
REPUBLIC OF SOUTH AFRICA

**VOLUNTARY
DISCLOSURE PROGRAMME
AND TAXATION LAWS SECOND
AMENDMENT ACT**

REPUBLIEK VAN SUID-AFRIKA

**VRYWILLIGE
BLOOTLEGGINGSPROGRAM EN
TWEEDE WYSIGINGSWET OP
BELASTINGWETTE**

No 8, 2010

GENERAL EXPLANATORY NOTE:

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

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

ACT

To—

- introduce a voluntary disclosure programme;
- amend the Transfer Duty Act, 1949, so as to provide for electronic submission of returns and electronic payment of duty;
- amend the Income Tax Act, 1962, so as to amend certain provisions;
- amend the Unemployment Insurance Contributions Act, 2002, so as to effect a technical correction;
- amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to amend certain provisions; and
- provide for matters connected therewith.

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

PART A

Voluntary Disclosure Programme

Definitions

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1. For the purposes of this Part, unless the context otherwise indicates, any meaning ascribed to a word or expression in a relevant tax Act must bear the meaning so ascribed, and—

“**default**” means the submission of inaccurate or incomplete information to the Commissioner, or the failure to submit information or the adoption of a tax position, where such submission, non-submission, or adoption resulted in— 10

(a) the taxpayer not being assessed for the correct amount of tax;

(b) the correct amount of tax not being paid by the taxpayer; or

(c) an incorrect refund being made by the Commissioner;

“**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962); 15

“**return**” means any return, declaration, bill of entry or other document in terms of which a tax determination is made;

“**tax**” means any tax, duty, levy, penalty and additional tax imposed in terms of a tax Act;

“**tax Act**” means any legislation administered by the Commissioner; 20

“tax position” means an assumption underlying one or more aspects of a return, including whether or not—

- (a) an amount, transaction, event or item is taxable;
- (b) an amount or item is deductible for tax;
- (c) a lower rate of tax than the maximum applicable to that class of taxpayer or transaction applies; or
- (d) an amount qualifies as a reduction of tax payable.

Administration

2. (1) This Part is administered by the Commissioner.

(2) Any power granted to the Commissioner under this Part may be exercised by the Commissioner personally or any official delegated by the Commissioner for that purpose.

(3) The provisions of section 4 of the Income Tax Act apply, with the changes required by the context, to this Part.

Application for voluntary disclosure relief

3. (1) Any person may apply, whether in a personal, representative, withholding or other capacity, for voluntary disclosure relief unless that person is aware of—

- (a) a pending audit or investigation into the person’s affairs; or
- (b) an audit or investigation that has commenced, but has not yet been concluded.

(2) The Commissioner may direct that a person may apply for voluntary disclosure relief, despite the provisions of subsection (1), where the Commissioner is of the view, having regard to the circumstances and ambit of the audit or investigation, that—

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

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

- (a) a representative of the person;
- (b) an officer, shareholder or member of the person, if the person is a company;
- (c) a partner in partnership with the person;
- (d) a trustee or beneficiary of the person, if the person is a trust; or
- (e) a person acting for or on behalf of or as an agent or fiduciary of the person,

has become aware of the pending audit or investigation, or that audit or investigation has commenced.

Requirements for valid voluntary disclosure

4. The requirements for a valid voluntary disclosure are that the disclosure must—

- (a) be voluntary;
- (b) involve a default;
- (c) be full and complete in all material respects;
- (d) involve the potential application of a penalty or additional tax in respect of the default;
- (e) not result in a refund due by the Commissioner;
- (f) be made in the prescribed form and manner;
- (g) be made within the period prescribed by the Commissioner by notice in the *Gazette*; and
- (h) be in respect of a default which occurred prior to 17 February 2010.

No-name voluntary disclosure

5. The Commissioner may issue a nonbinding private opinion as to a person's eligibility for relief under this Part, if the person provides sufficient information to do so, which information need not include the identity of any party to the default.

