MEMORANDUM ON THE OBJECTS OF THE TAXATION LAWS SECOND AMENDMENT BILL, 2009

1. PURPOSE OF BILL

1.1 The Bill amends administrative provisions of the Transfer Duty Act, 1949 (Act No. 40 of 1949), the Estate Duty Act, 1955 (Act No 45 of 1955), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No 91 of 1964), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Skills Development Levies Act, 1999 (Act No 9 of 1999), the Unemployment Insurance Contributions Act, 2002 (Act No 4 of 2002), the Diamond Levy (Administration) Act, 2007 (Act No 14 of 2007), the Securities Transfer Tax Act, 2007 (Act No. 2 of 2007), and the Mineral and Petroleum Resources Royalty (Administration) Act (Act No. 29 of 2008).

2. OBJECTS OF BILL

2.1: Allocation of payments received in terms of Acts administered by the Commissioner for the South African Revenue Service

The Bill seeks to enable SARS to apply a new payment allocation rule that generally sets payments off against the oldest outstanding debt.

2.2: Transfer Duty Act, 1949: Amendment of section 2

In 2009, the legislative process will change from producing a dual set of tax bills (i.e. Taxation Laws Amendment Bills & Revenue Laws Amendment Bills) to a single set of tax bills (i.e. Taxation Laws Amendment Bill and Taxation Laws Second Amendment Bill). Current law assumes that the first set of tax bills (i.e. Taxation Laws Amendment Bills) is promulgated by the President within 6 months of the Ministerial announcement of rate changes during the Budget. However, the new legislative process requires that the 6 month period mentioned above be extended. The proposed amendment assumes that the set of tax bills (i.e. Taxation Laws Amendment Bills) is to be promulgated by the President within 12 months of the Ministerial announcement of rate changes during the Budget.

2.3: Estate Duty Act, 1955: Amendment of section 9A

The time period for additional assessments will be reduced from five years down to three years to the extent that SARS issues actual assessments (i.e. falling outside a self-assessment system). The five-year rule will remain where the deemed assessment rules apply (because these rules have a similar effect to a self-assessment system).

2.4: Estate Duty Act, 1955: Amendment of section 12

The rule imposing personal as well as joint and several liability on every executor who pays over or parts with the possession or control of any property under his administration is hereby repealed. This rule is inconsistent with the underlying principle that the executor should only be liable to the extent the assets in the estate are subject to the executor's control. Executor liability will only extend beyond the available assets in the estate if the executor is engaged in fraud. The exception for fraud is consistent with the rules relating to fraud contained in the Administration of Estates Act, 1965.

2.5: Estate Duty Act, 1955: Repeal of section 19

The proposed repeal is consequential to the amendment of section 12 as described above.

2.6: Income Tax Act, 1962: Amendment of section 4

The proposed amendment permits SARS to provide to an employer, an employee's income tax reference number, identity number, physical or postal address and such other non-financial information as the employer may require in order to comply with its obligations in terms of the Income Tax Act, 1962.

2.7: Income Tax Act, 1962: Amendment of section 6quat

The proposed amendment aims to further simplify the income tax return process by allowing for the rounding off of foreign tax credits to the nearest rand.

2.8: Income Tax Act, 1962: Amendment of section 69

The proposed amendment requires third-party data providers to include taxpayer income tax reference numbers (which will be available in many cases due to requirements of the Financial Intelligence Centre Act, 2001), with the information they provide to SARS.

2.9: Income Tax Act, 1962: Amendment of section 70

The proposed amendment deletes provisions that have become obsolete.

2.10: Income Tax Act, 1962: Amendment of section 70A

The proposed amendment is consequential to the insertion of the definition of 'portfolio of a collective investment scheme in securities' in section 1 of the Income Tax Act, 1962.

2.11: Income Tax Act, 1962: Repeal of section 72

The proposed amendment deletes provisions that have become obsolete.

2.12: Income Tax Act, 1962: Insertion of section 73C

Provision is made for record keeping in relation to declarations for purposes of dividends tax.

