

REPUBLIC OF SOUTH AFRICA

DRAFT TAX ADMINISTRATION LAWS AMENDMENT BILL, 2020

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. of) (The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B - 2020]

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.
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BILL

To—

- amend the Estate Duty Act, 1955, so as to update an incorrect cross-reference;
- amend the Income Tax Act, 1962, so as to delete obsolete wording; so as to make a decision subject to objection and appeal; so as to enable a public benefit organisation to provide funds and assets to any department of government of the Republic and effect consequential amendments relating thereto; to align provisions to provide that only approved public benefit organisations can provide certain certificates; to provide that audit certificates must be obtained and retained by certain organisations; to align situations where withholding tax on royalties was due and payable but subsequently becomes irrecoverable with that of withholding tax on interest; to provide that certain entities be excluded from the definition of provisional taxpayer; to align the wording with certain current processes and remove a reference to a deleted provision; to remove the requirement of intent from certain criminal offences; to effect a consequential amendment; and to replace a reverse onus provision with an evidentiary burden;

- **amend the Customs and Excise Act, 1964, so as to make technical corrections; to extend a provision concerning information sharing and to exclude certain information from the application of the prohibition on disclosure of information; to clarify the movement in bond of containerised goods on the strength of a manifest and without furnishing security to licensed container depots or container terminals appointed or prescribed; to clarify how bills of entry may be adjusted; to provide for the commencement of liability for export duty; to provide for the liability of the master of a ship or pilot of an aircraft or other carrier for duty on goods deemed imported to cease upon delivery of the goods to a licensed remover in bond, for the assumption of such liability by a licensed remover in bond, as well as for the circumstances in which liability of the licensed remover in bond will cease; to clarify the meaning of “free on board” in relation to goods exported; to provide for the limitation of the period for applications for refunds of export duty; and to widen a provision relating to the production of permits or certificates required in respect of imported goods to apply to exported goods as well;**
- **amend the Value-Added Tax Act, 1991, so as to substitute the requirement to submit a return with the obligation to obtain, complete and retain the form prescribed by the Commissioner; to substitute obsolete wording; and to remove the requirement of intent from certain criminal offences;**
- **amend the Skills Development Levies Act, 1999, so as to provide that the Commissioner may refuse to authorise a refund if a return is outstanding;**

- amend the Unemployment Insurance Contributions Act, 2002, so as to provide that the Commissioner may refuse to authorise a refund if a return is outstanding;
 - amend the Tax Administration Act, 2011, so as to provide for a textual correction, to clarify certain terminology; to effect a consequential amendment; to move certain provisions to another section; to provide for consequential amendments; to provide for the issue of assessments based on an estimate where a taxpayer fails to provide relevant information; to amend the period within which a reduced assessment can be requested; to align the period within which an extension may be granted with the period for prescription; to provide for a specific effective date with regards to interest calculated on an erroneous overpayment of tax; to provide for interest on royalties payable in terms of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 and to provide for the interest rate with regards to refunds due under that Act; to provide that a refund does not need to be authorised where a matter is under criminal investigation and to remove the requirement of intent from certain criminal offences,
- and to provide for matters connected therewith.

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

Amendment of section 10 of Act 45 of 1955, as amended by section 271 read with paragraph 18 of Schedule 1 to Act 28 of 2011, section 3 of Act 21 of 2012 and section 2 of Act 13 of 2017

1. Section 10 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If any duty remains unpaid at the expiration of a period of thirty days from the date of payment notified in accordance with **[subsection (2) of section nine]**section 9C, there shall be payable, in addition to the unpaid duty, interest at the rate of six per cent, per annum on the amount of unpaid duty calculated from the date of the expiration of the said period to the date of payment: Provided that, where the assessment of duty is delayed beyond a period of twelve months from the date of death, interest at the rate of six per cent[.] per annum shall be payable as from a date twelve months after the date of death on the difference (if any) between the duty assessed and any deposit (if any) made on account of the duty payable within the said period of twelve months.”.

Amendment of section 1 of Act 58 of 1962 as amended by Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of

Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014, section 3 of Act 25 of 2015, section 5 of Act 15 of 2016, section 2 of Act 17 of 2017, section 1 of Act 23 of 2018 and section 1 of Act 34 of 2019

2. Section 1 of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “**representative taxpayer**” for paragraph (c) of the following paragraph:

"(c) in respect of income which is the subject of any trust or in respect of the income of any minor or **[mentally disordered or defective]** person with a mental disability or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving money on behalf of such person under disability;”.

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, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 5 of Act 60 of 2008, section 2 of Act 61 of 2008, section 14 of Act 8 of 2010, section 271 of Act 28 of 2011, read with paragraph 25 of Schedule 1 to that Act, section 2 of Act 39 of 2013, section 2 of Act 43 of 2014, section 2 of Act 44 of 2014, section 1 of Act 23 of 2015, section 1 of Act 16 of 2016, section 2 of Act 22 of 2018 and section 1 of Act 33 of 2019

3. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) section 8(5)(b) and (bA), section 10(1)(cA), (e)(i)(cc), (j) and (nB), section 10A(8), section 11(e), (f), (g), (gA), (j) and (l), section 12B(6), section 12C, section 12E, section 12J(6), (6A) and (7), section 13, section 15, section 18A(1)(a)(cc), (b) and (c), section 18A(1)(bA)(dd), section 22(1) and (3), section 23H(2), section 23K, section 24(2), section 24A(6), section 24C, section 24D, section 24I(1) and (7), section 24J(9), section 24P, section 25A, section 27, section 28(9), section 30, section 30A, section 30B, section 30C, section 31, section 37A, section 38(2)(a) and (b) and (4), section 44(13)(a), section 47(6)(c)(i), section 62(1)(c)(iii) and (d) and (2)(a) and (4), section 80B and section 103(2);”.