Voluntary disclosure relief

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6. Despite the provisions of any tax Act, the Commissioner must, pursuant to the making of a valid voluntary disclosure by the applicant and the conclusion of the voluntary disclosure agreement under section 7—

- (a) not pursue criminal prosecution for any statutory offence under a tax Act or a related common law offence; 10
- (b) grant 100 per cent relief in respect of any penalty and additional tax (excluding a penalty imposed in terms of regulation 5 of the regulations issued under section 75B of the Income Tax Act or in terms of a tax Act for the late submission of a return or for the late payment of tax); and
- (c) grant, in respect of a person described in— 15
 - (i) section 3(1), 100 per cent; or
 - (ii) section 3(2), 50 per cent,
 relief in respect of interest otherwise payable, up to the date of assessment described in section 9.

Voluntary disclosure agreement

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7. (1) The granting of the relief under section 6 must be evidenced by a written agreement between the Commissioner and the applicant who is liable for the outstanding tax.

(2) The agreement must be in the format prescribed by the Commissioner and must include details of— 25

- (a) the material facts of the default on which the voluntary disclosure relief is based;
- (b) the amount payable by the person, which amount must separately reflect the tax payable and the interest amount payable, if any;
- (c) the arrangements and dates for payment; 30
- (d) treatment of the issue in future years or periods; and
- (e) relevant undertakings by the parties.

Withdrawal of voluntary disclosure relief

8. (1) In the event that, subsequent to the conclusion of the voluntary disclosure agreement under section 7, it is established that the applicant failed to disclose a matter that was material for purposes of making a valid voluntary disclosure under section 4, the Commissioner may— 35

- (a) withdraw any relief granted under section 6;
- (b) regard any amount paid in terms of the voluntary disclosure agreement to constitute part payment of any further outstanding tax in respect of the relevant default; and 40
- (c) pursue prosecution for any statutory offence under a tax Act or a related common law offence.

(2) Any decision by the Commissioner under subsection (1) is subject to objection and appeal or internal review. 45

Assessment or determination to give effect to agreement

9. (1) Where a voluntary disclosure agreement has been concluded under section 7, the Commissioner may, notwithstanding anything to the contrary contained in any tax Act, issue an assessment or make a determination for purposes of giving effect to the agreement. 50

(2) Any assessment issued or determination made to give effect to an agreement under section 7 is not subject to objection and appeal or internal review.

Reporting

10. (1) The Commissioner must within 12 months after the expiry of the period prescribed under section 4(g), provide to the Auditor-General and to the Minister of Finance a summary of all voluntary disclosure agreements concluded in respect of applications received during the period. 5

(2) The summary must—

- (a) not disclose the identity of the applicant concerned, and must be submitted at such time as may be agreed upon between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and 10
- (b) contain details of the number of voluntary disclosure agreements, the amount of tax and interest assessed and the relief granted in terms of section 6(b) and (c), which must be reflected in respect of main classes of taxpayers or segments of the public. 15

Regulations

11. The Minister may make regulations regarding any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Part.

PART B 20

Amendment of section 3 of Act 40 of 1949, as amended by section 6 of Act 88 of 1974, section 1 of Act 99 of 1981, section 4 of Act 97 of 1993, section 10 of Act 37 of 1996, section 6 of Act 60 of 2001, section 3 of Act 74 of 2002, section 1 of Act 35 of 2007 and section 2 of Act 17 of 2009

12. (1) Section 3 of the Transfer Duty Act, 1949, is hereby amended— 25

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

“(2) Pending the completion of the declarations referred to in section **[fourteen] 14**, or the determination of the amount of duty payable under this Act, a deposit on account of the duty payable **[may be made manually or electronically, to the office of the South African Revenue Service to which the duty is payable in terms of subsection (3)]** must be made by way of an electronic payment.” 30

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

“(3) The payment of any duty, [and any] penalty [payable] or interest under section 4 [and any transfer duty and interest payable under any law repealed by this Act shall be paid, manually or electronically, to the office of the South African Revenue Service where payments are accepted, for the area in which the property in question is situated or, if the property is situated in the area of more than one office of the South African Revenue Service where payments are accepted, to any one of those offices, or, in either case, to the office of the South African Revenue Service or the area where the deeds registry in which the property is registered is situated] must be made by way of an electronic payment.” 35
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(2) Subsection (1) comes into operation on 1 January 2011 and applies to any payments made on or after that date. 45

