MEMORANDUM ON THE OBJECTS OF THE TAX ADMINISTRATION LAWS AMENDMENT BILL, 2017

1. PURPOSE OF BILL

The Bill proposes to amend the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Value-Added Tax Act, 1991, the Skills Development Levies Act, 1999, the Diamond Export Levy (Administration) Act, 2007, the Tax Administration Act, 2011, the Customs Duty Act, 2014, the Customs Control Act, 2014, the Customs and Excise Amendment Act, 2014, and the Tax Administration Laws Amendment Act, 2014.

2. OBJECTS OF BILL

2.1 *Estate Duty Act, 1955: Insertion of section 9C*

A new section is proposed to clarify the date for payment of Estate Duty, i.e. the date indicated in the assessment.

2.2 *Estate Duty Act, 1955: Amendment of section 10*

The proposed amendment is consequential upon the repeal of section 9(2) by section 271 read with paragraph 16*(b)* of Schedule 1 to the Tax Administration Act, 2011. The obsolete reference to the deleted subsection is replaced with a reference to the date on which payment of the duty is due, as indicated in the proposed new section 9C.

2.3 *Income Tax Act, 1962: Amendment of section 48C*

Qualifying micro businesses (with turnover up to R1 million a year) are eligible for preferential income tax rates i.e. such businesses are taxed on turnover. Where a registered micro business exceeds the R1 million turnover threshold during a particular year of assessment, it may be deregistered as a micro business with effect from the beginning of the month following the month during which the threshold was so exceeded.

Currently, there are no transitional measures for micro businesses that have grown sufficiently during the course of a particular year of assessment to migrate into the normal income tax regime. This can result in unforeseen administrative penalties for a deregistered micro business. The proposed amendment enables the deregistered micro business to transition smoothly by exempting the micro business from any penalties for underpayment of tax under the Fourth Schedule to the Income Tax Act or Chapter 15 of the Tax Administration Act, 2011, to which the micro business would otherwise have become liable solely as a result of being deregistered due to its qualifying turnover exceeding R1 million.

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

The Tax Administration Laws Amendment Act, 2016, exempts persons who derive a dividend from a tax free investment (section 12T of the Income Tax Act) from submitting a return in respect of that dividend. Retirement funds are tax exempt savings vehicles, as is the case with tax free investments, and the exemption from submitting returns is now also extended to these funds.

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

The proposed amendment is a technical correction. Section 64E(2) of the Income Tax Act provides for the date a dividend is paid for purposes of Part VIII of the Act. It is at that date that the liability for dividends tax is determined. The refund rules in sections 64L, 64LA and 64M refer to ''payment of the dividend'' and not ''*date of* payment of the dividend''. The proposed amendment aligns the wording and clarifies that the period within

which refunds may be made (i.e. the three-year limit) applies from the date of payment of the dividend.

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

See the note on paragraph 2.5.

2.7 ***Income Tax Act, 1962: Amendment of section 64M***

See the note on paragraph 2.5.

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

Ad paragraph (a): The proposed amendment aims to correct internal numbering in paragraph *(a)* of the definition of ''remuneration''.

Ad paragraph (b): The proposed amendment excludes allowances or advances in respect of transport expenses based on the actual distance travelled by the recipient. The taxable amount with regard thereto will now be calculated in terms of the new proposed paragraph *(c*C*)* of the definition of remuneration.

Ad paragraph *(c)*: To facilitate and simplify the calculation and administration of employees' tax, skills development levy and unemployment insurance contributions, it is proposed that the rate indicated by the Minister of Finance by notice in the *Gazette* for the simplified method be applied to determine the amount of remuneration irrespective of the limitation on the distance for the simplified method in the notice. This means that, to the extent an allowance is paid by an employer for business travel by an employee at a rate exceeding the rate per kilometre referred to under the simplified method, the excess will be regarded as remuneration for purposes of determining the amount of employees' tax payable.

Therefore, reference to ''the rate per kilometre for the simplified method'' in the proposed amendment for employees' tax purposes is not affected by the existing 12 000 kilometre limitation. The limitation is only relevant to the taxpayer's eligibility for the simplified method on assessment.

Examples: Reimbursive allowances based on actual distance forming part of remuneration For the purposes of the examples below, it is assumed the rate per kilometre in the simplified method in the Notice by the Minister of Finance is set at R3.55 per kilometre for the year of assessment.

Example 1

Facts: During the month the employee travels 260 kilometres for business purposes and is refunded by the employer at R3.55 per kilometre.

Result: The allowance of R923 does not form part of remuneration for employees' tax purposes as the rate per kilometre does not exceed the rate of R3.55 set out in the simplified method.

Example 2

Facts: During the month the employee travels 840 kilometres for business purposes and is refunded by the employer at R5.00 per kilometre.

