MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2014

1. PURPOSE OF BILL

The Bill proposes to amend administrative provisions of 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 Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007), the Tax Administration Act, 2011 (Act No. 28 of 2011), the Tax Administration Laws Amendment Act, 2012 (Act No. 21 of 2012), the Tax Administration Laws Amendment Act, 2013 (Act No. 39 of 2013), the Customs Duty Act, 2014 (Act No. 30 of 2014) and the Customs Control Act, 2014 (Act No. 31 of 2014).

2. OBJECTS OF BILL

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

The proposed amendment amends the definition of ''representative taxpayer'' to cater for a company under business rescue management in terms of Chapter 6 of the Companies Act, 2008, and whose affairs are handled by a business rescue practitioner. The business rescue practitioner is, accordingly, responsible for all acts, matters, or things that the taxpayer must do under a tax Act, and in case of default, may be subject to penalties for the taxpayer's defaults.

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

Decisions made under certain provisions of the Income Tax Act are subject to objection and appeal under section 3 of the Act. The proposed amendment adds a reference to new sections containing decisions that should also be subject to objection and appeal, i.e. section 18A(5C) and section 30C, inserted by the draft Taxation Laws Amendment Bill, 2014, and paragraph 5(2) of the Fourth Schedule to the Act.

Furthermore, the proposed amendment removes references to deleted sections or sections which no longer include a decision.

The deletion of paragraphs 20(1)*(a)* and (2), 20A(1) and (2) and 27 of the Fourth Schedule to the Income Tax Act is part of making the generic provisions of the Tax Administration Act, specifically Chapter 15, applicable to administrative non-compliance penalties imposed under any of the tax Acts. Section 220 of the Tax Administration Act, provides that a decision by SARS not to remit a penalty in whole or in part is subject to objection and appeal under Chapter 9 of that Act. Thus, a decision not to remit a penalty under paragraph 20(2) of the Fourth Schedule to the Income Tax Act is subject to objection and appeal under section 220 of the Tax Administration Act. See the further amendments to Chapter 15 of that Act proposed in this regard.

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

The proposed amendment is consequential to the deletion of section 30(9) of the Income Tax Act. See paragraph 2.4.

2.4 *Income Tax Act, 1962: Amendment of section 30*

Books of account, records or other documents relating to any approved public benefit organisation (PBO) must be retained and carefully preserved for a period of four years after the date of the last entry in any book or, if kept in electronic or any other form, for a period of four years after completion of the transactions, act or operations to which they relate. The duty to keep records under section 29 of the Tax Administration Act, is a period of five years from the date of the submission of an income tax return. The amendment proposes

to align the record-keeping requirements relating to PBOs in the Income Tax Act with the requirements of the Tax Administration Act.

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

The Tax Administration Laws Amendment Act, 2013, inserted a return obligation for persons receiving exempt dividends. Section 64K(1)*(d)* of the Income Tax Act presently requires returns when a section 64F exempt dividend is paid in cash. The amendment proposes to extend the return obligation where *in specie* dividends, exempt in terms of section 64FA of the Act, are paid or received. The provision once amended accordingly imposes a reporting obligation on a person paying a dividend or a person that receives a dividend that is exempt in terms of section 64F or section 64FA.

2.6 ***Income Tax Act, 1962: Insertion of section 64LA***

2.6.1 The amendment enables a company to claim a refund of dividends tax paid to SARS where the company had to pay the tax in respect of the distribution of dividends *in specie* as a result of being unable to obtain the declaration and written undertaking contemplated in section 64FA(1)*(a)* or (2) of the Income Tax Act.

2.6.2 For example, a listed South African corporation undertakes an unbundling exercise in terms of which the unbundled shares are distributed as assets *in specie* to its shareholders. The company is liable for the dividends tax unless the shareholder has, by the date of the distribution of the asset *in specie* submitted to the company a declaration that the dividends are exempt or that a reduced dividends tax rate can be applied. The listed corporation is not able to obtain the relevant declarations as it does not have the detailed shareholder information at hand and hence could not obtain the information by the time the transaction took place etc. As such, the listed corporation is liable for dividends tax on the asset *in specie* and, as a result of the limited application of section 64L, is not able to claim a refund of any dividends tax which would not have been payable had the corporation been in possession of the declarations. In cases where only a portion of dividends tax is not subject to tax, only a portion of the tax paid is refundable. With the introduction of the proposed new section 64LA this position is rectified, and the company will be able to claim a refund.

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

2.7.1 *Paragraph (a)* and *(b)*: The proposed amendments are consequential to the proposed amendment in paragraph *(c)*.

2.7.2 *Paragraph (c)*: In order to exempt small business funding entities from the payment of provisional tax in terms of the Fourth Schedule they need to be excluded from the definition of provisional taxpayer. The proposed amendment is consequential to the insertion of section 30C in the Income Tax Act by the Taxation Laws Amendment Bill, 2014.

2.7.3 *Paragraph (d)*: The proposed amendment amends the definition of ''representative employer'' to cater for an employer under business rescue management in terms of Chapter 6 of the Companies Act, 2008, and whose affairs are handled by a business rescue practitioner.

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

2.8.1 The amendment proposes to align the exemptions from payment of provisional tax for people 65 years or older with those of people under 65.

2.8.2 The exemption for persons over the age of 65 has been overtaken by developments in recent years. The current provision provides that the taxable income of a taxpayer who is 65 and above should not exceed R120 000. The proposed amendment provides that it should not exceed the applicable tax threshold. The tax threshold with effect from 1 March 2014 is R110 200 for a person who is 65 and above and R123 350 for a person who is 75 and above. The threshold for taxable income derived from interest, foreign dividends and fixed property rentals is also raised from R20 000 (previously only applicable to under 65s) to R30 000 for all natural persons. The effective date for this amendment is 1 March 2015 and applies to years of assessment commencing on or after that date.