Amendment of section 14 of Act 40 of 1949, as amended by section 6 of Act 88 of 1974, section 1 of Act 34 of 2004 and section 1 of Act 36 of 2007

13. (1) Section 14 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 50

“(1) Declarations appropriate to the manner of the acquisition of property in any particular case shall, **in substance as near as possible to the wording of the forms prescribed by the Commissioner, be**

- completed and submitted in such manner (including electronically and at such place]** be submitted electronically, in the form and manner and containing such information as may be prescribed by the Commissioner, by the parties to the transaction whereby the property has been acquired and, if the Commissioner so directs, also by the agent, auctioneer, broker or other person who acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.”;
- (b) by the deletion of subsection (1A);
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) An estate agent as contemplated in section 1 of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), who is entitled to any remuneration or other payment in respect of services rendered in connection with a transaction in terms of which a person acquired property contemplated in paragraphs (d), (e) or (f) of the definition of ‘property’, must within six months of the date of acquisition of that property submit details of that transaction to the Commissioner in a form and in such manner as prescribed by the Commissioner.”;
- (d) by the substitution for subsection (4) of the following subsection:
- “(4) Any person required to complete a declaration in terms of this section must **[sign the declaration and furnish it to the Commissioner]** affix an electronic or digital signature as a valid signature to such declaration, and [the person signing the declarations] such person is deemed for all purposes in connection with this Act to know and understand the meaning of all statements made in that declaration.”;
- (e) by the deletion of subsection (5);
- (f) by the substitution for subsection (6) of the following subsection:
- “(6) The **[Minister may make]** rules and regulations made by the Minister in terms of section 66(7B) of the Income Tax Act, prescribing the procedures for submitting any declaration in electronic format and the requirements for an electronic or digital signature, apply *mutatis mutandis* to [contemplated in] subsection (5).”;
- (g) by the substitution for subsection (6) of the following subsection:
- “(6) The rules and regulations made by the Minister in terms of section 66(7B) of the Income Tax Act, prescribing the procedures for submitting any delcaration in electronic format and the requirements for an electronic or digital signature, apply *mutatis mutandis* to subsection **[(5)] (4).**”;
- (h) by the substitution for subsection (7) of the following subsection:
- “(7) Where in any proceedings or prosecution under this Act or in any dispute to which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a person affixed to any declaration as contemplated in subsection **[(6)] (4)** was used with or without the consent and authority of that person, it shall, in the absence of proof to the contrary, for the purposes of this Act be presumed that such signature was so used with the consent and authority of that person.”.
- (2) Subsection (1)(a), (b), (c), (d), (e), (g) and (h) come into operation on 1 January 2011 and applies to any payments made on or after that date.
- (3) Subsection (1)(f) is deemed to have come into operation on 8 January 2008.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007 and section 3 of Act 36 of 2007, section 1 of Act 4 of 2008 and section 2 of Act 61 of 2008

- 14. (1) Section 3 of the Income Tax Act, 1962, is hereby amended—
 - (a) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
 - “(b) section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 10 (1)(e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12B(6), section 12C, section 12E, section 12G, section 12J(6), (6A) and (7), section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 28(2)(cA), section 30, section 30A, section 30B, section 31, section 35(2), section 37A, section 38(4), section 44(13)(a), section 47(6)(c)(i), section 57, section 76A, section 80B and section 80S;”;
 - (b) by the substitution in subsection (4) for paragraph (e) of the following paragraph:
 - “(e) paragraphs 14(6), 18, 19 (1), 20, 21, 24 and 27 of the Fourth Schedule;”;
 - (c) by the substitution in subsection (4) for paragraph (f) of the following paragraph:
 - “(f) paragraphs 10(3) and (4), 11(2) and (7), 12(1) and 13 of the Sixth Schedule;”;
 - (d) by the substitution in subsection (4) for paragraph (g) of the following paragraph:
 - “(g) paragraphs 2, 3, 6, 7(6), (7) and (8), 9 and 11 of the Seventh Schedule;”;
 - (e) by the addition in subsection (4) after paragraph (g) of the following paragraph:
 - “(h) paragraphs 12(5)(c)(i), 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(e) of the Eighth Schedule.”;
- (2) Subsection (1)(a), in so far as it relates to section 30B of the Income Tax Act, 1962, comes into operation on the date of promulgation of this Act.

