MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2013

1. PURPOSE OF BILL

The Bill amends administrative provisions of the Transfer Duty Act, 1949 (Act No. 40 of 1949), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), the Skills Development Levies Act, 1999 (Act No. 9 of 1999), the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), the Mineral and Petroleum Resources Royalty Act, 2008 (Act No. 28 of 2008), the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), the Mineral and Petroleum Resources Royalty Act, 2008 (Act No. 28 of 2008), the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008) and the Tax Administration Act, 2011 (Act No. 28 of 2011).

2. OBJECTS OF BILL

2.1 *Transfer Duty Act, 1949: Amendment of section 20B*

The proposed amendment is consequential to the Tax Administration Act, 2011, and provides that any decision by the Commissioner under section 20B(1) of the Act, will be subject to the dispute resolution procedures set out in Chapter 9 of the Tax Administration Act.

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

The now repealed paragraph 12(5) of the Eight Schedule to the Income Tax Act afforded the Commissioner discretion to extend the period to qualify for the exemption in respect of debt waivers in anticipation of liquidation or deregistration. This discretion is replicated in paragraph *(bb)*(A) of the proviso to paragraph 12A(6)*(e)* of the Eight Schedule. The proposed amendment replaces paragraph 12(5)*(c)*(i) with paragraph *(bb)*(A) of the proviso to paragraph 12A(6)*(e)* of the Eight Schedule.

2.3 *Income Tax Act, 1962: Amendment of section 6quat*

This section provides that for purposes of rebates or deductions in respect of foreign taxes on income, SARS has six years within which to issue an additional or reduced assessment. The proposed amendment is a technical correction to clarify that the exceptions to the prescription periods under section 99(2) of the Tax Administration Act, 2011, also apply to the period prescribed under section 6*quat*(5) of the Act.

2.4 *Income Tax Act, 1962: Amendment of section 6quin*

The term ''return'' is defined in the Tax Administration Act, 2011, to include a declaration. The proposed amendment ensures consistency between the Income Tax Act, the other tax Acts and the Tax Administration Act, 2011, so as to only use the defined term of ''return'' where mention is made of any document to be submitted to SARS that forms a basis of an assessment. The form of the return is prescribed by the Commissioner under section 25 of the Tax Administration Act.

2.5 *Income Tax Act, 1962: Amendment of section 64K*

The proposed amendment clarifies the date of submission of returns for purposes of dividends tax and further provides for returns to be submitted by persons that receive exempt dividends as specified. The additional return obligation on persons that receive exempt dividends aims to ensure that SARS has full sight of the exempt dividend flow so as to ensure that where one entity declares a dividend as being exempt it is in fact received by an exempt

beneficial owner of the dividend. This enables SARS to complete the audit trail and reconcile the dividend withholding tax flows.

2.6 ***Income Tax Act, 1962: Amendment of section 64N***

The proposed amendment is of a textual nature.

2.7 ***Income Tax Act, 1962: Amendment of paragraph 1 of Fourth Schedule***

The proposed amendment changes the word ''shareholder'' to ''holder of shares'' for purposes of style consistency. It also ensures that the reference to ''trust'' includes any member of the trust.

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

The proposed amendment is consequential to the changes effected to the deduction in respect of retirement fund contributions. See notes on REVISED CONTRIBUTION INCENTIVES FOR RETIREMENT SAVINGS in the Explanatory Memorandum to the Taxation Laws Amendment Bill, 2013.

2.9 ***Income Tax Act, 1962: Amendment of paragraph 11B of Fourth Schedule***

Paragraph 11B(6) requires a written declaration by the employee to show that he or she will be over 65 years of age on the last day of the year of assessment, before the rebate in terms of section 6(2)*(b)* will be allowed. This age verification is no longer required as SITE has been made obsolete by the increased tax threshold. For example: as the tax threshold for 2014 (with regard to persons under 65 years of age) is R67 111 and the SITE threshold is R60 000, taxpayers will never be liable for SITE and PAYE below R60 000 and the section 6(2)*(b)* rebate will not be considered, which makes verification unnecessary. The proposed amendment deletes the age verification requirement.

2.10 ***Income Tax Act, 1962: Amendment of paragraph 11C of Fourth Schedule***

Paragraph 11C(5) states that a tax certificate may be withheld by the employer until such time as PAYE paid by the employer on behalf of a director, has been repaid to the employer by the director. The EMP501 reconciliation process requires the director's tax certificate to be reconciled and submitted to SARS along with all the other employees' tax certificates. The tax certificate is then pre-populated in the director's annual return, allowing assessment to take place (which could include a refund). Hence, as a result of the pre-population of IRP5 certificates in individuals' returns, the withholding of the issue of the tax certificates to the directors is no longer required and this provision is now obsolete and, accordingly, deleted.

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

Paragraph 13(7) provides for a tax certificate to be delivered to an employee either directly or by registered post. Reference to ''registered post'' seems to exclude other delivery methods. The proposed amendment aims to provide the employer the option to deliver the certificate to the employee in another manner, for example, electronically.

2.12 ***Income Tax Act, 1962: Paragraph 17 of Fourth Schedule***

The proposed amendment deletes obsolete references.

2.13 ***Income Tax Act, 1962: Paragraph 19 of Fourth Schedule***

The proposed amendment clarifies that all lump sums (and the municipal employee anti-cash out inclusion) are excluded from PAYE withholding.

2.14 ***Income Tax Act, 1962: Paragraph 20A of Fourth Schedule***

The amendment deletes an obsolete reference.

2.15 ***Income Tax Act, 1962: Paragraph 11 of Sixth Schedule***

Paragraphs (a) and (b): In 2012, the legislative framework governing the taxation of micro businesses was changed to make provision for the payment of PAYE and VAT on a 6 monthly basis, as opposed to the normal monthly or bi-monthly regime. These measures form part of reducing the compliance burden and costs of micro businesses by simplifying and improving requirements, processes and systems used to service the small business segment. This legislative framework is now extended to include skills development levies and unemployment insurance contributions. Consistency is also ensured with regard to the due date for payment of employees' tax, as per paragraph 11(4A) of the Sixth Schedule, with regard to the seven day period after the end of the relevant tax period. The proposed amendment will apply in respect of tax periods commencing on or after 1 March 2014.