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

2.9.1 *Paragraph (a)*: The proposed amendment provides that amounts contained in paragraph *(d)* of ''gross income'' (other than severance benefits) must be excluded from the basic amount due to the irregular and once-off nature of these amounts. The amendments to subsubitems *(aa)* and *(bb)* are consequential to the insertion of subsubitem *(bb*A*)* in paragraph 19(1)*(d)*(i).

2.9.2 *Paragraph (b)*: Paragraph *(b)* of the proviso to paragraph 19(1)*(d)* of the Fourth Schedule serves no purpose due to the more important 18 month test in paragraph *(a)*. It is proposed that the proviso be merged as suggested in the Bill.

2.9.3 *Paragraph (c)*: The proviso to paragraph 19(1)*(e)*(ii) is in conflict with the 14 day rule for the use of the most recent assessment for determining a basic amount. Taxpayers accessing the provisional tax function on e-Filing long before the final date of payment of provisional tax can use the basic amount generated by the system at that stage and then argue that the 14 day rule cannot be applied. In the context of e-Filing a single 14 day rule is appropriate.

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

2.10.1 *Paragraph (a)*: The heading is amended to clarify the type of penalty. See further paragraph 2.11 below.

2.10.2 *Paragraph (b)*: Paragraph 20 refers to normal tax and not *net* normal tax. In the case of an underestimation the penalty may be levied on the tax determined before deducting rebates. This needs to be rectified. The proposed amendment will have the effect that where the calculation of normal tax is to be done, tax rebates are also to be deducted.

2.10.3 *Paragraph (c)*: The proposed amendment provides that irregular and once-off payments included in ''gross income'' under paragraph *(d)* of the definition in section 1 are added to the exclusions in the proviso to paragraph 20(1).

2.10.4 *Paragraph (d)*: It has been argued that if the provisional taxpayer does not submit his or her second estimate, then the provisions of paragraph 20 do not apply. The rationale behind this argument is that paragraph 20 is based on the submitted estimate and there is no provision that provides that non-submission of the estimate would be deemed to be a nil submission. The proposed amendment aims to clarify SARS's position that where a person does not submit his or her estimate as required then that estimate is deemed to be a nil estimate. A person who does not submit the estimate at all cannot be better off than a person who did submit the estimate but underestimated his or her taxable income.

2.10.5 The insertion of subparagraph (2B) allows for the reduction of a penalty imposed under paragraph 20(1) by the amount of a penalty imposed under paragraph 27 in respect of the same provisional tax period.

2.10.6 *Paragraph (e)*: The insertion of subparagraph (2C), originally in paragraph 20A(2), allows the Commissioner to remit the whole or any part of the penalty imposed under paragraph 20(1), if the Commissioner is satisfied that the provisional taxpayer's failure to submit such an estimate timeously was not due to an intent to evade or postpone the payment of provisional tax or normal tax.

2.10.7 *Paragraph (f)*: Currently the penalty for underpayment of provisional tax as a result of underestimation of provisional tax does not apply in relation to any final or last estimate referred to in paragraph 20(1), if the Commissioner has under the provisions of paragraph 19(3) increased such final or last estimate. The proposed amendment deletes this exception and hence the penalty will now also apply where the Commissioner has increased such final or last estimate in terms of paragraph 19(3). This amendment will not require the re-opening of any assessments. The effective date for this amendment will be for years of assessment commencing on or after 1 March 2014.

2.11 ***Income Tax Act, 1962: Repeal of paragraph 20A of Fourth Schedule***

An underestimation contemplated in paragraph 20 of the Fourth Schedule may result in a penalty under both paragraphs 20(1) and 20A(1) for the same action and may be regarded as too onerous. Also, paragraph 20 has been amended to allow a reduction of a penalty under paragraph 20(1) by the amount of any penalty under paragraph 27 for the late payment of provisional tax. This approach is thus aligned with the Tax Administration Act, 2011, scheme under which a default may not be subjected to both an administrative non-compliance penalty and an understatement penalty.

2.12 ***Income Tax Act, 1962: Amendment of paragraph 24 of Fourth Schedule***

Paragraph 22 of the Fourth Schedule was repealed. The proposed amendment deletes an obsolete reference to this paragraph and effects a textual correction.

2.13 ***Income Tax Act, 1962: Amendment of paragraph 29 of Eighth Schedule***

2.13.1 *Paragraph (a)*: The provisions of this paragraph dealt with a transitional rule as far as the valuation date (1 October 2001) value of valued assets is concerned. It is partially obsolete as it is not the intention that the Commissioner will extend the date of the submission of proof of valuation to a date after the date of the first return submitted after 30 September 2004. It is proposed that the following words be deleted: ''or, if it was not submitted with that return, within such period as the Commissioner may allow if proof is submitted that the valuation was performed within the period prescribed''.

2.13.2 *Paragraph (b)*: SARS no longer requires taxpayers to submit supporting documents with their tax returns as these will be specifically requested by SARS if the taxpayer is selected for a verification of audit. The proposed amendment brings paragraph 29(6) in line with this practice. Taxpayers must, however, retain proof of valuation of assets should they wish to adopt the market value basis for determining the valuation date value of a pre-valuation date asset.

2.14 ***Customs and Excise Act, 1964: Amendment of section 43***

2.14.1 Section 43(7) of the Customs and Excise Act provides for the disposal of various goods. Paragraph *(d)* provides that no duty is payable on any goods to which the subsection relates on disposal as contemplated in paragraph *(b)* of the subsection, but any duty paid is not refundable. Section 87(1) provides for the circumstances in which goods are liable to forfeiture. In terms of a proviso to the section forfeiture does not affect liability to any other penalty or punishment which has been incurred under the Act or any other law, or liability for any unpaid duty or charge in respect of the goods.

2.14.2 The proposed amendment to paragraph *(d)* is intended to clarify that the liability for duty in terms of the proviso to section 87(1) is not included in the exemption in paragraph *(d)* for payment of duty on the goods disposed in terms of the subsection.

