

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



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THE PRESIDENCY

No. 14

16 January 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:–

Act No. 39 of 2013: Tax Administration Laws Amendment Act, 2013



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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.

*(English text signed by the President)
(Assented to 14 January 2014)*

ACT

To—

- amend the Transfer Duty Act, 1949, so as to effect consequential amendments;
 - amend the Income Tax Act, 1962, so as to effect textual and consequential amendments; to amend provisions; and to effect technical corrections;
 - amend the Customs and Excise Act, 1964, so as to amend a provision; to make a new provision; and to amend provisions;
 - amend the Value-Added Tax Act, 1991, so as to effect technical corrections;
 - amend the Skills Development Levies Act, 1999, so as to make a new provision; and to effect consequential amendments;
 - amend the Unemployment Insurance Contributions Act, 2002, so as to make a new provision; and to effect consequential amendments;
 - amend the Securities Transfer Tax Act, 2007, so as to effect consequential amendments;
 - amend the Mineral and Petroleum Resources Royalty Act, 2008, so as to effect consequential amendments;
 - amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to effect a technical correction;
 - amend the Tax Administration Act, 2011, so as to amend certain provisions; to effect technical corrections; and to effect textual and consequential amendments;
- and to provide for matters connected therewith.

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

Amendment of section 20B of Act 40 of 1949, as inserted by section 9 of Act 45 of 2003

1. Section 20B of the Transfer Duty Act, 1949, is hereby amended by the substitution 5
for subsection (3) of the following subsection:

“(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such transaction, operation, scheme or understanding was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.”. 10

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 2 of Act 61 of 2008, section 5 of Act 60 of 2008, section 14 of Act 8 of 2010 and section 271 read with paragraph 25 of Schedule 1 to Act 28 of 2011

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

“(h) paragraphs [12(5)(c)(i)] (bb)(A) of the proviso to paragraph 12A(6)(e), 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(e) of the Eighth Schedule.”.

Amendment of section 6quat of Act 58 of 1962, as substituted by section 4 of Act 59 of 2000 and amended by section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007, section 9 of Act 17 of 2009, section 7 of Act 18 of 2009, section 11 of Act 24 of 2011 and section 271 read with paragraph 29 of Schedule 1 to Act 28 of 2011

3. Section 6quat of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Notwithstanding section [93,] 99(1) or 100 of the Tax Administration Act, an additional or reduced assessment in respect of a year of assessment to give effect to subsections (1) and (1A) may be made within a period that does not exceed six years from the date of the original assessment in respect of that year.”.

Amendment of section 6quin of Act 58 of 1962, as inserted by section 12 of Act 24 of 2011 and amended by section 13 of Act 24 of 2011 and section 4 of Act 21 of 2012

4. Section 6quin of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3A) of the following subsection:

“(3A) Where an amount of tax is levied and withheld as contemplated in subsection (1)(a), no rebate may be deducted in terms of this section if the resident contemplated in subsection (1) does not, within 60 days from the date on which that amount of tax is withheld, submit to the Commissioner a [declaration in such form as may be required by the Commissioner] return that the amount of tax was levied and withheld as contemplated in subsection (1)(a).”.

Amendment of section 64K of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008 and amended by section 53 of Act 17 of 2009, section 84 of Act 24 of 2011, section 271 read with paragraph 55 of Schedule 1 to Act 28 of 2011 and section 14 of Act 21 of 2012

5. Section 64K of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (d) of the following paragraph:

“(d) If, in terms of this Part, a person has paid a dividend or received a dividend that is exempt in terms of section 64F, that person must submit a return to the Commissioner by the last day of the month following the month during which the dividend is paid or received.”.

Amendment of section 64N of Act 58 of 1962, as inserted by section 53 of Act 17 of 2009 and amended by section 17 of Act 21 of 2012

6. Section 64N of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) A company or regulated intermediary must obtain proof of any tax paid to any sphere of government of any country other than the Republic and deducted

from the **[dividend]** dividends tax payable in terms of this section, in the form and manner prescribed by the Commissioner.”.

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 17 of Act 18 of 2009, section 18 of Act 8 of 2010 and section 93 of Act 24 of 2011

7. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “personal service provider” for the words following subparagraph (c) of the following words:

“except where such company or trust throughout the year of assessment employs three or more full-time employees who are on a full-time basis engaged in the business of such company or trust of rendering any such service, other than any employee who is a **[shareholder or member of]** holder of a share in the company or member of the trust or is a connected person in relation to such person;”.

(2) Subsection (1) comes into operation on 1 January 2014.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 30 of Act 103 of 1976, section 28 of Act 113 of 1977, section 29 of Act 104 of 1980, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007, section 65 of Act 35 of 2007, section 18 of Act 18 of 2009, section 94 of Act 24 of 2011 and section 19 of Act 21 of 2012

8. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (4) for items (a), (b) and (bA) of the following items, respectively:

“(a) any contribution by the employee concerned to any pension fund or provident fund which the employer is entitled or required to deduct from that remuneration, but limited to the deduction to which the employee is entitled under section 11(k) having regard to the remuneration and the period in respect of which it is payable;

(b) at the option of the employer, any contribution to a retirement annuity fund by the employee in respect of which proof of payment has been furnished to the employer, but limited to the deduction to which the employee is entitled under section **[11(n)] 11(k)** having regard to the remuneration and the period in respect of which it is payable;

(bA) any contribution made by the employer to any retirement annuity fund for the benefit of the employee, but limited to the deduction to which the employee is entitled under section **[11(n)] 11(k)** having regard to the remuneration and the period in respect of which it is payable;”;

(b) by the deletion in subparagraph (4) of items (c) and (cA).

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2015 and applies in respect of amounts contributed on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2015 and applies in respect of premiums paid on or after that date.

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as inserted by section 41 of Act 90 of 1988 and amended by 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 3 of Act 168 of 1993, 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 of Act 16 of 2004, section 43 of Act 20 of 2006, section 57 of Act 8 of 2007, section 44 of Act 3 of 2008, section 70 of Act 60 of 2008, section 20 of Act 8 of 2010 and section 271 read with paragraph 82 of Schedule 1 of Act 28 of 2011 5 10

9. Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (6). 15

Amendment of paragraph 11C of Fourth Schedule to Act 58 of 1962, as inserted by section 22 of Act 19 of 2001 and amended by section 85 of Act 45 of 2003 and section 271 read with paragraph 83 of Schedule 1 of Act 28 of 2011

10. Paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (5). 20

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, section 49 of Act 101 of 1990, section 23 of Act 19 of 2001 and section 21 of Act 4 of 2008

11. (1) Paragraph 13 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 25

(a) by the substitution for subparagraph (7) of the following subparagraph:

“(7) It shall be sufficient compliance with the provisions of sub-paragraph (1) or (4) in regard to the delivery of any employee’s tax certificate to any employee or former employee if such certificate is delivered to the employees’ authorized agent or the representative taxpayer in respect of the remuneration show in such certificate or, where delivery cannot conveniently be effected by personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer [by registered post].”; and 30

(b) by the deletion of subparagraph (12). 35

(2) Subsection (1)(b) is deemed to have come into operation on 1 January 2013.