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

The Income Tax Act, 1962, and the Value-Added Tax Act, 1991, do not require SARS to pay interest on the overpayment of tax when a taxpayer is required to pay a disputed amount while the amount is subject to objection, in circumstances where the objection is subsequently allowed. This non-payment of interest is arguably contrary to one of the core principles on which the constitutionality of the ''pay now argue later'' principle is based. In order to address these concerns, it is proposed that the Income Tax Act, 1962, and Value-Added Tax Act, 1991, be amended to: (i) clarify that payment is not suspended due to objection, (ii) formalise the circumstances where payment will be required despite objection, and (iii) provide for interest where a payment is made pending consideration of an objection that is ultimately allowed.

2.14: Income Tax Act, 1962: Amendment of section 88A

When the section 88A settlement procedures were introduced in 2003, the underlying assumption was that the settlement of disputes would only commence after the relevant assessment. Operational uncertainty now exists as to whether settlements may be concluded prior to assessments. It is therefore proposed that section 88A be clarified to ensure that settlement procedures are limited to post-assessment.

2.15: Income Tax Act, 1962: Amendment of section 89quin

As part of the modernisation agenda of SARS, the imposition of interest on all administered revenue will be aligned. The decision has been taken to move to the charging of compound interest instead of simple interest across all tax types. As part of the first stage of this alignment process it is proposed that the Commissioner be given the discretion to determine the method of calculation of interest in terms of the Income Tax Act, 1962, the tax types to which this new method will apply and date of implementation of this new method. It is expected that during the first phase of implementation compound interest will be made applicable to all payroll taxes (i.e. PAYE, SDL and UIF Contributions) and customs and excise, with the other taxes to follow.

2.16: Income Tax Act, 1962: Amendment of section 105A

The proposed amendment confirms that the Commissioner may lay a complaint with the controlling body to which a particular tax practitioner belongs if that tax practitioner's own tax affairs are not in order.

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

Subclause (1) (a): Public benefit organisations, recreational clubs and bodies and associations contemplated in section 10(1)*(e)* of the Income Tax Act are all subject to partial taxation. This taxation typically falls on trading activities and (in some cases) on investment income. Due to this system of partial taxation, it was initially believed that these entities should be subject to provisional tax as is the case with any other taxable entity. The treatment of these entities as provisional taxpayers was delayed because of the administrative complications of taxing these entities in this way. One serious difficulty not initially envisioned was the manner in which the provisional tax should apply to amounts subject to exemption only up to a specified threshold. The required compliance systems for these entities are also too expensive and burdensome to expect timely payments. It is therefore proposed that the decision to impose provisional tax on these entities should be reversed indefinitely. Hence, even if an entity of this kind has taxable trading or investment income, no provisional tax will be payable with any tax due arising only upon the year of assessment.

Subclause (1) (b): In view of the amendments proposed by the Taxation Laws Amendment Bill, 2009 (in terms of which the ''deemed kilometre'' method for the claiming of deductions against vehicle travel allowances is to be repealed), it is proposed that the percentage of the vehicle travel allowance that will be subject to employees' tax be increased from 60 per cent to 80 per cent. The purpose of this increased percentage is to address the reality that taxpayer claims of costs relating to actual business travel will often be less than the costs based on the deemed business travel. This shortfall would result in those taxpayers having to pay tax on assessment. The 80 per cent rule prevents significant under-withholding should these circumstances arise.

Subclause (1) (c): The proposed amendment explicitly requires monthly withholding for maintenance payments deducted from minimum individual reserves of retirement funds.

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

Subclause (1) (a): The proposed amendment is consequential to changes in the numbering of paragraph 2 of the Second Schedule to the Income Tax Act as a result of amendments proposed by the Taxation Laws Amendment Bill, 2009.

Subclauses (1) (b) and *(1) (c)*: The proposed amendment provides a deduction for any retirement annuity fund contribution in the hands of an employee even if paid by the employer on the employee's behalf. In effect, the tax system will be neutral as to who makes the retirement contribution. If the employee receives a salary and makes a contribution, the salary is part of gross income with an allowable deduction for employee contributions. If the employer directly pays the contribution on the employee's behalf, the contribution is again part of gross income (as a taxable fringe benefit) for the employee, and the employee will remain eligible to deduct the contribution. Moreover, it is proposed that such contributions be fully taken into account for pay-as-you-earn withholding.

