

**MEMORANDUM ON THE OBJECTS OF THE TAXATION LAWS  
SECOND AMENDMENT BILL, 2008**

**1. PURPOSE OF BILL**

1.1 The Bill seeks to amend administrative provisions of the Income Tax Act, 1962 (Act No 58 of 1962), the Value-Added Tax Act, 1991 (Act No 89 of 1991), the Diamond Export Levy (Administration) Act, 2007 (Act No 14 of 2007), and the Securities Transfer Tax Administration Act, 2007 (Act No 26 of 2007).

**2. OBJECTS OF BILL**

***2.1: Income Tax Act, 1962: Amendment of sections 3, 69 and 70B***

The proposed amendments in clauses 1, 9 and 11 of the Bill include pension preservation funds and provident preservation funds with pension funds, provident funds and retirement annuity funds.

***2.2: Income Tax Act, 1962: Amendment of sections 10, 13, 13bis, 13quat, 18A, 27, 70, 72, 72A and 73, paragraph 13A of the First Schedule and paragraph 13 of the Fourth Schedule***

The tax return filing requirements no longer provide for documents to be attached to a tax return. The proposed amendments in clauses 2, 3, 4, 5, 6, 7, 10, 12, 13, 14, 19 and 21 of the Bill remove the requirement for supporting documents to be attached to the tax return.

***2.3: Income Tax Act, 1962: Amendment of section 66***

*Clause 8(a):* The proposed amendment deletes a cross reference.

*Clause 8(b) and (c):* The proposed amendments allow taxpayers to align reporting for tax purposes with the period ending on the day on which the accounts of the taxpayer are closed.

***2.4: Income Tax Act, 1962: Insertion of section 75B***

The current penalty tax regime relating to the imposition and remittance of additional tax and other penalties in the Tax Acts differs from one Act to another, and does not appropriately cater for less serious procedural and administrative non-compliance. It is proposed that the administrative penalty regime be revamped and that a more objective penalty system be introduced which would be administered in accordance with a defined set of criteria. This would create more certainty for taxpayers. Clause 15 of the Bill proposes a new section to provide for this.

***2.5: Income Tax Act, 1962: Amendment of section 76***

The proposed amendment in clause 16 of the Bill effects a change consequential to the insertion of section 75B.

***2.6: Income Tax Act, 1962: Amendment of section 88***

In clause 17 an amendment is proposed to make it clear that the exercise of the discretion by the Commissioner to not receive and recover any taxes chargeable does not affect the obligation of a taxpayer to pay any tax chargeable and the imposition of interest on the unpaid tax.

***2.7: Income Tax Act, 1962: Amendment of section 89quat***

Interest on the late payment of income tax in respect of taxpayers that are not provisional taxpayers is currently charged only subsequent to the taxpayer's assessment. Equally unjust, the current interest dispensation does not permit for the payment of interest where such a taxpayer overpaid employees' tax during the tax year. The

proposed amendment in clause 18 seeks to charge interest where the total taxes paid by a taxpayer as at a particular date (typically 30 September each year in the case of individuals) in respect of his or her taxable income is insufficient. At the same time, the proposed amendment makes provision for the payment of interest to a taxpayer who overpaid tax during the same period.

A taxpayer can avoid paying interest by making an additional tax payment to SARS on or before the date from which interest is charged.

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

Currently, an employer can choose whether to take medical scheme contributions into account for employees' tax purposes. Where these contributions are not taken into account an employee who would otherwise not be required to submit a tax return is forced to submit a tax return in order to claim the expense as a tax deduction. The proposed amendment in clause 20 of the Bill seeks to make it compulsory for an employer to take these expenses into account where the employer effects payment of contributions to medical schemes. An employer has the option to take these expenses into account where an employer does not effect payment to a medical scheme but the employee submitted the necessary proof of payment to the employer.

***2.9: Income Tax Act, 1962: Amendment of paragraphs 13 and 14 of the Fourth Schedule***

The information that is currently prescribed by the Fourth Schedule for employees' tax reconciliation purposes is insufficient. Added to this, many employers fail in their duty to reconcile properly and to submit their reconciliations to SARS on time. Without a proper reconciliation submitted on time it is not possible to accurately verify a taxpayer's employee's tax credit on assessment. The proposed amendments in clauses 21 and 22 of the Bill prohibit the delivery of employees' tax certificates until the relevant employees' tax reconciliation has been submitted to SARS. The amendments also seek to permit the Commissioner to prescribe the information that an employer is required to submit for reconciliation purposes, and to penalise an employer that fails to submit a reconciliation on time to SARS.

***2.10: Income Tax Act, 1962: Amendment of paragraph 23A of the Fourth Schedule***

In support of the proposed amendment to section 89*quat* to pay or charge interest from the effective date for all taxpayers, in clause 23 of the Bill it is proposed that all taxpayers are afforded the opportunity to make a voluntary payment of tax by the effective date in order to avoid paying interest from that date. The effective date for individuals is 30 September (i.e. 7 months after the end of a tax year).

***2.11: Value-Added Tax Act, 1991: Amendment of section 23***

The proposed amendment in clause 24 of the Bill effects a textual change.

***2.12: Value-Added Tax Act, 1991: Amendment of section 27***

The proposed amendment in clause 25 of the Bill effects a textual change.

***2.13: Diamond Export Levy (Administration) Act, 2007: Amendment of section 5***

The proposed consequential amendment in clause 26 of the Bill addresses concerns regarding persons that are not ordinarily resident or do not have a diamond business nexus in South Africa.

***2.14: Securities Transfer Tax Administration Act, 2007: Amendment of section 3***

The proposed amendment in clause 27 of the Bill effects a textual change.

***2.15: Short title and commencement***

Clause 28 provides for the name and commencement of the Bill.

### **3. CONSULTATION**

The amendments proposed by this Bill were published on the websites of National Treasury and SARS for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large were consulted in preparing the Bill.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

An account of the financial implications for the State was given in the 2008 Budget Review.

### **5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers and the National Treasury 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.

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