Amendment of section 18A of Act 58 of 1962, as substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011, section 7 of Act 21 of 2012, section 52 of Act 31 of 2013, section 29 of Act 43 of 2014, section 3 of Act 44 of 2014, section 34 of Act 15 of 2015, section 31 of Act 17 of 2017 and section 35 of Act 23 of 2018

4. Section 18A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) any public benefit organisation contemplated in paragraph (a)(i) of the definition of “public benefit organisation” in section 30(1) approved by the Commissioner under section 30, which provides funds or assets to any public benefit organisation, or institution, board or body contemplated in paragraph (a), or any department contemplated in paragraph (c) and which has been approved by the Commissioner for the purposes of this section; or”;

(b) by the deletion in subsection (1)(bA) of the word “and” at the end of item (bb);

(c) by the substitution in subsection (1)(bA) for the word “or” of the word “and” at the end of item (cc);

(d) by the addition in subsection(1)(bA) after item (cc) of the following item:

“(dd) has been approved by the Commissioner for the purposes of this section; or”;

(e) by the substitution for subsection (1)(c) of the following subsection:

“(c) any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a), which has been approved by the Commissioner for the purposes of this section, to be used for purpose of any activity contemplated in Part II of the Ninth Schedule,

as does not exceed—

(A) where the taxpayer is a portfolio of a collective investment scheme, an amount determined in accordance with the following formula:

$$A = B \times 0,005$$

in which formula:

(AA) “A” represents the amount to be determind;

(BB) “B” represents the average value of the aggregate of all of the participatory interests held by investors in the portfolio for the year of assessment, determined by using the aggregate value of all of the participatory interests in the portfolio at the end of each day during that year; or

- (B) in any other case, ten per cent of the taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) of the taxpayer as calculated before allowing any deduction under this section or section 6quat(1C)

:Provided that any amount of a donation made as contemplated in his subsection and which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of the year of assessment shall be carried forward and shall, for the purposes of this section, be deemed to be a donation actually paid or transferred in the next succeeding year of assessment.”;

(f) by the substitution in subsection (2A) for item (ii) in paragraph (b) of the following item:

“(ii) **[if that public benefit organisation]**which provides funds and assets to public benefit organisations, institutions, boards or bodies or any department that carry on public benefit activities contemplated in **[Part]Parts I and II** of the Ninth Schedule **[and to other entities]**, that donation will be utilised solely to provide funds or assets to a public benefit organisation, institution, board or body contemplated in subsection (1)(a), which will utilise those funds or assets solely in

carrying on activities contemplated in Part II of the Ninth Schedule or to any department contemplated in subsection (1)(c) which will utilise those funds or assets solely for the purpose of any activity contemplated in Part II of the Ninth Schedule; or”;

(g) the substitution for subsection (2D) of the following subsection:

“(2D) Any public benefit organisation contemplated in subsection (1)(b), in respect of any amount that is not distributed **[referred to] as required** in subsection (2A)(b)(i), shall distribute or incur the obligation to distribute all amounts received in respect of investment assets held by it, other than amounts received in respect of disposals of those investment assets to any public benefit organisation, institution, board or body contemplated in subsection (1)(a) or to any department contemplated in subsection (1)(c), no later than six months after—”;

(h) the substitution in subsection (5) for the comma at the end of paragraph (c) with a semi-colon; and

(i) the addition in subsection (5) of the following paragraphs:

“(d) failed to obtain and retain an audit certificate as contemplated in subsection (2B); or

“(e) failed to submit an audit certificate as contemplated in subsection (2C).”.

Amendment of section 49G of Act 58 of 1962 as inserted by section 12 of Act 21 of 2012

5. Section 49G of the Income Tax Act, 1962, is hereby amended—
- (a) by the renumbering of the current section to subsection (1); and
 - (b) by the addition after subsection (1) of the following subsection:
 - “(2) Notwithstanding Chapter 13 of the Tax Administration Act, if—
 - (a) an amount of withholding tax on royalties is paid as contemplated in section 49E(1) in respect of an amount of royalties that became due and payable; and
 - (b) the amount of royalties subsequently becomes irrecoverable, so much of that amount as would not have been paid had the royalties not become due and payable is refundable by the Commissioner to the person who paid the tax.”

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as amended by Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as 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, section 17 of Act 18 of 2009, section 18 of Act 8 of 2010, section 93 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 77 of Schedule 1 to that Act, section 7 of Act 44 of 2014, section 6 of Act 23 of 2015, section 5 of Act 16 of 2016, section 8 of Act 13 of 2017 and section 4 of Act 22 of 2018

6. Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition in the definition of “provisional taxpayer” of the following paragraph after paragraph (ff):

“(gg) any entity as defined in section 30B that has been approved by the Commissioner in terms of section 30B(2).”.

Amendment of paragraph 13 of Fourth Schedule to Act 58 of 1962, as amended by section 24 of Act 72 of 1963, section 29 of Act 113 of 1977, substituted by section 49 of Act 101 of 1990, section 23 of Act 19 of 2001, as amended by section 21 of Act 4 of 2008, substituted by section 11 of Act 39 of 2013, deleted by section 31 of Act 23 of 2015 and section 12 of Act 23 of 2015 and section 49 of Act 101 of 1990

7. Paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to the provisions of paragraphs 5, 14(5) and 28, every employer who during any period contemplated in subparagraph (1A) deducts or withholds any amount by way of employees’ tax as required by paragraph 2 shall within the time allowed by subparagraph (2) of this paragraph deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such employer, an employees’ tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees’ tax deducted or withheld by such employer from such remuneration during the said period, excluding any amount of remuneration or employees’ tax included in any other employees’ tax certificate issued by such employer unless such other certificate **[has been surrendered to such employer by the employee or former employee and]** has been cancelled by such employer **[and dealt with by the employer as provided in subparagraph (10)]**.”;

(b) by the substitution for subparagraph (4) of the following subparagraph:

“(4) Notwithstanding the provisions of sub-paragraphs (1) and (2) any employer who has deducted or withheld employees’ tax from the remuneration of any employee shall as and when required by the Commissioner deliver to such employee an employees’ tax certificate in such form as the Commissioner may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees’ tax deducted or withheld by such employer from such remuneration during any period specified by the

Commissioner but excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer unless such other certificate **[has been surrendered to such employer by the employee or former employee and]** has been cancelled by such employer **[and dealt with by him as provided in subparagraph (10)].**”;

- (c) by the deletion of subparagraphs (8), (9), (10), (11), (13) and (14); and
- (d) by the substitution for subparagraph (15) of the following subparagraph:

“(15) For the purposes of this Schedule any employees' tax certificate on which appears the name or any trade name of any employer shall until the contrary is proved be deemed to have been issued by such employer if such certificate is in a form prescribed by the Commissioner **[for general use and was supplied by the Commissioner to such employer for use by him or is in a form approved by the Commissioner under subparagraph (12) for use by such employer].**”.