2.19: Income Tax Act, 1962: Amendment of paragraph 5 of the Fourth Schedule

Subclause (a): The proposed amendment clarifies existing wording.

Subclause (b): Where an employer settles the outstanding employees' tax in terms of paragraph 5(1), that employer's personal liability is extinguished. The proposed insertion of paragraph (1A) makes it clear that the employer's liability (agent liability) in terms of paragraph 2(1) is extinguished by the payment made by the employer in terms of paragraph 5(1) and effectively eliminates any dual liability i.e. ensures that the principal liability is extinguished if employer pays in terms of personal liability. Hence a payment made in terms of paragraph 5(1) relates back to the principal liability in terms of par 2(1) which bears interest from due date to date of payment.

Subclause (c): The proposed amendment clarifies that the payment made by the employer in terms of paragraph 5(1) and which is not recovered from the employee is, as far as the employer is concerned, regarded as a penalty for purposes of section 23(*d*) and hence not deductible by that employer.

2.20: Income Tax Act, 1962: Amendment of paragraph 9 of the Fourth Schedule

Transfers between retirement savings vehicles in terms of section 14 of the Pension Funds Act are generally exempt from pay-as-you-earn withholding. However, transfers from pension (or from pension preservation) to provident funds are subject to pay-as-you-earn withholding because funds are moving to less restrictive forms of savings.

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

Subclause (a): The proposed amendment requires the employer to maintain certain employee data and to report this data as required.

Subclause (b): The proposed amendment requires an employer, together with payment of any amount of PAYE, to submit a declaration containing such information as the Commissioner may prescribe.

Subclause (c): The proposed amendment enables the Commissioner to request employer reconciliations of employees' tax more frequently than once a year. The obligation to provide employer reconciliations will also be extended to skills development levies and UIF contributions.

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

Subclause (a): The proposed amendment provides that a person over the age of 65 is exempt from provisional tax where that person's taxable income for a particular year of assessment does not exceed the amount of R120 000.

Subclause (b): The proposed amendment deletes wording that has become obsolete.

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

The basic amount (for both first and second provisional tax payments) will be increased by 8% a year if the basic amount is in respect of a year of assessment that ended more than a year before the provisional tax estimate is due.

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

A concern has arisen that less sophisticated taxpayers may not always be able to adequately estimate their taxable income for purposes of the second provisional tax payment as contemplated in paragraph 20 of the Fourth Schedule. These taxpayers will then be subject to a 20% penalty on underestimates unless they can satisfy the Commissioner that the estimates were not negligently or deliberately understated and were seriously

calculated. In order to address this concern, a two tier model is proposed for the short to medium term.

Tier one—Smaller taxpayers

This tier largely reverts to the pre-2008 basis whereby an estimate of taxable income for the second provisional tax payment will not attract a penalty if the estimate is at least equal to the lesser of the basic amount or 90% of actual taxable income for the year. If the estimated amount does not reach this level, an automatic penalty of 20% of the shortfall is imposed. The taxpayer may approach SARS for a full or partial reduction of the penalty if the estimate ''was seriously calculated with due regard to the factors having a bearing thereon or was not deliberately or negligently understated''.

Tier two—Larger taxpayers

This tier retains the current basis whereby an estimate of taxable income for the second provisional tax payment will not attract a penalty if it is at least equal to 80% of actual taxable income for the year. If the estimate does not reach this level, SARS may impose a penalty of up to 20% of the shortfall if SARS is not satisfied that the estimate was ''seriously calculated with due regard to the factors having a bearing thereon or was not deliberately or negligently understated''. In other words the penalty becomes a discretionary penalty to address concerns that have been expressed about the impact of an automatic penalty on financial disclosure.

In order to determine in which tier a particular taxpayer will fall, the taxable income of that taxpayer for the current year will be used. Taxpayers with a taxable income up to R1 million will fall into tier one and taxpayer with a taxable income over R1 million will fall into tier two.