Amendment of paragraph 17 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 27 of Act 90 of 1964, section 4 of Act 88 of 1971, section 33 of Act 103 of 1976, section 30 of Act 104 of 1980, section 51 of Act 101 of 1990 and section 57 of Act 59 of 2000 and section 271 read with item 88 of Schedule 1 to Act 28 of 2011 40

12. (1) Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (5) of the following subparagraph:

“(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister in his or her budget statement or [as varied by the Minister under section 5(3) of this Act,] to the rebates applicable in terms of section 6(2) [and (3)(a) and section 6quat] of this Act and [to] taking into account any other factors having a bearing upon the 45

probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied together with the period for which such tables shall remain in force.” 5

(2) Subsection (1) is deemed to have come into operation on 1 January 2013.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005, section 46 of Act 3 of 2008, section 18 of Act 61 of 2008, section 23 of Act 18 of 2009, section 271 of Act 28 of 2011 read with item 90 of Schedule 1 to Act 28 of 2011 and section 22 of Act 21 of 2012 10

13. (1) Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 15

(a) by the insertion in subparagraph (1)(d)(i) after subsubitem (aa) of the word “and”;

(b) by the substitution in subparagraph (1)(d)(i) for subsubitem (bb) of the following subsubitem: 20

“(bb) the taxable portion of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit, other than any amount included under paragraph (eA) of the definition of ‘gross income’ in section 1;” and

(c) by the deletion in subparagraph (1)(d)(i) of subsubitem (cc). 25

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 20A of Fourth Schedule to Act 58 of 1962, as inserted by section 25 of Act 52 of 1970 and amended by section 45 of Act 88 of 1971, section 52 of Act 85 of 1974, section 40 of Act 121 of 1984, section 88 of Act 45 of 2003, section 271 read with item 92 of Schedule 1 to Act 28 of 2011 and section 24 of Act 22 of 2012 30

14. (1) Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph: 35

“(1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by that provisional taxpayer during any year of assessment and the estimate of the taxpayer’s taxable income for that year required to be submitted by the taxpayer under paragraph 19(1) during the period contemplated in paragraph 21(1)(b)[, 22(1)] or 23(b), as the case may be, was not submitted by the taxpayer on or before the last day of that year the taxpayer shall, unless the Commissioner has estimated the said taxable income under paragraph 19(2) or has increased the amount thereof under paragraph 19(3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, a penalty, which is deemed to be a percentage based penalty imposed under Chapter 15 of the Tax Administration Act, equal to 20 per cent of the amount by which the normal tax payable by the taxpayer in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by the taxpayer in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part and any amounts of employees’ tax deducted or withheld from the taxpayer’s remuneration by the taxpayer’s employer during such year.” 40 45 50

(2) Subsection (1) is deemed to have come into operation on 1 January 2013.

Amendment of paragraph 11 of Sixth Schedule to Act 58 of 1962, as amended by section 271 read with paragraph 99 of Schedule 1 to Act 28 of 2011 and section 26 of Act 21 of 2012

15. (1) Paragraph 11 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended— 5

- (a) by the substitution for subparagraph (4A) of the following subparagraph: 5
- “(4A) For the purposes of paragraph 2(1) of the Fourth Schedule **[and]**, section 89*bis*(2), section 6 of the Skills Development Levies Act, 1999 (Act No. 9 of 1999), and section 8 of the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), a registered micro business 10
may elect to pay the amounts deducted or withheld in terms of that paragraph or **[section]** those sections to the Commissioner—
- (i) with regard to amounts deducted or withheld during the first six calendar months from the first day of the year of assessment, **[by]** within seven days after the end of such period; and 15
- (ii) with regard to amounts deducted or withheld within the next six calendar months following the period in item (i), **[by the last day of the year of assessment]** within seven days after the end of such period.”; and

- (b) by the insertion after subparagraph (4A) of the following subparagraph: 20
- “(4B) If a registered micro business has made an election in terms of subparagraph (4A), the election must apply to all amounts deducted or withheld in terms of the applicable provisions referred to in that subparagraph.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of tax periods commencing on or after that date. 25

**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 30
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 and section 25 of Act 61 of 2008, section 24 of Act 8 of 2010 and section 3 of Act 25 of 2011 35**

16. Section 4 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for subsection (4) of the following subsection: 40
- “(4) (a) An officer may, for the purposes of this Act[—
- (i) **without previous notice, at any time]** enter any premises **[whatsoever and make such examination and enquiry as he deems necessary]** subject to the other provisions of this section. 40

(aA) An officer may enter premises in terms of paragraph (a) only on authority of a warrant issued by a magistrate or judge, provided that in the case of the following categories of premises an officer may enter the premises without a warrant: 45

- (i) Premises managed or operated by the State or a public entity within the meaning of the Public Finance Management Act, 1999 (Act No 1 of 1999) as part of a port, airport, railway station or land border post and on which an activity to which this Act applies is carried out or allowed; 50
- (ii) premises licensed or registered in terms of this Act;
- (iii) premises occupied by a person licensed or registered in terms of this Act and used for purposes of the business for which that person is licensed or registered; and
- (iv) premises entered by an officer with the consent of the owner or person in physical control of the premises after that owner or 55

person was informed that there is no obligation to admit the officer in the absence of a warrant.

(aB) An officer may without a warrant enter any premises for which a warrant is required in terms of paragraph (aA) if the officer on reasonable grounds believes—

- (i) that a warrant will be issued by a magistrate or judge if a warrant is applied for; and
- (ii) that the delay in obtaining the warrant is likely to defeat the purpose for which the officer seeks to enter the premises.

(aC) An officer may for purposes of this Act—

- (i) after having gained entry to any premises in terms of this subsection, conduct an inspection, examination, enquiry or a search;
- (ii) while **[he]** the officer is on the premises or at any other time require from any person the production then and there, or at a time and place fixed by the officer, of any book, document or thing which by this Act is required to be kept or exhibited or which relates to or which **[he]** the officer has reasonable cause to suspect of relating to matters dealt with in this Act and which is or has been on the premises or in the possession or custody or under the control of any such person or his employee;
- (iii) at any time and at any place require from any person who has or is believed to have the possession or custody or control of any book, document or thing relating to any matter dealt with in this Act, the production thereof then and there, or at a time and place fixed by the officer; and
- (iv) examine and make extracts from and copies of any such book or document and may require from any person an explanation of any entry therein and may attach any such book, document or thing as in **[his]** the opinion of the officer may afford evidence of any matter dealt with in this Act.

(b) An officer may take with him or her on to any premises an assistant or a member of the police force~~],~~ provided that only those assistants and members of the police force whose presence, in the reasonable opinion of the officer, is necessary for purposes of conducting the inspection, examination, enquiry or search on the premises may enter the premises.