2.15 ***Customs and Excise Act, 1964: Amendment of section 47***

Tariff determinations may currently be requested to obtain certainty on the appropriate tariff classification and excise duty rate applicable to products. Tariff determination applications for alcoholic beverages are now made compulsory to ensure the accurate and consistent tariff treatment of these products. All alcoholic beverages, whether existing, new or altered in terms of production process, ingredients or proportion thereof, alcoholic strength or brand name, will require tariff determinations before release for home consumption or manufacture commences. Substantiating information will have to be submitted together with evidence of compliance where applicable with the Liquor Products Act, 1989 (Act No. 60 of 1989). These compulsory tariff determinations will be phased in to ease administration and facilitate industry compliance. Current tariff determinations will remain valid until their eventual reconsideration as indicated in the subsequent rules for implementation. In cases where a re-determination gives rise to a tariff re-classification with a different excise duty tax implication, the new determination will only be applied going forward. This is provided the present determination was fully complied with and the beverage concerned did not alter in any substantive way after the determination was originally granted.

2.16 ***Customs and Excise Act, 1964: Amendment of section 50***

2.16.1 Section 50 of the Customs and Excise Act provides for the exchange of information in terms of international agreements. The amendment proposes provisions for the exchange of information as well as the automatic exchange of information, which include the systematic supply of clearance information in terms of the agreement by the customs authority of the sending party to the customs authority of the receiving party in an agreed electronic or other structured format in advance of the arrival of the persons, goods or means of transport in the territory of the receiving party.

2.16.2 It now provides that any information automatically exchanged must be treated as confidential by the receiving party and may only be used for the purposes of risk analysis by the customs authority of that party except if the Commissioner in writing authorises its use for other purposes or by other authorities in terms of the provisions of the agreement regulating the exchange of such information. The disclosure of information is made subject to section 101B in which provision is made for the protection of personal information.

2.16.3 The proposed amendment also empowers the Commissioner, in respect of the automatic exchange of information, to specify conditions on which any information will be exchanged and on which it may be used for any other purpose or by any other authority and refuse the

exchange of information with a party to any agreement if the information will be afforded in the territory of that party a level of protection that does not satisfy the requirements of this Act.

2.17 ***Customs and Excise Act, 1964: Amendment of section 101B***

2.17.1 Section 101B of the Customs and Excise Act presently provides for the processing and protection of personal information of a passenger transmitted to the Commissioner as Advance Personal Information in terms of section 7A. The amendments are related to the amendments to section 50 for the exchange and automatic exchange of information in terms of international agreements.

2.17.2 *Paragraph (a)*: The amendments propose that the provisions for ''passenger'' in the section should be substituted by a provision for ''person'', which is defined as meaning a natural and juristic person, unless the context otherwise requires.

2.17.3 *Paragraph (b)*: Personal information is also defined as meaning information relating to an identified or identifiable natural person and where it is applicable an identified or identifiable juristic person.

2.17.4 *Paragraph (c)*: In terms of amendments to subsection (2), the section applies (subject to section 4(3) and other subsections of section 4, which relate to the disclosure of information) to any personal information in possession or under the control of the Commissioner.

2.17.5 *Paragraph (d)*: The amendments to subsection (3) include proposals that the Commissioner may obtain and use personal information for the administration of any other provision of the Act including any international agreement contemplated in section 50. If the personal information is provided by a party to an international agreement the Commissioner may obtain and use the information in accordance with the provisions of that agreement and section 50.

2.17.6 *Paragraph (e)* to *(p)*: See notes to paragraphs *(a)* and *(b)*.

2.17.7 Subsection (10)*(b)* provides that the Commissioner may not transfer any information to a foreign government other than in a manner contemplated in section 50, provided that the Commissioner is satisfied that the recipient of that information is subject to a law which effectively upholds principles of fair handling of personal information that are substantially similar to the information protection principles set out in the section.

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

The proposed amendment provides, as contemplated in section 119A(3) of the Act, for the continuation of any rule made under section 119A or any amendment or withdrawal of or insertion in such rule during the period 1 September 2013 up to and including 30 September 2014.

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

The Value-Added Tax Act relies to a large extent on certain provisions and procedures performed in the current Customs and Excise Act, 1964, relating to the export and import of goods. This is to ensure that the correct VAT rate or exemption is applied to exports and imports whilst aligning the rules pertaining to the time and value of exports and imports. The new Customs Control Act, 2014, and the Customs Duty Act, 2014, are to replace the existing Customs and Excise Act, 1964. This required a review and alignment of the Value-Added Tax Act, 1991, and the two new Acts. The proposed amendments in this paragraph as well as paragraphs 2.20 to 2.24, 2.26, 2.27, 2.30 and

2.34 hereunder flow from the process of review and alignment with the aforementioned Acts.

2.20 ***Value-Added Tax Act, 1991: Amendment of section 7***

See paragraph 2.19 above.

2.21 ***Value-Added Tax Act, 1991: Amendment of section 8***

See paragraph 2.19 above.

2.22 ***Value-Added Tax Act, 1991: Amendment of section 11***

See paragraph 2.19 above.

2.23 ***Value-Added Tax Act, 1991: Amendment of section 12***

See paragraph 2.19 above.

2.24 ***Value-Added Tax Act, 1991: Amendment of section 13***

See paragraph 2.19 above.

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

2.25.1 *Paragraph (a)* to *(c)*: Under current VAT legislation, input tax is allowed where a bill of entry or other documents, as prescribed in terms of the Customs Act, 1964, together with proof of payment of the tax in relation to the said importation, are held by the vendor or his agent at the time any return in respect of that importation is furnished.

2.25.2 However, the Customs Modernisation Programme was implemented which addressed a number of critical issues, such as paper-based systems and processes. The main change was the introduction of an automated workflow driven system, which allowed Customs and taxpayers to complete all clearance processes end-to-end without having to perform manual functions. Accordingly, paper-based documents are no longer generated and issued to taxpayers.