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

Section 4 is being amended pursuant to a judgment of the Western Cape High Court *(Patrick Lorenz Martin Gaertner vs The South African Revenue Service (12632/12))* in terms of which subsections 4(4)*(a)*(i) and (ii), 4(4)*(b)*, 4(5) and 4(6) of the Customs and Excise Act, 1964, were declared unconstitutional. These provisions of the Act afford very wide powers to officers to search any premises whatsoever at any time, without the requirement of a warrant. The Court suspended the effect of the order to afford Parliament an opportunity to amend section 4 to correct the constitutional defect.

The proposed amendment aims to achieve this in the following way:

- The broad principle embodied in the proposed provision is that an officer may only enter premises on authority of a warrant.

- There are however exceptions to this general rule and certain premises may be entered without a warrant: Premises licensed or registered in terms of the Act, business premises of licensed or registered persons, premises managed or operated by the State or an organ of state as part of a port, airport, railway station or land border post and premises entered with the consent of the owner or person in physical control of the premises.

- Warrantless entry to premises for which a warrant is ordinarily required is furthermore allowed in circumstances where an officer believes that a warrant would have been issued if applied for, but that the delay in obtaining a warrant is likely to defeat the purpose for which entry is sought.

- Requirements are provided for the conduct of officers when they enter and search premises in these circumstances.

- The proposed amendment also sets out the requirements for obtaining a warrant.

2.17 ***Customs and Excise Act, 1964: Insertion of section 4D***

Clause 4D is inserted in the Act to clarify SARS officers' powers relating to criminal investigations. The proposed provision affords officers the power to investigate for purposes of criminal prosecution whether an offence in terms of the Act has been committed, to lay criminal charges for the prosecution of the offence and to provide such assistance to the prosecuting authority as may be required for the prosecution of the offence.

2.18 ***Customs and Excise Act, 1964: Amendment of section 21A***

Section 21A currently provides for Customs Controlled Areas (CCA) situated in an industrial development zone (IDZ) in giving effect to provisions of the Manufacturing Development Act, 1993 (Act No. 187 of 1993) and the regulations made in terms of that Act. IDZ operators and enterprises in the CCA may import goods under rebate of duty and on which VAT is exempt.

The Special Economic Zones Bill [B 3B-2013], seeks to provide in clause 39 that the existing industrial development zones will continue, but the operator must comply with the framework regulating Special Economic Zones in terms of that Bill within three years of its commencement. However, as the Special Economic Zones Bill is not yet enacted, the proposed amendment will refer to an Act of Parliament providing for special economic zones.

In order to provide for CCAs contemplated in clause 34(1)*(b)* of the Special Economic Zones Bill, it is proposed that a new subsection is inserted in section 21A to enable the Commissioner to designate a CCA in a Special Economic Zone after consultation with any person or authority administering any activity in a special economic zone. The Commissioner is further empowered to make rules for administering the CCA. The provisions of section 21A, with the necessary changes, are also made applicable to CCAs designated for the purposes of that Act, which will enable that the duty and VAT concessions of the CCA may be extended to the CCA of the Special Economic Zone.

It is proposed that the subsection will come into operation on the date on which the Special Economic Zones Bill comes into operation.

2.19 ***Customs and Excise Act, 1964: Amendment of section 64E***

Section 64E provides for the conferral of accredited client status and requires that applicants meet certain criteria. The proposed amendment extends the current criteria applicable to customs laws and procedures to cover excise laws and procedures. It also allows the Commissioner to determine separate criteria for customs or excise clients as may be prescribed by rule. The proposed amendment promotes the SARS strategic intent of modernising excise to a risk management and segmentation approach. This will enable SARS to concentrate their resources on higher risk areas while still having control over low risk clients.

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

This proposed amendment provides, as contemplated in section 119A of the Act, for the continuation of any rule made under that section or any amendment or withdrawal of or insertion in such rule during the period 1 August 2012 to 31 August 2013.

2.21 ***Value-Added Tax Act, 1991: Amendment of section 25***

The proposed amendment is consequential to the amendment of section 27 of the Value-Added Tax Act by the Tax Administration Laws Amendment Act, 2012.

2.22 ***Value-Added Tax Act, 1991: Amendment of section 27***

The proposed amendments are consequential to the amendment of section 27 of the Value-Added Tax Act by the Tax Administration Laws Amendment Act, 2012.

2.23 ***Skills Development Levies Act, 1999: Amendment of section 6***

See the discussion in paragraph 2.15 above.

2.24 ***Unemployment Insurance Contributions Act, 2002: Amendment of section 8***

Paragraphs (a) and (b): See the discussion in paragraph 2.15 above.

2.25 ***Unemployment Insurance Contributions Act, 2002: Amendment of section 13***

See the discussion in paragraph 2.15 above.

2.26 ***Securities Transfer Tax Act, 2007: Amendment of section 9***

The proposed amendment is consequential to the Tax Administration Act, 2011, and provides that any decision of the Commissioner under section 9(1) of the Act, is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act.

2.27 ***Mineral and Petroleum Resources Royalty Act, 2008: Amendment of section 12***

The proposed amendment is consequential to the Tax Administration Act, 2011, and provides that any decision of the Commissioner under section 12(1) of the Act, is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act.

2.28 ***Mineral and Petroleum Resource Royalty (Administration) Act, 2008: Amendment of section 6***

As the payment of royalties in terms of the Act is a deductible expense for normal income tax purposes, the finalisation of the income tax return (ITR14) is dependent upon the annual royalty return (MPR3). The proposed amendment brings into line the dates of submission of the two returns i.e. 12 months after financial year end.

2.29 ***Mineral and Petroleum Resource Royalty (Administration) Act, 2008: Amendment of section 19***

The Royalty return due date is changed to match the Income Tax return date in order to ensure meaningful comparison between the two returns.

