of the following subparagraph:

DRAFT

“(iv) the goods have, where relevant, been removed and received **[in any other premises registered or licensed under the provisions of this Act]** by a licensee of licensed premises or a rebate manufacturer; or”;

(j) by the substitution in subsection (14) for paragraph (a) of the following paragraph:

“(a) to designate an area within an SEZ as a CCA, provided that such designation takes place on application by—

(i) the holder of a Special Economic Zone license issued in terms of the Special Economic Zones Act in respect of that SEZ;

(ii) the entity established in terms of section 25(1) of the Special Economic Zones Act for the management of that SEZ; or

(iii) the SEZ operator in respect of that SEZ;” and

(k) by the substitution in subsection (14) for paragraph (g) of the following paragraph:

“(g) after consultation with the Director-General: Trade and Industry regarding duties or functions of the **[IDZ] SEZ** operator or a CCA enterprise;”.

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

Amendment of section 35A of Act 91 of 1964, as inserted by section 5 of Act 112 of 1977 and amended by section 24 of Act 45 of 1995, section 135 of Act 45 of 2003 and section 20 of Act 32 of 2014

16. Section 35A of the Customs and Excise Act, 1964, is hereby substituted by the following section:

“Special provisions regarding cigarettes and [cigarette] other tobacco products

35A.(1) The Commissioner may prescribe by rule—

(a) the sizes and types of containers which may be used by a manufacturer for the packing of cigarettes and **[cigarette] any other tobacco product**[.];

DRAFT

- (b) distinguishing marks or numbers **[in addition to the stamp impression referred to in subsection (2)]** which must or must not appear on containers of cigarettes and **[cigarette] other tobacco products** removed from a customs and excise warehouse for home consumption or for export;
- (c) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.

(2) No licensee may remove any cigarettes or any other tobacco product or allow any cigarettes or any other tobacco product to be removed from a customs and excise warehouse unless—

- (a) if removed for home consumption, **[a stamp impression]** distinguishing marks or numbers determined by the Commissioner **[has] have** been made on their containers; or
- (b) if removed for export, **[such stamp impression does not appear on the]** distinguishing marks or numbers determined by the Commissioner have been made on their containers; and
- (c) the cigarettes or other tobacco product otherwise comply in every respect with the requirements prescribed by rule.

(3) No cigarettes **[or cigarette]** or other tobacco products shall be sold or disposed of or removed from the customs and excise manufacturing warehouse in question in partly or completely manufactured condition except in accordance with the provisions of this Act.

(4) No person shall—

- (a) counterfeit or make any facsimile of any **[die or impression stamp]** distinguishing marks or numbers determined under subsection (2);
- (b) be in possession of, use or offer for sale or for use—
 - (i) any **[die or impression stamp]** distinguishing marks or numbers counterfeited in contravention of paragraph (a); or
 - (ii) any facsimile of any **[die or impression stamp]** distinguishing marks or numbers made in contravention of that paragraph.”.

(2) Subsection (1) takes effect on a future date to be determined by the Commissioner.

DRAFT

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

17. (1) Section 76B of the Excise Duty Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph (e) of the following paragraph:

“(e) other than a refund or drawback referred to in paragraphs (a), (b), (c) and (d), shall be limited to an application received by the Controller within a period of **[two]** three years from the date of entry for home consumption of the goods to which the application relates.”.

(2) Subsection (1) takes effect immediately after the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), has taken effect.

Amendment of section 76C of Act 91 of 1964, as inserted by section 67 of Act 30 of 1998

18. (1) The Customs and Excise Act, 1964, is hereby amended by the substitution for section 76C of the following section:

“Set-off of refund against amounts owing

76C. Where any refund of duty is in terms of this Act due to any person who has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under any **[other]** law administered by the Commissioner within the period prescribed for payment of the amount, the Commissioner may set off against the amount which the person has failed to pay, any amount which has become refundable to the person in terms of this Act: Provided that any outstanding debt under this Act is first set off.”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 and amended by section 65 of Act 45 of 1995, section 72 of Act 30 of 1998,

DRAFT

section 6 of Act 32 of 1999, Government Notices 540 of 1999, 1066 of 1999 and 185 of 2000, section 63 of Act 30 of 2000, section 111 of Act 74 of 2002, section 35 of Act 16 of 2004, section 93 of Act 31 of 2005, section 72 of Act 20 of 2006 and section 78 of Act 32 of 2014

19. (1) Section 105 of the Customs and Excise Act, 1964, is hereby amended—

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

“(a) interest shall be payable from such date **[and for such period]** as the Commissioner may determine by rule on any outstanding amount payable in terms of this Act, other than the outstanding amount of any penalty or forfeiture payable in terms of this Act that has been excluded by rule from interest payments;” and

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

“(e) any **[such]** interest so payable shall be calculated **[monthly and a portion of a month shall be regarded as a full month]** on the daily balance owing: Provided that as from the effective date referred to in section 926 of the Customs Control Act, 2014 (Act No. 31 of 2014), interest on any outstanding amount, including an amount outstanding on the effective date carried over from the previous day, shall be calculated on the daily balance owing and compounded at the end of each month; and”.

(2) Subsection (1)—

(a) takes effect on a date determined by the Minister by notice in the *Gazette*; and

(b) applies as from the date referred to in paragraph (a) to the calculation of interest on any outstanding amount, including an amount outstanding on that date carried over from the previous day.

Amendment of section 113 of Act 91 of 1964, as amended by section 14 of Act 57 of 1966, section 11 of Act 103 of 1972, section 5 of Act 68 of 1973, section 49 of Act 42 of 1974, section 25 of Act 86 of 1982, section 7 of Act 89 of 1983, section 31 of Act 84 of 1987, section 17 of Act 68 of 1989, section 14 of Act 105 of 1992, section 12 of Act

DRAFT

98 of 1993, section 71 of Act 45 of 1995, section 73 of Act 30 of 1998 and section 82 of Act 32 of 2014

20. (1) Section 113 of the Customs and Excise Act, 1964, is hereby amended—

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

“(b) cigarettes with a mass of more than **[2 kilograms]** 0.8 kilogram per 1 000 cigarettes;” and

(b) by the substitution for subsection (9) of the following subsection:

“(9) No person shall manufacture cigarettes the mass of the tobacco of which exceeds **[2 kilograms]** 0.8 kilogram per 1 000 cigarettes.”.

(2) Subsection (1) takes effect on the date of promulgation of this Act.