(c) When entering any premises in terms of paragraph (aB), the officer shall comply with the following requirements:

- (i) The officer may enter the premises only during ordinary business hours unless in the reasonable opinion of the officer entry at any other time is necessary for purposes of this Act;
- (ii) the officer shall, upon seeking admission to the premises, inform the person in charge of the premises of the purpose of the entry;
- (iii) if the purpose of the entry is, or if the officer after having gained entry decides, to search the premises for goods, records or any other things in respect of which an offence in terms of this Act is suspected to have been committed or that may be used as evidence for the prosecution of such an offence—

(aa) the officer shall hand to the person in charge a written statement signed by the officer stating that a search of the premises is to be conducted unless, in the officer's reasonable opinion, there are circumstances of urgency which may result in the search being frustrated if its commencement is delayed until such a statement can be prepared;

- (bb) the officer's actions shall be confined to such searching, inspection, enquiries and examination as are reasonably necessary for the purpose of the search;
 - (cc) the officer may, either before or after complying with item (aa), take such steps as the officer considers necessary to prevent persons present on the premises from concealing, destroying or tampering with any documents, data or things located on the premises;
 - (dd) the person in charge shall have the right to be present, or to appoint a delegate to be present, during and to observe the search;
 - (ee) the officer shall compile an inventory of all items removed from the premises and shall, prior to leaving the premises, sign the inventory and hand a copy thereof to the person in charge: Provided that if it is not possible in the circumstances to compile, sign and hand such inventory to the person in charge before leaving the premises, the officer shall seal the items to be removed and as soon as possible after removal of the items from the premises, compile the inventory in the presence of the person in charge of the premises, if that person requested to be present, and sign and hand a copy of the inventory to that person;
 - (ff) the officer shall compile a schedule of all copies and extracts made in the course of the search and shall, prior to leaving the premises, sign and hand a copy thereof to the person in charge; and
 - (gg) the officer must conduct the search with strict regard for decency and order.
- (d) A judge or magistrate may issue a warrant referred to in paragraph (aA) only on written application by an officer setting out under oath or affirmation the grounds why it is necessary for an officer to gain access to the relevant premises.
- (e) If the purpose of the entry is to conduct a search of the premises for goods, records or any other things in respect of which an offence in terms of this Act is suspected to have been committed or that may be used as evidence for the prosecution of such an offence, the magistrate or judge may issue such warrant if it appears from the information on oath that—
- (i) there are reasonable grounds for suspecting that an offence in terms of this Act has been committed;
 - (ii) a search of the premises is likely to yield such goods, records or other things; and
 - (iii) the search is reasonably necessary for the purposes of this Act.”; and
- (b) by the substitution for subsection (6) of the following subsection:
- “(6) (a) If an officer, after having declared his or her official capacity and his or her purpose and having demanded admission into any premises and having complied with any applicable requirements of subsection (4), is not immediately admitted, **[he]** the officer and any person assisting **[him]** the officer may at any time, but at night only in the presence of a member of the police force, break open any door or window or break through any wall on the premises for the purpose of entry and search.
- (b) An officer or any person assisting **[him]** the officer may at any time break up any ground or flooring on any premises for the purpose of a search if the officer in his or her reasonable opinion considers such breaking up to be necessary for the purposes of this Act; and if any room, place, safe, chest, box or package is locked and the keys thereof are not produced on demand, may open such room, place, safe, chest, box or package in any manner.”.

Insertion of section 4D in Act 91 of 1964

17. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 4C:

“Officers’ powers relating to criminal prosecutions

4D. An officer may—

- (a) investigate for purposes of a criminal prosecution whether an offence in terms of this Act has been committed;
- (b) lay criminal charges for the prosecution of any such offence; and
- (c) provide such assistance as may be required by the prosecuting authority for the prosecution of any such offence.”.

Amendment of section 21A of Act 91 of 1964, as inserted by section 121 of Act 60 of 2001, amended by section 2 of Act 10 of 2005, section 18 of Act 21 of 2006 and section 7 of Act 36 of 2007

18. (1) Section 21A of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for the heading of the following heading:

“Provision for [the] administration of customs controlled areas within industrial development zones and special economic zones”;
and

(b) by the insertion after subsection (1) of the following subsection:

“(1A) (a) For the purposes of this subsection, “Special Economic Zones Act” means an Act of Parliament that makes provision for special economic zones.

(b) Notwithstanding anything to the contrary in this section or any other provision of this Act, for the purposes of the Special Economic Zones Act, the Commissioner may by rule—

- (i) after consultation with any person or authority administering any activity in a special economic zone, designate a special economic zone or any part of a special economic zone as a CCA;
- (ii) regulate the customs and excise administration of the CCA, including but not limited to the control of the movement of goods and persons into, within or from the CCA, goods produced or manufactured or consumed and any other activity therein to which this Act relates;
- (iii) prescribe requirements in all respects to ensure the security of the CCA; and
- (iv) provide for any other matter that may be necessary and useful for the effective and efficient administration of a CCA.

(c) Except as may be otherwise provided in any Schedule or rule, the provisions of this section regarding a CCA shall apply, with the necessary changes, to a CCA designated in terms of paragraph (b).”.

(2) Subsection (1) comes into operation on the date on which the Act of Parliament referred to in section 21A(1A)(a) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), comes into operation.

Amendment of section 64E of Act 91 of 1964, as inserted by section 48 of Act 19 of 2001 and amended by section 50 of Act 30 of 2002 and section 36 of Act 61 of 2008

19. Section 64E of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:

“Every applicant for accredited client status shall apply for a specific level thereof and, in addition to the criteria prescribed for that level by rule or that may be determined by the Commissioner, prove, as may be applicable, the following:”;

- (b) by the substitution in subsection (1)(b) for subparagraph (ii) of the following subparagraph: 5
 “(ii) that the accounting records and other documents kept for providing evidence of compliance with customs and excise procedures utilise information prepared in a manner consistent with general accounting principles appropriate to the procedure concerned;”;
- (c) by the substitution in subsection (1)(b) for subparagraph (iv) of the following subparagraph: 10
 “(iv) that the person who will administer the accredited client requirements has sufficient knowledge of customs and excise laws and procedures to implement and maintain an efficient and effective accredited client compliance system.”; and
- (d) by the addition to subsection (1) of the following paragraph: 15
 “(c) The Commissioner may determine such separate criteria for accredited client status in respect of customs or excise clients as may be prescribed by rule.”.

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

20. 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 August 2012 up to and including 31 August 2013 shall not lapse by virtue of section 119A(3) of that Act. 20

Amendment of section 25 of Act 89 of 1991, as amended by section 96 of Act 30 of 1998, section 94 of Act 53 of 1999, section 40 of Act 34 of 2004, section 10 of Act 10 of 2005 and section 271 read with paragraph 118 of Schedule 1 to Act 28 of 2011 25

21. (1) Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (g) of the following paragraph:
 “(g) any change whereby the provisions of section [27(4)(c)] 27(4)(a)(iii) are no longer applicable in the case of that vendor[:]”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of tax periods commencing on or after that date. 30

Amendment of section 27 of Act 89 of 1991, as amended by section 34 of Act 136 of 1991, section 28 of Act 136 of 1992, section 78 of Act 30 of 2000, section 11 of Act 10 of 2005, section 50 of Act 9 of 2006, section 1 of Act 3 of 2008, section 25 of Act 4 of 2008 and section 271 read with paragraph 120 of Schedule 1 to Act 28 of 2011 35

22. (1) Section 27 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
 “For the purposes of subsection (3)(a) and subsection [(4)(c)] (4)(a)(iii)—”; and 40

(b) by the substitution in subsection (5) for the words in paragraph (b) preceding item (i) of the following words:
 “the total value of the taxable supplies of a vendor within any period of 12 months referred to in subsection (3)(a) or [(4)(c)] (4)(a)(iii) shall not be deemed to have exceeded or be likely to exceed the amount referred to in subsection 3(a) or the amount referred to in subsection [(4)(c)] (4)(a)(iii), as the case may be, where that total value exceeds or is likely to exceed that amount, as the case may be, solely as a consequence of—”. 45