Amendment of section 76E of Act 58 of 1962, as inserted by section 12 of Act 34 of 2004

- 15. Section 76E of the Income Tax Act, 1962, is hereby amended—
 - (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (l) and the addition in subsection (2) after paragraph (m) of the following paragraphs:
 - “(n) a statement confirming that the applicant complied with any registration requirements under any Act administered by the Commissioner, with regard to any tax for which the applicant is liable, unless the application concerns a ruling to determine if the applicant must register under any Act administered by the Commissioner; and
 - (o) a statement confirming that all returns required to be rendered by that applicant in terms any Act administered by the Commissioner have been rendered and any taxes, duties or levies due to the Commissioner have been paid or arrangements acceptable to the Commissioner have been made for the submission of any outstanding returns or for the payment of any outstanding taxes, duties or levies.”; and
 - (b) by the deletion in subsection (3) of the word “and” at the end of paragraph (a), the insertion in subsection (3) of the word “and” at the end of paragraph (b)

and the addition in subsection (3) after paragraph (b) of the following paragraph:

“(c) where the class members are identifiable and number less than 10, a statement confirming that each class member has fully complied with its relevant obligations under any Act administered by the Commissioner or has made arrangements acceptable to the Commissioner to do so.”.

Amendment of section 76G of Act 58 of 1962, as inserted by section 12 of Act 34 of 2004 and amended by section 4 of Act 9 of 2007 and section 8 of Act 61 of 2008

16. Section 76G of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of the word “or” at the end of paragraph (c), the substitution in subsection (1) for the full stop at the end of paragraph (d) of a semi-colon and the addition in subsection (1) after paragraph (d) of the following paragraphs:

- “(e) where the applicant has not complied with any registration requirements under any Act administered by the Commissioner, with regard to any tax for which the applicant is liable, unless the application concerns a ruling to determine if the applicant must register under any such Act;
- (f) where all returns required to be rendered by that applicant in terms of any Act administered by the Commissioner have been not been rendered, or where any taxes, duties or levies due to the Commissioner have not been paid and no arrangements acceptable to the Commissioner have been made for the submission of any outstanding returns or for the payment of any outstanding taxes, duties or levies; or
- (g) where the class members are identifiable and number less than 10 each class member has not fully complied with its relevant obligations under any Act administered by the Commissioner and has not made arrangements acceptable to the Commissioner to do so.”.

Amendment of section 89quat of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984 and amended by section 22 of Act 65 of 1986, section 18 of Act 70 of 1989, section 15 of Act 140 of 1993, section 42 of Act 113 of 1993, section 33 of Act 21 of 1995, section 24 of Act 36 of 1996, section 50 of Act 59 of 2000, section 29 of Act 5 of 2001, section 49 of Act 74 of 2002, section 17 of Act 34 of 2004 and section 18 of Act 4 of 2008

17. (1) Section 89quat of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Where the Commissioner having regard to the circumstances of the case is satisfied that **[any amount has been included in the taxpayer’s taxable income or that any deduction, allowance, disregarding or exclusion claimed by the taxpayer has not been allowed, and the taxpayer has on reasonable grounds contended that such amount should not have been so included or that such deduction, allowance, disregarding or exclusion should have been allowed,]** the interest payable in terms of subsection (2) is a result of circumstances beyond the control of the taxpayer, the Commissioner may, **[subject to the provisions of section 103(6),]** direct that interest shall not be paid in whole or in part by the taxpayer **[on so much of the said normal tax as is attributable to the inclusion of such amount or the disallowance of such deduction, allowance, disregarding or exclusion].**

(2) Subsection (1) comes into operation on 1 November 2010 and applies to years of assessment ending on or after that date.