Result: Only R1 218 ((5.00-3.55) x 840) of the total allowance of R4 200 forms part of remuneration for employees' tax purposes, being the portion by which the allowance paid or granted by the employer exceeds an allowance based on a rate per kilometre of R3.55.

Example 3

Facts: During the year of assessment the employee travels 17 891 kilometres for business purposes and is refunded by the employer at R4.20 per kilometre.

Result: Only R11 629 ((4.20-3.55) x 17 891) of the total allowance of R75 142 forms part of remuneration for employees' tax purposes over the course of the year, being the portion by which the allowance paid or granted by the employer exceeds an allowance based on a rate per kilometre of R3.55. The fact that the distance travelled exceeds the existing distance limitation of 12 000 kilometres under the simplified method does not have any effect on the determination of remuneration for employees' tax purposes.

Ad paragraph (d): The proposed amendment is consequential to the amendment to section 10(1)*(k)*(i) proposed in the Taxation Laws Amendment Bill, 2017.

2.9 *Income Tax Act, 1962: Amendment of paragraph 2 of Fourth Schedule*

For purposes of calculating income tax, employees are able to deduct contributions to pension, provident and retirement funds from their income in terms of section 11F. The deduction is limited to the lesser of R350 000 or 27,5 per cent of the greater of remuneration or taxable income. Contributions under these caps are deducted in full. Where the annual cap of R350 000 applies, the amendment proposes to spread it for employees' tax purposes on a cumulative basis. The cumulative cap will be based on the portion of the employee's year of assessment during which the employee receives remuneration from an employer. For example, if an employee is employed by an employer for a period of 7 months during the 2018/19 year of assessment the employer will apply a deduction limitation of R204 167 (R350 000 x $^{7}/_{12}$). As the cumulative cap only applies for employees' tax purposes, any unused portion of the annual cap will be taken into account on assessment.

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

The proposed amendment adjusts the wording of paragraph 11A to provide for changes in employees' tax brought about by the expansion of the definition of ''remuneration'' in 2016.

Paragraph 11A of the Fourth Schedule to the Income Tax Act deems certain persons to be persons that pay or are liable to pay amounts to employees by way of remuneration. This means that these persons fall into the definition of ''employer'' for purposes of the Fourth Schedule. The Taxation Laws Amendment Act, 2016, expanded the definition of ''remuneration'' in the Fourth Schedule to include any amount received by or accrued to a person by way of a dividend contemplated in paragraphs *(dd)*, *(ii)* and *(jj)* of the proviso to section 10(1)*(k)*(i) of the Income Tax Act. The persons by whom the right was granted or from whom the equity instrument or qualifying equity share that gave rise to the gain or amount was acquired, are therefore considered to be employers and must now deduct employee's' tax in respect of the dividends

paid or from the remuneration payable by them to that employee during that year of assessment.

Listed shares are processed via a Central Securities Depository Participant (CSDP). However, the CSDP will not be required to deduct employees' tax. Where an employee holds shares through a share incentive scheme, the employer or person from whom the shares were acquired, acting on behalf of the employee, should inform the CSDP under section 64H(2) of the Income Tax Act, that no dividends tax must be withheld from the relevant dividend in terms of section 64F(1)*(l)* of the Act.

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

The 2017 Budget Review proposed that the current legal authorisation for the sharing of trade statistics with organs of state be reviewed for its appropriateness and possibly be amended. The proposed amendment updates the list of government entities that are allowed access to SARS' trade statistics and the conditions for the sharing of such information to more closely reflect the data needs of government to research, formulate and apply trade-related policies.

2.12 ***Customs and Excise Act, 1964: Amendment of section 19A***

Progressive imports of finished fuel levy goods necessitate the additional regulation of licensed storage warehousing in the liquid fuels industry. The Taxation Laws Amendment Act, 2015, inserted section 20(7) of the Customs and Excise Act for this purpose. The 2015 amendment has proven inadequate and will not be implemented. It is accordingly repealed and the amendment to section 19A is proposed as a more suitable vehicle to facilitate the required warehousing reforms.

2.13 ***Customs and Excise Act, 1964: Amendment of section 20***

See the note on paragraph 2.12.

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

Ad paragraph (a): The proposed amendment re-orders the current sequence of subparagraphs in subsection (9)*(a)* and further clarifies the cessation of liability for duty on imported goods used in the manufacture or production of other goods by a Customs Controlled Area (CCA) enterprise. The proposed subparagraph (iv) provides that liability ceases if it can be proved that the goods have been used in the manufacturing or production of goods by the CCA enterprise and that those goods have been removed to other licensed or registered premises for manufacture or production of any other goods by the licensee or registrant of such premises in accordance with any relevant provision of the Customs and Excise Act.

Ad paragraph (b): The proposed insertion of subsection (9A) makes provision for the assumption of the liability for duty that ceased as contemplated in the amended subsection (9)*(a)*(iv), by a person described in that subsection.