2.30 ***Tax Administration Act, 2011: Amendment of section 1***

Paragraph (a) and (d): The insertion of the definition of ‘‘outstanding tax debt’’ and proposed amendment to the definition of ‘‘tax debt’’ aims to clarify what is regarded as a ‘‘tax debt’’ and what is an ‘‘outstanding tax debt’’ recoverable under the Act. A ‘‘tax debt’’ means an amount of tax due or payable in terms of a tax Act as set out in section 169(1) of the Tax Administration Act. For example: A tax debt may be payable but not due in a situation where a tax debt is disputed, but remains payable pursuant to the pay-now-argue-later rule. However, a disputed tax debt will only be ‘‘due’’ if a tax court or higher court finally determines the dispute in favour of SARS. Conversely a tax debt may also be due but not payable, for example an understatement penalty.

The term ‘‘outstanding tax debt’’ is used in the sections assigning recovery powers to SARS i.e. it is a prerequisite before recovery proceedings may be instituted by SARS. The proposed amendment therefore clarifies that the recovery powers can be used only if an amount of tax is not paid within the prescribed period for payment.

Paragraph (b): The proposed amendment clarifies that there must be a nexus between material requested by SARS and the administration of a tax Act for purposes of which the material is required.

Paragraph (c): The proposed amendment clarifies that a return by the taxpayer only constitutes *one basis* on which an assessment by SARS is based and not the *only basis*. SARS may have multiple sources of information to determine the correct tax liability of the taxpayer. These include the taxpayer's return, third party returns such as returns regarding interest received by the taxpayer, as well as information obtained by SARS under its powers to request information. These sources of information may be used to issue an original or revised assessment.

2.31 ***Tax Administration Act, 2011: Amendment of section 3***

The proposed amendment is a technical correction.

2.32 ***Tax Administration Act, 2011: Amendment of section 10***

Under the common law a delegation is a unilateral act that does not require the written acceptance of the person so delegated to become effective. The delegation becomes effective when signed by the delegating person. The proposed amendment brings the section in line with the common law approach.

2.33 ***Tax Administration Act, 2011: Amendment of section 11***

Paragraph (a): The proposed amendment is consequential to the further proposed amendments to section 11.

Paragraph (b): The proposed amendment aims to clarify that this provision overrides the requirement under the State Attorneys Act, 1957, that such legal costs ''must'' be paid into the National Revenue Fund if recovered by the State Attorney in matters involving SARS. Legal costs are incurred by SARS from its own account and moneys recovered under an order for legal costs in favour of SARS, constitute funds of SARS and must be paid to SARS.

Prior notice of intended legal proceedings

Paragraph (c): The proposed amendment essentially seeks to avoid unnecessary and costly litigation. Prior notice of an intended court application seeks to ensure that the matter is brought to the attention of an appropriate senior official, who can use the prior notice period productively to investigate the merits of the intended application and, if appropriate, resolve a dispute before formal court proceedings. It is submitted that most parties to a dispute would prefer resolution over litigation. The opportunity afforded by the prior notice requirement to seek resolution will also lessen the burden on the court system. The prior notice requirement is ameliorated by allowing a court to waive formal compliance in extremely urgent cases.

The amendment also seeks parity between customs and excise litigation under the Customs and Excise Act, 1964, and litigation related to a tax Act administered through the Act. Under section 92 of the Customs and Excise Act legal proceedings may only be instituted against the Commissioner if prior notice of at least one month of the intended legal proceeding has been given. Furthermore, the notice must be delivered at such places as may be prescribed by rule under that Act.

Specified place of service of proceedings

No standard practice has evolved, and no clear law exists, which clarifies where court papers citing SARS are to be filed. In practice, applications have been served haphazardly on branch offices of SARS or on an Office of the

State Attorney. Although the head of SARS is the Commissioner, at SARS Head Office, SARS has not normally taken issue with the place of service. However, this has often resulted in challenges being experienced in complying with the time limitations prescribed by the court rules. Under the Act the Commissioner must be cited as respondent for purposes of any legal proceedings arising under a tax Act and not the relevant SARS branch office or SARS official.

2.34 ***Tax Administration Act, 2011: Amendment of section 25***

The proposed amendment aims to afford the Commissioner the power to require returns other than those specifically referred to in a tax Act. The scheme of the Tax Administration Act is to administer a return obligation imposed under another tax Act or the Act. A tax Act generally only imposes the obligation to submit a return, while the form and manner is prescribed under the Act. A return must contain the information prescribed by a tax Act or the Commissioner.

A return is one method of information gathering. Information requests are *ad hoc* whereas returns are much broader, apply to a category of taxpayers and are generally, but not always, required on a recurring basis. In practice, it may happen that returns other than those currently specifically required under the tax Acts are necessary to administer a tax Act, including the Tax Administration Act itself. While SARS could send out individual requests for information in some cases, this option is inappropriate when information is sought from a large number of people.

Furthermore, if the identity of persons from whom information is required is unknown, then the standard information-gathering process is inappropriate. For example, if information is required by other countries in terms of an international tax agreement, the Commissioner should be enabled to request a specific return even if it is not specifically required under a South African tax Act other than the Tax Administration Act.

If a return may only be required if specifically prescribed in a tax Act other than the Act, this will limit the use of returns for purposes of information gathering.

2.35 ***Tax Administration Act, 2011: Amendment of section 26***

As a result of a technical oversight, section 26 of the Act does not include the authority of the Commissioner to prescribe the due date for the submission of third party returns, as is done in respect of taxpayer returns in section 25(1)*(b)*. The proposed amendment corrects this technical oversight.

2.36 ***Tax Administration Act, 2011: Amendment of section 27***

The proposed amendment ensures that the power exercised in terms of this section, given the impactful nature thereof, requires the approval of a senior SARS official specifically authorised by the Commissioner for this purpose.

2.37 ***Tax Administration Act, 2011: Amendment of section 34***

The proposed amendment caters for the fact that companies may no longer use South Africa's Generally Accepted Accounting Practice (GAAP) for financial periods commencing on or after 1 December 2012.

2.38 ***Tax Administration Act, 2011: Amendment of section 46***

Extensive criminal investigative powers are assigned to SARS in the Tax Administration Act. SARS may, under the Act, complete a criminal investigation and lay a charge with the SA Police Services (''SAPS''). The

National Prosecuting Authority (''NPA'') must then determine whether to institute a prosecution.

