

REPUBLIC OF SOUTH AFRICA

MERCHANT SHIPPING (INTERNATIONAL OIL POLLUTION COMPENSATION FUND) ADMINISTRATION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36591 of 21 June 2013)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 42—2013]

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BILL

To provide for administrative matters in connection with the levy imposed in terms of the Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 2013; and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

Sections

1. Definitions	5
2. Interpretation	
3. Registration	
4. Return and notice of assessment	
5. Record keeping	
6. Disclosure of information	10
7. Short title and commencement	

Definitions

1. In this Act, unless the context indicates otherwise, any meaning ascribed to a word or expression in the Merchant Shipping (International Oil Pollution Compensation Fund) Act, 2013, the Contributions Act or the Tax Administration Act, has the meaning so ascribed, and— 15

“**Contributions Act**” means the Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Act, 2013;

“**Fund Regulations**” means the Internal Regulations of the International Oil Pollution Compensation Fund established under the 1992 Fund Convention; 20

“**Tax Administration Act**” means the Tax Administration Act, 2011 (Act No. 28 of 2011).

Interpretation

2. Any administrative requirement and procedure for the purposes of the performance of any duty imposed, the exercise of any power conferred, the meeting of any obligation imposed or the exercise of any right conferred in terms of this Act or the Contributions Act are, to the extent not regulated in this Act, regulated by the Tax Administration Act. 25

Registration

3. (1) A person who meets the criteria set out in section 2 of the Contributions Act for the payment of the levy must, within 21 business days after meeting the criteria, apply to the Commissioner to be registered for the levy. 30

(2) The Commissioner must register a person contemplated in subsection (1).

Return and notice of assessment

4. (1) A person who is liable for payment of the levy must submit a return.
 (2) The Commissioner must submit to a person who is liable for payment of the levy, a notice of assessment of the levy due in terms of section 3(1) of the Contributions Act.

Record keeping

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5. In addition to the records required under Part A of Chapter 4 of the Tax Administration Act, every person receiving contributing oil must keep the following records and documents:

- (a) Import declarations required for customs purposes for contributing oil in respect of which the levy may be payable; and 10
- (b) records and books of account that set out the type and quantity of the contributing oil in respect of which the levy may be payable.

Disclosure of information

6. Despite Chapter 6 of the Tax Administration Act, the Commissioner must disclose to— 15
- (a) the Minister and the Minister of Transport the information referred to in Article 15 of the 1992 Fund Convention and Regulation 4 of the Fund Regulations; and
 - (b) the Director of the Fund any information required to be submitted to the Director in Article 15 (relevant to the administration) of the 1992 Fund Convention. 20

Short title and commencement

7. This Act is called the Merchant Shipping (International Oil Pollution Compensation Fund) Administration Act, 2013, and comes into operation on a date to be determined by the President by proclamation in the *Gazette*. 25

MERCHANT SHIPPING (INTERNATIONAL OIL POLLUTION COMPENSATION FUND) ADMINISTRATION BILL, 2013

1. BACKGROUND

- 1.1 The Merchant Shipping (International Oil Pollution Compensation Fund) Bill, developed by the Department of Transport, together with the Merchant Shipping (International Oil Pollution Compensation Fund) Contributions Bill (“the Contributions Bill”) and the Merchant Shipping (International Oil Pollution Compensation Fund) Administration Bill (“the Administration Bill”), propose to provide for the implementation of the International Maritime Organization Protocol of 1992 (“the 1992 Protocol”) to amend the International Convention on the Establishment of an International Fund for Oil Pollution Damage (“the Fund Convention”), by South Africa.
- 1.2 The Contributions Bill is the money Bill (section 77 Bill) that provides for the imposition and collection of the contributions that are due to be paid over to the Fund.
- 1.3 It is proposed that the South African Revenue Service (“SARS”) will be the authority responsible for the collection of the contributions that must be paid over to the International Oil Pollution Compensation Fund (“the Fund”).

2. OBJECTS OF BILL

The Administration Bill proposes to provide the necessary authority and administrative arrangements to enable SARS to fulfill the function of administering the collection of the International Oil Pollution Compensation Fund Contributions levy (“the levy”).

3. CLAUSE BY CLAUSE ANALYSIS

- 3.1 The Administration Bill contains provisions to enable SARS to administer the collection of the levy, in addition to the provisions that are contained in the Tax Administration Act, 2011 (Act No. 28 of 2011), which will provide the main basis for SARS to carry out its tax administration functions.
- 3.2 *Clause 1* of the Administration Bill provides for necessary definitions.
- 3.3 *Clause 2* provides that administrative requirements and procedures for purposes of the performance of any duty or the exercise of any power in terms of the Administration Bill or the Contributions Bill, to the extent that they are not set out in the Administration Bill, will be regulated by the Tax Administration Act, 2011 (Act No. 28 of 2011).
- 3.4 *Clause 3* requires that persons who are liable for paying the levy must apply to be registered with the Commissioner of SARS (“the Commissioner”).
- 3.5 *Clause 4* provides that a person who is liable to pay the levy must submit a return in accordance with section 25 of the Tax Administration Act, 2011. The Commissioner must submit to a person who is liable for payment of the levy a notice of assessment of the levy due in terms of section 3(1) of the Contributions Act.
- 3.6 *Clause 5* requires all registered persons to keep certain records.
- 3.7 *Clause 6* requires that the Commissioner must disclose information referred to in the 1992 Protocol and the Fund Convention to the Minister, the Minister of Transport and the Director of the Fund.
- 3.8 *Clause 7* provides for the short title and commencement.

4. DEPARTMENTS OR BODIES CONSULTED

The Bill was developed by the National Treasury, in consultation with SARS and the Department of Transport.

5. FINANCIAL IMPLICATIONS FOR STATE

There will be administrative costs associated with the administration of the levy by SARS, and these costs will be catered for in the budget proposals for SARS.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the National Treasury are of the opinion that the Administration 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 section 76 of the Constitution applies.
- 6.2 Furthermore, the State Law Advisers are of the opinion that it is not necessary to refer the Administration 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 does not contain provisions pertaining to customary law or customs of traditional communities.