Amendment of paragraph 30 of Fourth Schedule to Act 58 of 1962, as amended by section 45 of Act 21 of 1995, section 19 of Act 23 of 2015, section 44 of Act 53 of 1999 and section 271 read with paragraph 97 of Schedule 1 to Act 28 of 2011

8. Paragraph 30 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words in subsection (1) that precede paragraph (a) of the following words:

“Any person who **[wilfully and]** without just cause—”.

- (b) by the deletion in subparagraph (1) of item (a);
- (c) by the deletion in subparagraph (1) of item (g); and
- (d) by the substitution for subparagraph (2) of the following subparagraph:

“(2) For the purposes of item (b) of sub-paragraph (1) **[an amount which has been deducted or withheld by any]**the person may, **[from remuneration shall until the contrary is proved be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Commissioner if such amount is not paid to the Commissioner within the period allowed for payment under paragraph 2]** unless he or she proves a reasonable possibility that the amount was not so used or applied, be regarded as having used or applied the amount for purposes other than paying the amount to the Commissioner.”.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 32 of Act 60 of 1989, section 51 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 34 of Act 34 of 1997, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 66 of Act 32 of 2004, section 85 of Act 31 of 2005, section 7 of Act 21 of 2006, section 10 of Act 9 of 2007,

section 4 of Act 36 of 2007, section 22 of Act 61 of 2008, section 1 of Act 32 of 2014, section 20 of Act 23 of 2015 and section 11 of Act 33 of 2019

9. Section 1 of the Customs and Excise Act, 1964, is hereby amended by the insertion in the definition of “importer” in subsection (1) of the expression “; or” after paragraph (e).

Amendment of section 3 of Act 91 of 1964, as amended by section 132 of Act 45 of 2003, section 27 of Act 21 of 2012 and section 2 of Act 32 of 2014

10. Section 3 of the Customs and Excise Act, 1964, is hereby amended—
 (a) by the substitution in subsection (2) for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) the officer **[of]**or person concerned;” and

(b) by the substitution in subsection (2) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) the branch manager to whom the officer **[of]**or person in (i) reports;”.

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006, section 9 of Act 21 of 2006, section 5 of Act 36 of 2007, section 25 of Act 61 of 2008, section 24 of

Act 8 of 2010, section 3 of Act 25 of 2011 and section 16 of Act 39 of 2013, repealed by section 4 of Act 32 of 2014, and amended by section 22 of Act 23 of 2015, section 11 of Act 13 of 2017 and section 12 of Act 33 of 2019

11. Section 4 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014 (Act No. 32 of 2014), is hereby amended—

(a) by the substitution in subsection (3) for paragraph (ivC) of the proviso of the following paragraph:

“(ivC) disclosing to a public officer, as contemplated in section 246 of the Tax Administration Act, of an authorised dealer in foreign exchange appointed by the Minister of Finance for purposes of the **[Exchange Control] Regulations [published under Government Notice No. R1111 of 1 December 1961, as amended,]** issued under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), such information as may be required by the authorised dealer for purposes of verification of applications for advance foreign exchange payments in respect of goods that are to be imported;”;

(b) by the insertion in subsection (3) after paragraph (ivC) of the proviso of the following paragraph:

“(ivD) disclosing to the Director-General of the Department of International Relations and Co-operation such information in relation to purchases of goods free of duty or value-added tax, at premises licensed as special customs and excise warehouses in terms of section 21, as may be required to manage abuses in relation to privileges granted

in terms of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001);”;

(c) by the insertion in subsection (3A) after paragraph (h) of the following paragraph:

“(hA) the Director-General of the Department of International Relations and Co-operation;”; and

(d) by the substitution for subsection (3D) of the following subsection:

“(3D) The prohibition on the disclosure of information by the Commissioner or any officer, referred to in subsection (3), shall not apply in respect of information relating to—

(a) **[information about]** a person licensed or registered in terms of this Act in an anonymised form; **[and]**

(b) **[any information relating to]** any person, where that person has consented that such information may be published or made known to any other person~~[.]~~; and

(c) tariff determinations, provided that publication of such information shall take place in accordance with any rules prescribed by the Commissioner which may include the circumstances in which publication may take place, the kind of information that may be published and the manner in which the information must be published.”.

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, section 11 of Act 45 of 1995, section 48 of Act 53

of 1999, section 37 of Act 19 of 2001, section 119 of Act 60 of 2001, section 102 of Act 74 of 2002, section 21 of Act 34 of 2004, section 16 of Act 21 of 2006, section 26 of Act 18 of 2009 and section 5 of Act 32 of 2014

12. Section 18 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) a container operator may remove any container in bond to the container depot licensed in terms of section 64A, or to the container terminal contemplated in section 6(1)(hA), to which it was consigned, without furnishing the security provided for in subsection (6) of this section, and the manifest of the goods packed in such container shall be deemed to be due entry for removal in bond of that container;”.

Amendment of section 40 of Act 91 of 1964 as amended by section 9 of Act 95 of 1965, section 6 of Act 71 of 1975, section 5 of Act 105 of 1976, section 2 of Act 93 of 1978, section 4 of Act 86 of 1982, section 3 of Act 89 of 1983, section 11 of Act 84 of 1987, section 4 of Act 68 of 1989, section 30 of Act 45 of 1995, section 35 of Act 61 of 2008 and section 29 of Act 32 of 2014

13. Section 40 of the Customs and Excise Act, 1964, is hereby amended—
(a) by the substitution in paragraph (a) of subsection (3) for subparagraph (i) of the following subparagraph:

“(i) an importer or exporter or a manufacturer of goods shall on discovering that a bill of entry delivered by him or her—
(aa) does not in every respect comply with section 39; or

(bb) is invalid in terms of subsection (1) of this section,
adjust that bill of entry without delay by means of—

(A) a voucher of correction; or

**[(B) cancellation of such bill of entry and substitution of a fresh
bill of entry; or]**

(C) in such other manner as the Commissioner may prescribe; or”;
and

(b) by the substitution for the proviso in paragraph (a) of the following proviso:

“Provided that where the purpose for which the goods are entered as
specified on a bill of entry is not correct, such bill of entry must be adjusted in
terms of subparagraph (ii),

and [Provided]provided further that acceptance of such voucher or fresh bill
of entry shall not indemnify such importer or exporter or manufacturer
against any fine or penalty provided for in this Act.”.

**Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act
95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7
of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 10 of 1979,
section 3 of Act 89 of 1984, section 5 of Act 52 of 1986, section 13 of Act 84 of
1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act
45 of 1995, section 51 of Act 53 of 1999, section 136 of Act 45 of 2003, section
67 of Act 32 of 2004, section 12 of Act 9 of 2005, section 91 of Act 35 of 2007,
section 93 of Act 60 of 2008 and section 33 of Act 32 of 2014**

14. Section 44 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the renumbering of the existing wording of subsection (1) to subsection (1)(a) and by the addition of the following paragraph:

“(b) Liability for export duty on any goods specified in Part 6 of Schedule No. 1 shall commence—
(i) when the export bill or entry in respect of such goods is submitted before export in terms of section 38(3)(a); or
(ii) in circumstances where no export bill of entry is submitted before export, when the goods are deemed exported in terms of section 38(3)(b).”;

(b) by the addition in subsection (5) of the following paragraph:

“(e) upon delivery of the goods, if containerized, to a licensed remover of goods in bond for transporting the goods for purposes of examination as contemplated in section 4(8A).”;

(c) by the insertion after subsection (5A) of the following subsection:

“(5AA) The liability of a licensed remover of goods in bond for duty in terms of subsection (6)(bA) shall cease—
(a) in respect of goods which are containerized, upon lawful delivery thereof, after due entry thereof has been made, to the importer or his agent; or
(b) in respect of containers delivered to a licensed remover of goods in bond as contemplated in subsection (5)(e) and specified in a list to be compiled by the licensed remover of goods in bond concerned, upon delivery thereof to a depot operator.”;

(d) by the deletion in subsection (6) of the word “and” at the end of paragraph (b);

and

(e) by the insertion in subsection (6) of the following paragraph after paragraph (b):

“(bA) in the case contemplated in subsection (5)(e), on the licensed remover of goods in bond concerned; and”.

Amendment of section 72 of Act 91 of 1964, as amended by section 11 of Act 105 of 1976, section 11 of Act 98 of 1980, section 26 of Act 34 of 2004, section 162 of Act 31 of 2013 and repealed by section 62 of Act 32 of 2014

15. Section 72 of the Customs and Excise Act, 1964, pending its repeal by the Customs and Excise Amendment Act, 2014, is hereby amended by the addition after paragraph (c) of the following paragraph:

“(d) For the purpose of this section, “free on board” in relation to goods exported to or to be exported from the Republic includes—

(i) all profits, costs, charges and expenses incidental to placing goods on board a vessel, aircraft, train or vehicle in which the goods are to be transported across the border of the Republic; or

(ii) if those goods consist of a vessel, aircraft, train or vehicle moving under its own power or on its own wheels, all profits, costs, charges and expenses up to the place where the goods leave the Republic.”.

Amendment of section 76B of Act 91 of 1964 as inserted by section 67 of Act 30 of 1998, substituted by section 29 of Act 34 of 2004, and amended by section 20 of Act 32 of 2005, section 100 of Act 60 of 2008 and section 66 of Act 32 of 2014

16. Section 76B of the Customs and Excise Act, 1964 is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Where any person becomes entitled to a refund of export duty, such refund shall be limited to an application received by the Controller within a period of two years from the date of entry for export of the goods to which the application relates.”.

Amendment of section 113 of Act 91 of 1964 as amended by section 14 of Act 57 of 1966, section 57 of Act 57 of 1966, section 11 of Act 103 of 1972, section 5 of Act 68 of 1973, section 49 of Act 42 of 1974, section 25 of Act 86 of 1982, section 7 of Act 89 of 1983, section 31 of Act 84 of 1987, section 17 of Act 68 of 1989, section 14 of Act 105 of 1992, section 12 of Act 98 of 1993, section 71 of Act 45 of 1995, section 73 of Act 30 of 1998, section 22 of Act 16 of 2016 and section 82 of Act 32 of 2014

17. Section 113 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Goods which purport to have been imported or exported under a permit, certificate or other authority in terms of any provision of this Act or any other law shall be deemed to have been imported or exported in contravention of such provision unless the permit, certificate or other authority in question is produced to the Controller.”.

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990, section 11 of Act 19 of 1994, section 73 of Act 45 of 1995, section 74 of Act 30 of 1998, section 35 of Act 21 of 2006, section 24 of Act 36 of 2007, section 40 of Act 61 of 2008, section 86 of Act 32 of 2014 and section 18 of Act 33 of 2019

18. Section 120 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (mC) of the following words:

“(mC) as to matters relating to the making of certain advance foreign exchange payments in relation to goods that are to be imported, through authorised dealers in foreign exchange appointed by the Minister of Finance for purposes of the **[Exchange Control] Regulations[, published under Government Notice No. R1111 of 1 December 1961, as amended,]** issued under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), including rules prescribing—”.

Amendment of section 14 of Act 89 of 1991, as substituted by section 28 of Act 8 of 2010, amended by section 101 of Act 32 of 2004, section 136 of Act 24 of 2011 and section 271 read together with paragraph 113 of Schedule 1 to Act 28 of 2011

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

“(a) **[furnish]**obtain, complete and retain the form prescribed by the Commissioner **[with a return]**; and”.

Amendment of section 20 of Act 89 of 1991, as amended by 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, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009, section 30 of Act 8 of 2010, section 29 of Act 21 of 2012, section 176 of Act 31 of 2013, section 26 of Act 23 of 2015, section 7 of Act 22 of 2018 and section 19 of Act 33 of 2019

20. Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (8)(a)(i) for item (A) of the proviso of the following proviso:

“(A) shall verify such name and identity number of any such natural person with reference to his **[identity document]**identity card, as contemplated in section 1 of the Identification Act, 1997 (Act No. 68 of 1997), and retain a photocopy of such name and identity number appearing in such **[identity document]**identity card; or”.

Amendment of section 58 of Act 89 of 1991, as substituted by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, inserted and amended by section 102 of Act 53 of 1999, section 72 of Act 19 of 2001, added by section 173 of Act 60 of 2001, section 119 of Act 74 of 2002, section

43 of Act 34 of 2004, section 42 of Act 32 of 2005, substituted and added by section 41 of Act 18 of 2009, section 142 of Act 24 of 2011 and amended by section 271 read with paragraph 142 of Schedule 1 to Act 28 of 2011

21. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Any person who **[wilfully and]** without just cause—”.

Amendment of section 6 of Act 9 of 1999

22. Section 6 of the Skills Development Levies Act, 1999, is hereby amended by the addition after subsection (5) of the following subsection:

“(6) The Commissioner may refuse to authorise a refund under subsection 190 of the Tax Administration Act, if the employer has failed to furnish a return as required in terms of subsection (2), until the employer has finished such return.”.