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

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

(a) by the substitution for paragraph (b) of the definition of “remuneration” of the following paragraph:

“(b) any amount required to be included in such person’s gross income under paragraph (i) of that definition, excluding an amount described in paragraph 7 of the Seventh Schedule;”;

(b) by the substitution for subparagraph (cA) of the definition of “remuneration” of the following paragraph:

“(cA) 80 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under section 8(1)(b)(iii): Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of the amount of such allowance or advance must be included;”;

(c) by the addition after paragraph (cA) of the definition of “remuneration” of the following paragraph:

“(cB) 80 per cent of the amount of the fringe benefit as determined in terms of paragraph 7 of the Seventh Schedule: Provided that where the employer is satisfied that at least 80 per cent of the use of the motor vehicle for a year of assessment will be for business purposes, then only 20 per cent of such amount must be included;”;

(d) by the addition after paragraph (cc) of the definition of “provisional taxpayer” of the following paragraph:

“(dd) a person exempt from payment of provisional tax in terms of paragraph 18.”.

(2) Subsection (1)(a), (b) and (c) come into operation for years of assessment commencing on or after 1 March 2011.

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

19. Paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for the proviso of the following proviso:

“: Provided that where that person is an “associated institution”, as defined in paragraph 1 of the Seventh Schedule, in relation to any employer who pays or is liable to pay to that employee any amount by way of remuneration during the year

of assessment during which the gain contemplated in subparagraph (1) arises;
and—

- [(i) is an “associated institution”, as defined in paragraph 1 of the Seventh Schedule, in relation to any employer who pays or is liable to pay to that employee any amount by way of remuneration during the year of assessment during which the gain contemplated in subparagraph (1) arises; and 5
- (ii) is or will be unable, for the reason described in subparagraph (5), to deduct or withhold the amount of employees’ tax or part of it in respect of that gain during that year of assessment,] 10
- (i) is not resident nor has a representative employer; or
- (ii) is unable to deduct or withhold the full amount of employees’ tax during the year of assessment during which the gain arises, by reason of the fact that the amount to be deducted or withheld from that employee by way of employees’ tax exceeds the amount from which the deduction or withholding can be made, 15

that person and that employer must deduct or withhold from the remuneration payable by them to that employee during that year of assessment an aggregate amount equal to the employees’ tax payable in respect of that gain and shall be jointly and severally liable for that employees’ tax.”. 20

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as amended by section 41 of Act No 90 of 1988, section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997, section 53 of Act 30 of 1998, section 56 of Act 59 of 2000, section 33 of Act 30 of 2002, section 56 of Act 74 of 2002, section 22 Act 16 of 2004, section 43 of Act 20 of 2006, section 105 of Act 8 of 2007 and section 44 of Act 3 of 2008 25

20. Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for the words following paragraph (b) of the following words: 30

“be an amount (to be known as Standard Income Tax on Employees) which shall, subject to the provisions of subparagraphs (2A) and (4), be [finally] determined by the employer at the end of the tax period under the provisions of subparagraph (3).” 35

Amendment of paragraph 12 of Fourth Schedule to Act 58 of 1962, as inserted by section 43 of Act 53 of 1999 and amended by section 15 of Act 61 of 2008

21. Paragraph 12 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for items (a) and (b) of the following items: 40

- “(a) has failed to submit a declaration or furnish a return as required in terms of paragraph 14[(1)] (2) or (3);
- (b) has submitted a declaration or furnished a return as required in terms of paragraph 14 (2) or (3) but the Commissioner is not satisfied with the declaration or return;” 45

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 50 of Act 61 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008, section 16 of Act 61 of 2008 and section 21 of Act 18 of 2009

22. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (6) of the following subparagraph: 50

“(6) If an employer fails to render to the Commissioner a return referred to in subparagraph (3) within the period prescribed in that subparagraph, that employer shall be required to pay a penalty equal to 10 per cent of the total amount of

employees' tax deducted or withheld from the remuneration of employees for **[during]** the period **[described in]** relating to the return required in terms of that subparagraph: Provided that the Commissioner may remit that penalty or portion thereof if he or she is satisfied that the circumstances warrant it.”.