2.15 ***Customs and Excise Act, 1964: Amendment of section 54C***

This amendment refines the description of those other provisions of the Customs and Excise Act that also apply with any necessary changes as the context may require to the environmental levy. The revised wording clarifies that the scope of this section is limited to those provisions that govern the administration of excisable goods.

2.16 ***Customs and Excise Act, 1964: Amendment of section 75***

The 2015 Budget Review announced a comprehensive review of the administration of the diesel refund, which requires the delinking thereof from the VAT system. The 2017 Budget Review announced the legislative amendments contained in this proposal that will facilitate these reforms. Further amendments to the Schedules and Rules of the Customs and Excise Act, will be developed following public consultations to implement the outcome of the review.

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

The proposed amendment is a technical correction to adjust the wording and to clarify that the payment, recovery and refund of VAT on imported goods must be done in accordance with the Customs Duty Act, 2014, as from its commencement date.

2.18 ***Skills Development Levies Act, 1999: Amendment of section 6***

The proposed amendment is a technical correction to remove unnecessary wording.

2.19 ***Diamond Export Levy (Administration) Act, 2007: Amendment of section 1***

The proposed amendments are technical corrections to align the definitions of the various Acts that apply for purposes of the Diamond Export Levy (Administration) Act. The interpretation of terms defined in the Diamonds Act, 1986, the Diamond Export Levy Act, 2007, and the Tax Administration Act, 2011, apply in the context of the Diamond Export Levy (Administration) Act.

2.20 ***Diamond Export Levy (Administration) Act, 2007: Amendment of section 4***

The proposed amendment is a technical correction to correct a reference.

2.21 ***Diamond Export Levy (Administration) Act, 20017: Amendment of section 9***

The proposed amendments are technical corrections to correct internal references.

2.22 ***Tax Administration Act, 2011: Amendment of section 9***

It has been submitted that, with regard to decisions that are not subject to objection and appeal, a taxpayer can potentially be prejudiced by not having access to other effective internal remedies that may provide relief, such as section 9 of the Tax Administration Act. The taxpayer's only other remedy would then be to lodge a complaint with the Tax Ombud or take the matter up on review before the High Court in terms of the Promotion of Administrative Justice Act, 2000 (PAJA).

For example, estimated royalty payments under the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, were amended last year. Although these amendments were closely modelled on the provisional tax system in the Income Tax Act, 1962, a technical difference meant that section 9 of the Tax Administration Act did not cover SARS' adjustments to estimated royalty payments leaving a taxpayer without the section 9 review or the objection and appeal remedy in Chapter 9 of the Act.

Section 9 of the Tax Administration Act is essentially the enabling provision that allows a SARS official, in the official's discretion or at the request of a taxpayer, to amend or withdraw decisions that are not subject to objection and appeal, so ensuring that the *functus officio* principle does not apply. Decisions

that are given effect to in an assessment or notice of assessment are however excluded, since assessments generally have the separate remedy of objection and appeal. Hence, section 9 operates separately from the dispute resolution process and instead forms a legislative underpinning for SARS' internal complaints resolution procedures, managed by the SARS Complaints Management Office. Details of this process are available on the SARS website.

As a result of the public comment process on the 2016 legislation and the identification of a situation where a decision given effect to in a notice of assessment is not subject to objection and appeal, it is therefore proposed that such a decision be subject to the remedy under section 9. This will afford the taxpayer an internal remedy before exercising external remedies of, for example, lodging a complaint with the Tax Ombud or instituting a review application to the High Court under PAJA.

2.23 ***Tax Administration Act, 2011: Amendment of section 102***

The proposed amendment is a technical correction to correct spelling.

2.24 ***Tax Administration Act, 2011: Amendment of section 110***

In practice the current provision has been interpreted to mean that the appointment of an accountant or commercial member to the tax board is required if any one of the chairperson, SARS or the taxpayer considers it necessary. It is proposed that the chairperson of the tax board has the final decision as to whether or not an accountant or commercial member must form part of the constitution of the tax board. This is consistent with section 118 of the Tax Administration Act where the president of the tax court may, after considering any representations by SARS or the appellant in the matter, direct that the representative of the commercial community may be a person with the necessary experience in a particular field.

2.25 ***Tax Administration Act, 2011: Amendment of section 113***

The proposed amendment is a technical correction to align the wording used throughout this Part.

2.26 ***Tax Administration Act, 2011: Amendment of section 125***

The proposed amendment is a technical correction. The right of the appellant or his or her representative to appear at the hearing before the tax board is implicit.

2.27 ***Tax Administration Act, 2011: Amendment of section 160***

The proposed amendment is a technical correction to clarify meaning.