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 20 of 2006, sections 81 and 108 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008, section 33 of Act 18 of 2009, section 119 of Act 7 of 2010, section 26 of Act 8 of 2010, section 129 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 108 of Schedule 1 to that Act, section 145 of Act 22 of 2012, section 165 of Act 31 of 2013, section 95 of Act 43 of 2014, section 19 of Act 44 of 2014 and section 128 of Act 25 of 2015

21. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended—

DRAFT

(a) by the substitution for the definition of “customs controlled area”, pending its substitution by section 19(1)(c) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following definition:

“ **‘customs controlled area’** has the meaning assigned thereto in section 21A[(1A) or] (1) of the Customs and Excise Act;”;

(b) by the substitution for the definition of “customs controlled area enterprise”, pending its deletion by section 19(1)(d) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following definition:

“ **‘customs controlled area enterprise’** has the meaning assigned thereto in section 21A[(1A) or] (1) of the Customs and Excise Act;”;

(c) by the substitution for the definition of “IDZ” of the following definition:

“ **‘IDZ’ means an industrial development zone prescribed in an area designated as a Special Economic Zone in terms of section 23 or 24 of the Special Economic Zones Act] ‘Special Economic Zone’ or ‘SEZ’ has the meaning assigned thereto in section 21A(1) of the Customs and Excise Act;”;**

(d) by the deletion of the definition of “Special Economic Zone” or “SEZ”;

(e) by the substitution for the definition of “IDZ operator” of the following definition:

“ **‘IDZ operator’] ‘SEZ operator’ means an operator defined in section 1 of the Special Economic Zones Act;”.**

(2) Paragraphs (a), (b), (c) and (e) of subsection (1) are deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

(3) Paragraph (d) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67

DRAFT

of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 of 2007, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009, section 120 of Act 7 of 2010, section 131 of Act 24 of 2011, section 146 of Act 22 of 2012, section 166 of Act 31 of 2013, section 21 of Act 44 of 2014 and section 129 of Act 25 of 2015

22. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for subsection (24), pending its substitution by section 21(1)(a) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following subsection:

“(24) For the purposes of this Act, a vendor, being a customs controlled area enterprise or an **[IDZ] SEZ** operator, shall be deemed to supply goods in the course or furtherance of an enterprise where movable goods are temporarily removed from a place in a customs controlled area to a place outside the customs controlled area, situated in the Republic, if those goods are not returned to the customs controlled area within 30 days of its removal, or within a period approved in writing by the Controller: Provided that this subsection shall not apply where those movable goods are supplied by the customs controlled area enterprise or **[IDZ] SEZ** operator, prior to the expiry of the relevant prescribed time period: Provided further that this subsection shall not apply to—

(a) goods that are deemed to have been imported under paragraph (i) of the proviso to section 13(1); or

(b) goods to which section 18(10) previously applied.”;

(b) by the substitution for subsection (24) of the following subsection:

“(24) For the purposes of this Act, a vendor, being an SEZ enterprise or an **[IDZ] SEZ** operator in a customs controlled area, shall be deemed to supply goods in the course or furtherance of an enterprise where movable goods are temporarily removed from a place in a customs controlled area to a place outside the customs controlled area, situated in the Republic, if those goods are not returned to the customs controlled area within 30 days of its removal,

DRAFT

or within a period approved in writing by the customs authority: Provided that this subsection shall not apply where those movable goods are supplied by the SEZ enterprise or **[IDZ]** SEZ operator, prior to the expiry of the relevant prescribed time period:

- (a) goods that are cleared for home use in terms of the Customs Control Act; or
- (b) goods to which section 18(10) previously applied.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

(3) Paragraph (b) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007, section 29 of Act 36 of 2007, Government Notice R.1024 in Government Gazette 32664 of 30 October 2009, section 134 of Act 24 of 2011, section 169 of Act 31 of 2013, section 96 of Act 43 of 2014, section 22 of Act 44 of 2014 and section 132 of Act 25 of 2015

23. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c), pending its substitution by section 22(1)(a) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following paragraph:

“(c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or by a customs controlled area enterprise or an **[IDZ]** SEZ operator in a customs controlled area:

DRAFT

Provided that this subsection shall not apply where a ‘motor car’ as defined in section 1 is supplied to a person located in a customs controlled area;”;

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

“(c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or by an SEZ enterprise or an **[IDZ]** SEZ operator in a customs controlled area: Provided that this subsection shall not apply where a ‘motor car’ as defined in section 1 is supplied to an SEZ enterprise or an **[IDZ]** SEZ operator in a customs controlled area;”;

(c) by the substitution in subsection (1)(m), pending its substitution by section 22(1)(e) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), for the words preceding subparagraph (i) of the following words:

“a vendor supplies movable goods, (excluding any ‘motor car’ as defined in section 1), in terms of a sale or instalment credit agreement to a customs controlled area enterprise or an **[IDZ]** SEZ operator and those goods are physically delivered to that customs controlled area enterprise or **[IDZ]** SEZ operator in a customs controlled area either—”;

(d) by the substitution in subsection (1)(m) for the words preceding subparagraph (i) of the following words:

“a vendor supplies movable goods, (excluding any ‘motor car’ as defined in section 1), in terms of a sale or instalment credit agreement to an SEZ enterprise or an **[IDZ]** SEZ operator in a customs controlled area and those goods are physically delivered to that SEZ enterprise or **[IDZ]** SEZ operator in a customs controlled area either—”;

(e) by the substitution in subsection (1) for paragraph (mA), pending its substitution by section 22(1)(f) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following paragraph:

“(mA) a vendor supplies fixed property situated in a customs controlled area to a customs controlled area enterprise or an **[IDZ]** SEZ operator under any

DRAFT

agreement of sale or letting or any other agreement under which the use or permission to use such fixed property is granted;”;

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

“(mA) a vendor supplies fixed property situated in a customs controlled area to an SEZ enterprise or an [IDZ] SEZ operator under any agreement of sale or letting or any other agreement under which the use or permission to use such fixed property is granted;”;

(g) by the substitution in subsection (2) for paragraph (k), pending its substitution by section 22(1)(j) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following paragraph:

“(k) the services are physically rendered elsewhere than in the Republic or to a customs controlled area enterprise or an [IDZ] SEZ operator in a customs controlled area; or”; and

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

“(k) the services are physically rendered elsewhere than in the Republic or to an SEZ enterprise or an [IDZ] SEZ operator in a customs controlled area; or”.