Amendment of paragraph 3 of Seventh Schedule to Act 58 of 1962

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

“(2) The Commissioner may, if no determination is made, or if such determination appears to him or her to be incorrect, re-determine such cash equivalent—

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(a) and issue the employer with a notice of assessment in terms of paragraph 12 of the Fourth Schedule for the unpaid amount of employees' tax that is required to be deducted or withheld from such cash equivalent; or

(b) upon the assessment of the liability for normal tax of the employee to whom such taxable benefit has been granted.”.

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Amendment of section 4 of Act 91 of 1964

24. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the deletion in the first proviso to subsection (3) of the word “or” after paragraph (iii), the substitution in the proviso to subsection (3) for the full-stop at the end of paragraph (v) of the expression “; or” and the addition in the proviso to subsection (3) of the following paragraph:

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“(vi) disclosing to the Chief Commissioner of the International Trade Administration Commission such information in relation to imports and exports and importers and exporters as may be required by that Chief Commissioner for purposes of performing any function conferred on the Chief Commissioner by or in terms of the International Trade Administration Act, 2002 (Act No. 71 of 2002);” and

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

“(3A) The Statistician General or the Director-General of the Department of Trade and Industry or the National Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or any person acting under the direction and control of such Statistician-General or Director-General of the Department of Trade and Industry or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury or the Chief Commissioner of the International Trade Administration Commission shall not disclose any information supplied under the proviso to subsection (3) to any person or permit any person to have access thereto, except in the exercise of his or her powers or the carrying out of his or her duties under any Act from which such powers or duties are derived.”.

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(2) Subsection (1) is deemed to have come into operation on 1 June 2003.

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

25. Any rule made under section 119A of the Customs and Excise Act, 1964, or any amendment or withdrawal of or insertion in such rule during the period 1 October 2009 up to and including 31 May 2010 shall not lapse by virtue of section 119A(3) of that Act. 50

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, section 81 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008 and section 104 of Act 60 of 2008

26. Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in the definition of “**designated entity**” for paragraph (iii) of the following paragraph:

“(iii) which is a party to a ‘Public Private Partnership Agreement’ as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the extent that that party supplies goods or services in terms of that Agreement to the ‘institution’ defined in that Regulation;”.

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991, section 25 of Act 97 of 1993, section 21 of Act 46 of 1996, section 26 of Act 27 of 1997, section 167 of Act 45 of 2003, section 96 of Act 32 of 2004, section 103 of Act 31 of 2005, section 172 of Act 34 of 2005 and section 28 of Act 36 of 2007

27. Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) where the supply is for a consideration in money received by the supplier by means of any machine, meter or other device operated by a coin [or], paper currency, token or by any other means—

(i) in the case of such supplier, at the time any such coin, paper currency or token is taken from that machine, meter or other device by or on behalf of the supplier or an amount is received by the supplier by other means; and

(ii) in the case of the recipient of such supply at the time the coin, paper currency or token is inserted into that machine, meter or other device by or on behalf of the recipient or when payment is tendered through other means;”.

Amendment of section 14 of Act 89 of 1991, as amended by section 171 of Act 45 of 2003 and section 101 of Act 32 of 2004

28. (1) Section 14 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Where tax is payable in terms of section 7(1)(c) in respect of the supply of imported services the recipient shall within 30 days of the date referred to in subsection (2)—

- (a) furnish the Commissioner with a declaration (in such form as the Commissioner may prescribe) containing such information as may be required; and
- (b) calculate the tax payable on the value of the imported services at the rate of tax in force on the date of supply of the imported services and pay such tax to the Commissioner:

Provided that where the recipient is a vendor, that vendor must calculate the tax payable on the value of the imported services at the rate of tax in force on the date of supply of the imported services and must furnish the Commissioner with a return reflecting the information required for the purposes of the calculation of the tax in terms of section 14 and pay such tax to the Commissioner in accordance with section 28.”.