2.25.3 The customs modernisation programme has eliminated the need for paper-based documents to be generated and issued to taxpayers. Therefore, documents that are legally required will be aligned with the modernised customs processes and procedures.

2.25.4 The documentary requirements contained in this section need to be aligned to the modernised Customs processes and procedures. The proposed amendment will come into operation on 1 April 2015.

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

2.26.1 *Paragraphs (a)*, *(c)*, *(d)*, *(e)* and *(f)*: See paragraph 2.19 above.

2.26.2 *Paragraph (b)*: The entitlement to deduct input tax is, *inter alia*, dependant on the vendor obtaining and retaining documentary evidence in support of the amount that is deducted. In this regard the deduction of input tax in respect of the acquisition of second-hand goods is dependent on the vendor obtaining and retaining the records stipulated in section 20(8) of the Value-Added Tax Act. The amendment clarifies that the records to be obtained and retained are the declaration as well as the details stipulated in paragraphs *(a)* to *(f)* of section 20(8).

2.27 ***Value-Added Tax Act, 1991: Amendment of section 18***

See paragraph 2.19 above.

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

The fourth-monthly VAT category for vendors was introduced in 2005 to assist small retailers. Vendors qualify if taxable supplies constitute R1.5 million or less during a 12-month period. Less than 1 000 vendors, with only R44 million output tax and R23 million input tax, were registered for this provision in 2012/13. Government proposes to eliminate this category and to bring registered vendors into the bimonthly category. The proposed amendment gives effect to Government's proposal and will come into effect on 1 July 2015 and applies in respect of tax periods commencing on or after that date.

2.29 ***Value-Added Tax Act, 1991: Amendment of section 31***

The amendment proposes to adjust the wording to refer to a regulation rather than an export incentive scheme. The definition of ''exported'' was amended by section 165(1)*(f)* of the Taxation Laws Amendment Act, 2013, to refer to regulations in terms of the Value-Added Tax Act and the new regulation No. 316, published in *Government Gazette* 37580, came into effect on May 2014.

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

See paragraph 2.19 above.

2.31 ***Value-Added Tax Act, 1991: Amendment of section 44***

See paragraph 2.29 above.

2.32 ***Value-Added Tax Act, 1991: Amendment of section 45***

The proposed amendment deletes the suspension of interest in instances where SARS requested relevant material for purposes of auditing the refund, the provision of which was delayed without just cause. In practice, it has also proven factually difficult and impractical to apply. The existing requirement that the vendor must furnish SARS in writing with particulars of the vendor's bank account details so as to enable SARS to transfer a refund to that account will still apply. SARS should not be liable for interest on a refund that it cannot make because a vendor fails to provide banking details.

2.33 ***Value-Added Tax Act, 1991: Amendment of section 46***

The proposed amendment provides that the business rescue practitioner appointed to handle the affairs of any company under business rescue management in terms of Chapter 6 of the Companies Act, 2008, will be the person responsible for the duties imposed on that company under the Value-Added Tax Act. The business rescue practitioner is, accordingly, responsible for all acts, matters, or things that the taxpayer must do under a tax Act, and in case of default, may be subject to penalties for the taxpayer's non-compliance.

2.34 ***Value-Added Tax Act, 1991: Amendment of section 54***

See paragraph 2.19 above.

2.35 ***South African Revenue Service Act, 1997: Amendment of section 30***

Section 30 of the South African Revenue Service Act was found to be not restrictive enough in its prohibition in preventing the unlawful use of SARS's

names, trademarks and logos. Fraudulent use of SARS's names, trademarks and logos by for example bogus tax practitioners has become prevalent and has been aggravated by improper and unauthorised use in domain names, the internet and social media. The purpose of the proposed amendment is to broaden SARS's protection against unlawful use of its intellectual property and to protect the broad public from fraudulent schemes and misrepresentations of SARS's names and logos on the internet, in various media as false advertising and on goods.

2.36 ***Securities Transfer Tax Administration Act, 2007: Insertion of section 6A***

The proposed insertion aligns the late payment penalty provisions of the Securities Transfer Tax Administration Act with those of the Tax Administration Act and other tax Acts imposing late payment penalties. The specific provision imposing a penalty for the unpaid tax is retained in the relevant tax Act, whereas the remittance of that penalty as well as other general procedural matters relating to that penalty (which is an administrative non-compliance penalty) must be dealt with in accordance with the procedures in Chapter 15 of the Tax Administration Act. This is also the legislative scheme applied in other tax Acts that impose late payment penalties.

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

2.37.1 *Paragraph (a)*: ''international tax agreement'' This amendment ensures that the definition of an international tax agreement includes all agreements entered into between the competent authority of the Republic of South Africa and the competent authority of another country, flowing from the main agreement (e.g. concluded under section 108 of the Income Tax Act, 1962) under which SARS exchanges information with that country.

2.37.2 *Paragraph (b)*: ''relevant material'' SARS's information gathering powers were extended in the Tax Administration Act to prevent protracted disputes around entitlement to information and the consequent waste of resources. Concepts such as ''relevant material'' and ''reasonable specificity'' were introduced at the time to give guidance on requests for information. The proposed amendment aims to clarify that the statutory duty to determine the relevance of any information, document or thing for purposes of e.g. a verification or audit, is that of SARS and the term foreseeable relevance does not imply that taxpayers may unilaterally decide relevance and refuse to provide access thereto, which is what is happening in practice.

2.37.2.1 According to the literature, the test of what is foreseeably relevant for domestic tax application would have a low threshold, and the application of what is ''foreseeably relevant'' follows the following broad grounds:

- whether at the time of the request there is a reasonable possibility that the material is relevant to the purpose sought;
- whether the required material, once provided, actually proves to be relevant is immaterial;
- an information request may not be declined in cases where a definite determination of relevance of the material to an ongoing audit or investigation can only be made following receipt of the material;
- there need not be a clear and certain connection between the material and the purpose, but a rational possibility that the material will be relevant to the purpose; and
- the approach is to order production first and allow a definite determination to occur later.

