MEMORANDUM ON THE OBJECTS OF TAX ADMINISTRATION LAWS AMENDMENT BILL, 2016

1. PURPOSE OF BILL

The Bill proposes to amend the Income Tax Act, 1962, The Customs and Excise Act, 1964, the Value-Added Tax Act, 1991, the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, the Tax Administration Act, 2011, the Customs Duty Act, 2014, and the Customs Control Act, 2014.

2. OBJECTS OF BILL

2.1 Income Tax Act, 1962: Amendment of section 3

2.1.1 The Commissioner's function to approve a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund or the amendments to the rules of these funds was delegated to the Executive Officer of the Financial Services Board ('FSB'), with effect from 1 April 2012, under section 3(5). Accordingly, with effect from 1 April 2012, these funds had to submit all rules and amendments directly to the FSB to be considered for income tax approval.

2.1.2 The FSB publishes a list of all the funds that are registered with the FSB on their website. However, section 70(3)*(b)* of the Tax Administration Act, 2011, only provides that required information, such as the income tax approval status of a pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund, may be provided to the FSB in order for the FSB to carry out their duties and functions in respect of the regulation and supervision of the Pension Funds Act, 1956, under section 3*(a)* of the Financial Services Board Act, 1990. This section does not give the FSB permission to disclose the information provided by SARS to any third party.

2.1.3 It is recommended that section 69(8) of the Tax Administration Act be amended to specifically allow the FSB to disclose the income tax approval status of a pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund to a third party. The proposed amendment will allow the FSB to similarly also publish the details of funds approved for income tax purposes on their website.

2.2 Income Tax Act, 1962: Amendment of section 35A

The proposed amendment is a technical correction to an amendment contained in section 2 of the Tax Administration Laws Amendment Act, 2015, and furthermore aims to insert a correct reference.

2.3 Income Tax Act, 1962: Amendment of section 64K

Investors receiving dividends from tax-free investments are required to submit an exempt dividends tax return to SARS following the receipt of every dividend payment. The proposed amendment aims to relieve investors from this obligation.

2.4 Income Tax Act, 1962: Amendment of section 102

The proposed amendment is a technical correction, to update the heading to accord with its present content.

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

2.5.1 Paragraphs *(a)* and *(b)*: If foreign employers in South Africa do not deduct PAYE, local employees should pay provisional tax in terms of the Fourth Schedule.

2.5.2 In terms of paragraph *(c)* of the definition of a provisional taxpayer, a person can become a provisional taxpayer upon notification by the Commissioner. A method for doing so would be for SARS to send letters to the various employers informing them that all local recruits employed by them are regarded as provisional taxpayers. However, notification of the local recruits employed by foreign employers is cumbersome and administratively onerous for SARS. In many cases SARS may not even have some of the personal information of the local recruits on record. This will require SARS to obtain all the necessary information from the employers and thereafter inform the employees that they are provisional taxpayers.

2.5.3 The proposed amendment aims to avoid this administratively onerous task by providing that any person who derives, by way of income, remuneration from an employer that is not registered in terms of the Fourth Schedule, be included in the definition of provisional taxpayer.

2.5.4 Paragraph *(c)*: Certain dividends received from restricted equity instruments do not qualify for an income tax exemption and are taxable on assessment of the directors and employees. The proposed amendment aims to specifically include these taxable dividends in the definition of ‘‘remuneration’’ for PAYE in paragraph 1 of the Fourth Schedule.

2.5.5 Paragraph *(d)*: The proposed amendment deletes an obsolete reference.

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

2.6.1 Paragraph *(a)*: The proposed amendment deletes an obsolete reference to paragraph 12 of the Fourth Schedule, which paragraph was deleted in 2011, with the introduction of the Tax Administration Act, 2011. This reference should be linked to section 95 of the Tax Administration Act.

2.6.2 Paragraph *(b)*: The proposed amendment deletes obsolete references to items that were deleted with effect from 1 March 2015.

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

2.7.1 Paragraph *(a)*: The proposed amendment aims to update the text by removing an obsolete reference. It also clarifies the fact that the deduction tables prescribed by the Commissioner in terms of this paragraph cannot take into account all the rebates claimable by taxpayers, specifically foreign tax credits claimable by employees under section 6*quat*. The proposed provision instead states clearly that these tables should take account of the rebates applicable in terms of section 6.