(2) Paragraphs (a), (c), (e) and (g) of subsection (1) are deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

(3) Paragraphs (b), (d), (f) and (h) of subsection (1) come into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011, section 148 of Act 22 of 2012, section 173 of Act 31 of

DRAFT

2013, section 98 of Act 43 of 2014, sections 25 and 26 of Act 44 of 2014 and section 25 of Act 23 of 2015

24. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(f) the vendor, in the case where an amount is deducted from the sum of the amounts of output tax which are attributable to that period in terms of subsection (3)(c), (d), (dA), (e), (f), (g), (h), (i), (j), (k), (l), (m) or (n), is in possession of documentary proof, as is prescribed by the Commissioner, substantiating the vendor’s entitlement to the deduction at the time a return in respect of the deduction is furnished; or”;

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

“(g) **[in the case where the vendor, under such circumstances prescribed by the Commissioner, is unable to obtain any document required in terms of paragraph (a), (b), (c), (d), (e) or (f), the vendor is in possession of documentary proof, containing such information as is acceptable to the Commissioner, substantiating the vendor’s entitlement to the deduction]**

(i) a ruling issued in terms of section 41B of this Act or Chapter 7 of the Tax Administration Act confirms that the document in the vendor’s possession is acceptable for the purpose of making a deduction; and

(ii) the ruling and document are held by the vendor at the time a return in respect of the deduction is furnished: Provided that the Commissioner may only issue a ruling in terms of this paragraph if satisfied that—

(aa) the vendor has taken reasonable steps to obtain a document required in terms of paragraph (a), (b), (c), (d), (dA), (e) or (f) and is unable to obtain said document due to circumstances beyond the vendor’s control; and

(bb) no other provision of this Act can be applied to make the deduction.”;

DRAFT

(c) by the substitution in subsection (3)(n) for subparagraphs (i) and (ii), pending their substitution by section 26(1)(e) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following subparagraphs:

- “(i) those goods are returned to the customs controlled area enterprise or **[IDZ]** SEZ operator; or
- (ii) those goods are supplied by the customs controlled area enterprise or **[IDZ]** SEZ operator where those goods are supplied after the relevant prescribed time period contemplated in section 8(24):”;

(d) by the substitution in subsection (3)(n) for subparagraphs (i) and (ii) of the following subparagraphs:

- “(i) those goods are returned to the SEZ enterprise or **[IDZ]** SEZ operator in a customs controlled area; or
- (ii) those goods are supplied by the SEZ enterprise or **[IDZ]** SEZ operator in a customs controlled area where those goods are supplied after the relevant prescribed time period contemplated in section 8(24):”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2016.

(3) Paragraph (c) of subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

(4) Paragraph (d) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005, section 49 of Act 9 of 2006, section 85 of Act 20 of 2006, section 112 of Act 60 of 2008, section 123 of Act 7 of 2010, section 138 of Act 24 of 2011, section 149 of Act 22 of 2012, section 27 of Act 44 of 2014 and section 135 of Act 25 of 2015

25. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended—

DRAFT

- (a) by the substitution for subsection (10), pending its substitution by section 27(1) of the Tax Administration Laws Amendment Act, 2014 (Act No. 44 of 2014), of the following subsection:

“(10) Where—

- (a) goods or services have been supplied by a vendor at the zero rate in terms of sections 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k) to a vendor, that is a customs controlled area enterprise or an **[IDZ] SEZ** operator; or
- (b) goods have been imported into the Republic by a vendor, being a customs controlled area enterprise or an **[IDZ] SEZ** operator and those goods are exempt from tax in terms of section 13 (3),

and where a deduction of input tax would have been denied in terms of section 17(2), or to the extent that such goods or services are not wholly for consumption, use or supply within a customs controlled area in the course of making taxable supplies by that vendor, that is a customs controlled area enterprise or an **[IDZ] SEZ** operator, those goods or services shall be deemed to be supplied by the vendor concerned in the same tax period in which they were so acquired, in accordance with the formula:

$$A \times B$$

in which formula—

‘A’ represents the rate of tax levied in terms of section 7(1); and

‘B’ represents—

- (i) the cost to the vendor of the acquisition of those goods or services which were supplied to him or her in terms of sections 11 (1) (c), 11(1)(m), 11(1)(mA) or 11(2)(k); or
- (ii) the value to be placed on the importation of goods into the Republic as determined in terms of section 13(2).”; and

- (b) by the substitution for subsection (10) of the following subsection:

“(10) Where—

- (a) goods or services have been supplied by a vendor at the zero rate in terms of section 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k) to a vendor, that is an SEZ enterprise or an **[IDZ] SEZ** operator in a customs controlled area; or

DRAFT

(b) goods have been imported by a vendor, being an SEZ enterprise or an [IDZ] SEZ operator in a customs controlled area and those goods are exempt from tax in terms of section 13 (3),

and where a deduction of input tax would have been denied in terms of section 17(2), or to the extent that such goods or services are not wholly for consumption, use or supply within a customs controlled area in the course of making taxable supplies by that vendor, that is an SEZ enterprise or an [IDZ] SEZ operator, those goods or services shall be deemed to be supplied by the vendor concerned, that is an SEZ enterprise or an [IDZ] SEZ operator, in the same tax period in which they were so acquired, in accordance with the formula:

$$A \times B$$

in which formula—

‘A’ represents the rate of tax levied in terms of section 7(1); and

‘B’ represents—

- (i) the cost to the vendor, that is an SEZ enterprise or an [IDZ] SEZ operator, of the acquisition of those goods or services which were supplied to him or her in terms of section 11(1)(c), 11(1)(m), 11(1)(mA) or 11(2)(k); or
- (ii) the value to be placed on the importation of goods as determined in terms of section 13(2).”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

(3) Paragraph (b) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001, section 88 of Act 20 of 2006, section 43 of Act 61 of 2008, section 271 of Act 28 of 2011 read with paragraph 133 of Schedule 1 to that Act, section 180 of Act 31 of 2013 and section 31 of Act 44 of 2014

26. (1) Section 44 of the Value-Added Tax Act, 1991, is hereby amended—

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

DRAFT

“(1) Any amount of tax which is refundable to any vendor in terms of section 16(5) in respect of any tax period shall, to the extent that such amount has not been set off against unpaid tax in terms of section 191 of the Tax Administration Act, be refunded to the vendor by the Commissioner: Provided that the Commissioner shall not make a refund under this subsection unless, despite the provisions of section 190(4) of the Tax Administration Act, the claim for the refund is received by the Commissioner within five years after the end of the said tax period.”;

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

“(2) Subject to the provisions of subsection (3), where—

(a) any amount of tax paid by any person in terms of this Act to the Commissioner was in excess of the amount of tax that should properly have been charged under this Act; or