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

The Customs and Excise Act, 1964, currently empowers only the Commissioner or an officer or person to withdraw or amend a decision made by such officer or person. The amendment extends the power to withdraw or amend any decision made by such officer to the supervisor of that officer.

The amendment also provides that an aggrieved person must submit a request to withdraw or amend a decision within a period to be specified by rule. If such request is not received within the specified period the aggrieved person must, for the purpose of reconsideration of the matter concerned in terms of this Act, follow the procedure provided for in Chapter XA. Provision is also made that SARS may reconsider any decision on its own initiative at any time.

The amendment or any part thereof comes into operation on a date or dates determined by the Minister by notice in the *Gazette*.

2.26: Customs and Excise Act, 1964: Amendment of section 18

The Customs and Excise Act currently requires that proof of export or removal as the case may be in respect of every transit bill of entry be submitted to the Commissioner for the duty liability of the client to cease. SARS Operations are now employing a risk based methodology by identifying high risk transit entries in respect of which proof of export or removal, as the case may be, must be submitted upon request. The amendments provide that proof be submitted only upon request by the Commissioner.

Currently the only interruptions allowed while goods are in transit are for sorting and repacking in terms of section 18(13)*(b)*.

The change in trade environment required an improved provision for interruptions in transit. This amendment extends the circumstances for interruptions while goods are in transit to include; tallying, cleaning, inspecting and sealing the goods, and the carrying out of activities directed at preserving the condition of the goods.

2.27: Customs and Excise Act, 1964: Amendment of section 18A
See paragraph 2.26 above.

2.28: Customs and Excise Act, 1964: Insertion of section 38A
The insertion of the new section 38A allows the supply of stores, spares and equipment to foreign-going ships and aircraft under cover of the issuing of a certificate, invoice or other document prescribed or approved by the Commissioner and also allows such documents to be deemed due entry and followed up with a validating bill of entry. This amendment also empowers the Commissioner to prescribe by rule any matters reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.

2.29: Customs and Excise Act, 1964: Insertion of section 75A
Section 75 of the Customs and Excise Act, 1964 does not provide for the clearance of imported goods under rebate of duty where such goods are free of duty and as a result thereof the goods could also not be entered in terms of Schedule 1 of the Value Added Tax act, 1991 to qualify for the VAT exemption. A new section 75A of the Act has now been inserted to allow the clearance of imported goods free of duty under the relevant item of Schedule 1 of the Value Added Tax Act, 1991.

2.30: Customs and Excise Act, 1964: Amendment of section 93
Section 93 provides, amongst other matters, for the mitigation or remission of penalties. In terms of the proposed amendment the Commissioner may, subject to section 3(2), mitigate or remit a penalty, or must do so as a result of the finalisation of any procedure contemplated in Chapter XA. (Chapter XA provides for internal administrative appeals, alternative dispute resolution and dispute settlement).

The amendment comes into operation on a date determined by the Minister by notice in the *Gazette*.

2.31: Customs and Excise Act, 1964: Amendment of section 105
Amendments are proposed as part of the SARS modernisation agenda to the accounting system. Section 105 of the Customs and Excise Act, 1964, is amended to provide for—

- the levying of compound interest instead of simple interest;
- the payment of interest by the Commissioner on refunds and drawbacks; and
- the deletion of the exclusion in respect of the payment of interest on penalty and forfeiture.

In terms of a further amendment proposed to section 105 the Commissioner may, subject to section 3(2), mitigate or remit interest or must do so as a result of the finalisation of any procedure contemplated in Chapter XA. The proposed amendment or any part thereof comes into operation on a date or dates determined by the Minister by notice in the *Gazette*.

2.32: Customs and Excise Act, 1964: Insertion of section 119A
The insertion of section 119A seeks to facilitate the implementation of SARS' customs modernisation programme by empowering the Commissioner to make rules to provide the necessary regulatory framework where the enabling provisions for the implementation of any part of a modernisation program are urgently required and it is not possible to timeously effect the necessary amendment to any relevant section of the Customs and Excise Act, 1964.