2.7.2 Paragraph 9(2) of the Fourth Schedule provides that any tables prescribed by the Commissioner will come into force on such date as may be notified by the Commissioner in the *Government Gazette*, and shall remain in force until withdrawn.

2.7.3 New tax deduction tables are formulated in consequence of the adjustment to the tax thresholds and brackets announced by the Minister of Finance in the annual Budget Review. The new tax deduction tables are then published on the SARS website and a general notice in this regard is issued directly to users of the Statutory Tax Rates prior to its implementation date.

2.7.4 The new tax deduction tables are implemented by employers as from 1 March of a particular year and subsequent to notification as mentioned. It is therefore submitted that publication of the effective date in the *Government Gazette* is redundant in the modern context and in this regard the proposed amendment aims to remove this requirement for future purposes.

2.7.5 Paragraph *(c)*: It is proposed that an employer should apply to the Commissioner for a directive before paying out any lump sum envisaged in paragraph *(d)* or *(e)* of the definition of ''gross income'', i.e. the exception that was contained in subparagraph (3)*(b)* should be removed. SARS has the capacity to deal with these directives and they provide greater certainty to SARS, employers and taxpayers.

2.7.6 Paragraph *(d)*: The proposed amendment is consequential to the proposed repeal of paragraph 11C. See the note on the proposed repeal of paragraph 11C hereunder.

2.8 Income Tax Act, 1962: Amendment of paragraph 10 of the Fourth Schedule

The proposed amendment affects a textual correction and deletes an obsolete reference to paragraph 12 of the Fourth Schedule, which paragraph was deleted in 2011, with the introduction of the Tax Administration Act, 2011. This reference should be linked to section 95 of the Tax Administration Act.

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

The proposed amendment is consequential to the proposed repeal of paragraph 11C. See the note on the proposed repeal of paragraph 11C hereunder.

2.10 Income Tax Act, 1962: Amendment of paragraph 11A of the Fourth Schedule

The proposed amendment adjusts the wording of paragraph 11A, as a consequence of the changes made to this paragraph in the Tax Administration Laws Amendment Act, 2015.

2.11 Income Tax Act, 1962: Repeal of paragraph 11C of the Fourth Schedule

The proposed amendment repeals the provision for payment of employees' tax (PAYE) by directors of private companies. The provisions of section 7B would apply to the variable remuneration received by the director in that it is deemed to accrue to the director on the date on which it is paid to the director. This is also the date on which the amount of the remuneration becomes claimable as expenditure by the private company.

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

If an estimate for the second provisional tax period is not submitted before the due date of the subsequent provisional tax payment, the provisional taxpayer is deemed to have submitted an estimate of nil taxable income, thereby triggering a penalty under paragraph 20. It is proposed that the window period for submission of provisional tax estimates be closed four months after the end of the relevant year of assessment. Furthermore this deeming provision relates to the submission of an estimate and is therefore moved from paragraph 20 to subparagraph (6) of paragraph 19.

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

2.13.1 Paragraph *(a)*: The penalty for underpaying provisional tax is based on a percentage of normal tax payable after taking into account rebates and tax already paid. Certain once-off amounts, such as retirement lump-sum and severance-benefit payments, are excluded from the calculation of the penalty because they are taxed separately in terms of special tables and the tax owed is withheld before payment is made. Taxpayers are required to pay provisional tax on the other amounts listed in paragraph *(d)* of the definition of gross income in section 1, because these other amounts are not taxed under the lump-sum tax tables. However, because these amounts are excluded from the penalty calculation, taxpayers are not penalised if they fail to pay the required provisional tax. To correct this, it is proposed that the penalty calculation's exclusion of the amounts in paragraph *(d)* not taxed in terms of the special tables, be removed.

2.13.2 The wording of subparagraph (1) and the rest of paragraph 20 is adjusted to provide greater clarity.

2.13.3 Paragraph *(b)* The contents of subparagraph (2A) have been moved to paragraph 19(6) and subparagraph (2A) is accordingly deleted.