Taxpayers have the protection that taxpayer information held by SARS is secret and may only be disclosed under narrowly defined circumstances.

2.37.2.2 One of the comments to this amendment is that SARS should provide reasons in every request for information as to why the relevant material requested is considered relevant. Besides the sheer impracticality of auditing in this manner, such an approach has also been rejected in international case law, e.g. in the *Australia and New Zealand Banking Group Limited v Konza* ([2012] FCA 196) case where it was held:

> *"It is . . . for the recipient to decide for himself, difficult though the task may be, which of the documents answer the description. If his decision is wrong he exposes himself to prosecution and penalty. The existence of this hazard is not a sufficient basis for the conclusion that the section requires the Commissioner to give a notice in such terms as would enable the recipient on reading it and on examining the documents in his custody or control to determine whether they fall within the ambit of the Commissioner's powers. To so hold would be to impose an impossible burden on the Commissioner. In many, if not most, cases he will be unaware of the contents of the documents of which he seeks production." (emphasis added).*

2.37.2.3 The fact that SARS determines what relevant material is required for purposes of the administration of a tax Act does not mean that the taxpayer has no remedies during, for example, the audit process. It is submitted that a taxpayer would have the following remedies:

- Request SARS to withdraw or amend decision to request material — section 9 of the Tax Administration Act, 2011,
- Pursue the internal administrative complaints resolution process of SARS,
- Approach the Tax Ombud,
- Approach the Public Protector.

2.37.2.4 Remaining with Australia as an example of the international approach in this regard, the ATO Taxpayer's Charter — *Explanatory Booklet — Part 11 Fair use of our access and information gathering powers*, the following is stated:

> "If you are dissatisfied with the way in which access and information gathering action is being conducted, you should raise your concerns with the tax officer with whom you are dealing. If the issue cannot be resolved, it may be appropriate to contact that officer's manager or the Problem Resolution Service . . . You also have the right to complain to the Commonwealth Ombudsman . . .".

2.37.2.5 It must be recognised that information is the lifeblood of a revenue authority's taxpayer audit activity, and the whole rationale of taxation would break down and the whole burden of taxation would fall only on diligent and honest taxpayers if a revenue authority had no effective powers to obtain confidential information about taxpayers who may be negligent or dishonest. Inadequate investigation of tax evaders, or taxpayers who through aggressive tax planning only purport to comply with tax laws, is unfair to taxpayers who complied with the law. If such problems were allowed to persist, they

would undermine public confidence in the tax system, and would reduce voluntary compliance by the majority of taxpayers, such compliance being an integral feature of an effective tax system.

2.37.3 *Paragraph (c)*: This amendment clarifies that a return is also an information gathering mechanism to obtain for example *(a)*, third party information which may not necessarily constitute a basis of an assessment but is simply used by SARS to verify the correctness of taxpayer returns or *(b)*, information required for purposes of meeting SARS's exchange of information obligations under international tax agreements. It does not always follow that an assessment will be based on such information as referred to in the first part of the definition. The amendment will link the definition of a return more closely to the provisions in the Tax Administration Act and other tax Acts dealing with returns, as the intention is not that all relevant material required by SARS is included under the definition, for example that obtained during audit.

2.37.4 *Paragraph (d)*: ''Tax Act'' the Tax Administration Act does not apply to customs and excise legislation, which includes the new Customs Control Act, 2014 and the Customs Duty Act, 2014.

2.37.5 *Paragraph (e)*: ''tax offence'' This amendment ensures that the theft of amounts due or paid to SARS for the benefit of the National Revenue Fund constitutes a 'tax offence' which may be investigated by SARS under the Tax Administration Act. Although such offences will normally be effected by fraudulent means, all the elements of fraud may not necessarily be present. In other cases, amounts are simply stolen.

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

This amendment ensures that the subsection not only caters for requests for information under an international tax agreement but also spontaneous and automatic exchange of information. The term ''spontaneous'' is commonly understood in South African tax treaties and international law in the context of exchange of information. For example, the *IBFD International Tax Glossary*, 5th ed, refers under the term ''exchange of information'' to the three ways to effect this, i.e.:

- On request
- Automatically (i.e. under a pre-agreed procedure)
- Spontaneously. See further the *OECD Model Tax Convention Condensed Version*, 2014, which at 421 refers to spontaneous exchange of information ''of interest'' to a treaty partner.

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

International tax agreements and exchange of information standards may require due diligence from third parties submitting information in returns for exchange of information purposes. This amendment provides that a tax Act and an international tax agreement may prescribe due diligence obligations in respect of an information return. The Commissioner may also prescribe such obligations in the public notice calling for the return where they are consistent with an international standard for exchange of information.

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

2.40.1 *Paragraph (a)*: The proposed amendment widens the definition of a participant to include persons other than companies and trusts and

clarifies that the definition only applies to participants who will derive or assume they will derive a tax benefit or financial benefit by virtue of an arrangement.

2.40.2 *Paragraph (b)*: The proposed amendment corrects the reference to an arrangement, rather than a reportable arrangement.

2.40.3 *Paragraph (c)*: The proposed amendment inserts a definition of reportable arrangement for clarification purposes.

2.40.4 *Paragraph (d)*: It is proposed that the definition of tax benefit be made more specific and to include tax evasion as a tax benefit for purposes of the reportable arrangement legislative scheme.

2.41 ***Tax Administration Act, 2011: Amendment of section 35***

2.41.1 *Paragraph (a)*: The proposed changes are textual in order to make a clear distinction between subsections (1) and (2) and to correct the references to defined terms.

2.41.2 *Paragraph (b)*: There has been some uncertainty about when a tax benefit is an 'undue tax benefit'. The deletion of this term is therefore proposed.

2.41.3 *Paragraph (c)*: The deletion is consequential to the above amendments.