Amendment of section 8 of Act 4 of 2002

23. Section 8 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the addition after subsection (5) of the following subsection:

“(b) The Commissioner may refuse to authorise a refund under subsection 190 of the Tax Administration Act, if the employer has failed to furnish a return as required in terms of subsection (2), until the employer has finished such return.”.

Amendment of section 12 of Act 28 of 2011, as amended by section 28 of Act 33 of 2019

24. Section 12 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Despite any law to the contrary, a senior SARS official may on behalf of SARS or the Commissioner in proceedings referred to in a tax Act, appear *ex parte* in a judge's chambers, in the tax court or in a High Court.”.

Amendment of section 70 of Act 28 of 2011 as amended by section 13 of Act 26 of 2013, section 42 of Act 39 of 2013 and section 48 of Act 23 of 2015

25. Section 70 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) the Governor of the South African Reserve Bank, or other person to whom the Minister delegates powers, functions and duties under the **[Exchange Control] Regulations[, 1961,]** issued under section 9 of the Currency and Exchange Act, 1933, (Act No. 9 of 1933), the information as may be required to exercise a power or perform a function or duty under the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), or those Regulations;”.

Amendment of section 86 of Act 28 of 2011

26. Section 86 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If the ‘advance ruling’ is a ‘binding private ruling’ or ‘binding class ruling’, SARS must first provide the ‘applicant’ with notice of the proposed withdrawal or modification and a reasonable opportunity to **[object]** make representations prior to the proposed decision.”.

Amendment of section 91 of act 28 of 2011, as amended by section 45 of Act 39 of 2013 and section 49 of Act 23 of 2015

27. Section 91 of the Tax Administration Act, 2011, is hereby amended by the deletion of subsections (4), (5) and (6).

Amendment of section 93 of Act 28 of 2011

28. Section 93 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in subsection (1) for the full stop at the end of paragraph (e) with a semi-colon; and

(b) by the addition in subsection (1) after paragraph (e) of the following paragraph:

“(f) the taxpayer in respect of whom an assessment has been issued under section 95(1), requests SARS to issue a reduced assessment under section 95(5)(c).”.

Amendment of section 95 of Act 28 of 2011

29. Section 95 of the Tax Administration Act, 2011, is hereby amended:

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

“(1) SARS may make an original, additional, reduced or jeopardy assessment based in whole or in part on an estimate if the taxpayer—

(a) **[fails to]does not** submit a return **[as required]**;

(b) submits a return or information that is incorrect or inadequate; or

(c) fails to submit relevant material requested by SARS under section 46, after receiving more than one request for such material.”; and

(b) by the addition after subsection (3) of the following subsections:

(4) The making of an assessment under subsection (1) does not detract from the obligation to submit a return or the relevant material.

(5) An assessment under subsection (1) is not subject to objection or appeal unless the taxpayer submits the return or the relevant material and SARS does not issue a reduced or additional assessment.

(6) The taxpayer in respect of whom the assessment under subsection (1) has been issued may, within 40 business days from the date of assessment, request SARS to issue a reduced assessment or additional assessment by submitting a true and full return or the relevant material.

(7) A senior SARS official may extend the period referred to in subsection (6) within which the return or relevant material must be submitted, for a period not exceeding the period referred to in section 99(1).”.

Amendment of section 187 of Act 28 of 2011, as amended by section 66 of Act 21 of 2012 and section 59 of Act 23 of 2015

30. Section 187 of the Tax Administration Act, 2011, is hereby amended by the addition in subsection (3) of the following paragraph after paragraph (g):

“(h) an erroneous payment referred to in section 190(1)(b), is the date 60 business days after the date that the payment was made.”

Amendment of section 188 of Act 28 of 2011

31. Section 188 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the deletion in subsection (2) of the word “and” at the end of paragraph (a);
- (b) by the addition in subsection (2) after paragraph (b) of the following paragraphs:

“(c) first payment under section 5(1) or 5A of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008) is imposed from the effective date for the first payment until the earlier of the date on which the payment is made or the effective date for the second payment under section 5(2) or 5A of that Act for the relevant year of assessment; and

(d) second payment under section 5(2) or 5A of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008 (Act No. 29 of 2008) is imposed from the effective date for the second payment until the earlier of the date on which the payment is made or the effective date for mineral and petroleum resources royalty under section 6(2) for the

relevant year of assessment.”.

Amendment of section 189 of Act 28 of 2011, as amended by section 67 of Act 21 of 2012

32. Section 189 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) In the case of interest payable with respect to refunds on assessment of provisional tax and employees’ tax for purposes of final assessment of income tax or of mineral and petroleum resources royalty paid for the relevant year of assessment, the rate payable by SARS is four percentage points below the prescribed rate.”.

Amendment of section 190 of Act 28 of 2011, as amended by section 71 of Act 39 of 2013, section 53 of Act 44 of 2014, section 60 of Act 23 of 2015, section 28 of Act 13 of 2017 and section 21 of Act 22 of 2018

33. Section 190 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) SARS need not authorise a refund as referred to in subsection (1) until such time that a verification, inspection or audit or criminal investigation of the refund in accordance with Chapter 5 has been finalised.”; and

Amendment of section 234 of Act 28 of 2011 as substituted by section 77 of Act 21 of 2012 and section 43 of Act 33 of 2019

34. Section 234 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution of the words preceding paragraph (a) of the following words:

“A person who **[wilfully and]** without just cause—.” and

(b) by the substitution for paragraph (p) of the following paragraph:

“(p) makes or becomes liable to make a payment of any withholding tax and
fails or neglects to withhold **[and]**or pay to SARS **[an]**the amount of tax
as and when required under a tax Act;”.

Short title and commencement

35. (1) This Act is called the Tax Administration Laws Amendment Act, 2020.

(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.

DRAFT MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2020

1. PURPOSE OF BILL

The Tax Administration Laws Amendment Bill, 2020 (the “Bill”), proposes to amend the Estate Duty Act, 1955, Income Tax Act, 1962, the Customs and Excise Act, 1964, the Value-Added Tax Act, 1991, the Skills Develop Levies Act, 1999, the Unemployment Insurance Contributions Act, 2002, and the Tax Administration Act, 2011.

2. OBJECTS OF BILL

2.1. *Estate Duty Act, 1955: Amendment of section 10*

The proposed amendment aims to update an incorrect cross-reference.