(b) any amount refunded to a vendor in terms of subsection (1) was less than the amount properly refundable under that subsection,

the Commissioner shall, on application by the person concerned, refund the amount of tax paid in excess or the amount by which the amount refunded was less than the amount properly refundable, as the case may be.”; and

(c) by the insertion in subsection (3) of the following paragraph:

“(a) despite section 190(4) of the Tax Administration Act, the claim for the refund of such excess amount of tax is received by the Commissioner within five years after the date upon which payment of the amount claimed to be refundable was made.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 55 of Act 89 of 1991, as amended by section 35 of Act 136 of 1992, section 38 of Act 97 of 1993, section 102 of Act 30 of 1998, section 17 of Act 10 of 2006, section 18 of Act 9 of 2007, section 37 of Act 36 of 2007 and section 271 read with paragraph 140 of Schedule 1 to Act 28 of 2011

27. Section 55 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (aB) of the following paragraph:

DRAFT

“(aB) any documentary proof required to be obtained and retained in accordance with section 16(2)(f) and (g).”

Amendment of section 86A of Act 89 of 1991, as inserted by section 176 of Act 60 of 2001 and section 106 of Act 43 of 2014

28. Section 86A of the Value-Added Tax Act, 1991, is hereby substituted—

(a) pending its substitution by section 106(1) of the Taxation Laws Amendment Bill, 2014 (Act No. 43 of 2014), by the following section:

“Provisions relating to [industrial development] special economic zones

86A. Where a provision of the Customs and Excise Act, [or] the Manufacturing Development Act, 1993 (Act No. 187 of 1993), or the Special Economic Zones Act, or a regulation made thereunder governing the administration of [industrial development] special economic zones including a matter relating to the liability for or levying of value-added tax or a refund thereof or a supply of goods or services subject to tax at the zero-rate is inconsistent or in conflict with a provision of this Act, the provision of this Act will prevail.”; and

(b) by the following section:

“Provisions relating to IDZs

86A. Where a provision of the Customs Control Act, the Manufacturing Development Act, 1993 (Act No. 187 of 1993), or the Special Economic Zones Act, or a regulation made thereunder governing the administration of [IDZs or] SEZs including a matter relating to the liability for or levying of value-added tax or a refund thereof or a supply of goods or services subject to tax at the zero-rate is inconsistent or in conflict with a provision of this Act, the provision of this Act will prevail.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

(3) Paragraph (b) of subsection (1) comes into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

DRAFT

Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R.111 in *Government Gazette* 24274 of 17 January 2003, section 189 of Act 45 of 2003, section 52 of Act 16 of 2004, section 53 of Act 16 of 2004, section 54 of Act 16 of 2004, section 55 of Act 16 of 2004, section 108 of Act 32 of 2004, section 111 of Act 31 of 2005, section 112 of Act 31 of 2005, section 113 of Act 31 of 2005, section 114 of Act 31 of 2005, section 115 of Act 31 of 2005, section 116 of Act 31 of 2005, section 117 of Act 31 of 2005, section 118 of Act 31 of 2005, section 119 of Act 31 of 2005, section 120 of Act 31 of 2005, section 121 of Act 31 of 2005, section 122 of Act 31 of 2005, section 123 of Act 31 of 2005, section 52 of Act 9 of 2006, section 53 of Act 9 of 2006, section 89 of Act 20 of 2006, section 85 of Act 8 of 2007, Government Notice R.958 in *Government Gazette* 30370 of 12 October 2007, section 107 of Act 35 of 2007, Government Notice R.766 in *Government Gazette* 32416 of 24 July 2009, section 143 of Act 24 of 2011, section 181 of Act 31 of 2013, Government Notice R.288 in *Government Gazette* 37554 of 17 April 2014 and Government Notice R.723 in *Government Gazette* 39100 of 14 August 2015

29. (1) Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution for Item 498.00 of the following item:

“498.00

IMPORTED GOODS FOR USE IN A CUSTOMS CONTROLLED AREA

NOTES:

1. Goods may only be imported and entered into a customs controlled area under this item where such goods are imported by a customs controlled area enterprise or an **[IDZ]** SEZ operator.
2. Goods may only be entered under item 498.02 by a registered SEZ operator as contemplated in rule 21A.04.

DRAFT

- 498.01/00.00/01.00 Goods that are imported into a customs controlled area by a customs controlled area enterprise
- 498.02/00.00/01.00 Goods of any description imported by a registered SEZ operator for use in the construction and maintenance of the infrastructure of a CCA in an SEZ”.

(2) Subsection (1) is deemed to have come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), came into operation.

Amendment of Arrangement of sections of Act 29 of 2008

30. The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for the Arrangement of sections of the following Arrangement of sections:

“ARRANGEMENT OF SECTIONS

Part I

Interpretation

1. Definitions

Part II

Registration

2. Registration

3. Cancellation of registration

4. Election for unincorporated body of persons

Part III

Estimates, returns, payments, adjusted estimates, refunds and records

5. Estimates, returns and payments

5A. Adjustments of estimates

6. Final return and final payment

6A. Refunds

8. Maintenance of records

DRAFT

Part V

Penalties and interest

14. Penalty for underpayment as a result of underestimation of royalty payable

16. Interest

Part VI

Miscellaneous

17. Administration of Act

19. Reporting, secrecy and disclosure

20. Regulations

21. Short title and commencement”.

Amendment of section 1 of Act 29 of 2008, as amended by section 61 of Act 18 of 2008, section 33 of Act 8 of 2010, section 271 of Act 28 of 2011 read with paragraph 183 of Schedule 1 to that Act

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

- (a) by the deletion in subsection (1) of the definition of “Commissioner”;
- (b) by the deletion in subsection (1) of the definition of “notice of assessment”; and
- (c) by the substitution in subsection (1) for the definition of “Royalty Act” of the following definition:

“ **‘Royalty Act’** means the Mineral and Petroleum Resources Royalty Act, 2008 (Act No. 28 of 2008);”; and

- (d) by the substitution in subsection (1) for the definition of “Tax Administration Act” of the following definition:

“ **‘Tax Administration Act’** means the Tax Administration Act, 2011 (Act No. 28 of 2011);”.

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Amendment of heading to Part III of Act 29 of 2008

32. Part III of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for the heading of the following heading:

“**[Payments and]** Estimates, returns, payments, adjusted estimates, refunds and records”.