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of tax periods commencing on or after that date. 50

Amendment of section 6 of Act 9 of 1999, as amended by section 76 of Act 19 of 2001, section 43 of Act 18 of 2009 and section 271 read with paragraph 150 of Schedule 1 to Act 28 of 2011

23. (1) Section 6 of the Skills Development Levies Act, 1999, is hereby amended—

(a) by the insertion after subsection (1) of the following subsection: 5

“(1A) Notwithstanding the provisions of subsection (1), if an employer is a micro business that is registered in terms of the Sixth Schedule to the Income Tax Act, the employer may pay the levy to the Commissioner within the periods as prescribed in paragraph 11(4A) of the Sixth Schedule to that Act.”; and 10

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

“(2) An employer must together with payment of the levy in terms of subsection (1) or (1A), submit a return.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of tax periods commencing on or after that date. 15

Amendment to section 8 of Act 4 of 2002, as amended by section 81 of Act 30 of 2002, section 48 of Act 18 of 2009, section 32 of Act 8 of 2010 and section 271 read with paragraph 159 of Schedule 1 of Act 28 of 2011

24. (1) Section 8 of the Unemployment Insurance Contributions Act, 2002, is hereby amended— 20

(a) by the insertion after subsection (1) of the following subsection:

“(1A) Notwithstanding the provisions of subsection (1), if an employer is a micro business that is registered in terms of the Sixth Schedule to the Income Tax Act, the employer may pay the amount as described in subsection (1) to the Commissioner within the periods prescribed in paragraph 11(4A) of the Sixth Schedule to that Act.”; and 25

(b) by the substitution for subsection (2) of the following subsection: “

(2) An employer must, together with the payment referred to in subsection (1) or (1A), submit a return [reflecting the amount of the payment and such other particulars as the Minister may prescribe] to the Commissioner.”. 30

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of tax periods commencing on or after that date.

Amendment of section 13 of Act 4 of 2002, as amended by section 83 of Act 30 of 2002, section 51 of Act 18 of 2009 and section 271 read with paragraph 163 of Schedule 1 of Act 28 of 2011 35

25. (1) Section 13 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If any contribution remains unpaid after the last day for payment thereof as contemplated in section 8(1), 8(1A) or 9(1), the Commissioner must, under Chapter 15 of the Tax Administration Act, impose a penalty of 10 per cent of the unpaid amount but the Commissioner or the Unemployment Insurance Commissioner, as the case may be, may remit the penalty or any portion thereof in accordance with the provisions of Chapter 15 of the Tax Administration Act.”. 40 45

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of tax periods commencing on or after that date.

Amendment of section 9 of Act 25 of 2007

26. Section 9 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for subsection (3) of the following subsection: 50

“(3) Any decision of the Commissioner under subsection (1) is subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act,

2011 (Act No. 28 of 2011), and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it is presumed, until the contrary is proved, that that scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.”.

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Amendment of section 12 of Act 28 of 2008

27. Section 12 of the Mineral and Petroleum Resources Royalty Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A decision of the Commissioner under subsection (1) is subject to objection and appeal **[mentioned in section 18(1)(d) of the Administration Act]** in accordance with Chapter 9 of the Tax Administration Act, 2011 (Act No. 28 of 2011), and whenever in proceedings relating thereto it is proved that the disposal, transfer, operation, scheme or understanding in question would result in the avoidance or postponement of liability for the royalty, or in the reduction of the amount thereof, it is presumed, until the contrary is proved, in the case of any such disposal, transfer, operation, scheme or understanding, that it was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of such liability, or the reduction of the amount of such liability.

Amendment of section 6 of Act 29 of 2008

28. Section 6 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A registered person must submit a return **[(as) to the Commissioner [may prescribe]]** for the royalty payable in respect of a year of assessment—
(a) in the case of a company as defined in section 1 of the Income Tax Act, within **[six] 12 months from the date on which its financial year ends;** or
(b) in the case of any other person, within 12 months after the last day of that year.”.

Amendment of section 19 of Act 29 of 2008, as amended by section 38 of Act 8 of 2010 and section 33 of Act 21 of 2012

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

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“**[In respect of a year of assessment an extractor]** The Commissioner must annually submit to the Minister of Finance a report, in the form and manner that the Minister may prescribe, within six months from the date that the Commissioner received the report from each extractor, advising the Minister of—”;
- (b) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:
“(a) the volume of mineral resources transferred by **[that] each** extractor;
(b) the gross sales of **[that] each** extractor as mentioned in section 6(1) and (2) of the Royalty Act;”;
- (c) by the insertion in subsection (1) after paragraph (b) of the following paragraph:
“**(bA) the adjusted gross sales of the extractor if that adjustment is required in terms of section 6(5) of the Royalty Act;**”;
- (d) by the substitution for subsection (2) of the following subsection:
“(2) The Minister of Finance and every person employed or engaged by him or her and the Commissioner and every person engaged by him or her must preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge by virtue of subsection (1), and may not communicate any such matter to any person whatsoever other

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than the Minister, the Commissioner or the registered person concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession of the Minister, the Commissioner or person except in the performance of his or her duties as required by the laws of the Republic or by order of a competent court.”; 5
and

(e) by the deletion in subsection (7) of paragraph (a).

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 1 of Act 28 of 2011, as amended by section 36 of Act 21 of 2012

30. Section 1 of the Tax Administration Act, 2011, is hereby amended—

(a) by the insertion of the following definition after the definition of “original assessment”:

“**‘outstanding tax debt’** means a tax debt not paid by the day referred to in section 162;” 15

(b) by the substitution for the definition of “relevant material” of the following definition:

“**‘relevant material’** means any information, document or thing that is foreseeably relevant for the administration of a tax Act as referred to in section 3 [tax risk assessment, assessing tax, collecting tax, showing non-compliance with an obligation under a tax Act or showing that a tax offence was committed];” 20

(c) by the substitution for the definition of “return” of the following definition:

“**‘return’** means a form, declaration, document or other manner of submitting information to SARS that incorporates a self-assessment or is [the] a basis on which an assessment is to be made by SARS;” 25

(d) by the substitution for the definition of “tax debt” of the following definition:

“**‘tax debt’** means an amount [of tax due by a person in terms of a tax Act] referred to in section 169(1);” 30

Amendment of section 3 of Act 28 of 2011, as amended by section 37 of Act 21 of 2012

31. Section 3 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (e) of the following paragraph:

“(e) collect tax debts and refund tax overpaid;” 35

Amendment of section 10 of Act 28 of 2011

32. Section 10 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) becomes effective only when signed by the [person to whom the delegation is made] Commissioner;” 40

Amendment of section 11 of Act 28 of 2011, as amended by section 40 of Act 21 of 2012

33. Section 11 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Legal proceedings [on behalf of] involving Commissioner**”; 45

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

“(3) A cost order in favour of SARS resulting from any civil proceedings under this Act constitutes funds of SARS within the meaning of section 24 of the SARS Act and must be paid to SARS despite any law to the contrary.”; and 50

(c) by the addition of the following subsections:

“(4) Unless the court otherwise directs, no legal proceedings may be instituted in the High Court against the Commissioner unless the applicant has given the Commissioner written notice of at least one week of the applicant’s intention to institute the legal proceedings.