2.2. *Income Tax Act, 1962: Amendment of section 1*

The terms “mentally disordered” and “defective person” are inappropriate. It is proposed that these terms be replaced with a modern term of more general application, namely, “mentally disabled”.

2.3. *Income Tax Act, 1962: Amendment of section 3*

The proposed amendment to section 18A(1)(bA) to specify that the approval for purposes of section 18A is subject to the discretion of the Commissioner, should be subject to objection and appeal. Section 3(4)(b) should therefore be amended to include section 18A(1)(bA)(dd).

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

Paragraph (a): Currently a conduit public benefit organisation (PBO) approved under section 18A(1)(b), can only provide funds and assets to a PBO or an institution, board or body approved by the Commissioner under section 18A(1)(a) carrying on public benefit activities (PBAs) in Part II of the Ninth Schedule, in South Africa. The proposed

amendment aims to ensure that a conduit PBO can also provide funds and assets to any department of government of the Republic contemplated in section 10(1)(a) which has been approved by the Commissioner under section 18A(1)(c).

Paragraph (d): The amendment intends to align section 18A(1)(bA) with sections 18A(1)(a), (b) and (c) to clarify that an application for approval by the Commissioner is required.

Paragraph (e): The proposed amendment is a textual correction to ensure that the proviso to section 18A(1)(c) is applicable to both paragraphs (A) and (B).

Paragraph (f) and (g): The proposed amendments to section 18A(1)(2A)(b)(ii) and 18A(2D) as consequential to the amendment to section 18A(1)(b) allowing a conduit PBO to also provide funds or assets to a department contemplated in section 18A(1)(c). The proposed amendment furthermore, affects some textual changes, clarifies existing wording and aligns the current wording with that of section 18A(1)(b) that provides for a conduit PBO to provide funds as well as assets.

Paragraph (h): Consequential amendment for purposes of adding a new paragraph (d).

Paragraph (i): It is a requirement that a public benefit organisation, an institution, board or body or a department approved by the Commissioner for purposes of section 18A carrying on a combination of PBAs in Parts I and II of the Ninth Schedule, must obtain and retain an audit certificate confirming that all donations received or accrued in the year of assessment for which section 18A receipts were issued were used solely in carrying on PBAs in Part II in South Africa. In the case of a department the audit

certificate must be submitted annually to the Commissioner.

In the case of a conduit PBO, it is a requirement to obtain and retain an audit certificate to confirm that at least 50% of the donations will be distributed within 12 months and that the funds or assets will be used to fund a PBO, institution, board or body or a department carrying on PBAs in Part II.

It is proposed that the audit certificate requirement be added to the listed requirements where non-compliance may give rise to the taxation of donations and ultimately the invalidity of section 18A receipts.

2.5. *Income Tax Act, 1962: Amendment of section 49G*

The withholding tax on interest provisions provide for a refund of excess withholding tax on interest withheld if the required declaration was not submitted in time (a refund to the person entitled to the interest) or the interest subsequently proves to be irrecoverable (a refund to the person who withheld and paid over the tax when it became due and payable). However, the withholding tax on royalties provisions only provide for a refund if the declaration is not submitted. It is proposed that provision be made for a situation where the withholding tax on royalties that was due and payable (in other words, it triggered a withholding tax on royalties) subsequently becomes irrecoverable, to be aligned with the withholding tax on interest provisions.

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

Although receipts and accruals of entities as defined in section 30B(1) and approved by the Commissioner under section 30B(2) are currently fully exempt from payment of income tax, there may be instances where such entities fall within the ambit of the definition of “provisional taxpayer” by virtue of them being companies. It is proposed that these entities be excluded from the definition of “provisional taxpayer”.

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

Many provisions of the Fourth Schedule still cater for the manual process that was in place prior to the modernisation of the employees' tax system. In order to ensure that the Act keeps up to date with the system changes the proposed amendments aim to align the Act with the modernised process of employees' tax between SARS and employers. The proposed amendment furthermore removes the reference to a deleted provision.

2.8. Income Tax Act, 1962: Amendment of paragraph 30 of Fourth Schedule

Paragraph (a): Currently this section requires that a taxpayer must have acted "wilfully and without just cause" in order to be found guilty of having committed an offence. Before the Tax Administration Act, 2011, these requirements did not exist in this section and they were used inconsistently in respect of offences in the various tax Acts. In view of their inconsistent use, the decision was to use both of them in the introductory wording in paragraph 30 of the Fourth Schedule, section 58 of the Value-Added Tax Act, 1991, and section 234 of the Tax Administration Act. However, the use of the term 'wilfully' in respect of a statutory crime is not correct for the reasons set out below.

In South African Law there are two types of culpability, namely intention (*dolus*) and negligence (*culpa*). Intention has a positive character i.e. the person willed and knew and foresaw something. Negligence on the other hand, always has a negative character i.e. the person did not will or know or foresee something, although according to legal standards he or she should reasonably have known or foreseen it.

A reference to wilful conduct must necessarily exclude negligent conduct. It is not notionally possible for a person to wilfully neglect to do something. Hence the reference to "a person who wilfully and without just cause" fails to do something as required in a tax Act may be problematic. Furthermore, whereas the test for intention is subjective, the test for negligence is objective. In

other words, in the latter instance the person's conduct must be measured against the standard of a reasonable person.

The current wording of this section requires the State to prove that the conduct was "wilful and without just cause". This is purely subjective and there can be no reference to what a reasonable person would have done in the circumstances.

The National Prosecuting Authority (NPA) is of the view that the current wording relating to criminal offences substantially undermines the ability of SARS to ensure compliance based on the objective standard expected of the reasonable person. Consequently this may hamper the criminal prosecution of non-compliant taxpayers by the NPA in seeking to prove the elements of the crime.

For this reason it is proposed that the requirement of wilful conduct be removed with regards to criminal offences in the wording of the statutory offence. This will enable the NPA and SARS to measure a taxpayer against such objective standards where required. The amendment is also proposed in respect of similar sections in other tax Acts, that is, section 58 of the Value-Added Tax Act (see clause 20 of the draft Bill) and section 234 of the Tax Administration Act (see clause 32 of the draft Bill).

Paragraph (b): Paragraph 30(1)(a) of the Fourth Schedule, essentially duplicates section 234(p) of the Tax Administration Act, 2011. It is proposed that this paragraph be deleted for purposes of clarity and consistency between the two Acts. It is also proposed that section 234(p) of the Tax Administration Act be amended to make a technical correction highlighted by comparing it with paragraph 30(1)(a).