Amendment of section 5 of Act 29 of 2008, as amended by section 36 of Act 8 of 2010 and section 271 of Act 28 of 2011 read with paragraph 185 of Schedule 1 to that Act

33. Section 5 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby substituted by the following section:

“**[Payments in respect of estimated royalty]** Estimates, returns and payments

5.(1) **[A]** In respect of a year of assessment a registered person must—

(a) [submit an] estimate [of] the royalty payable [in respect of a year of assessment within six months after the first day of that year];

(b) submit a return of that estimate in the form and manner prescribed by the Commissioner; and

(c) [must] make a first payment [(together with a return for that payment)] equal to one-half of the amount of the royalty so estimated, within six months after the first day of that year of assessment.

(2) **[A]** In respect of a year of assessment a registered person must—

(a) [submit an] estimate [of] the royalty payable [in respect of a year of assessment by the last day of that year];

(b) submit a return of that estimate in the form and manner prescribed by the Commissioner; and

(c) [submit] make a second payment [(together with a return for that payment)] equal to the amount of the royalty so estimated less the amount paid as mentioned in subsection (1), by the last day of that year of assessment.”.

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Insertion of section 5A in Act 29 of 2008

34. The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the insertion after section 5 of the following section:

“Adjustments of estimates

5A. (1) The Commissioner may require a registered person to justify any estimate of the royalty payable by that person as mentioned in section 5 or to furnish particulars in respect of that estimate and, if the Commissioner is dissatisfied with the amount of that estimate, the Commissioner may increase the amount of the estimate to an amount that the Commissioner considers reasonable.

(2) If a registered person fails to submit an estimate as required by section 5, the Commissioner may estimate the amount of the royalty payable.

(3)(a) Any estimate made by the Commissioner under subsection (1) or (2) is deemed to take effect in respect of the year of assessment within which the royalty so estimated is required to be paid in terms of section 5.

(b) Any additional amount of royalty payable as a result of the increase or estimate referred to in subsection (1) or (2) must be paid within 30 days after the issue of a notice of assessment referred to in section 96 of the Tax Administration Act in respect of that additional assessment.

(4) Subject to subsection (2), if a registered person fails to submit an estimate of the royalty payable in respect of a year of assessment within four months after the last day of the period referred to in section 5(1) or (2), that registered person is regarded as having submitted an estimate of an amount of nil royalty payable.”.

Amendment of section 6 of Act 29 of 2008, as amended by section 28 of Act 39 of 2013

35. Section 6 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby substituted by the following section:

“[Submission of] Final return and final payment

6. (1) A registered person must submit a final return to the Commissioner for the royalty payable in respect of a year of assessment[—

DRAFT

- (a) in the case of a company as defined in section 1 of the Income Tax Act, within 12 months from the date on which its financial year ends;
or
- (b) in the case of any other person,] within [12] six months after the last day of that year of assessment.

(2) If the amount of the royalty [mentioned in subsection (1), that is] payable in respect of a year of assessment exceeds the sum of the [two] payments made [as mentioned in section] in terms of sections 5(1) and (2) and 5A, that excess must be paid within six months after the last day of that year of assessment.”.

Insertion of section 6A in Act 29 of 2008

36. The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the insertion after section 6 of the following section:

“Refunds

6A. If in respect of a year of assessment the amount of the royalty payable is less than the sum of the payments made by that registered person in terms of sections 5(1) and (2) and 5A, the excess must be refunded by the Commissioner to that registered person under Chapter 13 of the Tax Administration Act.”.

Amendment of section 8 of Act 29 of 2008, as amended by section 271 of Act 28 of 2011 read with paragraph 187 of Schedule 1 to that Act

37. Section 8 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby substituted by the following section:

“Maintenance of records

8. [(1)] In addition to the records required under the Tax Administration Act, a registered person must retain the following records[—] in respect of mineral resources extracted from within the Republic:

- (a) particulars of ‘earnings before interest and taxes’ as mentioned in section 5 of the Royalty Act with sufficient detail to identify all the gross sales, income and allowable deductions in respect of those earnings;

DRAFT

- (b) particulars of “gross sales” as mentioned in section 6 of the Royalty Act with sufficient detail to identify all transferred mineral resources in respect of those gross sales and the persons acquiring those transferred mineral resources;
- (c) the quantity of mineral resources resources—
 - (i) extracted but not transferred; and
 - (ii) **[those]** transferred,by that registered person with sufficient detail to identify **[those]** the mineral resources extracted but not transferred and **[transferred]** the mineral resources transferred;
- (d) the accounting income with sufficient detail to identify the ‘earnings before interest and taxes’ as mentioned in section 5 of the Royalty Act that relate to that accounting income;
- (e) any ledger, cash book, journal, cheque book, bank statement, deposit slip, paid cheque, invoice, other book of account or financial statement; and
- (f) any information specifically required by the Commissioner by public notice.”.

Repeal of Part IV of Act 29 of 2008

38. The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the repeal of Part IV.

Amendment of heading to Part V of Act 29 of 2008

39. Part V of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for the heading of the following heading:

“[Refunds, penalty] Penalties and interest”.

Amendment of section 14 of Act 29 of 2008, as amended by section 37 of Act 8 of 2010 and section 32 of Act 23 of 2015

40. Section 14 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—

DRAFT

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

“Penalty for underpayment as a result of underestimation of royalty payable”;

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

“(1) If in respect of a year of assessment the royalty **[mentioned in section 6(1) in respect of a year of assessment]** payable exceeds the amount paid **[as mentioned in section 5 in respect of that year]** and that excess is greater than 20 per cent of the royalty **[mentioned in section 6(1)]** payable, the Commissioner **[may]** must impose a penalty, which is regarded as a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, that may not exceed 20 per cent of that excess.”; and

(c) by the addition after subsection (3) of the following subsection:

“(4) If—

(a) a registered person is regarded under section 5A(4) as having submitted an estimate of an amount of nil royalty payable due to a failure to submit an estimate within four months after the last day of the period referred to in section 5(1) or (2); and

(b) the Commissioner is satisfied that the failure was not due to an intent to evade or postpone the payment of the royalty, the Commissioner may remit the whole or any part of a penalty imposed under subsection (1).”.