It is evident from the Criminal Procedure Act, 1977, that the ability to require information to be provided in a prescribed manner is not limited to specific investigative authorities, such as SAPS or NPA. Sections 212 and 236 of the Criminal Procedure Act extend the general admissibility requirements of documentary evidence to criminal proceedings. In practice, affidavits are obtained during a criminal investigation, from banks for example, and then presented as evidence if criminal proceedings are instituted.

The proposed amendment will enable SARS to obtain these documents in a manner that it may be used as *prima facie* evidence to obviate the unnecessary calling of third parties as witnesses. It does not, however, empower SARS to use authority under the Criminal Procedure Act. SARS's power to request information is under section 46 of the Act, which allows SARS to direct the manner in which it may obtain information for purposes of an audit or criminal investigation, including under oath or by way of solemn declaration.

2.39 ***Tax Administration Act, 2011: Amendment of section 54***

The proposed amendment is stylistic.

2.40 ***Tax Administration Act, 2011: Amendment of section 68***

The proposed amendment is a technical correction. Given the clear prejudice to the effectiveness of SARS's audits or investigations should its verification or audit selection procedures or methods be disclosed, such information should be included under ''SARS confidential information''. SARS's audit selection methods are premised on the reality that it is impossible to audit all returns. The effective administration of the tax system presupposes that taxpayers should not know when they will be selected for an audit. At the conclusion of the audit, the taxpayer is entitled to SARS's reasons and examination methods that result in an assessment. This mirrors the protection of such information *inter alia* afforded under section 44(2)*(a)* of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

2.41 ***Tax Administration Act, 2011: Amendment of section 69***

The proposed amendment gives effect to a proposal by the Tax Practitioner Controlling Bodies to ensure that taxpayers are able to determine if the practitioner they are dealing with is a duly registered tax practitioner.

2.42 ***Tax Administration Act, 2011: Amendment of section 70***

The proposed amendment gives effect to a proposal by the Tax Practitioner Controlling Bodies to ensure that SARS may exchange information with them to verify that practitioners are both members of a Recognised Controlling Body and registered with SARS. Such disclosure would only be to the extent required to give effect to the objectives of section 240A of the Act.

2.43 ***Tax Administration Act, 2011: Amendment of section 73***

Paragraph (a): The proposed amendment is consequential to the further proposed amendments to section 73 discussed below.

Paragraph (b): The proposed amendment aims to avoid the problem that if taxpayer information obtained by SARS ''relates to a third party'', the information can in effect only be provided under the Promotion of Access of Information Act, 2000, (''PAIA'') with the consent of such third party under section 42 of that Act. Particularly in the context of auditing transactions involving several taxpayers and third parties, this is a problem when SARS uses the information to assess one or more of the taxpayers involved.

The rationale for requiring the taxpayer to apply under PAIA for information obtained by SARS from other sources, is to afford SARS the protection under that Act in respect of, for example, premature requests that may prejudice the outcome of an audit or investigation, as well as to protect information obtained from informants, information regarding SARS's audit and investigative methods and information that could frustrate the deliberative process in SARS. This typically occurs in the pre-assessment stage. However, once third party information is used to determine the tax liability of a taxpayer, SARS should be able to disclosure such information to the taxpayer in the performance of its duties without having to obtain the prior consent of third parties to whom the information also relates.

Paragraphs (c) and *(d)*: The proposed amendments are consequential to the proposed amendments to section 73 discussed above.

Paragraph (e): Section 73(1) relates to information on which the taxpayer's assessment is based. This information forms part of the reasons that SARS should provide to justify the assessment and must be given to the taxpayer as a matter of course. The taxpayer should not have to pay for copies of this information.

2.44 ***Tax Administration Act, 2011: Amendment of section 79***

The proposed amendment is contextual to make use of the proposed defined term ''outstanding tax debt''.

2.45 ***Tax Administration Act, 2011: Amendment of section 93***

The proposed amendment is a technical correction.

2.46 ***Tax Administration Act, 2011: Amendment of section 98***

In practice, erroneous assessments are often only discovered after all prescription periods and remedies have expired and it becomes apparent that it would be unreasonable and inequitable to recover the tax due under such assessments. Examples are assessments that result from fraud by a person not authorised by the taxpayer to complete or submit a return, an undisputed error by the taxpayer in a return or a processing error by SARS in making the assessment. The proposed amendments aim to address this problem by allowing for the withdrawal of assessments in specified narrow circumstances.

The proposed amendments further provide that a senior SARS official may agree with the taxpayer as to the amount of tax properly chargeable for the relevant tax period and subsequently issue a revised original, additional or reduced assessment, pursuant to such agreement, which assessment would then not be subject to objection and appeal.

2.47 ***Tax Administration Act, 2011: Amendment of section 99***

In terms of section 99 of the Act, there are certain circumstances where SARS may not make an assessment. This prohibition will not apply where *inter alia*, the assessment is necessary to give effect to the resolution of a dispute under Chapter 9 of the Act or to a judgment pursuant to an appeal under Part E of Chapter 9 of the Act, where there does not exist any right of further appeal. The proposed amendment aims to extend these grounds to include assessments made pursuant to a withdrawal in the circumstances referred to in section 98(1) of the Act.

2.48 ***Tax Administration Act, 2011: Amendment of section 103***

The proposed amendment enables the Commissioner to prescribe the form of documents required to be completed or delivered under the dispute resolution

rules which rules, in turn, are published in a regulation by the Minister of Finance.

The proposed amendment affords only a limited authority to the Commissioner to prescribe the form of documents, such as the notices of objection and appeal, required under the dispute resolution rules. It is and always has been the practice that the form of the documents used in the dispute resolution process be prescribed by the Commissioner but only within the ambit of the empowering provision. The Minister is not involved in the design of documents used for purposes of tax administration, since this is the responsibility of the Commissioner.

2.49 ***Tax Administration Act, 2011: Amendment of section 110***

The proposed amendment is a technical correction. The decisions that a tax board may make in deciding a tax appeal are similar to those of the tax court under section 129 with the necessary changes.

2.50 ***Tax Administration Act, 2011: Amendment of section 117***

The proposed amendment affords the tax court jurisdiction to hear and decide procedural matters instituted under the dispute resolution rules. It also aims to clarify the difference between interlocutory applications and applications in a procedural matter relating to a dispute under Chapter 9 of the Act and instituted under the dispute resolution rules.