2.42 ***Tax Administration Act, 2011: Amendment of section 36***

There has been some uncertainty about when a tax benefit is 'undue'. This amendment is proposed in order to provide that the Commissioner may simply list by public notice an arrangement in respect of which no reporting obligation exists to ensure clarity.

2.43 ***Tax Administration Act, 2011: Amendment of section 37***

2.43.1 *Paragraph (a)*: The proposed change clarifies the reporting obligation of the promoter of an arrangement and all of the participants. Because participant is defined to include a promoter it is unnecessary to define separate reporting obligations for each. The amendment specifically aims to make all participants in the arrangement primarily responsible for reporting. The proposed change also clarifies that all participants to a reportable arrangement are responsible for reporting that arrangement and when the reporting obligation arises. The arrangement is reportable within 45 business days of becoming a reportable arrangement, or within 45 days of a person becoming a participant in an existing reportable arrangement. A participant need not report the arrangement if that participant has a written statement from any other participant that the arrangement has been reported.

2.43.2 *Paragraph (b)*: The deletion of subsection (4) is consequential to the amendments to subsection (1).

2.44 ***Tax Administration Act, 2011: Amendment of section 38***

This amendment is consequential to the amendments to section 37 clarifying the reporting obligation of participants.

2.45 ***Tax Administration Act, 2011: Amendment of section 39***

The proposed amendment is consequential to the insertion of a definition of ''reportable arrangement'' in section 34.

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

It has happened that taxpayers refused to provide information in a certain format, particularly electronic format even if this is the ''original'' source of the information, and are only prepared to hand over print-outs. Although this is implicit from the ambit of section 46 read with section 30 of the Tax Administration Act, the proposed amendment will clarify the fact that a person receiving a request for relevant material from SARS, under this section, must submit the relevant material in the format required by SARS if reasonably accessible to the person.

2.47 ***Tax Administration Act, 2011: Amendment of section 50***

The proposed amendment clarifies that the senior SARS official need not personally bring the intended application but must only authorise the bringing of the application by SARS. This scheme of the Tax Administration Act is reflected in section 6(4) of the Act which provides that the execution of a task ancillary to a power or duty assigned to a senior SARS official may be done by a SARS official under the control of the senior SARS official.

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

The proposed amendment aims to enable the Commissioner to disclose 'taxpayer information' in an anonymised form despite the secrecy provisions of Chapter 6 of the Tax Administration Act. The information will be anonymised to such an extent that the identity of the taxpayers concerned cannot be determined even by inference.

2.49 ***Tax Administration Act, 2011: Amendment of section 162***

The proposed amendment specifies that the method of payment of tax may be prescribed by the Commissioner by public notice.

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

The proposed amendment seeks to simplify the criteria that SARS may, in considering a request for suspension of disputed tax, consider and that these are in addition to having regard to relevant factors. Although the initial proposal was to include the merits of the matter, this was recognised to be in error as the purpose of the pay now argue later rule is precisely to separate the adjudication of the merits of the matter, which happens before the tax court, and the payment and recovery of the tax debt. A further review of this provision will be conducted during the 2015 legislative cycle.

2.51 ***Tax Administration Act, 2011: Amendment of section 184***

2.51.1 Currently, although it is evident that SARS must have *prima facie* grounds to believe and bears the onus to prove that a representative taxpayer or withholding agent is personally liable under section 155 or 157 of the Tax Administration Act, as the case may be, the Act does not provide for a process to recover the tax from such persons, as section 184 does not apply to them and currently only applies to sections 179 to 183.

2.51.2 Section 179 is also excluded from section 184(2), which subsection provides for prior notice by SARS before recovery steps may be taken against a third party that is regarded as personally liable. This appears to be an oversight.

2.51.3 Personal liability for the tax debt of another person under section 155 or 157 does not constitute a tax liability of the representative taxpayer or withholding agent and thus cannot be a basis for issuing an assessment against them under the Tax Administration Act. The proposed amendment seeks to enable SARS to, as authorised under section 184, use the same powers of recovery it has under the Act against the assets of a personally liable representative taxpayer, withholding agent or person referred to in Part D, as well as providing them with the protection afforded under section 184.

2.51.4 Although the proposed amendment does no more than regulate the recovery of a liability that already exists under current law, bringing it into effect on the date of promulgation of the Bill as opposed to the date of commencement of the Tax Administration Act is a pragmatic approach.

2.52 ***Tax Administration Act, 2011: Amendment of section 187***

This amendment clarifies that simple interest applies to a given tax type until such time that the Commissioner issues a public notice to the effect that compounded interest will apply to that tax type.

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

The proposed amendment aims to clarify that a refund in the case of self-assessment where a return is required e.g. VAT, must be made within five years from the date the return has to be submitted or if no return was submitted, the date that payment had to be made.

2.54 ***Tax Administration Act, 2011: Amendment of section 194***

The proposed amendment will enable SARS to temporarily write-off a tax debt where it is evident that the tax debt is uneconomical to pursue and is thus akin to a ''doubtful debt'', despite the fact that the tax debt may still be disputed by the debtor. Debts that are temporarily written off may be reinstated once they become economical to pursue.

2.55 ***Tax Administration Act, 2011: Amendment of section 195***

2.55.1 A tax debt can be written off temporarily if it is ''uneconomical to pursue''. ''Uneconomical to pursue'' means that the total cost of recovery of that tax debt is likely to exceed the anticipated amount to be recovered. In order to determine whether the cost of recovery is likely to exceed the anticipated amount to be recovered a senior SARS official must have regard to factors such as the steps that have been taken to date to recover the tax debt and the costs involved in those steps, the likely cost of continuing action to recover the tax debt and the anticipated return from that action, the financial position of the debtor, including the debtor's assets and liabilities, cash flow and possible future income streams.

2.55.2 Where a taxpayer is engaged in business rescue proceedings SARS's recovery efforts are suspended *ex lege* until the business rescue proceedings are over. Consequently a tax debt tied up in this procedure cannot easily meet the test of ''uneconomical to pursue'' as laid out above.