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

Currently, section 190(5A) requires a bank, if it reasonably suspects that the payment of a refund is related to a tax offence, to immediately report the suspicion to SARS in the prescribed form and manner. Upon such notification SARS has the discretion to instruct the bank to hold the funds for two business days, pending an investigation by SARS into the matter. However, given the speed with which amounts can be transferred to other accounts and the high incidence of using bank accounts in committing tax offences–in particular fraudulent refunds, this instruction may be too late in practice, rendering the provision ineffective.

The amendment proposes that a bank, if it reasonably suspects that the payment of a refund into the taxpayer's account is related to a tax offence place an automatic hold on the taxpayer's account whilst the matter is reported

to SARS. This will ensure that the funds are secured as soon as the transaction is reported. Banks generally have sophisticated systems in place to detect and analyse suspicious transactions and it is considered unlikely that such suspicion will be unreasonable. In any event, the hold is limited to the amount of the suspicious transaction and two business days. The two business days will commence when the hold is placed and the transaction is reported to SARS. The hold may be lifted if either SARS or a High Court directs otherwise, so a taxpayer who believes it is inappropriate may approach either to make their case.

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

The proposed amendment clarifies that the manner in which interest was calculated in respect of an additional tax penalty under the provisions of the tax Act imposing the penalty, prior to the repeal of the penalty by the Tax Administration Act, will apply for purposes of the calculation of interest on understatement penalties until Chapter 12 of the Tax Administration Act has come into effect.

2.30 ***Tax Administration Act, 2011: Amendment of section 272***

The full interest scheme of the Tax Administration Act as set out in Chapter 12 and the consequential amendments to the interest provisions of the tax Acts have not been promulgated with the rest of the Act with effect from 1 October 2012 in light of the system changes required to implement the new interest scheme. This was effected by section 272(2) of the Act that provided that the President may determine different dates for different provisions of this Act to come into operation. SARS now seeks to implement the new interest scheme in phases based on tax type. Accordingly, an amendment is proposed to allow the Minister, for purposes of Chapter 12 and the provisions relating to interest in Schedule 1 once promulgated, to determine by public notice the date on which they come into operation in respect of a tax type.

2.31 ***Customs Duty Act, 2014: Insertion of section 65A***

The proposed section is aimed at combatting refund and drawback fraud and irregularities. Refund and drawback applications will only be allowed from persons ‘‘entitled to’’ a refund or drawback as stipulated in the section. For instance, in the case of a duty refund, only the person who cleared the goods in respect of which the duty was paid will be entitled to claim a refund of the duty, whether or not that person was the person who actually paid the duty.

If a refund or drawback is approved, it will be paid only into the bank account of the person entitled to the refund or drawback as provided for in the section, unless that person has authorised SARS to pay the refund or drawback into a designated bank account of a third person. In circumstances where a third person has, for instance, paid a duty on behalf of the person clearing the goods, the third person will not be entitled to claim any refunds but that third person’s bank account may be designated as the bank account into which the refund must be paid. Provision will, however, be made in the rules for submission of the application by other duly authorised persons on behalf of the person entitled to claim.

2.32 ***Customs Duty Act, 2014: Substitution of section 67***

The proposed amendment is consequential in order to give effect to the proposed new section 65A.

2.33 ***Customs Duty Act, 2014: Amendment of section 68***

The proposed amendment is aimed at systems facilitation. Firstly, SARS' electronic system is not designed to receive accompanying documents as section 68(1) of the Customs Duty Act, envisages. Instead, the system generates a request for supporting documents to be submitted separately.

Secondly, as section 68(2) is too specific for system facilitation purposes, it is proposed to rather delete subsection (2) and replace it with a wider, general provision to broaden the scope for clearance declarations and amended clearance declarations to be regarded as applications for purposes of the Act, including refund applications. The proposed provision is to be inserted in section 224(1)*(g)*.

2.34 ***Customs Duty Act, 2014: Amendment of section 224***

See the note to paragraph 2.33.

2.35 ***Customs Control Act, 2014: Amendment of section 43***

The proposed amendment is a technical correction to correct spelling.

2.36 ***Customs Control Act, 2014: Amendment of section 52***

The current provision is unnecessary for domestic departures. The proposed amendment provides that permissions to depart should only apply to vessels about to depart to foreign destinations.

2.37 ***Customs Control Act, 2014: Amendment of section 53***

In terms of the current provision, departure reports must be submitted after departure of the vessel. This should work well for vessels operated by carriers as their reports must be submitted electronically through EDI. However, if departure reports are to be submitted in paper format by the on-board operators of private vessels, the reports can only be submitted before departure. The proposed amendment provides for the submission of departure reports before departure where it is to be submitted by the on-board operator of a private vessel.

2.38 ***Customs Control Act, 2014: Amendment of section 58***

The repeal of the current provision which requires customs permission for the departure of an aircraft is proposed as it appears to be too onerous in respect of the airline industry in view of the rapid turnaround times for aircraft landing and departing from customs airports.