2.51 ***Tax Administration Act, 2011: Amendment of section 118***

Paragraph (a): The proposed amendment is stylistic.

Paragraph (b): In practice, problems are experienced in appointing mining engineers as members of the tax court. The amendment proposes that a registered engineer with experience in the field of mining may be appointed instead, as they are more readily available.

Paragraph (c): The proposed amendment enables the president of the tax court sitting alone to deal with interlocutory and procedural matters instituted under the dispute resolution rules.

2.52 ***Tax Administration Act, 2011: Amendment of section 129***

Paragraph (a): The proposed amendment affords the tax court the jurisdiction to decide procedural matters instituted under the dispute resolution rules.

Paragraph (b): The proposed amendment clarifies that the tax court, in dealing with an appeal against the imposition of an understatement penalty, is not limited to the behavioural category in the Understatement Penalty Table initially chosen by SARS. The tax court may decide, based on the evidence, that another behavioural category in the Table is more appropriate and reduce or increase the penalty accordingly.

Paragraph (c): The proposed amendment clarifies what is the effect of the decision of the tax court in a test case designated under section 104(6) of the Act. It is not intended that the judgment by the tax court in the test case will be binding on other tax courts—it will only be binding on the taxpayers whose objections or appeals were stayed or selected for the test case.

The remedies of taxpayers who are selected but do not wish to be part of the test case will be regulated in the new dispute resolution rules to be issued under section 103 of the Act.

Taxpayers who agreed to a stay of their disputes (or have been ordered by a tax court order to stay their disputes) will be bound by a final judgment. Taxpayers

whose disputes were stayed and exercised their right to participate as co-appellant in the case, will be able to further appeal the test case. In addition, if taxpayers are of the view that the test case judgment does not apply to the facts and issues in their stayed disputes, the rules will permit the taxpayers to approach the tax court for an order to pursue their dispute independently. This is specifically catered for in the proposed amendment by the insertion of the words ''unless a tax court otherwise directs''.

2.53 ***Tax Administration Act, 2011: Amendment of section 130***

Paragraph (a): The proposed amendment is consequential to the further proposed amendments to section 130 discussed below.

Paragraph (b): The proposed amendment enables the tax court to award costs as provided for in the dispute resolution rules in a test case, interlocutory application or application in a procedural matter instituted under the rules. Under the rules, provision will also be made for costs relating to the cases stayed pending the outcome of the test case.

2.54 ***Tax Administration Act, 2011: Amendment of section 133***

The proposed amendment is a technical correction.

2.55 ***Tax Administration Act, 2011: Amendment of section 160***

The proposed amendment aims to protect a third party compelled under section 179 to pay amounts owed to or held on behalf of a tax debtor to SARS, from recovery actions by the tax debtor on this basis. It aims to ensure parity between third parties obliged to pay amounts to SARS solely under compulsion of law where the payment does not originate from wrongful conduct or from being a party to or beneficiary of dissipating actions by the tax debtor.

2.56 ***Tax Administration Act, 2011: Amendment of section 161***

The proposed amendment clarifies that the ''tax debt'' in this context is an ''outstanding tax debt'' in respect of which SARS may initiate recovery proceedings under the Act.

2.57 ***Tax Administration Act, 2011: Amendment of section 163***

Paragraph (a): A preservation order is not a recovery mechanism. SARS's recovery powers of quantified and outstanding tax debts are contained in Chapter 11 of the Act. The proposed amendment clarifies what the main purpose of a preservation order is, namely to deal with both the situation where a taxpayer subject to e.g. an audit takes steps to transfer assets to avoid payment of the tax properly chargeable *and* where the taxpayer takes such steps once there is a quantified tax liability. This is in line with the common law *Mareva injunction* remedy.

However, the fact that SARS may apply for a preservation order in respect of tax that may be due or payable, does not mean that SARS may make use of this measure to preserve assets under circumstances where it has yet to be determined that it is likely that a debt will arise. If the audit is not completed and the tax debt not yet quantified, a senior SARS official on reasonable grounds must be satisfied that tax may be due or payable.

Paragraph (b): The proposed amendment is consequential to the other proposed amendments to section 163.

Paragraph (d): The proposed amendment clarifies that ''tax'' in this context means the tax that is or may be due or payable referred to in subsection (1).

Paragraphs (c), (e), (f), (g) and *(h)*: The proposed amendments provide for the appointment of a *curator bonis* by SARS to safeguard seized assets before the granting of a preservation order under subsection (7) and the ability of the court to confirm the appointment or, if one was not appointed by SARS, order the appointment of a *curator bonis*.

2.58 ***Tax Administration Act, 2011: Amendment of section 164***

Paragraph (a): Section 164 of the Act does not apply to the undisputed part of the assessment. The proposed amendment provides that the disputed amount under an assessment may be partially suspended, rather than an all or nothing approach.

Paragraph (b): The proposed amendment is a technical correction to clarify that this subsection caters for both scenarios for suspension envisaged under subsection (2) i.e. where the taxpayer intends to object but is waiting, for example, for reasons requested under the rules or needs more time to formulate the grounds of objection, and where the taxpayer has already lodged an objection.

Paragraph (c): The proposed amendment is a technical correction.

2.59 ***Tax Administration Act, 2011: Amendment of section 165***

Paragraphs (a) to *(c)*: The proposed amendments aim to introduce more neutral terms to avoid confusion between tax liability and tax due or owed.

2.60 ***Tax Administration Act, 2011: Amendment of section 166***

The proposed amendment is contextual to make use of the defined term ‘‘tax debt’’.

2.61 ***Tax Administration Act, 2011: Amendment of section 169***

Paragraph (a): The proposed amendment is contextual to make use of the defined term ‘‘tax debt’’.

Paragraph (b): Amendment to subsection (3): The proposed amendment is a technical correction in view of the fact that an agreement under section 4(1)*(a)*(ii) of the South African Revenue Service Act, 1997, is included as a ‘‘tax Act’’ for purposes of the definition of ‘‘tax debt’’.

Amendment to subsection (4): The proposed amendment clarifies that the amount in this context is a ‘‘tax debt’’.