Paragraph (c): The proposed deletion of paragraph 30(1)(g) of the Fourth Schedule is consequential to the deletion of paragraph 13(11) of the Fourth Schedule.

Paragraph (d): Paragraph 30(2) of the Fourth Schedule contains a reverse onus provision in terms of which a taxpayer who fails to make payment of employees' tax (PAYE) deducted or withheld, to the Commissioner, within the prescribed period for payment, is deemed to have used or applied the amounts for purposes other than the payment thereof to the Commissioner. Such taxpayer would have to prove his or her innocence, in other words, the taxpayer is deemed to be guilty of the offence in terms of paragraph 30(1)(b) of the Fourth Schedule, until such taxpayer furnishes proof to the contrary. This provision places the legal burden of rebuttal on the taxpayer, to prove his or her innocence beyond a reasonable doubt.

Reverse onus provisions of this nature have been held by our courts to be unconstitutional and to conflict with amongst others, the right to a fair trial, previously enshrined in section 25 of the Interim Constitution and subsequently in section 35 of the Constitution.

It is proposed that paragraph 30(2) be amended in order to align the wording of the provision with the views expressed by our courts, as well as section 235(2) of the Tax Administration Act, 2011, in order to replace the reverse onus with an evidentiary burden upon the taxpayer in these circumstances.

2.9. *Customs and Excise Act, 1964: Amendment of section 1*

The proposed amendment is a technical correction.

2.10. *Customs and Excise Act, 1964: Amendment of section 3*

The proposed amendment is a technical correction.

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

Paragraph (a): The proposed amendment caters for the possible replacement of the regulations in order to deal with the

new capital flow management framework announced in the Budget 2020.

Paragraphs (b) and (c): The proposed amendment of section 4(3) and (3A) provides the authorisation for the sharing of information regarding purchases of goods free of duty or value-added tax at licensed special customs and excise warehouses (tax free shops), with the Director-General of the Department of International Relations and Co-operation (DIRCO), and the protection of such information. Tax evasion through these kinds of duty and value-added tax free purchases has become an increasing problem and because diplomats must be dealt with through diplomatic channels, DIRCO must be involved in managing the abuse of privileges granted in terms of the Diplomatic Immunities and Privileges Act, 2001.

Paragraph (d): The proposed amendment of section 4(3D) provides for the publication of tariff determinations with a view to enhancing consistency and transparency in respect of the classification of goods. The Commissioner is furthermore authorised to prescribe rules dealing with the circumstances in which such publication may take place, the kind of information that may be published as well as the manner of publication.

2.12. Customs and Excise Act, 1964: Amendment of section 18

Section 18(1)(d) provides for containerized goods to be moved in bond under cover of a manifest and without payment of security, to a container depot or container terminal to which the goods were consigned. The proposed amendment clarifies that such a depot or terminal must be licensed in terms of section 64A or appointed or prescribed by the Commissioner as contemplated in section 6(1)(hA), as the case may be. The amendment removes any doubt that the container depot or terminal must be situated in the Republic. A container operator will therefore only be able to

move goods under cover of a manifest for national transit movements; an international transit bill of entry is required for delivery of goods beyond the borders of the Republic.

2.13. Customs and Excise Act, 1964: Amendment of section 40

Paragraph (a): The proposed amendment aims to effect a correction in section 40(3)(a)(i) to clarify that a bill of entry may be adjusted in the following ways: The importer, exporter or manufacturer may upon discovery that a bill of entry submitted by him or her does not comply with section 39 or is invalid in terms of section 40(1), amend the bill of entry by way of a voucher of correction or in another manner as the Commissioner may prescribe. The other way to adjust a bill of entry is set out in subsection (3)(a)(ii), namely by substitution of a fresh bill of entry and cancellation of the original.

Paragraph (b): Paragraph (a) is furthermore subjected to a proviso to the effect that if the purpose for which goods are entered as specified on a bill of entry is incorrect, the adjustment must be made by way of substitution in terms of paragraph (a)(ii).

The current wording of subsection (3)(a)(i) creates uncertainty as to whether the time periods for substitution referred to in subsection (3)(b)(i) and (ii) apply for purposes of a substitution referred to in subsection (3)(a)(i)(B). The proposed amendment removes uncertainty in this regard.

2.14. Customs and Excise Act, 1964: Amendment of section 44

All but the first amendment proposed to this section relate to the announcement in Budget 2020 that legislative steps would be taken to alleviate difficulties in relation to containerized goods arising due to the prolonged liability of the master of a ship, pilot of an aircraft or other carrier of goods.

- Paragraph (a): The proposed amendment of section 44(1) is aimed at providing for the commencement of liability for an export duty on goods specified in Part 6 of Schedule No.1 (to be published). This amendment relates to announcement in Budget 2020 concerning the introduction of an export tax on scrap metal.
- Paragraph (b): The proposed amendment of subsection (5) is intended to provide for additional circumstances in which the liability of the master or pilot or other carrier referred to in that subsection will cease, namely upon delivery of the goods to a licensed remover in bond for transport of the goods for purposes of examination. This will encourage competition and afford the importer or the importer's agent a choice to use another transporter onto whom the liability for duty will be transferred.
- Paragraph (c): The insertion of subsection (5AA) provides for the circumstances in which the liability of the licensed remover in bond will cease, whilst the proposed amendment of subsection (6) clarifies that the licensed remover in bond assumes liability in circumstances contemplated in proposed subsection (5)(e).

2.15. Customs and Excise Act, 1964: Amendment of section 72

The proposed amendment clarifies the meaning of "free on board" in relation to goods for purposes of section 72.

2.16. Customs and Excise Act, 1964: Amendment of section 76B

The proposed amendment aims to limit applications for refunds in relation to export duty to a period of two years calculated from the date of entry for export. This is a further amendment relating to the announcement in Budget 2020 concerning the introduction of an export tax on scrap metal.

2.17. Customs and Excise Act, 1964: Amendment of section 113

The proposed amendment aims to widen section 113(2) to apply to exported goods for which a certificate or other authority is required to be produced.

2.18. Customs and Excise Act, 1964: Amendment of section 120

The proposed amendment caters for the possible replacement of the regulations in order to deal with the new capital flow management framework announced in the Budget 2020.

2.19. Value-Added Tax Act, 1991: Amendment of section 14

Where a recipient is required to pay tax in terms of section 7(1)(c), and the exceptions and exclusions listed under section 14(5), *inter alia*, do not apply, the recipient is required to furnish a return to the Commissioner, i.e. a Form VAT215.