2.13.4 Paragraph *(c)*: As a consequential amendment to the amendment described in paragraph *(b)* above, the relief granted by the Commissioner for failure to submit an estimate not due to an intent to evade or postpone the payment of provisional tax only applies to the non-submission of a provisional tax estimate by the end of the four month period specified in paragraph 19(6) of the Fourth Schedule.

2.14 Income Tax Act, 1962: Amendment of paragraph 28 of the Fourth Schedule

Payment of refunds by the Commissioner is now regulated under section 190 of the Tax Administration Act, 2011, and hence the paragraph can be deleted.

2.15 Income Tax Act, 1962: Amendment of paragraph 3 of the Seventh Schedule

The proposed amendment deletes an obsolete reference to paragraph 12 of the Fourth Schedule, which paragraph was deleted in 2011, with the introduction of the Tax Administration Act, 2011. This reference should be linked to section 96 of the Tax Administration Act.

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

The proposed amendment aims to—

(a) align definitions and terms to that of the Special Economic Zones Act, 2014;

(b) delete reference to the value-added tax liability as it is covered in that Act and duty liability is covered by subsection (9) of this section; and
(c) clarify removals to other licensed premises and rebate manufacturers.

2.17 Customs and Excise Act, 1964: Amendment of section 35A

2.17.1 The proposed amendments facilitate South Africa's compliance with its fiscal marker and tracking and tracing obligations under Article 8 of the Protocol to Eliminate Illicit Trade in Tobacco Products of the World Health Organisations' Framework Convention on Tobacco Control. The proposals empower the Commissioner to prescribe by rule the necessary identification markings, and a national or regional tracking and tracing system for tobacco products. As a consequence, the current diamond stamp marking of cigarette containers will be replaced.

2.17.2 The proposed amendment applies the fiscal marker and tracking and tracing obligations in respect of locally manufactured tobacco products.

2.18 Customs and Excise Act, 1964: Amendment of section 54

2.18.1 See the note to the amendment of section 35A.

2.18.2 The proposed amendment applies the fiscal marker and tracking and tracing obligations in respect of imported tobacco products.

2.19 Excise Duty Act, 1964: Amendment of section 76B

The proposed amendment aligns the prescription period for refunds to the general prescription period of three years. The effect of the amendment is that the period will be the same across the customs and excise spectrum.

2.20 Excise Duty Act, 1964: Amendment of section 76C

Section 76C authorises the Commissioner to set off any amount of duty refundable to a person in terms of this Act against any amount of tax, additional tax, duty, levy, charge, interest or penalty not timeously paid by such person in terms of any other law administered by the Commissioner. The proposed amendment aims to ensure that a refund of duty will in the first instance be set off against a debt under this Act and thereafter against a debt under any other law administered by the Commissioner.

2.21 Customs and Excise Act, 1964: Amendment of section 105

In terms of section 105 of the Customs and Excise Act, 1964, interest on amounts payable in terms of the Act that are in arrears must currently be calculated monthly, whereas the new customs laws will introduce interest on arrears on daily balances owing which will be compounded at the end of each month. The purpose of the amendment to section 105 is to switch to interest calculation on arrears on daily balances as from a date earlier than the effective date for the new laws and to compound interest as from the effective date. This arrangement will apply uniformly to all customs and excise payments that are in arrears, whether they are due on imported goods or locally produced goods.

2.22 Customs and Excise Act, 1964: Amendment of section 113

2.22.1 Illicit tobacco manufacturers have been avoiding excise duties through duplicate manufacturing runs of both legal and illegal products and have avoided prosecution through the declaration of inaccurate cigarette manufacturing input to output ratios. The proposed amend-

ment reduces the maximum allowed tobacco content of locally manufactured cigarettes to 0.9kg per 1000 to more accurately reflect volumes of tobacco inputs currently used in cigarette production. This will assist anti-illicit tobacco enforcement interventions that match tobacco inputs against declared cigarette outputs.

2.22.2 The proposed amendment also reduces the maximum allowed weight of imported cigarettes to 1.2kg per 1000 to similarly reflect the volumes of tobacco inputs currently used in the production of imported cigarettes. Anti-illicit tobacco enforcement on imported cigarettes considers the weight of the completed cigarettes and their unit packaging, hence the higher weight limitation compared to locally manufactured cigarettes.