Repeal of section 15 of Act 29 of 2008

41. The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the repeal of section 15.

Amendment of section 16 of Act 29 of 2008, as repealed by section 271 of Act 28 of 2011 read with paragraph 189 of Schedule 1 to that Act

42. Section 16 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—

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

DRAFT

“(1) The Commissioner must pay interest **[calculated on a monthly basis]** in accordance with the provisions contained in Chapter 12 of the Tax Administration Act in respect of an amount or royalty paid to the extent that that amount exceeds—

- (a) in the case where that amount was paid in respect of a notice of assessment, the amount so assessed; or
- (b) in any other case, the amount of royalty properly chargeable under the Royalty Act[,

if that excess is not refunded within 30 days after the later of—

- (i) the date which is six months after the last day of a year of assessment in respect of which the royalty giving rise to that excess is required to be paid as mentioned in section 6; or**
- (ii) the date of receipt of a refund claim mentioned in section 13 in respect of that excess].”;**

(b) by the substitution for subsection (2) of the following section:

“(2) A registered person must pay interest **[calculated on a monthly basis]** in accordance with the provisions contained in Chapter 12 of the Tax Administration Act—

- (a) in respect of so much of the estimated amount that must be paid **[as mentioned]** in terms of section 5(1) or 5A as is not paid on the day by which that payment was required to be made **[in respect of the six months after the first day that that estimated payment is due];**
- (b) in respect of so much of the estimated amount that must be paid **[as mentioned]** in terms of section 5(2) or 5A as is not paid on the day by which that payment was required to be made **[in respect of the six months after the first day that that estimated payment is due]; [or] and**
- (c) in respect of so much of the amount that must be paid **[as mentioned]** in terms of section 6 or under an additional estimate, other than an assessment under section 5A, issued by the Commissioner as is not paid on the day by which that payment was required to be made **[in respect of any period after the first day that that payment is due].”;** and

(c) by the deletion of subsection (3).

DRAFT

Repeal of section 18A of Act 29 of 2008

43. The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the repeal of section 18A.

Amendment of section 19 of Act 29 of 2008, as amended by section 38 of Act 8 of 2010, section 33 of Act 21 of 2012 and section 29 of Act 39 of 2013

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

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

“Reporting, secrecy and disclosure”; and

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

“(3) Every person employed or engaged as contemplated in subsection (2) must, before acting under this section, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of **[fidelity or]** secrecy as may be prescribed.”.

Amendment of section 1 of Act 28 of 2011, as amended by section 36 of Act 21 of 2012, section 30 of Act 39 of 2013, section 37 of Act 44 of 2014 and section 33 of Act 23 of 2015

45. Section 1 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of “SARS official” of the following definition:

“ **‘SARS official’** means—

- (a) the Commissioner[.,,];
- (b) an employee of SARS; or
- (c) a person contracted or engaged by SARS, other than an external legal representative, 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;”.

DRAFT

Amendment of section 11 of Act 28 of 2011, as amended by section 40 of Act 21 of 2012, section 33 of Act 39 of 2013 and section 36 of Act 23 of 2015

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

“(3) **[A]** An amount due or payable as a result of a 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 and]** must be paid to **[SARS despite any law to the contrary]** the National Revenue Fund.”.

Amendment of section 14 of Act 28 of 2011

47. Section 14 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister must appoint a person as Tax Ombud—
(a) for a term of **[three]** five years, which term may be renewed; and
(b) under such conditions regarding remuneration and allowances as the Minister may determine.”.

Amendment of section 15 of Act 28 of 2011

48. Section 15 of the Tax Administration Act, 2011, is hereby amended—

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

“(1) The Tax Ombud must employ the staff of the office of the Tax Ombud **[must be employed]** in terms of the SARS Act **[and be seconded to the office of the Tax Ombud at the request of the Tax Ombud in consultation with the Commissioner].**”; and

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

“(4) The expenditure connected with the functions of the office of the Tax Ombud is paid out of the funds of SARS, in accordance with the budget approved by the Minister for that office.”.

DRAFT

Amendment of section 16 of Act 28 of 2011

49. Section 16 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The mandate of the Tax Ombud is to—
- (a) review and address any complaint by a taxpayer regarding a service matter or a procedural or administrative matter arising from the application of the provisions of a tax Act by SARS; and
 - (b) review, at the request of the Minister, any systemic and emerging issue related to a service matter or the application of the provisions of this Act or procedural or administrative provisions of a tax Act.”.

Amendment of section 20 of Act 28 of 2011

50. Section 20 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Tax Ombud’s recommendations are not binding on **[taxpayers]** a taxpayer or SARS, but if not accepted by a taxpayer or SARS, reasons for such decision must be provided to the Tax Ombud and may be included by the Tax Ombud in a report to the Minister or the Commissioner under section 19.”.

Amendment of section 69 of Act 28 of 2011

51. Section 69(8) of the Tax Administration Act, 2011, is hereby amended by the deletion of the word “and” after paragraph (c), the substitution for the full stop after paragraph (d) of the expression “; and” and the addition of the following paragraph:

- “(e) a list of approved pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds for purposes of the provisions of section 3(5) of the Income Tax Act.”.

Amendment of section 97 of Act 28 of 2011

52. Section 97 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (4) of the following subsection:

DRAFT

“(4) The record of an assessment, including the return or records on which it was based, whether in electronic format or otherwise, may be destroyed by SARS after **[five]** seven years from the date of assessment or the expiration of a further period that may be required—

(a) by the Auditor-General;

(b) as a result of the application of section 99(2)(c); or

(c) for purposes of a verification, audit or investigation under Chapter 5 or a dispute under Chapter 9.”.

Amendment of section 99 of Act 28 of 2011, as amended by section 59 of Act 21 of 2012, section 47 of Act 39 of 2013 and section 51 of Act 23 of 2015

53. Section 99 of the Tax Administration Act, 2011, is hereby amended by the addition in subsection (2)(d) of the word “or” at the end of subparagraph (i) and the deletion of subparagraph (ii).

Amendment of section 100 of Act 28 of 2011

54. Section 100 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) does not prevent SARS from making an additional assessment, but in respect of an amount of tax that has been dealt with in a disputed assessment referred to in—

(a) subsection (1)(d), (e) and (f), SARS may only make an additional assessment under the circumstances referred to in section 99(2)(a) and (b) if the relevant period under section 99(1)(a), (b) or (c) has expired; and

(b) subsection (1)(g), SARS may not make an additional assessment.”.

Amendment of section 104 of Act 28 of 2011

55. Section 104 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

DRAFT

“(a) for a period exceeding **[21]** 30 business days, unless a senior SARS official is satisfied that exceptional circumstances exist which gave rise to the delay in lodging the objection.”.

Amendment of section 118 of Act 28 of 2011, as amended by section 51 of Act 39 of 2013

56. Section 118 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) if the appeal relates to **[the business of mining, be a registered engineer]** a complex matter that requires specific expertise, be a person with the necessary experience in that field of expertise; or”.