2.39 ***Customs Control Act, 2014: Amendment of section 59***

In terms of the current provision, departure reports must be submitted after departure of the aircraft. This should work well for aircraft operated by carriers as their reports must be submitted electronically through EDI. However, if departure reports are to be submitted in paper format by the on-board operators of private aircraft, the report can only be submitted before departure. The proposed amendment provides for the submission of departure reports before departure where they are to be submitted by the on-board operator of a private aircraft.

2.40 ***Customs Control Act, 2014: Amendment of section 90***

The proposed amendment is a technical correction to correct spelling.

2.41 ***Customs Control Act, 2014: Amendment of section 91***

The proposed amendment is a technical correction to correct spelling.

2.42 ***Customs Control Act, 2014: Amendment of section 94***

Section 94 of the Customs Control Act determines the time when export clearances must be submitted in respect of goods to be exported from the Republic. The equivalent provision for imported goods, section 90, contains a timeframe for the submission of clearance declarations in the case of goods imported on board vehicles whilst section 94 only covers goods exported on board trucks. This is an oversight and the proposed amendment aims to correct this.

2.43 ***Customs Control Act, 2014: Amendment of section 97***

The current section allows a clearance of goods for home use or a customs procedure to be substituted for another clearance before release of the goods. As release normally happens within seconds, this provision is impractical. Furthermore it is neither a Kyoto requirement nor a current provision of the Customs and Excise Act, 1964. It is therefore proposed that the section be deleted.

2.44 ***Customs Control Act, 2014: Amendment of section 111***

Under the Customs and Excise Act, 1964, the transfer of ownership of goods is subject to customs permission only in the case of warehoused goods (see section 26 of that Act). Section 111(1) of the Customs Control Act, as currently worded, will extend the permission requirement to all customs procedures as from the effective date. The section is too wide and should apply only to goods under customs procedures as may be prescribed by rule where ownership control is essential. The proposed amendment will provide the necessary flexibility to limit the permission requirement for ownership transfers to goods under selected procedures, such as warehousing, home use processing and inward processing, and to exclude the permission requirement in the case of procedures where it is not needed, such as the export, tax free shop and stores procedures.

Section 111(1) furthermore currently covers only transfers of ownership where the goods remain under the same procedure after the transfer and consequently excludes situations where, for instance, warehoused goods are moved to another warehouse which requires a new clearance. (See the definition of ''warehousing''). The new proposed provision in section 111(1A) is aimed at extending section 111(1) to ownership transfers in situations where a new clearance is required, and also to cover the proposed amendments to sections 408(1)*(a)*(i) and 435(1)*(a)*(i), which will provide for new clearances to be submitted where goods under the home use and inward processing procedures are transferred between licensees of processing premises.

In terms of the current provisions of the Customs Control Act only the importer or owner can submit a clearance declaration and only the person who cleared the goods may submit an amended clearance declaration. The implication is that if clearance declarations or amended clearance declarations are used to apply for section 111 permissions, only the current owner will be able to submit an application. This restriction seems to complicate the application of section 111, which can be avoided if section 111 is amended to allow prospective new owners to submit clearance declarations in circumstances where they are not yet the owners. The new subsection (3A) gives effect to this proposal.

Subsection (5) applies only in the scenario where the goods remain under the same customs procedure after the transfer of ownership as contemplated in section 111(1A)*(a)*, for instance a transfer in a public warehouse. The proposed new subsection (7) will apply where the goods, simultaneously with the transfer, come under a new procedure as contemplated in section 111(1A)*(b)*.

The purpose of the proposed subsection (8) is generally to enable the customs authority to regulate the application of section 111 by way of rules.

2.45 ***Customs Control Act, 2014: Amendment of section 165***

Section 165(3) of the Customs Control Act, which requires submission of a clearance instruction on request by the customs authority, is superfluous as it repeats what section 176(1)*(c)* essentially stipulates, that is to say such a document is a supporting document for a clearance which like all supporting documents must be submitted on request. It is proposed that section 165(3) be deleted.

2.46 ***Customs Control Act, 2014: Amendment of section 174***

In terms of the existing provisions of section 174 of the Customs Control Act an amended clearance declaration can only correct an error or update or change existing information on the initial declaration. The aim of this proposed amendment is to broaden this notion of an amended clearance declaration and to allow a clearance declaration also to be amended for purposes of extending a timeframe that applies to the goods in terms of a customs procedure for which the goods were cleared.

These timeframe extensions may in terms of section 908 be granted by the customs authority on application by the person who cleared the goods. As a separate application process would be more onerous, it is felt that integrating the application process with the clearing system would be a better option. Not only would it simplify the process for both SARS and the trade, but also save costs.

The amendment would therefore allow a person who cleared goods for a customs procedure and who requires a timeframe extension applicable to the procedure, to simply submit through the electronic clearance system an amended clearance declaration stating the extended timeframe.

2.47 ***Customs Control Act, 2014: Amendment of section 180***

The addition proposed by the amendment is aimed at creating the necessary flexibility in relation to what information should be on a release notification.