Subsection (2) of the proposed amendment requires that any rule made in terms of the section must be consistent with the objectives of the Act and the Commissioner may exempt the application of any rule made under the section. Subsection (3) provides that rules made under the section lapse on a specified date unless Parliament otherwise provides.

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

The proposed amendment inserts a definition of biometrical information. See paragraph 2.34 below.

2.34: Value-Added Tax Act, 1991: Amendment of section 6

The proposed amendment provides that biometrical information may not be disclosed to any person except where such biometrical information relates to, and constitutes material information for, the proving of any offence in terms of the Value-Added Tax Act, 1991, or a related common law offence. In these circumstances the Commissioner is permitted to disclose the information to the National Commissioner for the South African Police Service or the National Director of Public Prosecutions.

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

The proposed amendment provides a transitional arrangement for vendors who have acquired a business from a supplying vendor that has subsequently deregistered as a vendor. In this regard, the requirement that a tax invoice, debit or credit note be issued reflecting the name, address and VAT number of the supplier or recipient, as the case may be, will not be applicable for a period of 6 months from the date of the transaction. As a result, the tax invoice, debit or credit note may reflect the name, address and VAT registration number of the supplying vendor. This transitional arrangement allows vendors to comply with the provisions of sections 20, 21 and 16 of the VAT Act.

2.36: Value-Added Tax Act, 1991: Amendment of section 21

See paragraph 2.35 above.

2.37: Value-Added Tax Act, 1991: Amendment of section 23

In order to combat the exceptionally high levels of fictitious persons applying for VAT registration, the proposed amendment allows the Commissioner to obtain biometrical information when considering the person's application for registration as a vendor.

2.38: Value-Added Tax Act, 1991: Amendment of section 36

The Income Tax Act and VAT Act do not require SARS to pay interest on the overpayment of tax when a taxpayer is required to pay a disputed amount while the amount is subject to objection in circumstances where the objection is subsequently allowed. This non-payment of interest is arguably contrary to one of the core principles on which the constitutionality of the ''pay now argue later'' principle is based. In order to address these concerns, it is proposed that the Income Tax Act and VAT Act be amended to: (i) clarify that payment is not suspended due to objection, (ii) formalise the circumstances where payment will be required despite objection, and (iii) provide for interest where a payment is made pending consideration of an objection that is ultimately allowed.

2.39: Value-Added Tax Act, 1991: Amendment of section 39

Subclause 1 (a): Prior to the proposed amendment, a person could elect to use one of two options that were available in order to convince the Commissioner that the interest imposed on the underpayment of tax should be remitted. The proposed amendment deletes these options. Accordingly, it is proposed that a single test be used to determine whether the interest imposed should be remitted. In this regard, the Commissioner will issue an interpretation note setting out the circumstances under which interest may be remitted.

Subclause 1 (b): As part of the modernisation agenda of SARS, the imposition of interest on all administered revenue will be aligned. The decision has been taken to move to the charging of compound interest instead of simple interest across all tax types. As part of the first stage of this alignment process it is proposed that the Commissioner be given the discretion to determine the date from which and the period for which the compound interest will be payable on any outstanding amounts payable in terms of the Value-Added Tax Act, 1991.

2.40: Value-Added Tax Act, 1991: Amendment of section 41B

The proposed amendment aligns the wording with the wording of section 41A of the Value-Added Tax Act, 1991.

2.41: Value-Added Tax Act, 1991: Amendment of section 58

It is proposed that a false statement made to the Commissioner without reasonable grounds for believing that the statement is true will be regarded as an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

2.42: Skills Development Levies Act, 1999: Amendment of section 1

The proposed amendment is consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962, that will also apply within the context of the Skills Development Levies Act, from a date to be determined by the Minister of Finance.

2.43: Skills Development Levies Act, 1999: Amendment of section 6

The proposed amendment provides for the introduction of employer reconciliations for purposes of skills development levies and essentially mirrors the obligation of an employer to submit employer reconciliations of employees' tax as provided for in the Fourth Schedule to the Income Tax Act, 1962.