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

The proposed amendments are technical corrections to adjust a reference due to changes in section 21A of the Customs and Excise Act, 1964, and to adjust wording after the promulgation of the Special Economic Zones Act, 2014, on 9 February 2016.

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

2.24.1 Paragraph *(a)*: The proposed amendments are technical corrections to adjust the wording after the promulgation of the Special Economic Zones Act, 2014, on 9 February 2016.

2.24.2 Paragraph *(b)*: The proposed amendment adjusts the wording that will come into operation when the Customs Control Act, 2014, comes into operation.

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

The proposed amendments are technical corrections to adjust the wording after the promulgation of the Special Economic Zones Act, 2014, on 9 February 2016.

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

2.26.1 Paragraph *(a)*: The proposed amendment is a technical correction to an amendment in section 25 of the Tax Administration Laws Amendment Act, 2015, and it aims to insert a reference.

2.26.2 Paragraph *(b)*: The Value-Added Tax Act places a statutory obligation on vendors to issue documents in a defined form and manner. These requirements are attuned to commercial and accounting practice and ensure a seamless audit trail. Recipient vendors are occasionally issued with defective documents or are unable to obtain documents from supplying vendors, resulting in an inability to make input tax deductions.

2.26.3 With effect from 1 April 2015, section 25 of the Tax Administration Laws Amendment Act, 2015, introduced section 16(2)*(g)* in the Value-Added Tax Act to provide relief to recipient vendors in these situations. The current amendment provides clarity with regard to the considerations that the Commissioner will take into account for accepting alternative documentary proof. It is important to note that vendors can only access this relief as a last resort. Vendors must still be able to demonstrate that a sincere effort has been put into obtaining the proper documents and maintain proof of those efforts. Furthermore, vendors would have to make an application for a ruling no later than 2 months prior to expiry of the five-year prescription period and only if and when that ruling is issued, may the amount be deducted as input

tax at that later stage. Lastly, invoking this provision will not allow vendors to backdate the claim to a past tax period that has already been closed.

2.26.4 Paragraph *(c)*: The proposed amendment is a technical correction to adjust the wording after the promulgation of the Special Economic Zones Act, 2014, deemed to have come into effect on 9 February 2016, the date on which that Act came into operation.

2.26.5 Paragraph *(d)*: The same wording changes are effected in the text due to come into effect when the Customs Control Act, 2014, comes into effect.

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

2.27.1 Paragraph *(a)*: The proposed amendment is a technical correction to adjust the wording after the promulgation of the Special Economic Zones Act, 2014, deemed to have come into effect on 9 February 2016, the date on which that Act came into operation.

2.27.2 Paragraph *(b)*: The same wording changes are effected in the text due to come into effect when the Customs Control Act, 2014, comes into effect.

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

A vendor is required to submit VAT returns in accordance with its allocated tax period. Where the total amount of input tax for a particular tax period exceeds the total amount of output tax for that tax period, the vendor will submit a VAT return for that tax period, requesting SARS to pay a refund to that vendor; this is commonly referred to as a refund of VAT arising from a VAT return. It is proposed that the time limit within which a vendor or any other person must request a refund of VAT arising from a VAT return in order for SARS to properly pay that refund, be clarified. Accordingly, for a refund arising from a VAT return, the VAT return must be submitted within five years from the due date of that VAT return.

2.29 Value-Added Tax Act, 1991: Amendment of section 55

The proposed amendment is consequential to the addition of section 16(2)*(g)* by section 25 of the Tax Administration Laws Amendment Act, 2015, and it aims to insert a reference.

2.30 Value-Added Tax Act, 1991: Amendment of section 86A

2.30.1 Paragraph *(a)*: Technical corrections to adjust wording after the promulgation of the Special Economic Zones Act, 2014, deemed to have come into effect on 9 February 2016, the date on which that Act came into operation.

2.30.2 Paragraph *(b)*: The same wording changes are effected in the text due to come into effect when the Customs Control Act, 2014, comes into effect.

2.31 Value-Added Tax Act, 1991: Amendment of Schedule 1

The proposed amendment is a technical correction to adjust the wording of item 498.00 after the Special Economic Zones Act, 2014, came into effect on 9 February 2016.