2.55.3 The intention of the amendment is to allow SARS to temporarily write off the tax debt during business rescue to recognise this suspension.

2.56 ***Tax Administration Act, 2011: Amendment of section 207***

The proposed amendment allows SARS more time to submit its report on tax debts which were written off or compromised. It furthermore removes the onerous and impractical requirement to calculate an estimate of the amount of savings in costs of recovery, as it will not in all cases be the reason for the write off or compromise or be quantifiable. A tax debt may on another basis be written off or compromised where in the best interest of the state and these records as a result of strict corporate governance procedures are available for inspection by the Auditor-General.

2.57 ***Tax Administration Act, 2011: Amendment of section 208***

This amendment further ensures the alignment between administrative penalties triggered under a tax Act and the procedure thereof under Chapter 15.

2.58 ***Tax Administration Act, 2011: Amendment of section 215***

Although the remittance of penalties are mostly regulated under Chapter 15 of the Act, some remittance discretions remained in the tax Act and this amendment ensures that these remittance discretions apply and not those under Chapter 15.

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

The amendment proposes a better alignment between the heading and the content of the provision, as obtaining undue tax refunds does not necessarily constitute tax evasion.

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

2.60.1 *Paragraph (a)*: The proposed amendment clarifies that if qualifying criminal convictions of a registered tax practitioner are discovered subsequent to registration SARS may deregister the practitioner.

2.60.2 *Paragraph (b)*: The proposed amendment enables SARS to prevent the registration of a person as a tax practitioner or to deregister a registered tax practitioner where that person or registered tax practitioner was convicted of a serious tax offence in the preceding five years.

2.60.3 *Paragraph (c)*: The proposed amendment addresses the practical problem that a registered tax practitioner may continue to practice as such, and even continue with unlawful practices, despite the fact that prosecution for a serious tax offence has been instituted. In view of the fact that the prosecution may take a substantial amount of time to finalise, this amendment enables SARS to refuse to register a person as a tax practitioner or suspend the registered tax practitioner as a temporary measure to protect itself as well as taxpayers. This suspension may only be effected once prosecution by the National Prosecuting Authority is instituted indicating that there is a *prima facie* case with reasonable prospect of success and the person or registered tax practitioner continues with the commission of a serious tax offence after the criminal proceedings have been instituted. If finally acquitted, the person will be allowed to register or the suspension will be lifted.

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

The proposed amendment provides that each of the statutory recognised controlling bodies referred to in section 240A(1) of the Tax Administration Act must submit a list of its members, to whom the provisions of section 240(1) apply, to SARS. SARS can use this information to verify if these members are duly registered as tax practitioners. This amendment does not extend the scope of who is liable to register as tax practitioner in section 240. If a person does not perform the functions listed in section 240(1) or is excluded under section 240(2), neither of which is being amended, such person is not obliged to register.

2.62 ***Tax Administration Act, 2011: Amendment of section 248***

The proposed amendment provides that where a company is subject to a business rescue plan in terms of Chapter 6 of the Companies Act, 2008, the business rescue practitioner is required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under a tax Act for the duration of the period that the company is subject to the business rescue plan.

2.63 ***Tax Administration Act, 2011: Amendment of section 255***

Section 255(2) of the Tax Administration Act permits the use of electronic or digital signatures for returns or other documents submitted in electronic format. Subsection (2) permits the use of an electronic or digital signature for a return or other document. Subsection (3) deals with the question of whether an electronic or digital signature has been used with the authority of the person whose signature has been used. A cross-reference to ''the person'' has been inserted in subsection (2) to clarify which person is referred to for purposes of subsection (3).

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

2.64.1 A new tax clearance system has been operationalised by SARS in order to modernise and improve the functionality by SARS of issuing tax clearance certificates for purposes of e.g. government tenders for both taxpayers and third parties that have to award the tender. The wording of section 256 of the Tax Administration Act is amended significantly to align the section with the new modernised confirmation of tax compliance status system and to deal with certain practical implications encountered in the implementation thereof. The current ''TCC process'' will be replaced by the new tax compliance status (TCS) process. The requirement of no outstanding requests for information is removed as a requirement for TCS, but further review on the inclusion of such non-compliance will be conducted during the 2015 legislative cycle. The TCC process whereby a tax clearance certificate is valid for a year no longer applies, which approach is in line with the purpose of the new system, i.e. taxpayers must remain compliant for the duration of the contract and they are responsible for checking and ensuring that they remain compliant. The system will, however, cater for sending alerts to taxpayers when their status changes from compliant to non-compliant to enable the taxpayers to immediately remedy their non-compliant status.

2.64.2 The new TCS process does not replace the certificate of good standing and the tender clearance certificate. Taxpayers will still be able to request their overall tax compliance status in respect of tender, good standing, foreign investment account (FIA) or emigration. When the request is successful, SARS will issue the taxpayer with a PIN for the specific request. When the PIN is used by another person that person will see the real-time compliance of the taxpayer on the date that the PIN is used.

2.64.3 The TCS process will also enable taxpayers to print a TCC (in old format) from the new system for the phasing in period of the new real-time TCS system with PIN etc.

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

2.65.1 *Paragraph (a)*: In the Tax Administration Laws Amendment Act, 2013, section 270(6D) was amended to accommodate the difference in the additional tax scheme under the Value-Added Tax Act, 1991, and the understatement penalty scheme in the Tax Administration Act 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, 1991.

2.65.2 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, 1991, did not already impose such as the obligation to submit true and correct returns. The amendment at the time provided 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.

2.65.3 As a similar basis i.e. intent to evade, was applied for the imposition of additional tax in terms of paragraph 6(2A) of the Fourth Schedule to the Income Tax Act, 1962, prior to its repeal by the Act, it is proposed that PAYE must be treated the same as VAT for purposes of section 270(6D), as both required an intention to evade tax prior to the imposition of additional tax.

2.65.4 *Paragraph (b)*: This amendment is consequential to the amendment of section 187(2).