2.44: Skills Development Levies Act, 1999: Insertion of section 7A

The proposed amendment enables the Commissioner to estimate the amount of any levy due in terms of the Skills Development Levies Act, 1999 and essentially aligns the provisions of this Act with that of the Fourth Schedule of the Income Tax Act, 1962.

2.45: Skills Development Levies Act, 1999: Amendment of section 11

As part of the modernisation agenda for SARS, the imposition of interest on all administered revenue will be aligned. The decision has been taken to move to the charging of compound interest instead of simple interest across all tax types. As part of the first stage of this alignment process it is proposed that the Commissioner be given the discretion to determine the method of calculation of interest in terms of the Act, the tax types to which this new method will apply and date of implementation of this new method. It is expected that during the first phase of implementation compound interest will be made applicable to all payroll taxes (i.e. PAYE, SDL and UIF contributions) and customs and excise with the other taxes to follow.

2.46: Skills Development Levies Act, 1999: Amendment of section 12

The proposed amendment aligns the penalty provisions in the Skills Development Levies Act, with that of the Fourth Schedule of the Income Tax Act, 1962, by allowing for any decision by the Commissioner to impose any penalty or not to remit any penalty in terms of this section to be subject to objection and appeal.

2.47: Unemployment Insurance Contributions Act, 2002: Amendment of section 1

The proposed amendment is consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962, that will also apply within the context of the Unemployment Insurance

Contributions Act, 2002, from a date to be determined by the Minister of Finance.

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

The proposed amendment provides for the introduction of employer reconciliations for purposes of unemployment insurance contributions and essentially mirrors the obligation of an employer to submit employer reconciliations of employees' tax as provided for in the Fourth Schedule to the Income Tax Act, 1962.

2.49: Unemployment Insurance Contributions Act, 2002: Insertion of section 9A

The proposed amendment enables the Commissioner to estimate the amount of any contribution due in terms of the Unemployment Insurance Contributions Act, 2002, and essentially aligns the provisions of this Act with that of the Fourth Schedule of the Income Tax Act, 1962.

2.50: Unemployment Insurance Contributions Act, 2002: Amendment of section 12

As part of the modernisation agenda for SARS, the imposition of interest on all administered revenue will be aligned. The decision has been taken to move to the charging of compound interest instead of simple interest across all tax types. As part of the first stage of this alignment process it is proposed that the Commissioner be given the discretion to determine the method of calculation of interest in terms of the Act, the tax types to which this new method will apply and date of implementation of this new method. It is expected that during the first phase of implementation compound interest will be made applicable to all payroll taxes (i.e. PAYE, SDL and UIF contributions) and customs and excise with the other taxes to follow.

2.51: Unemployment Insurance Contributions Act, 2002: Amendment of section 13

The proposed amendment aligns the penalty provisions in the Unemployment Insurance Contributions Act, with that of the Fourth Schedule of the Income Tax Act, 1962, by allowing for any decision by the Commissioner to impose any penalty or not to remit any penalty in terms of this section to be subject to objection and appeal.

2.52: Revenue Laws Amendment Act, 2005: Repeal of section 87

The proposed amendment is consequential to the amendment of section 18 of the Customs and Excise Act, 1964. See paragraph 2.24 above.

2.53: Diamond Export Levy (Administration) Act, 2007: Amendment of section 1

The proposed amendment inserts a definition of the Customs and Excise Act, 1964, as a consequential amendment to the amendment of section 17 of the Diamond Export Levy (Administration) Act.

2.54: Diamond Export Levy (Administration) Act, 2007: Amendment of section 2

The proposed amendment shortens the registration period for persons who qualify for registration in terms of the Diamond Export Levy (Administration) Act after 1 March 2009 to 7 days instead of 60 days. The 60 day period will continue to apply to all persons who qualified for registration prior to 1 March 2009.

2.55: Diamond Export Levy (Administration) Act, 2007: Amendment of section 4

The proposed amendment provides that where the last day of the 30 day period within which the levies due in terms of this Act must be paid falls on a weekend or a public holiday, payment of such levies must be made by no later than the penultimate business day of that period.

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

In practice it has become problematic to determine the actual date and time when a transaction in terms of the Diamond Export Levy (Administration) Act, 2007, was effected. The proposed amendment provides for a discretion by the Commissioner to determine the actual date of the transaction as well as the rate that will be applied.