2.62 ***Tax Administration Act, 2011: Amendment of section 172***

The proposed amendment clarifies that the statement referred to in sub-section (2) may only be filed if the period referred to in section 164(6) has expired i.e. that recovery proceedings under this section may only be instituted in respect of an ‘‘outstanding tax debt’’.

Section 164(6) provides that during the period commencing on the day that SARS receives a request for suspension for disputed tax and ending 10 business days after the issue of SARS’ decision or revocation, no recovery proceedings may be taken unless SARS has a reasonable belief that there is a risk of dissipation of assets. If SARS does not give the notice required under section 164(6), the 10 day period does not commence and SARS cannot take any recovery proceedings. The proposed amendment clarifies that the statement referred to in subsection (2) may only be filed if the period referred to in section 164(6) has expired.

2.63 ***Tax Administration Act, 2011: Amendment of section 175***

The proposed amendment is contextual to make use of the defined term ‘‘tax debt’’.

2.64 ***Tax Administration Act, 2011: Amendment of section 176***

Paragraph (a): The proposed amendment is contextual to make use of the defined term ‘‘tax debt’’ and to clarify that the new statement may include an amount of the tax debt that differs from the amount in the withdrawn statement.

Paragraph (b): The proposed amendment obliges SARS to withdraw a judgment if the relevant tax debt is satisfied, in order to assist a taxpayer in restoring financial credibility. A taxpayer must submit a withdrawal request in the prescribed form and manner.

Furthermore, a senior SARS official must be satisfied that the tax debt has been paid in full and that there are no other ‘‘outstanding tax debts’’. A debtor normally has to apply to court for rescission of a judgment and a creditor is generally under no obligation to withdraw a judgment once the debt is paid. As a departure from this general principle, this provision compels SARS to withdraw the judgment once all tax debts are paid to assist taxpayers in restoring their financial credibility. This significant additional obligation on SARS should accordingly be limited to deserving taxpayers who have *no* outstanding tax debts.

It should be noted the proposed amendment does not apply to cases where a tax debt is or was never owed. If the debt should never have existed SARS already has the power to withdraw the judgment.

2.65 ***Tax Administration Act, 2011: Amendment of section 177***

Paragraph (a): The proposed amendment clarifies that recovery proceedings under this section may only be instituted in respect of an ‘‘outstanding tax debt’’ as defined.

Paragraph (b): The proposed amendment clarifies that a separate application by SARS is not required before it may institute recovery proceedings under this section in respect of a disputed tax debt for which no suspension under section 164 was requested or exists. In pursuance of judicial economy the same court before which the proceedings are instituted decides whether leave should be given to SARS to pursue such proceedings.

2.66 ***Tax Administration Act, 2011: Amendment of section 179***

The proposed amendment clarifies that recovery proceedings under this section may only be instituted in respect of an ‘‘outstanding tax debt’’ as defined.

2.67 ***Tax Administration Act, 2011: Amendment of section 180***

The proposed amendment clarifies that an ‘‘outstanding tax debt’’ is contemplated here.

2.68 ***Tax Administration Act, 2011: Amendment of section 181***

Paragraph (a): The proposed amendment clarifies that an ‘‘outstanding tax debt’’ is contemplated here.

Paragraph (b): The proposed amendment is contextual to make use of the defined term ‘‘tax debt’’.

Paragraph (c): The proposed amendment is contextual to make use of the defined term ''tax debt''.

2.69 ***Tax Administration Act, 2011: Amendment of section 182***

The proposed amendment clarifies that an ''outstanding tax debt'' is contemplated here.

2.70 ***Tax Administration Act, 2011: Amendment of section 186***

The proposed amendment clarifies that an ''outstanding tax debt'' is contemplated here.

2.71 ***Tax Administration Act, 2011: Amendment of section 190***

The proposed amendment clarifies that an amount erroneously paid by SARS as a refund is regarded as an ''outstanding tax debt'' and recoverable by SARS as such.

2.72 ***Tax Administration Act, 2011: Amendment of section 191***

The proposed amendment clarifies that a refund may only be set off against a tax debt if no suspension request of the debt under section 164 is pending or if no suspension exists.

2.73 ***Tax Administration Act, 2011: Amendment to section 192***

Paragraph (a) and *(c)*: The proposed amendment clarifies that a ''tax debt'' is contemplated here.

Paragraph (b): The proposed amendment clarifies that an ''outstanding tax debt'' is contemplated here.

2.74 ***Tax Administration Act, 2011: Amendment of section 221***

The proposed amendment clarifies that the tax period is relevant to calculating the shortfall under section 222(3) and (4) and not *whether* there is prejudice to SARS or the *fiscus* as referred to in the definition of ''understatement''.

2.75 ***Tax Administration Act, 2011: Amendment of section 222***

Paragraph (a): Amendment of subsection (1): The proposed amendment clarifies when an ''understatement'' will not result in a penalty by excluding *bona fide* inadvertent errors. This gives effect to the announcement in this regard in the 2013 Budget Review. The proposed amendment will apply with effect from 1 October 2012, but will also apply to understatements made in a return before 1 October 2012. Due to the broad range of possible errors, the proposal to define the term ''*bona fide* inadvertent error'' has the potential to inadvertently exclude deserving cases and include undeserving cases. SARS will, however, develop guidance in this regard for the use of taxpayers and SARS officials.

Amendment of subsection (2): The purpose of the amendment is to avoid an unnecessarily onerous penalty. If more than one understatement is made in a return, the applicable behavioural category in respect of each understatement must be separately or individually determined as the behaviour may differ. For example, one understatement may result from reasonable care not taken while another may result from gross negligence. The amendment clarifies that the approach should not be to determine the net shortfall of the entire period and then apply the ''highest applicable percentage''. To follow the example above, this would mean that the higher percentage for gross negligence would apply in respect of both understatements.

Paragraph (b): This amendment follows from the amendment to the definition of ''understatement'' in section 221. See the discussion in paragraph 2.73 above.

Paragraph (c): Amendment of subsection (4): The proposed amendment removes the unnecessary and arguably circular reference to ''understatement'' in the subsection.