However, as a consequence of the VAT modernisation initiative, the channel to furnish the Commissioner with a return, i.e. the VAT215, was removed. Consequently, the recipient of the imported services will not be able to file the return as required by legislation and it is proposed that this requirement be substituted with a requirement to obtain, complete and retain the VAT215.

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

Section 20(8) refers to an identity document contemplated in section 1 of the Identification Act, 1997. This Act no longer contains a definition of an “identity document” but rather an “identity card”. It is proposed that section 20(8) be amended to align with the terminology prescribed in terms of the Identification Act.

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

See the note on the amendment to paragraph 30(1) of the Fourth Schedule to the Income Tax Act, 1962, in paragraph 2.7 above.

2.22. Skills Development Levies Act, 1999: Amendment of section 6

In terms of the Income Tax Act, 1962, SARS may refuse to authorise a refund until a taxpayer furnishes any returns that are outstanding under the Act. A similar but broader provision exists in the Employment Tax Incentive Act, 2013. In view of the tight integration between the PAYE, skills development levy, unemployment insurance contributions and employment tax incentive systems, it is proposed that this power also apply to the Skills Development Levy Act.

2.23. Unemployment Insurance Contributions Act, 2002: Amendment of section 8

In terms of the Income Tax Act, 1962, SARS may refuse to authorise a refund until a taxpayer furnishes any returns that are outstanding under the Act. A similar but broader provision exists in the Employment Tax Incentive Act, 2013. In view of the tight integration between the PAYE, skills development levy, unemployment insurance contributions and employment tax incentive systems, it is proposed that this power also apply to the Unemployment Contributions Act.

2.24. Tax Administration Act, 2011: Amendment of section 12

The proposed amendment is a technical correction.

2.25. Tax Administration Act, 2011: Amendment of section 70

The proposed amendment caters for the possible replacement of the regulations in order to deal with the new capital flow management framework announced in the Budget 2020.

2.26. Tax Administration Act, 2011: Amendment of section 86

The original wording in section 76M(4) of the Income Tax Act, 1962, was lengthier but concentrated on the “pre-decision” phase with respect to the withdrawal or modification of a binding ruling. The new wording was also intended as affording a prior hearing, and not a post decision “objection”, which interpretation is possible under the current wording, although this has not arisen in practice. The taxpayer retains the right to object to the assessment wherein SARS does not follow the

original form of the withdrawn or modified binding ruling and so has an effect that 'dissatisfies' the taxpayer.

2.27. Tax Administration Act, 2011: Amendment of section 91

It is proposed that certain provisions that specifically deal with an assessment based on an estimate be deleted in section 91 and relocated to section 95, which section deals with the issue of such assessments by SARS.

2.28. Tax Administration Act, 2011: Amendment of section 93

The proposed amendment is consequential to the amendments to section 95 of the Tax Administration Act.

2.29. Tax Administration Act, 2011: Amendment of section 95

Paragraph (a): SARS may currently issue an assessment based on an estimate to a taxpayer who does not file a return. The assessment may not be disputed until the relevant return is filed and SARS has failed to revise the assessment in the light of the return. This ensures that all the facts are available when the assessment is revisited and that the dispute resolution timelines that would otherwise apply may be relaxed in appropriate circumstances. It is proposed that this approach be extended to cases where specific relevant material was requested from a taxpayer on more than one occasion, without an adequate response.

Paragraph (b): The proposed amendment aims to relocate the provisions that specifically relate to the issue of an assessment based on an estimate, currently housed in section 91, to section 95 which is the section under which an assessments based on an estimate is issued by SARS. In this way all the rules relating to the issue of an assessment based on an estimate will be housed together in the same section.

Although the new proposed subsection (4) and (5), in essence contain provisions that are similar to the provisions contained in

section 91, now being repealed, the following matters can be highlighted:

- The time-period within which the taxpayer may request SARS to issue a reduced or additional assessment, once the outstanding return or relevant material has been provided by the taxpayer, has been extended from 30 to 40 business days;
- The time period within which a senior SARS official may extend the period is aligned with the prescription periods contained in section 99;
- The new wording furthermore contains a technical correction to align the words of the proposed section 95(4)(c) with wording used elsewhere in the Act, i.e. to replace the words “complete and correct return” (currently used section 91(5)(b)) with the words “true and full return” used in section 25 and 26 of the Act.

2.30. Tax Administration Act, 2011: Amendment of section 187

Payments that are not properly allocated by a taxpayer are administratively difficult to allocate correctly. SARS requires a period to determine if the payment was in fact erroneous or not. If the payment had to be allocated to a specific tax type, but is refunded as an erroneous payment, the taxpayer will be charged interest on the debt that remains. The proposed amendment aims to insert a specific effective date for erroneous payments referred to in section 190(1)(b) of the Tax Administration Act. This provides SARS a period of 60 business days to determine the erroneous nature of the payment prior such payment being refunded to the taxpayer.

2.31. Tax Administration Act, 2011: Amendment of section 188

Chapter 12 of the Tax Administration Act created a framework to support the modernisation of SARS’ accounting system regarding interest. Due to the similarities in relation to the interaction between provisional and income tax on the one hand and the estimation and final payment of royalties for mineral and petroleum

resources on the other, it is proposed that Chapter 12 be amended to achieve uniformity with the provisions of the Mineral and Petroleum Resource Royalty (Administration) Act, 2008. This alignment includes aligning interest payable for royalties, in respect of the first and second payment, with provisional tax interest under Chapter 12.

2.32. Tax Administration Act, 2011: Amendment of section 189

The proposed amendment provides that the current interest rate applicable to refunds of provisional tax and employees' tax paid for the relevant year of assessment, upon final assessment of income tax, will also apply to refunds of mineral and petroleum resources royalties, paid for the relevant year of assessment, in excess of the amount properly chargeable under the Mineral and Petroleum Resources Royalty Act, 2008, upon final assessment.

2.33. Tax Administration Act, 2011: Amendment of section 190

The Tax Administration Act provides that SARS may withhold a refund until such time that a verification, inspection or audit of the refund is finalised. It is proposed that this provision be extended to also include criminal investigations.

2.34. Tax Administration Act, 2011: Amendment of section 234

See the note to the proposed amendment of paragraph 30(1) of the Fourth Schedule to the Income Tax Act, 1962.

2.35. 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 2020 Budget Review, tabled in Parliament on 26 February 2020.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers, 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.