(5) The notice or any process by which the legal proceedings referred to in subsection (4) are instituted, must be served at the address specified by the Commissioner by public notice.”.

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Amendment of section 25 of Act 28 of 2011

34. Section 25 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“A person required under a tax Act or by the Commissioner to submit or who voluntarily submits a return must do so—”.

Amendment of section 26 of Act 28 of 2011, as substituted by section 41 of Act 21 of 2012

35. Section 26 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Commissioner may by public notice, at the time and place and by the due date specified, require a person who employs, pays amounts to, receives amounts on behalf of or otherwise transacts with another person, or has control over assets of another person, to submit a return by the date specified in the notice.”.

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Substitution of section 27 of Act 28 of 2011, as substituted by section 42 of Act 21 of 2012

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36. The following section is hereby substituted for section 27 of the Tax Administration Act, 2011:

“Other returns required

27. (1) A senior SARS official may require a person to submit further or more detailed returns regarding any matter for which a return under section 25 or 26 is required or prescribed by a tax Act.

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(2) A person required under subsection (1) to submit a return must do so in the prescribed form and manner and the return must contain the information prescribed by [SARS] the official and must be a full and true return.”.

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Amendment of section 34 of Act 28 of 2011, as amended by section 45 of Act 21 of 2012

37. Section 34 of the Tax Administration Act, 2011, is hereby amended by the substitution for the definition of “financial reporting standards” of the following definition:

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“‘financial reporting standards’ means, in the case of a company required to submit financial statements in terms of the Companies Act, 2008 (Act No. 71 of 2008), financial reporting standards prescribed by that Act, or, in any other case, the [Generally Accepted Accounting Practice] International Financial Reporting Standards or appropriate financial reporting standards that provide a fair presentation of the financial results and position of the taxpayer;”.

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Amendment of section 46 of Act 28 of 2011, as amended by section 50 of Act 21 of 2012

38. Section 46 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (7) of the following subsection:

- “(7) A senior SARS official may direct that relevant material— 5
- (a) be provided under oath or solemn declaration; or
 - (b) if required for purposes of a criminal investigation, be provided under oath or solemn declaration and, if necessary, in accordance with the requirements of section 212 or 236 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).” 10

Substitution of section 54 of Act 28 of 2011

39. The following section is hereby substituted for section 54 of the Tax Administration Act, 2011:

“Powers of presiding officer

54. The presiding officer has the same powers regarding witnesses at the inquiry as are vested in a [President] president of the tax court under sections 127 and 128.” 15

Amendment of section 68 of Act 28 of 2011

40. Section 68 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (i); 20
 - (b) by the insertion in subsection (1) of the phrase “; and” at the end of paragraph (j); and
 - (c) by the addition to subsection (1) of the following paragraph:
“(k) information relating to the verification or audit selection procedure or method used by SARS, the disclosure of which could reasonably be expected to jeopardise the effectiveness thereof.” 25

Amendment of section 69 of Act 28 of 2011

41. Section 69 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the deletion in subsection (8) of the word “and” at the end of paragraph (a);
 - (b) by the insertion in subsection (8) of the phrase “; and” at the end of paragraph (b); 30
 - (c) by the addition to subsection (8) of the following paragraph:
“(c) the name and tax practitioner registration number of a registered tax practitioner.”

Amendment of section 70 of Act 28 of 2011 35

42. Section 70 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 (c);
 - (b) by the insertion in subsection (2) of the phrase “; and” at the end of paragraph (d); and
 - (c) by the addition to subsection (2) of the following paragraph: 40
“(e) a recognised controlling body (as defined in section 239) of a registered tax practitioner, such information in relation to the tax practitioner as may be required to verify that sections 240A(2)(a) and 240A(3) are being given effect to.”

Amendment of section 73 of Act 28 of 2011 45

43. Section 73 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b);
 - (b) by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) [other information relating to the tax affairs of the taxpayer] information, other than SARS confidential information, on which the taxpayer’s assessment is based; and”;

(c) by the addition to subsection (1) of the following paragraph:

“(d) other information relating to the tax affairs of the taxpayer.”; 5

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

“(2) A request for information under subsection (1)[(c)] (d) must be made under the Promotion of Access to Information Act.”; and

(e) by the deletion of subsection (3).

Amendment of section 79 of Act 28 of 2011, as amended by section 56 of Act 21 of 2012 10

44. Section 79 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (4) for paragraph (o) of the following paragraph:

“(o) a statement confirming that all returns required to be rendered by that ‘applicant’ in terms of a tax Act have been rendered and any tax has been paid or arrangements acceptable to SARS have been made for the submission of any outstanding returns or for the payment of any outstanding tax debt.”. 15

Amendment of section 93 of Act 28 of 2011

45. Section 93 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 20

“(b) necessary to give effect to a settlement under [section 149] Part F of Chapter 9;”.

Amendment of section 98 of Act 28 of 2011

46. Section 98 of the Tax Administration Act, 2011, is hereby amended—

(a) by the deletion in subsection (1) of the word “or” at the end of paragraph (b); 25

(b) by the insertion in subsection (1) of the phrase “; or” after paragraph (c);

(c) by the addition to subsection (1) of the following paragraph:

“(d) in respect of which the Commissioner is satisfied that—

(i) it was based on—

(aa) an undisputed factual error by the taxpayer in a return; 30

or

(bb) a processing error by SARS; or

(cc) a return fraudulently submitted by a person not authorised by the taxpayer;

(ii) it imposes an unintended tax debt in respect of an amount that the taxpayer should not have been taxed on; 35

(iii) the recovery of the tax debt under the assessment would produce an anomalous or inequitable result;

(iv) there is no other remedy available to the taxpayer; and

(v) it is in the interest of the good management of the tax system.”; and 40

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

“(2) An assessment withdrawn under this section is regarded not to have been issued, unless a senior SARS official agrees in writing with the taxpayer as to the amount of tax properly chargeable for the relevant tax period and accordingly issues a revised original, additional or reduced assessment, as the case may be, which assessment is not subject to objection or appeal.”. 45

Amendment of section 99 of Act 28 of 2011, as amended by section 59 of Act 21 of 2012

47. Section 99 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the deletion in paragraph (d) of subsection (2) of the word “or” at the end of subparagraph (i); 5
 - (b) by the insertion in paragraph (d) of subsection (2) of the phrase “; or” at the end of subparagraph (ii);
 - (c) by the addition to paragraph (d) of subsection (2) of the following subparagraph:
“(iii) an assessment referred to in section 98(2).” 10

Amendment of section 103 of Act 28 of 2011

48. Section 103 of the Tax Administration Act, 2011, is hereby amended by the addition of the following subsection:
“(3) The Commissioner may prescribe the form of a document required to be completed and delivered under the ‘rules’.” 15

Amendment of section 110 of Act 28 of 2011

49. Section 110 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:
“(2) Sections 122, 123, 124, 126, 127 **[and]**, 128 and 129 apply, with the necessary changes, and under procedures determined in the ‘rules’, to the tax board and the chairperson.” 20

Amendment of section 117 of Act 28 of 2011

50. Section 117 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:
“(3) The court may hear and decide an interlocutory application or an application in a procedural matter relating to **[an objection or appeal and may decide on a procedural matter]** a dispute under this Chapter as provided for in the ‘rules’.” 25