2.57: Diamond Export Levy (Administration) Act, 2007: Amendment of section 14

Subclause (a): The proposed amendment provides that a registered person can only obtain a refund of any levy overpaid in terms of the Diamond Export Levy (Administration) Act, if that person submits the necessary forms, documents or information in support of such refund as the Commissioner may prescribe by rule.

Subclause (b): The proposed subsection (5) seeks to refund amounts of less than R100 by means of a set-off of that amount in the assessment period immediately following the assessment period in which the claim for the refund arose. However, should no levy be payable by a registered person in the period immediately following the assessment period in which the claim arose, it would not be possible to refund the registered person in the manner originally envisaged. The amount of R100 may potentially be carried over for a number of consecutive assessment periods, hence the proposed amendment seeks to reduce the amount that may be thus carried over to R5.

2.58: Diamond Export Levy (Administration) Act, 2007: Amendment of section 15

Section 15 provides that the Commissioner or a registered person must pay simple interest in specific circumstances calculated on a monthly basis. As part of the modernization agenda for SARS, the imposition of interest on all administered revenue will be aligned. The decision has been taken to move to the charging of compound interest instead of simple interest across all tax types. This amendment will be implemented from a date to be determined by the Minister of Finance by notice in the *Gazette*.

2.59: Diamond Export Levy (Administration) Act, 2007: Amendment of section 17

Section 17 provides for the application of certain provision of the Income Tax Act, 1962, to certain diverse matters not specifically dealt with in the Diamond Export Levy (Administration) Act. It is proposed that similar provisions in the Customs and Excise Act, 1964, rather be applied in order to best align the provisions of section 17 of the Diamond Export Levy (Administration) Act, 2007, with the SARS' operational environment of customs and excise.

2.60: Securities Transfer Tax Act, 2007: Amendment of section 2

In 2009, the legislative process will change from producing a dual set of tax bills (i.e. Taxation Laws Amendment Bills & Revenue Laws Amendment Bills) to a single set of tax bills (i.e. Taxation Laws Amendment Bill and Taxation Laws Second Amendment Bill). Current law assumes that the first set of tax bills (i.e. Taxation Laws Amendment Bills) is promulgated by the President within 6 months of Ministerial announcement. However, the new legislative process requires that the 6 month period mentioned above be extended. The proposed amendment assumes that the set of tax bills (i.e. Taxation Laws Amendment Bills) is to be promulgated by the President within 12 months of Ministerial announcement.

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

The proposed amendment inserts a definition of a nonbinding private ruling for purposes of the new section 18A. See paragraph 2.62 below.

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

For administrative efficiency reasons, the proposed amendment allows affected parties that qualify for registration in terms of the Act to pre-register with the Commissioner on 1 November 2009, but by no later than 31 January 2010. Affected parties that qualify for registration in terms of the Act after 1 November 2009 have 60 days from the date of qualifying to register with the Commissioner.

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

The registration of an unincorporated body of persons for the purposes of the Mineral and Petroleum Resources Royalty Act, 2008, was too narrow. The proposed amendment deems the unincorporated body of persons (if so elected by all its members) to be a person for the entirety of both the Royalty Act and the Royalty Administration Act.

2.64: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 9

The proposed amendment aligns the wording of subsection (2) with that of subsection (1).

2.65: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Insertion of section 18A

With the impending implementation of the Mineral and Petroleum Resources Royalty Act, questions of interpretation are starting to emerge. In order to assist in this regard, it is proposed that SARS be empowered to issue nonbinding private opinions and other written statements.

2.66: Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 21

The date of coming into operation for both the Mineral and Petroleum Resources Royalty Act, 2008, and the Mineral and Petroleum Resources (Administration) Act, 2008, has been deferred from 1 May 2009 to 1 March 2010. The proposed amendment defers certain sections in both Acts for purposes of administrative efficiency.

2.67: Short title and commencement

Clause 67 provides for the name and commencement of the proposed Act.

3. CONSULTATION

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

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2009 Budget Review.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act. No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.