2.32 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of Arrangement of sections

The payment of mineral and petroleum resources royalties under the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, largely follows the provisional tax scheme in the Fourth Schedule of the Income Tax Act, 1962. However, to improve payment automation, greater alignment with the Fourth Schedule is required, particularly with regard to interest and penalties. The proposed amendments aim to effect such alignment as well as other technical corrections to the Act.

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

The amendments proposed are technical corrections to align the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, with the definitions in the Tax Administration Act, 2011.

2.34 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of heading to Part III

The proposed consequential amendment will reflect the contents of the Part in the order in which these items are dealt with in the Part.

2.35 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 5

Section 5 deals with the first and second payments of the royalty payable for a year of assessment. In practice this process starts with the calculation of an estimate of the royalty payable for the year. A return of this estimate must then be submitted to SARS. The submission of the return constitutes an original self-assessment in terms of section 91(2) of the Tax Administration Act, 2011. Payment of the amount due must then take place within the specified period. This process of estimate, return and payment is repeated in the second period. The amended wording more clearly reflects the steps in the process.

2.36 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Insertion of section 5A

2.36.1 The provisions contained in the proposed new section 5A are at present contained in section 15 of the Act. Placing them straight after section 5 makes clear the order in which the actions take place, as SARS may adjust a first or second estimate as soon as the return has been submitted. In cases where no return is submitted, SARS may make an estimate. The proposed amendment further aligns this section with paragraph 19(3) of the Fourth Schedule to the Income Tax Act, 1962, in that the adjusted estimate will not be subject to objection and appeal.

2.36.2 The proposed new subsection (4) mirrors the changes to similar provisions in paragraphs 19 and 20 of the Fourth Schedule to the Income Tax Act, 1962. To avoid payment of a penalty, taxpayers may decide not to file a return. In such a case, the taxpayer is deemed to have submitted a nil estimate and this amount forms the basis for the calculation of the penalty imposed under section 14.

2.37 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 6

The proposed amendment to the heading clarifies that the provision applies to the returns and payments for a year of assessment. A final payment must be made of the amount still owed after all the previous payments for that year

have been made. The proposed wording change reflects the fact that there may be more than two payments if an estimate is adjusted under section 5A.

2.38 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Insertion of section 6A

The proposed section allows for refunds in case of overpayment by the taxpayer, under section 190 of the Tax Administration Act, 2011.

2.39 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 8

The proposed wording changes clarify which records must be kept specifically for the purposes of the principal Act.

2.40 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Repeal of Part IV

Most of the provisions relating to assessment were repealed because they were made obsolete by the Tax Administration Act, 2011. Submission of returns under sections 5(1) and (2) and 6 are original self-assessments by taxpayers of their tax liability under section 91(2) of the Tax Administration Act, 2011. The contents of the remaining section 9, pertaining to notices of assessment, have been incorporated in the proposed new section 5A and Part IV is no longer required.

2.41 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of heading to Part V

The proposed adjustment of the words more accurately reflects the content of the Part.

2.42 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 14

2.42.1 Paragraph *(a)*: The proposed change to the heading clarifies that a penalty is levied under this section in the case of underpayment as a result of underestimation and not on the underestimation as such.

2.42.2 Paragraph *(b)*: The proposed wording change clarifies that the amount of the royalty paid is not limited to the amount paid under section 5 but includes additional amounts paid under section 5A. The existing wording makes the imposition of a penalty under this section discretionary. An electronic filing environment requires certainty and, in line with paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, the imposition of a penalty becomes automatic.

2.42.3 Paragraph *(c)*: The proposed new subsection mirrors the proposed changes to paragraph 20(2A) and (2C) of the Fourth Schedule to the Income Tax Act.

2.43 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Repeal of section 15

See the note to the insertion of section 5A.

2.44 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Restitution and amendment of section 16

To make provision for interest to accrue on outstanding amounts of tax or refunds specifically under the Mineral and Petroleum Resources Royalty Act, 2008, it is proposed that section 16 of the Mineral and Petroleum Resources Royalty (Administration) Act be reinserted. Interest under this Act can then

accrue in accordance with the interest provisions contained in Chapter 12 of the Tax Administration Act, 2011. These provisions have not yet become effective for all the tax Acts but are specifically made applicable for the purposes of the mineral royalty. Paragraph *(a)* proposes to insert subsection (1) that deals with interest due by SARS, whereas subsection (2), inserted by paragraph *(b)*, deals with interest due by taxpayers. Paragraph *(c)* proposes the deletion of subsection (3), dealing with the rate of interest due. This matter will be deal with under section 189 of the Tax Administration Act, 2011.