(2) Subsection (1) comes into operation on 1 February 2011.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007 and section 30 of Act 36 of 2007 5

29. Section 16 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

- “(b) (i) a **[tax invoice]** document as is acceptable to the Commissioner has been issued [is] in terms of section 20(6) **[or (7) not required to be issued, or a debit note or credit note is in terms of section 21 not required to be issued]; or** 10
 (ii) a document issued by the supplier in compliance with section 20(7) or 21(5); or” 15

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007 and section 35 of Act 18 of 2009 20

30. Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for subsection (6) of the following subsection:

“(6) Notwithstanding any other provision of this Act, a supplier shall not be required to provide a tax invoice if the total consideration for a supply is in money and does not exceed R50; Provided that the supplier shall provide the recipient with a document as is acceptable to the Commissioner.”; and 25

(b) by the substitution for subsection (8) of the following subsection:

“(8) Notwithstanding anything in this section, where a supplier makes a supply (not being a taxable supply) of second-hand goods or of goods as contemplated in section 8(10) to a recipient, being a registered vendor, the recipient shall in the form as the Commissioner may prescribe, **[where the value of the supply is R1 000 or more, obtain and]** maintain a declaration by the supplier stating whether the supply is a taxable supply or not and shall further maintain sufficient records to enable the following particulars to be ascertained: 30 35

(a) (i) The name of the supplier and—

(aa) where the supplier is a natural person, his identity number; or

(bb) where the supplier is not a natural person, the name and identity number of the natural person representing the supplier in respect of the supply and any legally allocated registration number of the supplier: 40

Provided that the recipient—

(A) shall verify such name and identity number of any such natural person with reference to his identity document, as contemplated in section 1 of the Identification Act, 1997 (Act No. 68 of 1997), and, **where the value of the supply is R1 000 or more,** retain a photocopy of such name and identity number appearing in such identity document; or 45 50

(B) shall verify such name and registration number of any supplier other than a natural person with reference to its business letterhead or other similar document and, **where**

the value of the supply is R1 000 or more,] retain a photocopy of such name and registration number appearing on such letterhead or document; and

- (ii) the address of the supplier;
- (b) the date upon which the second-hand goods were acquired or the goods were repossessed, as the case may be; 5
- (c) a description of the goods;
- (d) the quantity or volume of the goods;
- (e) the consideration for the supply[:]; and
- (f) proof and date of payment 10

[Provided that this subsection shall not require that recipient to keep such records where the total consideration for that supply is in money and does not exceed R50 or an amount determined by the Commissioner].”

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001, section 158 of Act 60 of 2001, section 118 of Act 74 of 2002, section 179 of Act 45 of 2003, section 37 of Act 32 of 2005, section 32 of Act 36 of 2007 and section 41 of Act 61 of 2008 15

31. Section 28 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 20

“(a) furnish the Commissioner with a return reflecting such information as may be required for the purpose of the calculation of tax in terms of section 14 or 16; and”.

Amendment of section 8 of Act 4 of 2002, as amended by section 81 of Act 30 of 2002 and section 48 of Act 19 of 2009 25

32. (1) Section 8 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for subsection (2A) of the following subsection:

“(2A) Every employer shall—

- (a) by such date or dates as prescribed by the Commissioner by notice in the Gazette; and 30
- (b) if during any such period the employer ceases to carry on any business or other undertaking in respect of which the employer has paid or becomes liable to pay a contribution as determined in terms of section 6, or otherwise ceases to be an employer, within 14 days after the date on which the employer has so ceased to carry on that business or undertaking or to be an employer, as the case may be, or within such longer time as the Commissioner may approve, render to the Commissioner such return as the Commissioner may prescribe.” 35

(2) Subsection (1) is deemed to have come into operation on 30 September 2009.

Amendment of section 1 of Act 29 of 2008, as amended by section 61 of Act 18 of 2009 40

33. (1) Section 1 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution in subsection (1) for paragraph (b) of the definition of “year of assessment” of the following paragraph:

“(b) in the case of any other person[,]—

- (i) the period commencing on 1 March 2010 and ending on the last day of the financial year in which that period falls; or 45
- (ii) the period commencing on the first day of that person’s financial year and ending on the last day of that financial year, and if any financial year begins on any day other than the first day of a month, that financial year is deemed to begin on the first day of that month.” 50

(2) Subsection (1) is deemed to have come into operation on 1 March 2010.