2.66 ***Tax Administration Laws Amendment Act, 2012: Repeal of section 11***

2.66.1 The earlier (2012) version of the withholding tax on interest was inserted by section 69 of the Taxation Laws Amendment Act, 2012 (Act No. 22 of 2012) (money Bill provisions), and by section 11 of the Tax Administration Laws Amendment Act, 2012 (administrative provisions). Section 69 of the first mentioned Act was repealed by section 199 of the Taxation Laws Amendment Act, 2013 (Act No. 31 of 2013), when revised withholding tax on interest provisions was introduced. The effective date for this was 30 June 2013.

2.66.2 To complete the exercise, section 11 of the Tax Administration Laws Amendment Act, 2012, must also be repealed, as from the same date. The proposed repeal must take place in the Tax Administration Laws Amendment Bill, 2014, as the amendment deals with administrative provisions.

2.67 ***Tax Administration Laws Amendment Act, 2012: Amendment of section 26***

The effective date of 1 March 2014 should apply only to the amendment contained in section 26(1)*(a)*. The other amendments contained in that section are deemed to have come into operation on the date of the promulgation of the Act, i.e. 20 December 2012.

2.68 ***Tax Administration Laws Amendment Act, 2013: Amendment of section 8***

The effective date for the new section 11*(k)* as inserted by section 27(1)*(k)* of the Taxation Laws Amendment Act, 2013, will now be postponed from 1 March 2015 to 1 March 2016. The changes to paragraph 2(4)*(a)*, *(b)* and (*b*A) of the Fourth Schedule, effected by section 8 of the Tax Administration Laws Amendment Act, 2013, are linked to the new section 11*(k)* and hence must also be postponed to that date.

2.69 ***Customs Duty Act, 2014: Amendment of section 1***

The proposed amendment to the definition of ''port or place of export'' is a consequential amendment which was inadvertently omitted when an amendment was previously effected to the clause which is now section 131 of the Customs Duty Act, 2014.

2.70 ***Customs Duty Act, 2014: Amendment of section 88***

The proposed amendment is a technical correction to insert a word inadvertently omitted.

2.71 ***Customs Duty Act, 2014: Amendment of section 201***

2.71.1 *Paragraph (a)*: The proposed substitution of the Table in subsection (2) is aimed at the alignment of section 201 with section 876 of the Customs Control Act, 2014, and in particular aligns the penalty amounts for the different categories of breaches with the penalty amounts in the Customs Control Act, 2014.

2.71.2 *Paragraph (b)*: The proposed amendment is aimed at the alignment of section 201 of the Customs Duty Act, 2014, with section 876 of the Customs Control Act, 2014, by the addition to section 201 of subsection (4) providing that a fixed amount penalty may not be imposed for a breach consisting of a failure to submit full or accurate information other than information that may result in revenue prejudice, if the breach was committed inadvertently and in good faith.

2.72 ***Customs Duty Act, 2014: Amendment of section 202***

The proposed substitution of subsection (3) is aimed at the alignment of section 202 of the Customs Duty Act, 2014, with section 877 of the Customs Control Act, 2014, and provides for the customs authority to impose a fixed amount penalty for a Category A breach referred to in the Table in section 201(2) of the Customs Duty Act, 2014, consisting of a failure to submit full or accurate information other than information that may result in revenue prejudice, only after it has issued a warning for the same or a similar type of breach.

2.73 ***Customs Duty Act, 2014: Amendment of section 221***

The proposed amendment of section 221 of the Customs Duty Act, 2014, contains an amendment of a technical nature and also corrects an error in respect of a word inadvertently omitted.

2.74 ***Customs Control Act, 2014: Amendment of section 177***

The proposed amendment adds a new subsection (5) limiting the application of subsection (4) which provides for a person clearing goods to notify the customs authority of any change in the particulars on an invoice or other circumstances described in the subsection. The effect of the proposed subsection (5) is that a notification is only required if the change referred to in subsection (4) affects any of the information included in the clearance declaration submitted in respect of the goods to which the invoice relates.

2.75 ***Customs Control Act, 2014: Amendment of section 178***

The proposed amendment is related to the amendment in section 177 of the Customs Control Act, 2014, and qualifies section 178(5)*(a)*(i) by providing that notification in terms of section 178(5)*(a)*(i) must only take place if an amendment to an invoice affects any of the information included in the clearance declaration submitted in respect of the goods to which the invoice relates.

2.76 ***Customs Control Act, 2014: Amendment of section 241***

The proposed amendment is aimed at widening the application of Chapter 11 of the Customs Control Act, 2014, in order to also include the transfer of goods from one foreign-going vessel at a customs seaport to another foreign-going vessel at another customs seaport which is served by the same Customs Office. This is to make provision for the transfer of goods between the customs seaports Port Elizabeth and Port of Ngqura.

2.77 ***Customs Control Act, 2014: Amendment of section 242***

The proposed amendment is consequential to the amendment of section 241 of the Customs Control Act, 2014.

2.78 ***Customs Control Act, 2014: Amendment of section 634***

The proposed amendment is aimed at avoiding a double licensing requirement in respect of licensees of inward or home use processing premises. In terms of section 634(2) of the Customs Control Act, 2014, no person may import goods for inward processing or home use processing unless that person is licensed as an importer for inward or home use processing. Similarly no person may export goods as inward processed compensating products unless that person is licensed as an exporter of inward processed compensating products. Section 630 of the Act however also requires inward processing premises or home use processing premises to be licensed. The proposed subsection (2A) provides that subsection (2) does not apply in the case where the premises are licensed as required in terms of section 630 of the said Act.

2.79 ***Short title and commencement***

Clause 79 provides for the name of the proposed Act. Different provisions of the Act may come into operation on different dates.

3. CONSULTATION

The amendments proposed by this Bill were published on SARS and National Treasury's websites 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 2014 Budget Review, tabled in Parliament on 26 February 2014.

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.

Printed by Creda

ISBN 978-1-4850-0190-4