Amendment of subsection (5): The proposed amendment is contextual to clarify which tax rate is contemplated here.

2.76 ***Tax Administration Act, 2011: Amendment of section 223***

Paragraph (a): The proposed amendment reduces the applicable percentages of the penalty in the case of ''substantial understatements'', ''reasonable care not taken'' or ''no reasonable grounds for tax position taken''. The percentages are now more aligned with comparative tax jurisdictions where largely similar penalty regimes apply. The applicable percentages for gross negligence or intentional tax evasion remain the same. Column 5 and 6 of the understatement penalty table are amended to include the word ''investigation'' and is a correction consequently to the wording of section 229*(b)* of the Act.

Paragraph (b): The proposed amendment clarifies that for purposes of a remittance request for a ''substantial understatement penalty'', the opinion in issue must have been given by a tax practitioner that is independent from the taxpayer. Opinions by, for example, in-house tax practitioners will not qualify given their potential vested interests in such matters as in-house tax practitioners are not independent of their employers and are not subject to the same statutory or other sanctions as other practitioners. They are not required to register as tax practitioners, since they qualify for an exclusion from registration, and could legally retain their employment even if removed from the rolls of a recognised controlling body.

2.77 ***Tax Administration Act, 2011: Amendment of section 224***

The right to object and appeal against an understatement penalty, given effect to in an assessment, flows from the fact that if a taxpayer is aggrieved by the assessment the taxpayer may object under section 104. However, as a result of uncertainty in this regard, the proposed amendment clarifies that a taxpayer may object and appeal against the imposition of any understatement penalty and not only against the decision not to remit a ''substantial understatement penalty''.

2.78 ***Tax Administration Act, 2011: Amendment of section 230***

The proposed amendment clarifies that a ''tax debt'' is contemplated here.

2.79 ***Tax Administration Act, 2011: Amendment of section 231***

The proposed amendment clarifies that a ''tax debt'' is contemplated here.

2.80 ***Tax Administration Act, 2011: Amendment of section 235***

The proposed amendment clarifies that this is not an enabling but a limitation provision. Any SARS official may in the performance of their duties lay criminal charges in respect of tax offences, but in the case of tax evasion under this section only a senior SARS official may do so given the serious nature of the charge and the potential sentence upon conviction.

2.81 ***Tax Administration Act, 2011: Amendment of section 240***

Paragraphs (a) and *(b)*: The proposed amendments regarding the use of the word ''solely'' in subsection (2), aims to allow combinations between the different scenarios referred to in section 240(2)*(a)* to *(d)*, for example a person who completes returns for no consideration under paragraph *(a)* may also complete such returns under paragraph *(d)*, without having to register as a tax practitioner.

Furthermore, under the current wording persons who are under the *direct supervision* of a person who is a registered tax practitioner need not register as tax practitioners. However, the result of this according to the industry is that ''intermediate managers'' between trainees or articled clerks, for example, and a partner or director must also register as tax practitioners. The exclusion from registration for subordinates must, however, be balanced against the need to ensure that a registered tax practitioner is accountable for the actions of a subordinate.

In view of the arguable adverse practical implications of the ''direct supervision'' requirement, an amendment to replace it with the concept of acceptance of accountability by the tax practitioner assigning the completion of returns or tax advisory functions to a person or persons, is proposed. This will regard the partner or director who is a registered tax practitioner and who assigned or approved the assignment of the functions to e.g. the intermediate manager and the trainees or articled clerks, as accountable for the actions of the person or persons in performing the functions, for purposes of complaints by taxpayers or SARS to the relevant recognised controlling body.

2.82 ***Tax Administration Act, 2011: Amendment of section 240A***

Paragraph (a): The proposed amendment caters for Recognised Controlling Bodies that have both tax practitioner members and other members. The requirements under section 240A(2)*(a)* will only apply to the tax practitioner members.

Paragraph (b): The proposed amendment provides that the report by the Recognised Controlling Body must be submitted in the form prescribed by SARS.

2.83 ***Tax Administration Act, 2011: Amendment of section 242***

The term ''taxpayer information'' is a defined term. It would include information provided by both the taxpayer and the tax practitioner to SARS or obtained by SARS under its information gathering powers. It is thus subject to secrecy and the proposed amendment is required to ensure that SARS may disclose the necessary ''taxpayer information'' to a controlling body regarding the taxpayer concerned and the tax practitioner against whom the complaint is lodged.

2.84 ***Tax Administration Act, 2011: Amendment of section 246***

Paragraph (a): The public officer of a company must reside in South Africa and is responsible for all acts, matters, or things that the public officer's company must do under a tax Act. Enforcement of these duties and obligations would be impossible if the public officer does not reside in the Republic. Section 246(2) affords SARS discretion to approve a suitable public officer based on such officer's position in the relevant company. The purpose is to ensure that a suitably senior person is accountable for the tax obligations of the company, which obligations in SARS's view should preferably be dealt with at the executive or board level of a company by an official who has a say at this level.

However, the current wording does not cater for non-resident companies which are obliged to register for tax in South Africa for VAT or income tax as a result of income sourced in the country. Often these companies do not have a physical presence or employees in South Africa. To address these problems an amendment is proposed under which SARS may approve a person as public officer who is *not* a senior official or even an employee of the company *if* the person is regarded as suitable for this purpose by a senior SARS official. The suitability of the person will be determined by the seniority, status and influence of the person in the company at executive or board level. Examples are independent attorneys or accountants used or appointed by non-resident companies who have such seniority, status and influence.

Paragraph (b): The proposed amendment aims to align the terminology used in subsection (3) with that of the Companies Act, 2008.

2.85 ***Tax Administration Act, 2011: Amendment of section 256***

The proposed amendment is contextual in order to make use of the proposed definition of the term ''outstanding tax debt''.

2.86 ***Tax Administration Act, 2011: Amendment of section 270***

The drafting of the Tax Administration Bill was announced in the 2005 Budget Review as a legislative review project to incorporate into one piece of legislation certain generic administrative provisions, which were duplicated in the different tax Acts, as well as to remove redundant administrative provisions and to simplify the provisions. The administrative provisions in the different tax Acts originate from 1962 and although the provisions have been amended over the years, the tax Acts have become very fragmented and disparate provisions arose in the different tax Acts. These provisions were also outdated and not aligned with modern approaches, business, accounting and constitutional rights.