Amendment of section 151 of Act 28 of 2011

57. (1) Section 151 of the Tax Administration Act, 2011, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) a person chargeable to tax or with a tax offence;”.

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

Amendment of section 194 of Act 28 of 2011, as amended by section 54 of Act 44 of 2014

58. (1) Section 194 of the Tax Administration Act, 2011, is hereby substituted by the following section:

“**194.** Parts C and D of this Chapter apply only in respect of a tax debt owed by a ‘debtor’ if the liability to pay the tax debt is not disputed under Chapter 9 by the ‘debtor’.”.

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

DRAFT

Amendment of section 221 of Act 28 of 2011, as amended by section 74 of Act 39 of 2013

59. Section 221 of the Tax Administration Act, 2011, is hereby amended—

(a) by the insertion of the following definition:

“ ‘impermissible avoidance arrangement’ means an arrangement in respect of which Part IIA of Chapter III of the Income Tax Act is applied and includes, for purposes of this Chapter, any transaction, operation, scheme or agreement in respect of which section 73 of the Value-Added Tax Act or any other general anti-avoidance provision under a tax Act is applied;”;

(b) by the substitution for the definition of “repeat case” of the following definition:

“ ‘repeat case’ means a second or further case of any of the behaviours listed under items (i) to **[(v)] (vi)** of the understatement penalty percentage table reflected in section 223 within five years of the previous case;” and

(c) by the substitution for the definition of “understatement” of the following definition:

“ ‘understatement’ means any prejudice to SARS or the *fiscus* as a result of—

- (a) a default in rendering a return;
- (b) an omission from a return;
- (c) an incorrect statement in a return; **[or]**
- (d) if no return is required, the failure to pay the correct amount of ‘tax’**[.]**; or
- (e) an ‘impermissible avoidance arrangement’.”

Amendment of section 223 of Act 28 of 2011, as amended by section 73 of Act 21 of 2012 and section 76 of Act 39 of 2013

60. Section 223 of the Tax Administration is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The understatement penalty percentage table is as follows:

1	2	3	4	5	6
<i>Item</i>	<i>Behaviour</i>	<i>Standard case</i>	<i>If obstructive, or if it is a ‘repeat</i>	<i>Voluntary disclosure after notification</i>	<i>Voluntary disclosure before notification of</i>

DRAFT

			<i>case'</i>	<i>of audit or</i>	<i>audit or</i>
				<i>investigatio</i>	<i>investigation</i>
				<i>n</i>	
(i)	'Substantial understatement'	10%	20%	5%	0%
(ii)	Reasonable care not taken in completing return	25%	50%	15%	0%
(iii)	No reasonable grounds for 'tax position' taken	50%	75%	25%	0%
(iv)	' <u>Impermissible avoidance arrangement</u> '	<u>75%</u>	<u>100%</u>	<u>35%</u>	<u>2%</u>
[(iv)] (v)	Gross negligence	100%	125%	50%	5%
[(v)] (vi)	Intentional tax evasion	150%	200%	75%	10%"

Amendment of section 225 of Act 28 of 2011, as amended by section 64 of Act 23 of 2015

61. Section 225 of the Tax Administration Act, 2011, is hereby substituted by the following section:

"Definitions

225. In this Part, unless the context indicates otherwise, the following **[term]** terms, if in single quotation marks, **[has] have** the following **[meaning] meanings**—
'default' means the submission of inaccurate or incomplete information to SARS, or the failure to submit information or the adoption of a 'tax position', where such submission, non-submission, or adoption resulted in an understatement;
'pending audit' means, where—
(a) a taxpayer has been notified of an intended audit; or

DRAFT

(b) an application has been made for an inquiry order in terms of section 50; or

[alternative wording: an order has been granted in terms of section 51]

(c) an application has been made for a warrant in terms of section 59;

[alternative wording: a warrant has been issued in terms of section 60]

‘criminal investigation’ means a criminal investigation under Chapter 5.”.

Amendment of section 226 of Act 28 of 2011, as amended by section 65 of Act 23 of 2015

62. Section 226 of the Tax Administration Act, 2011, is hereby substituted by the following section:

“Qualification of person subject to audit or investigation for voluntary disclosure

226. (1) A person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief, unless that person is aware of a ‘pending audit’ or ‘criminal investigation’—

- (a) a audit or investigation into the affairs of the person seeking relief, which is related to the ‘default’ the person seeks to disclose; or
- (b) a[n] ‘pending audit’ or ‘criminal investigation’ that has commenced, but has not yet been concluded, which is related to the ‘default’ the person seeks to disclose.

(2) A senior SARS official may direct that a person may apply for voluntary disclosure relief, despite the provisions of subsection (1), where the official is of the view, having regard to the circumstances and ambit of the ‘pending audit’ or ‘criminal investigation’, that—

- (a) the audit or investigation is not related to the ‘default’ the person seeks to disclose;
- (b) the ‘default’ in respect of which the person wishes to apply for voluntary disclosure relief would not otherwise have been detected during the audit or investigation; and
- (c) the application would be in the interest of good management of the tax system and the best use of SARS’ resources.

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

DRAFT

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

Amendment of section 270 of Act 28 of 2011, as amended by section 86 of Act 39 of 2013 and section 65 of Act 44 of 2014

63. Section 270 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (6D) for paragraph (b) of the following paragraph:

- “(b) the Value-Added Tax Act or the Fourth Schedule to the Income Tax Act, a senior SARS official must reduce the penalty in whole if the penalty was imposed under circumstances other than the circumstances referred to in item **[(v)] (vi)** of the understatement penalty table in section 223(1).”.

Amendment of paragraph 189 of Schedule 1 to Act 28 of 2011

64. Paragraph 189 of Schedule 1 to the Tax Administration Act, 2011, is hereby substituted by the following paragraph:

“Repeal of sections 10, 11, 12[,] and 13 [and 16]

189. Sections 10, 11, 12[,] and 13 **[and 16]** of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, are hereby repealed.”.

Amendment of section 95 of Act 30 of 2014

65. Section 95 of the Customs Duty Act, 2014, is hereby amended by—

- (a) the deletion in subsection (1)(a) of subparagraph (ii); and
- (b) the deletion in subsection (2) of paragraph (b).

DRAFT

Amendment of section 171 of Act 30 of 2014

66. Section 171 of the Customs Duty Act, 2014, is hereby amended by—

(a) the insertion after subsection (1) of the following subsection:

“(1A)(a) A process in the production of goods is substantial for purposes of subsection (1) if at least the applicable percentage referred to in paragraph (b) of the production costs of those goods is represented by materials produced and labour utilised in a specific country.