Amendment of section 2 of Act 29 of 2008, as amended by section 62 of Act 18 of 2009

- 34.** (1) Section 2 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended—
- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (a); 5
 - (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) wins or recovers a mineral resource extracted from within the Republic[.]; or”;
 - (c) by the addition in subsection (1) of the following paragraph: 10
 - “(c) elects to register for the purposes of this Act.”; and
 - (d) by the substitution in subsection (2)(a) for subparagraph (ii) of the following subparagraph:
 - “(ii) must apply to register with the Commissioner by [31 January] 28 February 2010; or”.
- (2) Subsection (1) is deemed to have come into operation on 1 November 2009. 15

Amendment of section 4 of Act 29 of 2008, as amended by section 63 of Act 18 of 2009

- 35.** (1) Section 4 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection: 20
- “(1) Notwithstanding subsection (2), if an unincorporated body of persons—
 - (a) consists of two or more members; [and]
 - (b) [holds] one or more members of that unincorporated body hold a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted pursuant to the Mineral and Petroleum Resources Development Act (or a lease or sublease mentioned in section 11 of the Mineral and Petroleum Resources Development Act in respect of such a right) [in the name of that unincorporated body]; and
 - (c) wins or recovers a mineral resource originating from within the Republic, 30 all the members of that unincorporated body may elect that the unincorporated body is deemed to be a person for the purposes of this Act [and], the Royalty Act and the Income Tax Act as applied to the Royalty Act.”.
- (2) Subsection (1) is deemed to have come into operation on 1 March 2010.

Amendment of section 5 of Act 29 of 2008 35

- 36.** (1) Section 5 of the Mineral and Petroleum Resources (Administration) Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) A registered person must—
 - (a) submit an estimate of the royalty payable in respect of a year of assessment if that person is registered within less than six months before the last day of that year; and 40
 - (b) make a payment equal to—
 - (i) one-half of the amount of the royalty so estimated; or
 - (ii) if the number of months in that year is less than 12, an amount which bears to the amount so estimated the same ratio as the number of months 45 that have elapsed in that year bear to the total number of months in that year,
 together with such return for that payment as the Commissioner may prescribe.”.
- (2) Subsection (1) is deemed to have come into operation on 1 March 2010. 50

Amendment of section 14 of Act 29 of 2008

37. (1) Section 14 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If the royalty mentioned in section 6(1) in respect of a year of assessment exceeds the amount paid as mentioned in section 5 in respect of that year and that excess is greater than ~~[10]~~ 20 per cent of the royalty mentioned in section 6(1), the Commissioner may impose a penalty that may not exceed 20 per cent of that excess.”

(2) Subsection (1) is deemed to have come into operation on 1 March 2010. 10

Amendment of section 19 of Act 29 of 2008

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

(a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b) and the addition to subsection (1) of the following paragraphs: 15

“(d) the methodology employed to adjust the amount allowed to be deducted in respect of the use of assets or expenditure incurred in terms of section 5 of the Mineral and Petroleum Resources Royalty Act;

(e) the methodology employed to adjust the amount of gross sales determined in terms of section 6 of the Mineral and Petroleum Resources Royalty Act; and 20

(f) the allocation of the amount in respect of assets used or expenditure incurred contemplated in section 5 of the Royalty Act per mineral resource.”; and 25

(b) by the substitution for subsection (7) of the following subsection:

“(7) The provisions of this section ~~[may]~~ must not be construed as preventing—

(a) the Minister of Finance from disclosing to the Commissioner; and 30

(b) the Commissioner from disclosing to the Director-General of the Department of Mineral Resources; and

(c) the Minister of Finance and the Commissioner from disclosing to 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 (Act No. 20 of 2002), 35

any information submitted under this subsection.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2010.

Short title and commencement

39. (1) This Act is called the Voluntary Disclosure Programme and Taxation Laws Second Amendment Act, 2010. 40

(2) Save in so far as is otherwise provided for in this Act or the context otherwise indicates, the amendments effected by this Act come into operation on the date of promulgation of this Act.

(3) Notwithstanding subsection (2), and save in so far as is otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act are deemed for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, to have come into operation as from the commencement of years of assessment ending on or after 1 January 2011. 45