During the drafting of the Tax Administration Bill, SARS was assisted by international experts from the IMF and the constitutionality of the Bill was also reviewed by both expert constitutional counsel and the State Law Advisers who certified the Bill as constitutional.

As was made clear during the Parliamentary process when the Tax Administration Act was enacted, the general transitional approach when drafting the Tax Administration Bill was that the new Act would apply to an act, omission or proceeding taken, occurring on instituted before the commencement date—see section 270(1). This applied to the imposition of understatement penalty from the outset i.e. the commencement date of the Act. During the public commentary stage and parliamentary hearings on the Tax Administration Bill, no concerns regarding this retrospective application were raised.

To have continued these actions or proceedings under the ''old law'' would have necessitated different processes and systems in SARS into the indefinite future which would have increased the cost of tax administration substantially. It would also have defeated the legislative reform intended by the Act, in that SARS would have had to still apply the duplicatory, outdated, fragmented, disparate and unnecessarily complicated provisions, which were addressed and corrected by the Act, indefinitely.

As an exception to the general transitional approach under section 270(1), section 270(6) of the Act was enacted to allow additional tax (rather than an understatement penalty) to be imposed if the verification, audit or investigation had been completed before the Act commenced, but the assessment had not been issued. The section specified that additional tax must have been ''capable of'' being imposed, in the sense that all other requirements for the

intended imposition must have been met, before the Act commenced, but was not.

In practice, uncertainty has arisen as to whether the exception under section 270(6) has a wider application in that it means that additional tax must be imposed in respect of all returns containing understatements submitted before the commencement date of the Act. It is, furthermore, argued that if an understatement penalty cannot be imposed in respect of understatements in returns submitted before the commencement date of the Act, they will also escape additional tax on the grounds that it has been repealed. In other words, taxpayers making these understatements will not be subject to any penalty for their unacceptable behaviour.

In the light of the above, an amendment to section 270(6) is proposed to clarify that if an understatement penalty cannot be imposed, additional tax may be imposed.

Paragraph (b): Under the additional tax legislation the amount of the penalty was subject to an open-ended discretion as a taxpayer could incur a penalty anywhere between 0 to 200%. Under the Act a structured approach based on taxpayer behaviour was adopted. Both before and after the commencement date of the Act a penalty was imposed for an understatement and was and still is calculated as a percentage of the amount of the shortfall. In both cases the relevant behaviour of the taxpayer influences the amount of the penalty. Whereas the additional tax penalty scheme allowed the recognition of extenuating circumstances to reduce penalties from 200%, the Act now incorporates similar factors under broader behavioural categories namely reasonable care not taken, unreasonable tax position, gross negligence and intentional tax evasion.

However, it is accepted that clarification may be required and that there may be unanticipated consequences arising from the transitional approach adopted regarding understatement penalties. The following additional amendments are, therefore, proposed:

New subsection (6A): This amendment aims to clarify the original purpose of the exception under subsection (6), namely that additional tax may be imposed if capable of being imposed which would only be the case if the verification, audit or investigation necessary to determine the additional tax, penalty or interest had been completed before the commencement date of the Act.

New subsection (6B): The understatement penalty scheme includes a ‘‘substantial understatement penalty’’ which is strictly imposed if the shortfall resulting from an understatement amounts to the greater of five per cent of the amount of tax properly chargeable or refundable, or R1 000 000. The Act provides for the remittance of these penalties if certain requirements are met. One of the requirements for remittance is that the taxpayer must be in possession of an opinion by a registered tax practitioner, regarding the arrangement in issue that was issued by no later than the date that the relevant return was due.

As a taxpayer submitting a return before commencement of the Act was not aware of this requirement at that time, this amendment will enable taxpayers seeking remittance of a ‘‘substantial understatement penalty’’ in respect of an understatement made before the commencement date of the Act, to use an opinion obtained after the relevant return was submitted.

New subsection (6C): This amendment enables taxpayers who made voluntary disclosures before the commencement date of the Act, to qualify for relief on an understatement penalty if the audit of their affairs was concluded after the commencement date.

New subsection (6D)*(a)*: This amendment allows a senior SARS official who considers an objection by the taxpayer against an understatement penalty imposed as a result of an understatement in a return submitted in terms of the Income Tax Act, 1962, before the commencement date of the Act, to reduce the penalty in whole or in part if satisfied that there were extenuating circumstances.

New subsection (6D)*(b)*: The additional tax scheme under the Value-Added Tax Act, 1991, and the understatement penalty scheme differ in the sense that an understatement made in a value-added tax (VAT) return submitted before the commencement date of the Act will only result in additional tax if there was intent to evade tax. Under the understatement penalty scheme, a penalty may also be imposed if reasonable care was not taken, no reasonable tax position existed or gross negligence existed. In other words, the Act removes the intent requirement as the basis for the imposition of additional tax under the Value-Added Tax Act.

It is likely to be difficult for vendors to argue that had they known about the application of the understatement penalty scheme to returns submitted before commencement of the Act, they would not have been negligent in filing their VAT returns. While removing the intent requirement may create penalties that did not previously exist, it will not establish duties that, properly understood, the Value-Added Tax Act did not already impose such as the obligation to submit true and correct returns.

However, out of an abundance of caution, an amendment is proposed which provides that a senior SARS official who considers an objection by the taxpayer against an understatement penalty imposed as a result of an understatement in a VAT return submitted before the commencement of the Act, must reduce the penalty in whole if the penalty was imposed under circumstances other than the circumstances referred to in item (v) of the understatement penalty table i.e. an intent to evade tax.

Paragraphs (c) and *(d)*: The proposed amendment is a technical correction as the Act, in the context of interest, uses the term ‘‘interest payable’’.

2.87 ***Tax Administration Act, 2011: Amendment of Arrangement of Sections***

The proposed amendment is consequential to the proposed amendment to sections 11 and 224 of the Act.

2.88 ***Short title and commencement***

Clause 87 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 have been consulted in preparing the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications for the State was given in the 2013 Budget Review.

5. PARLIAMENTARY PROCEDURE

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

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

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