2.48 ***Customs Control Act, 2014: Amendment of section 249***

Section 167 of the Customs Control Act prescribes mandatory information to be included in all clearance declarations. In the case of transhipment clearance declarations not all the mandatory information may in certain circumstances be necessary, especially in the Ngqura/Port Elizabeth seaport scenario, and it is accordingly proposed in order to create the necessary flexibility, to make provision for the exclusion by rule of certain clearance information that is generally mandatory.

2.49 ***Customs Control Act, 2014: Amendment of section 251***

It is proposed that section 251 of the Customs Control Act be amended to allow the customs authority to prescribe the documents that may be used as transhipment clearances.

2.50 ***Customs Control Act, 2014: Amendment of section 254***

Currently section 254 of the Customs Control Act only covers the scenario where the transhipment operation is carried out at the port of import of the goods. The proposed amendments are aimed at also covering the scenario where a transhipment operation involves two separate seaports, viz. the port where the goods were off-loaded after import and another port where the goods are loaded for export.

2.51 ***Customs Control Act, 2014: Amendment of section 257***

Currently section 257 of the Customs Control Act covers the transport of transhipment goods only from the premises where the goods are secured to the export terminal. This does not cover all the possible scenarios, especially where the transhipment operation involves two separate seaports, that is to say the port where the goods were off-loaded after import and another port where the goods are loaded for export. The proposed amendment aims to broaden the scope of the section to cover all possible scenarios where transhipment goods are transported by public road.

2.52 ***Customs Control Act, 2014: Amendment of section 269***

This proposed amendment is necessary for purposes of electronic systems facilitation. The reasoning is that if release is given for a clearance containing the period of temporary admission required by the importer, the release would include approval of that period as well. If the period is to be extended, the importer can apply for extension by submitting an amended clearance declaration which is more systems facilitative than a separate application for extension.

If the extension exceeds the maximum period stipulated in section 269(2) of the Customs Control Act, necessitating a section 908 application, the amended declaration can also serve as an application in terms of section 908 of the Act obviating the need for a separate application in terms of that section.

2.53 ***Customs Control Act, 2014: Substitution of section 290***

The current provisions relating to reusable transport equipment are unclear and these amendments are suggested to improve legal certainty. The rationale for section 290 of the Customs Control Act is to provide a tax free platform for reusable transport equipment when imported and exported. The problem is, however, to keep track of the reusable transport equipment to ensure that it is re-exported. Because of the technical nature of this matter, the best way to deal with it is through rules where the necessary flexibility exists to address divergent issues concerning the different types of reusable transport equipment such as containers, unit load devices, pallets, packing material and racking.

2.54 ***Customs Control Act, 2014: Amendment of section 294***

The proposed amendment is consequential to the proposed amendment to section 290 of the Customs Control Act.

2.55 ***Customs Control Act, 2014: Amendment of section 303***

The amendment is proposed to remove an unnecessary requirement.

2.56 ***Customs Control Act, 2014: Amendment of section 304***

The proposed amendment replaces the notification requirement in section 304(2) of the Customs Control Act with a less onerous ‘‘recording requirement’’ in terms of which the carrier delivering the goods and the licensee of the premises receiving the goods will be required to merely note

and keep record of the delivery or receipt of the goods. The customs authority can then request that these records be submitted to it when needed.

2.57 ***Customs Control Act, 2014: Amendment of section 346***

It has in terms of section 86 of the Customs Control Act been decided to exempt, as from the effective date until further notice, all sea and air carriers from submitting arrival reports referred to in sections 50 and 56 of the Act. This exemption will have an effect on section 346(2) as carriers would not be able to submit their stores arrival reports as part of the vessel or aircraft arrival reports as contemplated in section 346(2). It is accordingly proposed to amend section 346(2) of the Act and to provide for an alternative submission methodology to be prescribed by rule for the duration of the exemption.

2.58 ***Customs Control Act, 2014: Amendment of section 350***

The proposed amendment to section 350(1) of the Customs Control Act clarifies that stores under the stores procedure may be removed from a foreign-going vessel or aircraft or a cross-border train by means of a clearance for another permissible procedure, which includes a stores clearance onto another foreign-going vessel, aircraft or cross-border train. It is further proposed that subsection (2) be deleted to simplify the process of clearing stores under the stores procedure as stores onto other vessels, aircrafts or trains.

The amendment to subsection (3) clarifies that that no clearance declaration is required in cases where stores removed from a foreign-going vessel, aircraft or cross-border train for a purpose stated in subsection (1)*(b)* (i.e. for securing, reconditioning or repairing the stores), are returned to the same foreign-going vessel, aircraft or cross-border train.

The amendment to subsection (4) is proposed as it is impractical to require stores removed as contemplated in subsection (1)*(b)* from a vessel, aircraft or train to always be returned to the same vessel, aircraft or train. The subsection now allows carriers to return the removed stores to any vessel, aircraft or train under their operational control.