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

Non-binding private opinions are defined in section 75 of the Tax Administration Act, 2011, and applied under section 88 of that Act. The reference to them can therefore be deleted as it is no longer necessary.

2.46 Mineral and Petroleum Resources Royalty (Administration) Act, 2008: Amendment of section 19

2.46.1 Paragraph *(a)*: The proposed change to the heading clarifies the content of the section.

2.46.2 Paragraph *(b)*: The proposed amendment provides that despite the confidentiality provisions contained in the Tax Administration Act, 2011, the Commissioner must annually submit to the Minister of Finance a report received from each extractor.

2.46.3 Paragraph *(c)*: The proposed amendment provides that the Minister of Finance and any person employed or engaged by him or her with regard to all matters that may come to his or her knowledge in terms of section 19 of the Act, must preserve the secrecy of the information as provided in section 67(4) of the Tax Administration Act, 2011, and may only disclose information to another person if the disclosure is necessary to perform the functions as specified.

2.46.4 Paragraph *(d)*: The secrecy provisions contained in subsections (3), (4), (5) and (6) are now contained in the Tax Administration Act and it is therefore no longer necessary to maintain them in the Mineral and Petroleum Resources Royalty (Administration) Act.

2.46.5 Paragraph *(e)*: The proposed amendment is of a technical nature as it corrects a reference.

2.46.6 Paragraph *(f)*: The proposed amendment provides that the preservation of secrecy of the information also applies to the Director-General of the Department of Mineral Resources and the chief executive officer of the agency designated by the Minister responsible for Mineral Resources in terms of section 70 of the Mineral and Petroleum Resources Development Act, 2002, as well as any person engaged or employed by them that has access to the information.

2.47 Tax Administration Act, 2011: Amendment of section 1

An external legal practitioner briefed to represent SARS in legal matters, in particular an advocate, must advise and assist SARS with the required degree of independence and does not, in doing so, carry out the provisions of a tax Act under the control, direction or supervision of the Commissioner. The proposed amendment aims to address uncertainty that has arisen in this regard in practice.

2.48 Tax Administration Act, 2011: Amendment of section 11

Legal costs recovered by the state attorney on behalf of SARS are paid directly to SARS, not to the National Revenue Fund. The proposed amendment provides that legal costs recovered by the state attorney on behalf of SARS must be paid to the National Revenue Fund.

2.49 Tax Administration Act, 2011: Amendment of section 14

The proposed amendment aims to enhance the independence of the Tax Ombud by extending his or her tenure.

2.50 Tax Administration Act, 2011: Amendment of section 15

The proposed amendment aims to enhance the independence of the Tax Ombud in respect of the appointment of the staff of the Office of the Tax Ombud. In addition, an amendment is proposed that the expenditure connected with the functions of the office of the Tax Ombud is paid in accordance with a budget for the office approved by the Minister. The amendment furthermore provides that the Tax Ombud must appoint the staff of his or her office which staff must be employed in terms of the South African Revenue Service Act, 1997 (SARS Act). The reference to the SARS Act is essential if the Tax Ombud's staff are to enjoy the same conditions of service as SARS staff.

2.51 Tax Administration Act, 2011: Amendment of section 16

The proposed amendment aims to extend the mandate of the Tax Ombud to include the investigation and review, at the request of the Minister or at the initiative of the Tax Ombud with the approval of the Minister, of any systemic and emerging issue related to a service matter; the application of the provisions of the Tax Administration Act; or procedural or administrative provisions of a tax Act, as defined in the Tax Administration Act.

2.52 Tax Administration Act, 2011: Amendment of section 20

The proposed amendment aims to enhance the effectiveness of the Tax Ombud's recommendations. If SARS or the taxpayer does not accept them, reasons must be provided within a period of 30 days. This will ensure that the Tax Ombud is able to review the reasonableness of the reasons to inform future action.

2.53 Tax Administration Act, 2011: Amendment of section 69

See the note on the amendment of section 3 of the Income Tax Act, 1962.