Amendment of section 118 of Act 28 of 2011

51. Section 118 of the Tax Administration Act, 2011, is hereby amended— 30
- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“If the **[President]** president of the tax court, a senior SARS official or the ‘appellant’ so requests, the representative of the commercial community referred to in subsection (1)(c) must—”; 35
 - (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
“(a) if the appeal relates to the business of mining, be a registered **[mining]** engineer with experience in that field; or”; and
 - (c) by the substitution for subsection (3) of the following subsection: 40
“(3) If an appeal to the tax court involves a matter of law only or is **[an application for condonation or]** an interlocutory application or application in a procedural matter under the ‘rules’, the president of the court sitting alone must decide the appeal.” 45

Amendment of section 129 of Act 28 of 2011

52. Section 129 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“In the case of an assessment or ‘decision’ under appeal or an application in a procedural matter referred to in section 117(3), the tax court may—”; 50

- (b) by the substitution for subsection (3) of the following subsection:
“(3) In the case of an appeal against an understatement penalty imposed by SARS under a tax Act, the tax court must decide the matter on the basis that the burden of proof is upon SARS and may reduce, confirm or increase the understatement penalty [**so imposed**].”; and 5
- (c) by the addition of the following subsection:
“(5) Unless a tax court otherwise directs, a decision by the tax court in a test case designated under section 106(6) is determinative of the issues in an objection or appeal stayed by reason of the test case under section 106(6)(b) to the extent determined under the ‘rules’.”. 10

Amendment of section 130 of Act 28 of 2011, as amended by section 61 of Act 21 of 2012

53. Section 130 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 15
“(2) The costs [**referred to in subsection (1)**] awarded by the tax court under this section must be determined in accordance with the fees prescribed by the rules of the High Court.”; and
- (b) by the addition of the following subsection:
“(3) The tax court may make an order as to costs provided for in the ‘rules’ in— 20
(a) a test case designated under section 106(5); or
(b) an interlocutory application or an application in a procedural matter referred to in section 117(3).”.

Amendment of section 133 of Act 28 of 2011

54. Section 133 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2)(b) for subparagraph (i) of the following subparagraph: 25
“(i) the president of the tax court has granted leave under [**the ‘rules’**] section 135; or”.

Amendment of section 160 of Act 28 of 2011

55. Section 160 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection: 30
“(2) Unless otherwise provided for in a tax Act, a taxpayer [**on whose behalf an amount deducted or withheld**] in respect of whom an amount has been paid to SARS by a withholding agent under a tax Act or by a responsible third party under section 179, is not entitled to recover from the withholding agent or responsible 35
third party the amount so [**deducted or withheld**] paid but is entitled to recover the amount of an unlawful or erroneous payment from SARS.”.

Amendment of section 161 of Act 28 of 2011

56. Section 161 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph: 40
“(a) be collected as if it were [**a**] an outstanding tax debt of the taxpayer recoverable under this Act; or”.

Amendment of section 163 of Act 28 of 2011

57. Section 163 of the Tax Administration Act, 2011, is hereby amended— 45
- (a) by the substitution for subsection (1) of the following subsection:
“(1) A senior SARS official may, in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax that is due or payable or the official on reasonable grounds is satisfied may be due or payable, authorise an *ex parte* application to the High Court for an order for the preservation of 50

any assets of a taxpayer or other person prohibiting any person, subject to the conditions and exceptions as may be specified in the preservation order, from dealing in any manner with the assets to which the order relates.”;

- (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 5
“(a) SARS may, in anticipation of the application under subsection (1) [and in order to prevent any realisable assets from being disposed of or removed which may frustrate the collection of the full amount of tax due,] seize the assets pending the outcome of an application for a preservation order, which application must commence within 24 hours from the time of seizure of the assets or the further period that SARS and the taxpayer or other person may agree on.”;
- (c) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 15
“(b) Until a preservation order is made in respect of the seized assets, SARS must take reasonable steps to preserve and safeguard the assets including appointing a *curator bonis* in whom the assets vest.”;
- (d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 20
“A preservation order may be made if required to secure the collection of the tax referred to in subsection (1) and in respect of—”;
- (e) by the deletion in subsection (4) of the word “and” after paragraph (b);
- (f) by the insertion in subsection (4) of the phrase “; and” after paragraph (c);
- (g) by the addition to subsection (4) of the following paragraph: 25
“(d) upon application by SARS, confirm the appointment of the *curator bonis* under subsection (2)(a) or appoint a *curator bonis* in whom the seized assets vest.”;
- (h) by the substitution in subsection (7) for paragraph (b) of the following paragraph: 30
“(b) if not appointed under subsection (4)(d), appointing a *curator bonis* in whom the assets [of that taxpayer or another person liable for tax] vest.”.

Amendment of section 164 of Act 28 of 2011, as amended by section 64 of Act 21 of 2012 35

58. Section 164 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 40
“A senior SARS official may suspend payment of the disputed tax or a portion thereof having regard to—”;
- (b) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
“If [the] payment of tax [which the taxpayer intended to dispute] was suspended under subsection (3) and subsequently—”;
- (c) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 45
“A senior SARS official may deny a request in terms of subsection (2) or revoke a decision to suspend payment in terms of [that] subsection (3) with immediate effect if satisfied that—”.

Amendment of section 165 of Act 28 of 2011 50

59. Section 165 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
“(2) The taxpayer account must reflect the tax [due] liability in respect of each tax type included in the account.”;

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

“(a) the tax **[owed] liability**”; and

(c) by the substitution in subsection (3) for paragraphs (c) and (d) of the following paragraphs, respectively:

“(c) the interest payable on outstanding **[amounts due] tax debts**;

(d) **[any other amount owed] the tax liability for any other tax type**”.

Amendment of section 166 of Act 28 of 2011, as amended by section 65 of Act 21 of 2012

60. Section 166 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Despite anything to the contrary contained in a tax Act, SARS may allocate payment made in terms of a tax Act against an amount of penalty or interest or the oldest amount of an outstanding tax debt at the time of the payment, other than amounts—”.

Amendment of section 169 of Act 28 of 2011

61. Section 169 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“A tax debt **[due to SARS]** is recoverable by SARS under this Chapter, and is recoverable from—”; and

(b) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) SARS is regarded as the creditor for the purposes of **[an amount referred to in subsection (1) as well as any other amount if SARS has entered into an agreement under section 4(1)(a)(ii) of the SARS Act in terms of which SARS is the creditor for the State or the organ of state or institution concerned] any recovery proceedings related to a tax debt**.

(4) SARS need not recover **[an amount] a tax debt** under this Chapter if the amount thereof is less than R100 or any other amount that the Commissioner may determine by public notice, but the amount must be carried forward in the relevant taxpayer account.”.

Amendment of section 172 of Act 28 of 2011

62. Section 172 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) If a person **[fails to pay tax when it is payable] has an outstanding tax debt**, SARS may, after giving the person at least 10 business days’ notice, file with the clerk or registrar of a competent court a certified statement setting out the amount of tax payable and certified by SARS as correct.

(2) SARS may file the statement irrespective of whether or not the **[amount of] tax debt** is subject to an objection or appeal under Chapter 9, unless the period referred to in section 164(6) has not expired or the obligation to pay the [amount] tax debt has been suspended under section 164.”.