2.59 ***Customs Control Act, 2014: Amendment of section 354***

In terms of section 86 of the Customs Control Act it has been decided to exempt, as from the effective date until further notice, all sea and air carriers from submitting departure reports referred to in sections 53 and 59 of the Act. This exemption will have an effect on section 354(2) of the Act as carriers would not be able to submit their stores departure reports as part of the vessel or aircraft departure reports as contemplated in section 354(2). It is accordingly proposed to amend section 354(2) and to provide for an alternative submission methodology to be prescribed by rule for the duration of the exemption.

2.60 ***Customs Control Act, 2014: Amendment of section 380***

This amendment is proposed for purposes of electronic system facilitation. The reasoning is that if release is given for a clearance indicating the period of temporary export required by the importer, the release would include approval of that period as well. If the period is to be extended, the importer can apply for extension by submitting an amended clearance declaration which is more systems facilitative than a separate application for extension.

If the extension exceeds the maximum period stipulated in section 380(2) of the Customs Control Act, necessitating a section 908 application, the amended declaration can also serve as an application in terms of section 908 of the Act, obviating the need for a separate application in terms of that section.

2.61 ***Customs Control Act, 2014: Amendment of section 385***

The proposed amendment is a consequential adjustment necessitated by the proposed amendment to section 380 of the Customs Control Act.

2.62 ***Customs Control Act, 2014: Substitution of section 403***

The current provisions relating to reusable transport equipment are unclear and these amendments are suggested to improve legal certainty. The rationale for section 403 of the Customs Control Act is to provide a tax free platform for reusable transport equipment when temporarily exported. The problem is, however, to keep track of the reusable transport equipment to ensure that it is returned. Because of the technical nature of this matter, the best way to deal with it is through rules where the necessary flexibility exists to address divergent issues concerning the different types of reusable transport equipment such as containers, unit load devices, pallets, packing material and racking.

2.63 ***Customs Control Act, 2014: Amendment of section 406***

The proposed amendment is consequential to the proposed amendment to section 403 of the Customs Control Act.

2.64 ***Customs Control Act, 2014: Amendment of section 408***

This proposed amendment is aimed at removing any doubt that inward processing is a premises specific procedure. If goods under this procedure are to be transferred to and processed at other inward processing premises than the premises specified in the initial clearance declaration, a new clearance declaration must be submitted.

2.65 ***Customs Control Act, 2014: Amendment of section 415***

The proposed amendment replaces the notification requirement in section 415(1) of the Customs Control Act with a less onerous ‘‘recording requirement’’ in terms of which the carrier delivering the goods and the licensee of the premises receiving the goods will be required to merely note and keep record of the delivery or receipt of the goods. The customs authority can then request that these records be submitted to it when needed.

2.66 ***Customs Control Act, 2014: Amendment of section 435***

This proposed amendment is aimed at removing any doubt that home use processing is a premises specific procedure. If goods under this procedure are to be transferred to and processed at other home use processing premises than the premises specified in the initial clearance declaration, a new clearance declaration for home use processing must be submitted.

2.67 ***Customs Control Act, 2014: Amendment of section 442***

The proposed amendment replaces the notification requirement in section 442(2) of the Customs Control Act with a less onerous ‘‘recording requirement’’ in terms of which the carrier delivering the goods and the licensee of the premises receiving the goods will be required to merely note and keep record of the delivery or receipt of the goods. The customs authority can then request that these records be submitted to it when needed.

2.68 ***Customs Control Act, 2014: Amendment of section 460***

Section 460*(e)* of the Customs Control Act requires that the kind of compensating products that will be obtained from the outward processing of goods must be stated on the outward processing clearance declaration when the goods to be processed are exported. As this information will be on the

permit issued by ITAC for the export of the goods, it is unnecessary to duplicate this information on the clearance declaration and it is consequently proposed that section 460*(e)* be deleted.

2.69 ***Customs Control Act, 2014: Amendment of section 558***

This proposed amendment accommodates a complaint by the airline industry that section 542(2) or 549(2) of the Customs Control Act place an impractical burden on especially air carriers to notify the customs authority of all damaged and lost travellers' baggage items. The amendment provides for the exemption of a category of persons such as airline carriers from the notification requirement in relation to baggage without affecting the baggage owner's current right to submit the notification personally and claim tax relief for damaged or lost baggage items.

2.70 ***Customs Control Act, 2014: Amendment of section 604***

Section 604 of the Customs Control Act is currently too widely drafted as it affects, for instance, customs procedures where the transfer of ownership is implicit in the procedure, such as the tax free shop, stores and export procedures. The amendment is necessary to limit the registration requirement to persons acquiring ownership of goods in circumstances where tax collection is at risk and liability is an issue.