2.54 Tax Administration Act, 2011: Amendment of section 97

The proposed amendment aims to clarify that the ''record'' of an assessment includes the return and the documents in support thereof provided to SARS for purposes of a verification or audit. It would be nonsensical to only destroy the assessment and not the supporting documents which generally constitute the more voluminous part of the ''record'' of an assessment. The period of 5 years is extended to 7 years to align it with the maximum period of extension for prescription in section 99(3), and additional grounds where a further period may be required are added.

2.55 Tax Administration Act, 2011: Amendment of section 99

The proposed amendment is a technical correction. The resolution of a dispute under section 99(2)*(d)*(i) includes a judgment pursuant to an appeal under Part E of Chapter 9 and there is no right of further appeal.

2.56 Tax Administration Act, 2011: Amendment of section 100

The general principle is that finality of a dispute must be achieved, i.e. the resolution of a dispute in respect of the issues in dispute and the relevant tax period must be final. The amendment clarifies that only in exceptional circumstances should SARS be allowed to ''reopen'' the tax period, audit and issue an additional assessment after prescription. Prior to the expiry of the periods listed in section 99(1), where the factors listed in section 99(2) are absent, SARS may still issue an additional assessment to comply with its statutory duties to ensure payment of the correct amount of tax in respect of the tax period that was under dispute within the normal expiry period for that tax period.

2.57 Tax Administration Act, 2011: Amendment of section 104

The current period for lodging an objection is 30 business days from the date of assessment. This has been shown to be too short in practice, particularly in complex matters, resulting in a large number of applications for condonation. A longer period for lodging an objection will be proposed which will be effected in the dispute resolution rules issued under section 103 of the Act. It is proposed that condonation of a late objection not based on exceptional circumstances may be extended by SARS for a period up to 30 days, but if there are exceptional circumstances this period may be further extended by SARS. The maximum period within which a late objection may be extended remains three years.

2.58 Tax Administration Act, 2011: Amendment of section 118

Currently section 118 provides that if a tax appeal relates to the business of mining, the commercial member must be a registered engineer with experience in that field, or a sworn appraiser if it involves the valuation of assets. Because other matters of a technical nature may also require a commercial member with expertise in the relevant field, it is proposed that an amendment be considered to include a more generic provision for this purpose. The proposed amendment gives effect to this proposal.

2.59 Tax Administration Act, 2011: Amendment of section 151

The proposed amendment aims to clarify that ''relevant material'' may be obtained in respect of a person subject to a criminal investigation in line with the administration of a tax Act under section 3(2)*(c)*, *(d)*, *(f)* and *(h)*, and that all information gathering powers and other relevant provisions where the word ''taxpayer'' is used, apply to such suspect.

2.60 Tax Administration Act, 2011: Amendment of section 194

The proposed amendment is a technical correction.

2.61 Tax Administration Act, 2011: Amendment of section 221

Amendments to the understatement penalty regime to enhance clarity with regard to whether and the extent to which understatement penalties are imposable in GAAR matters pursuant to recent contentions in this regard, are proposed. Under the additional tax penalty regime, the predecessor to the understatement penalty regime, case law supported the imposition of such penalties in GAAR matters. The amendments will clarify that this prevails in respect of understatement penalties, which is also in line with international law. In addition, to provide clarity as to what would be the appropriate penalty in GAAR matters, it is proposed that a new behavioural category is inserted in the understatement penalty table.

2.62 Tax Administration Act, 2011: Amendment of section 223

See the note on the amendment to section 221.

2.63 Tax Administration Act, 2011: Amendment of section 226

The proposed amendments aim to clarify the application of the section. It furthermore inserts a requirement that a person seeking voluntary disclosure relief must be given notice of the commencement of an audit or criminal investigation into the affairs of the person as opposed to the requirement that the person has become aware of a pending audit or criminal investigation or that the audit or criminal investigation has commenced.

2.64 Tax Administration Act, 2011: Amendment of section 270

The proposed amendment is consequential to the amendments to sections 221 and 223.

2.65 Tax Administration Act, 2011: Amendment of paragraph 189 of Schedule 1

The proposed amendment is consequential to the amendments made to the Mineral and Petroleum Resources Royalty (Administration) Act, 2008.