(b) The applicable percentage of production cost for purposes of paragraph (a) is—

(i) the percentage as may be determined in the Customs Tariff in respect of the goods; or

(ii) 25 per cent, if no percentage is determined in terms of subparagraph (i).”;

and

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

“(3) The Commissioner may by rule prescribe the manner in which the production cost of goods must be determined for purposes of subsection (1A)(a).”.

Repeal of section 172 of Act 30 of 2014

67. Section 172 of the Customs Duty Act, 2014, is hereby repealed.

Amendment of section 175 of Act 30 of 2014

68. Section 175 of the Customs Duty Act, 2014, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If packaging in which goods are contained is regarded to have the same origin as the goods, the value of the packaging may for the purposes of section **[172] 171** be taken into account in determining the production cost of the goods, but only if the goods are ordinarily sold by retail in such packaging.”.

DRAFT

Amendment of section 1 of Act 31 of 2014, as amended by section 83 of Act 23 of 2015

69. Section 1(1) of the Customs Control Act, 2014, is hereby amended by the substitution for the definition of “international transit” or “international transit procedure” for the following definition:

“ **‘international transit’ or ‘international transit procedure’** means the customs procedure described in section 194(2) read with section 194(2A).”

Amendment of section 63 of Act 31 of 2014

70. The following section is hereby substituted for section 63 of the Customs Control Act, 2014:

“Departure reports

63.(1) The carrier operating a cross-border train in the Republic to a destination outside the Republic must report to the customs authority the departure of the train from **[each] the last** railway station in the Republic before the train leaves the Republic [where—

- (a) travellers or crew or cargo bound for a destination outside the Republic are taken on board that train; or**
- (b) a cross-border railway carriage transporting such travellers or crew or cargo is attached to that train].**

(2) A train departure report must be submitted within a timeframe as may be prescribed by rule after the departure of the train from **[a] the** railway station referred to in subsection (1).”.

Amendment of section 91 of Act 31 of 2014

71. Section 91 of the Customs Control Act, 2014, is hereby amended by the deletion in subsection (2) of paragraph (a).

DRAFT

Amendment of section 94 of Act 31 of 2014

72. Section 94 of the Customs Control Act, 2014, is hereby amended by the deletion in subsection (2) of paragraph (b).

Amendment of section 194 of Act 31 of 2014

73. Section 194 of the Customs Control Act is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) The international transit procedure is despite subsection (2) also available for electricity generated in another country which is transmitted through the Republic’s electricity grid to a third country, whether the electricity imported or a quantity of electricity equivalent to the quantity imported is exported to that third country.”.

Amendment of section 204 of Act 31 of 2014

74. Section 204 of the Customs Control Act, 2014, is hereby amended by the addition of the following subsection:

“(3)(a) This Part does not apply to the transmission of electricity under the international transit procedure as provided for in section 194(2A).
(b) Instead the Commissioner may by rule prescribe other requirements and conditions for an international transit operation involving the transmission of electricity.”.

Amendment of section 308 of Act 31 of 2014

75. Section 308 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The licensee of a storage warehouse must submit to the customs authority regular reports for such kinds or classes of goods and for such periods as may be prescribed by rule or as the customs authority may require in a specific case.”.

DRAFT

Amendment of section 576 of Act 31 of 2014

76. Section 576 of the Customs Control Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A record in terms of subsection (1)(a) must be kept in such a manner and format and must contain such information as may be **[prescribe]** prescribed by rule.”.

Amendment of section 600 of Act 31 of 2014, as amended by section 122 of Act 23 of 2015

77. Section 600 of the Customs Control Act, 2014, is hereby amended—

- (a) by the deletion of the word “and” at the end of paragraph (b);
- (b) by the substitution for the full stop at the end of paragraph (c) of the expression “; and” and
- (c) by the addition of the following paragraphs:
 - “(d) the manner in and the conditions on which detained suspected counterfeit goods may be kept in a state warehouse pending a decision on the removal of the goods in terms of section 815 or any other provision applicable to counterfeit goods; and
 - (e) the provisions of this Chapter that are inappropriate for suspected counterfeit goods kept in a state warehouse and from the application of which such goods are excluded.”.

Amendment of section 626 of Act 31 of 2014, as amended by section 123 of Act 23 of 2015

78. Section 626 of the Customs Control Act, 2014, is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) exempting importers or exporters or other categories of persons referred to in paragraph (c) from any provision of this Chapter;”.

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Amendment of section 687 of Act 31 of 2014

79. Section 687 of the Customs Control Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) goods released for the temporary admission or temporary export procedure on authority of a **[CDP]** CPD or ATA carnet, from the guaranteeing association guaranteeing that carnet;”.

Amendment of section 929 of Act 31 of 2014

80. (1) Section 929 of the Customs Control Act, 2014, is hereby amended by the addition of the following subsection:

“(7) This section does not affect the application as from the effective date of section 701(2) of this Act and sections 45(2) and 76(3) of the Customs Duty Act, including the extended application of those sections in terms of section 105(2) of the Excise Duty Act, and as from the effective date interest on any outstanding amount to which those sections apply, including an amount outstanding on the effective date carried over from the previous day, must be calculated in accordance with those sections.”.

(2) Subsection (1) takes effect immediately after the Customs Control Act, 2014 (Act No. 31 of 2014), has taken effect in terms of section 944 of that Act.

Amendment of section 19 of Act 44 of 2014

81. (1) Section 19 of the Tax Administration Laws Amendment Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsections:

“(2) Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), **[(i), (j),]** (l), (m), **[(n),]** (o) and (p) of subsection (1) come into operation on the date on which the Customs Control Act, 2014 (Act No. 31 of 2014), takes effect.

“(3) Paragraphs (i), (j) and (n) of subsection (1) come into operation on the date on which the Special Economic Zones Act, 2014 (Act No. 16 of 2014), comes into operation.”.

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(2) Subsection (1) is deemed to have come into operation on 20 January 2015.

Short title and commencement

82. (1) This Act is called the Tax Administration Laws Amendment Act, 2016.

(2) Subject to subsections (3) and (4), 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.

(3) The amendments to the Customs Duty Act, 2014, take effect immediately after the Customs Duty Act, 2014, has taken effect in terms of section 229 of that Act.

(4) The amendments to the Customs Control Act, 2014, take effect immediately after the Customs Control Act, 2014, has taken effect in terms of section 944(1) of that Act.