Amendment of section 175 of Act 28 of 2011

63. Section 175 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) SARS may amend the amount of the tax **[due] debt** specified in the statement filed under section 172 if, in the opinion of SARS, the amount in the statement is incorrect.”.

Amendment of section 176 of Act 28 of 2011

64. Section 176 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection:
“(2) SARS may file a new statement under section 172 setting out an amount of the tax debt included in a withdrawn statement.”; and 5
 - (b) by the addition of the following subsection:
“(3) If SARS is satisfied that a person has paid the full amount of the tax debt set out in a certified statement filed under section 172 and has no other outstanding tax debts, SARS must withdraw the statement if requested by the person in the prescribed form and manner.” 10

Amendment of section 177 of Act 28 of 2011

65. Section 177 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) SARS may institute proceedings for the sequestration, liquidation or winding-up of a person for [a] an outstanding tax debt.” 15

Amendment of section 179 of Act 28 of 2011

66. Section 179 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) A senior SARS official may by notice to a person who holds or owes or will hold or owe any money, including a pension, salary, wage or other remuneration, for or to a taxpayer, require the person to pay the money to SARS in satisfaction of the taxpayer’s outstanding tax debt.” 20

Amendment of section 180 of Act 28 of 2011

67. Section 180 of the Tax Administration Act, 2011, is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 25
- “A person is personally liable for any outstanding tax debt of the taxpayer to the extent that the person’s negligence or fraud resulted in the failure to pay the tax debt if—”.

Amendment of section 181 of Act 28 of 2011

68. Section 181 of the Tax Administration Act, 2011, is hereby amended— 30
- (a) by the substitution for subsection (1) of the following subsection:
“(1) This section applies where a company is wound up other than by means of an involuntary liquidation without having satisfied its outstanding tax debt, including its liability as a responsible third party, withholding agent, or a representative taxpayer, employer or vendor.”; 35
 - (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“The persons who are shareholders of the company within one year prior to its winding up are jointly and severally liable to pay the [unpaid] tax debt to the extent that—”; and 40
 - (c) by the substitution for subsection (4) of the following subsection:
“(4) Persons who are liable for the tax debt of a company under this section may avail themselves of any rights against SARS as would have been available to the company.”.

Amendment of section 182 of Act 28 of 2011

69. Section 182 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A person (referred to as a transferee) who receives an asset from a taxpayer who is a connected person in relation to the transferee without consideration or for consideration below the fair market value of the asset is liable for the outstanding tax debt of the taxpayer.” 5

Amendment of section 186 of Act 28 of 2011

70. Section 186 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10

“To collect [a] an outstanding tax debt, a senior SARS official may apply for an order referred to in subsection (2), if—”.

Amendment of section 190 of Act 28 of 2011

71. Section 190 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (5) of the following subsection: 15

“(5) If SARS pays to a person by way of a refund any amount which is not properly payable to the person under a tax Act, the amount is regarded as an outstanding tax [that is payable by the person to SARS] debt from the date on which it is paid to the person.” 20

Amendment of section 191 of Act 28 of 2011

72. Section 191 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) [**that is disputed under Chapter 9 and**] for which the period referred to in section 164(6) has not expired or suspension of payment under section 164 exists; or” 25

Amendment of section 192 of Act 28 of 2011, as amended by section 68 of Act 21 of 2012

73. Section 192 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution in the definition of “compromise” for the words preceding paragraph (a) of the following words: 30

“‘**compromise**’ means an agreement entered into between SARS and a ‘debtor’ in respect of a tax debt in terms of which—”;

(b) by the substitution for the definition of “debtor” of the following definition: “‘**debtor**’ means a taxpayer with [**an outstanding**] a tax debt; and”; 35 and

(c) by the substitution for the definition of “write off” of the following definition: “‘**write off**’ means to reverse [a] an outstanding tax debt either in whole or in part.”.

Amendment of section 221 of Act 28 of 2011

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74. Section 221 of the Tax Administration Act, 2011, is hereby amended by the substitution in the definition of “understatement” for the words preceding paragraph (a) of the following words:

“‘**understatement**’ means any prejudice to SARS or the *fiscus* [**in respect of a tax period**] as a result of—” 45

Amendment of section 222 of Act 28 of 2011

75. Section 222 of the Tax Administration Act, 2011, is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) In the event of an ‘understatement’ by a taxpayer, the taxpayer must pay, in addition to the ‘tax’ payable for the relevant tax period, the understatement penalty determined under subsection (2) unless the ‘understatement’ results from a bona fide inadvertent error.”

(2) The understatement penalty is the amount resulting from applying the highest applicable understatement penalty percentage in accordance with the table in section 223 to **[the] each** shortfall determined under subsections (3) and (4) in relation to each understatement in a return.”;

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

“(a) the difference between the amount of ‘tax’ properly chargeable for the tax period and the amount of ‘tax’ that would have been chargeable for the tax period if the ‘understatement’ were accepted;”; and

(c) the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) If **[an ‘understatement’ results in]** there is a difference under both paragraphs (a) and (b) of subsection (3), the shortfall must be reduced by the amount of any duplication between the paragraphs.

(5) The tax rate applicable to the shortfall determined under subsections (3) and (4) is the maximum tax rate applicable to the taxpayer, ignoring an assessed loss or any other benefit brought forward from a preceding tax period to the tax period.”.

Amendment of section 223 of Act 28 of 2011, as amended by section 73 of Act 21 of 2012

76. (1) Section 223 of the Tax Administration Act, 2011, is hereby amended—

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

“(1) The understatement penalty percentage table is as follows[—]:

| 1 | 2 | 3 | 4 | 5 | 6 |
|-------|--|----------------|---|---|--|
| Item | Behaviour | Standard case | If obstructive, or if it is a ‘repeat case’ | Voluntary disclosure after notification of audit or investigation | Voluntary disclosure before notification of audit or investigation |
| (i) | ‘Substantial understatement’ | [25]10% | [50]20% | 5% | 0% |
| (ii) | Reasonable care not taken in completing return | [50]25% | [75]50% | [25]15% | 0% |
| (iii) | No reasonable grounds for ‘tax position’ taken | [75]50% | [100]75% | [35]25% | 0% |
| (iv) | Gross negligence | 100% | 125% | 50% | 5% |
| (v) | Intentional tax evasion | 150% | 200% | 75% | 10% |

(b) by the substitution in subsection (3)(b) for the words preceding subparagraph (i) of the following words:

“was in possession of an opinion by **[a] an independent** registered tax practitioner that—”.

(2) Subsection (1) comes into operation on date of promulgation of this Act.

Substitution of section 224 of Act 28 of 2011, as substituted by section 74 of Act 21 of 2012

77. The following section is hereby substituted for section 224 of the Tax Administration Act, 2011:

“Objection and appeal against [decision not to remit] imposition of understatement penalty 5

“224. [A] The imposition of an understatement penalty under section 222 or a decision by SARS not to remit an understatement penalty under section 223(3), is subject to objection and appeal under Chapter 9.”.

Amendment of section 230 of Act 28 of 2011 10

78. Section 230 of the Tax Administration Act, 2011, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The approval by a senior SARS official of a voluntary disclosure application and relief granted under section 229, must be evidenced by a written agreement between SARS and the qualifying person who is liable for the outstanding tax debt 15 in the prescribed format and must include details on—”.