2.66 Customs Duty Act, 2014: Amendment of section 95

The proposed amendment is aimed at providing for less harsh consequences to flow from a failure by a person to comply with a request by Customs to submit a worksheet or additional documents. The result of the proposed amendment will be that such a failure will not be a Category 2 offence in terms of section 95, but only a non-prosecutable breach of the Act for which an administrative penalty may be imposed.

2.67 Customs Duty Act, 2014: Amendment of section 171

The current separate provisions of sections 171 and 172 appear to overlap. The proposed amendment in effect combines sections 171 and 172, and section 172 is consequently repealed.

2.68 Customs Duty Act, 2014: Repeal of section 172

See the note on the amendment of section 171 of the Customs Duty Act, 2014.

2.69 Customs Duty Act, 2014: Amendment of section 175

The proposed amendment is consequential to the amendments proposed in relation to sections 171 and 172 of the Customs Duty Act, 2014.

2.70 Customs Control Act, 2014: Amendment of section 1

The proposed amendment is consequential to the amendments to sections 194 and 204 of the Customs Control Act, 2014.

2.71 Customs Control Act, 2014: Amendment of section 63

The proposed amendment is intended to ensure that departure information submitted in relation to a cross-border train is reliable and final when the train leaves the Republic.

2.72 Customs Control Act, 2014: Amendment of section 91

The proposed amendment is intended to align the *de minimis* regime in relation to import duty with the international tendency to utilise a minimum

threshold in relation to the value of goods below which no duties will be collected, without restriction as to the kind of goods or the frequency of import.

2.73 Customs Control Act, 2014: Amendment of section 94

The proposed amendment is intended to facilitate the clearance process in respect of containerised goods exported from the Republic in instances where the goods are containerised at a place other than a container depot.

2.74 Customs Control Act, 2014: Amendment of section 194

The proposed amendment provides for the international transit of electricity imported from a neighbouring country through the Republic to third countries. Currently the provisions regulating the international transit of goods are too restrictive to enable such transits.

2.75 Customs Control Act, 2014: Amendment of section 204

See the notes on the amendment of section 194 of the Customs Control Act, 2014.

2.76 Customs Control Act, 2014: Amendment of section 308

The proposed amendment provides flexibility in that it allows the Commissioner to prescribe the kind of warehoused goods in relation to which regular reports have to be submitted.

2.77 Customs Control Act, 2014: Amendment of section 576

The amendment is proposed to correct an error.

2.78 Customs Control Act, 2014: Amendment of section 600

The proposed amendment enables the Commissioner to prescribe rules specifically applicable where suspected counterfeit goods which were detained by Customs are secured in terms of section 570(2)*(e)* in a state warehouse, pending removal of the goods to a counterfeit goods depot or termination of the detention. Suspected counterfeit goods secured in a state warehouse should not be subject to the other provisions of Chapter 27 of the Act applicable to goods removed to state warehouses, for example provisions relating to reclaiming or disposal. The amendment accordingly also provides for the exclusion of suspected counterfeit goods from provisions of the Chapter, as may be prescribed by rule, that are inappropriate for such goods. Counterfeit goods are disposed of in terms of the Counterfeit Goods Act.

2.79 Customs Control Act, 2014: Amendment of section 626

The proposed amendment is consequential to the amendment to section 626*(c)* effected in terms of section 123 of the Tax Administration Laws Amendment Act, 2015.

2.80 Customs Control Act, 2014: Amendment of section 687

The purpose of the proposed amendment is to correct an error.

2.81 Customs Control Act, 2014: Amendment of section 929

This amendment to section 929 is aimed at ensuring that a single system of interest calculation applies to all amounts outstanding as from the effective date, irrespective of which law must be applied to the goods. The amendment is proposed purely for purposes of legal clarity and to avoid any uncertainty as

to which legal regime applies to interest calculation during the transition period.

2.82 Tax Administration Laws Amendment Act, 2014: Amendment of section 19

The proposed amendment is a technical correction to adjust the effective date for definitions pertaining to the Special Economic Zones Act, 2014. It is proposed that these definitions are deemed to have come into effect on 9 February 2016, the date on which the Special Economic Zones Act came into operation.

2.83 Short title and commencement

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

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 2016 Budget Review, tabled in Parliament on 24 February 2016.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the National Treasury 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.