2.71 ***Customs Control Act, 2014: Amendment of section 606***

This proposed amendment deletes the current requirement of ''double registration'' in terms of which a client who makes use of the services of a registered electronic user to submit documents on his or her behalf, is also required to be registered as an electronic user. Only the person who actually accesses the SARS systems must be registered and controlled.

2.72 ***Customs Control Act, 2014: Amendment of section 626***

The proposed amendment is intended to facilitate the functioning of SARS' electronic system in relation to, amongst others, the validation of the roles of, and relationships between, parties involved in the customs supply chain. It is furthermore aimed at combatting fraud and tax evasion.

2.73 ***Customs Control Act, 2014: Amendment of section 665***

The proposed amendment is intended to facilitate the functioning of SARS' electronic system in relation to, amongst others, the validation of the roles of, and relationships between, parties involved in the customs supply chain. It is furthermore aimed at combatting fraud and tax evasion.

2.74 ***Customs Control Act, 2014: Amendment of section 681***

The subsection proposed to be deleted requires the holder of an accredited client status certificate to return the certificate to the customs authority if the certificate is withdrawn. The provision is obsolete as these certificates are issued electronically and not manually.

2.75 ***Customs Control Act, 2014: Insertion of section 935A***

The proposed section 935A of the Customs Control Act aims to introduce a special arrangement for deferments granted in terms of the Customs and Excise Act, 1964. As a general transition principle, section 928 of the Customs Control Act provides for the continuation of all approvals, permissions, authorisations, exemptions, rebates, relief and other existing measures, including deferments, granted under the 1964 Act when the new legislation takes effect. Insofar as the deferment of tax under the 1964 Act is concerned, it is proposed that deferments of customs duty should not be a measure that

automatically continues but that these deferments should rather lapse on the date when the Customs Duty Act takes effect. It is further proposed that existing deferment holders who operated under the 1964 Act on a deferment system for the payment of customs duties should be given the opportunity to apply for deferment benefits under the Customs Duty Act before the effective date. The aim is to have all these new deferment benefits in place on ''day one'' of the new legislation.

2.76 ***Customs Control Act, 2014: Insertion section 942A***

The proposed section 942A of the Customs Control Act aims to provide legal certainty for the performance, before the effective date of the new Customs Acts, of certain actions that are necessary to achieve a smooth transition to the new dispensation. The section enables the Commissioner to exercise certain powers in terms of the new Acts before the effective date where this is necessary to implement the new Acts as from the effective date, such as the publishing of rules, the appointment of customs officers, the delegation of powers and duties, etc. All these actions will only take effect as from the effective date.

With regard to rules regulating the registration, licensing and deferment benefits for customs duty under the new Acts, section 942A also allows Customs to start with these processes and allow the submission of applications well before the effective date. This is bound to be a massive undertaking that cannot be delayed until the effective date and should start as soon as possible. However, decisions taken in terms of these rules on the granting of any of those applications before the effective date will only come into effect on the effective date.

2.77 ***Customs and Excise Amendment Act, 2014: Amendment of section 43***

The proposed amendment is a technical correction. In light of the proposed substitution of section 54C of the Customs and Excise Act, 1964 (see paragraph 2.15), the amendment in section 43 must be deleted to prevent it from overriding the proposed amendment to section 54C once the Customs and Excise Amendment Act comes into operation.

2.78 ***Customs and Excise Amendment Act, 2014: Amendment of section 63***

The proposed repeal of paragraph *(b)* of section 63 of the Customs and Excise Amendment Act, 2014, amending section 75(4A)*(f)* of the Customs and Excise Act, 1964, is a technical amendment required as a consequence of the proposed amendment to section 75 of the Customs and Excise Act, 1964 (see paragraph 2.16 above).

Although the Customs and Excise Amendment Act, 2014, has been promulgated, it has not yet come into effect. The proposed amendment to section 75 of the Customs and Excise Act, 1964, is intended to come into effect on a date earlier than the ''effective date'' of the Customs and Excise Amendment Act, 2014. For this reason the wording of subsection 75(4A)*(f)* has to be restored to the way it read before the 2014 amendment.

2.79 ***Tax Administration Laws Amendment Act, 2014: Amendment of section 24***

The amendment proposes the deletion of paragraph *(e)* of section 24 of the Tax Administration Laws Amendment Act, 2014. This paragraph amended section 13(2A) of the Value-Added Tax Act, 1991, as from the date on which the Customs Control Act, 2014, comes into operation. The current amendment is required as a consequence of the scrapping of subsection (2A) proposed by the Taxation Laws Amendment Bill, 2017, from its insertion which came into effect on 10 January 2012. The amendment contained in the 2014 legislation is deemed to have been deleted from the date of promulgation of the 2014 Act.

2.80 ***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 2017 Budget Review, tabled in Parliament on 22 February 2017.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the National Treasury and SARS are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-4850-0402-8