Amendment of section 231 of Act 28 of 2011, as amended by section 76 of Act 21 of 2012

79. Section 231 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph: 20

“(b) regard an amount paid in terms of the voluntary disclosure agreement to constitute part payment of any further outstanding tax debt in respect of the relevant ‘default’; and”.

Amendment of section 235 of Act 28 of 2011, as amended by section 78 of Act 21 of 2012 25

80. Section 235 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) [A] Only a senior SARS official may lay a complaint with the South African Police Service or the National Prosecuting Authority regarding an offence under this section.”. 30

Amendment of section 240 of Act 28 of 2011, as amended by section 82 of Act 21 of 2012

81. (1) Section 240 of the Tax Administration Act, 2011, is hereby amended—

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

“(2) The provisions of this section do not apply in respect of a person 35 who only—

(a) provides the advice or completes or assists in completing a return [solely] for no consideration to that person or his or her employer or a connected person in relation to that employer or that person;

(b) provides the advice [solely] in anticipation of or in the course of any 40 litigation to which the Commissioner is a party or where the Commissioner is a complainant;

(c) provides the advice [solely] as an incidental or subordinate part of providing goods or other services to another person; or

(d) provides the advice or completes or assists in completing a return 45 [solely]—

(i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of the

- employer and connected persons in relation to the employer;
or
(ii) under the **[direct]** supervision of a **[person who is a registered tax practitioner who has assigned or approved the assignment of those functions to the person.]**”; and 5
- (b) by the insertion after subsection (2) of the following subsection:
“(2A) A tax practitioner who has assigned or approved the assignment of functions to a person under subsection (2)(d)(ii) is regarded as accountable for the actions of that person in performing those functions for the purposes of a complaint to a recognised controlling body under section 241(2).” 10
- (2) Subsection (1) is deemed to have come into operation on 20 December 2012.

Amendment of section 240A of Act 28 of 2011, as inserted by section 83 of Act 21 of 2012

- 82.** (1) Section 240A of the Tax Administration Act, 2011, is hereby amended— 15
- (a) by the substitution in subsection (2)(a) for the words preceding subparagraph (i) of the following words:
“**in respect of such persons, maintains relevant and effective—**”; and
- (b) by the substitution for subsection (3) of the following subsection:
“(3) A body recognised under subsection (2) must submit a report on 20
its members and compliance with this Chapter within the prescribed time period and in the prescribed form and manner **[as prescribed by the Commissioner]**.”.
- (2) Subsection (1) is deemed to have come into operation on 20 December 2012.

Amendment of section 242 of Act 28 of 2011

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- 83.** Section 242 of the Tax Administration Act, 2011, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:
- “(1) Despite section 69, the senior SARS official lodging a complaint under section 241 may disclose the taxpayer information **[relating to the person’s tax affairs]** as in the opinion of the official is necessary to lay before the ‘controlling body’ to which the complaint is made. 30
- (2) Before a complaint is lodged or information is disclosed, SARS must deliver to the taxpayer concerned and the person against whom the complaint is to be made notification of the intended complaint and information to be disclosed.”.

Amendment of section 246 of Act 28 of 2011, as amended by section 86 of Act 21 of 2012

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- 84.** Section 246 of the Tax Administration Act, 2011, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
“(a) approved by SARS and— 40
(i) must be a person who is a senior official of the company **[and is approved by SARS]**; or
(ii) if no senior official resides in the Republic, may be another suitable person;”; and
- (b) by the substitution for subsection (3) of the following subsection: 45
“(3) If a public officer is not appointed as required under this section, the public officer is the **[managing director,]** director, company secretary or other officer of the company that SARS designates for that purpose.”.

Amendment of section 256 of Act 28 of 2011, as substituted by section 89 of Act 21 of 2012

85. Section 256 of the Tax Administration Act, 2011, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

- “(a) outstanding tax debt [**outstanding**], excluding a tax debt contemplated in section 167 or 204 or a tax debt that has been suspended under section 164 or does not exceed the amount referred to in section 169(4); or” 5

Amendment of section 270 of Act 28 of 2011

86. Section 270 of the Tax Administration Act, 2011, is hereby amended—

- (a) by the substitution for subsection (6) of the following subsection: 10

“(6) Additional tax, penalty or interest may be imposed or levied as if the repeal of the legislation in Schedule 1 had not been effected and may be assessed and recovered under this Act, if—

- (a) additional tax, penalty or interest which but for the repeal would have been capable of being imposed, levied, assessed or recovered by the commencement date of this Act, has not been imposed, levied, assessed or recovered by the commencement date of this Act; or 15

- (b) an understatement penalty, administrative non-compliance penalty or interest under this Act cannot be imposed, levied, assessed or recovered in respect of an understatement as defined in section 221, non-compliance or failure to pay that occurred before the commencement date of this Act.”; 20

- (b) by the insertion after subsection (6) of the following subsections: 25

“(6A) For the purposes of subsection (6), ‘capable of being imposed’ means that the verification, audit or investigation necessary to determine the additional tax, penalty or interest had been completed before the commencement date of this Act.

(6B) If a return was due by the commencement date of this Act, the requirement under section 223(3)(b)(i) is regarded as having been met for the purposes of remittance of a substantial understatement penalty. 30

(6C) A person who made a valid voluntary disclosure before the commencement date of this Act, qualifies for the relief referred to in section 229(b) if the audit or investigation of the person’s affairs has commenced before but only concluded after commencement date of this Act and the requirements of Part B of Chapter 16 have been met. 35

(6D) If an understatement penalty is imposed as a result of an understatement, as defined in section 221, made in a return submitted before the commencement date of this Act, a taxpayer may object against the penalty under Chapter 9 (whether or not the taxpayer has previously objected against the assessment imposing the penalty) and if the return was required under— 40

- (a) the Income Tax Act, a senior SARS official must, in considering the objection, reduce the penalty in whole or in part if satisfied that there were extenuating circumstances; or 45

- (b) the Value-Added Tax Act, a senior SARS official must reduce the penalty in whole if the penalty was imposed under circumstances other than the circumstances referred to in item (v) of the understatement penalty table in section 223(1).”; 50

- (c) by the substitution in subsection (7) for paragraph (b) of the following paragraph:

“(b) regarded as interest [**due**] payable under this Act from the commencement date of the comparable provisions of this Act.”; and

- (d) by the substitution in subsection (8) for paragraph (b) of the following paragraph:
“(b) regarded as interest [**due**] payable under this Act.”.

Amendment of Arrangement of Sections of Act 28 of 2011

87. The Arrangement of Sections of the Tax Administration Act, 2011, is hereby 5 amended—

- (a) by the substitution for item 11 of the following item:
“**11.** Legal proceedings [**on behalf of**] involving Commissioner”; and
(b) by the substitution for item 224 of the following item:
“**224.** Objection and appeal against [**decision not to remit**] imposition 10
of understatement penalty.”.

Short title and commencement

88. (1) This Act is called the Tax Administration Laws Amendment Act, 2013.

(2) Save in so far as is otherwise provided for in this Act, amendments to the Tax Administration Act, 2011 (Act No. 28 of 2011), are deemed to have come into operation 15 on 1 October 2012.

(3) Subject to subsection (2), and 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.