

REPUBLIC OF SOUTH AFRICA

REVENUE LAWS SECOND AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 28212 of 7 November 2005)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 41—2005]

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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.

BILL

To amend the Estate Duty Act, 1955, so as to amend a definition; to effect certain consequential amendments; to amend the Income Tax Act, 1962, so as to amend certain definitions and to insert further definitions; so as to amend the provisions relating to the taxation of royalties or similar payments paid to non-residents to delete provisions which have become obsolete; to further regulate the provisions relating to the withholding tax on foreign sellers of property in the Republic to make provision for the right of objection and appeal; to amend a definition for purposes of donations tax; to amend the provisions relating to submission of returns and payment; to amend the provisions relating to the registration of tax practitioners; to further regulate the returns relating to controlled foreign companies; to amend the provisions relating to offences; to amend the provisions relating to reportable arrangements to include the regulations issued in the Act; to further regulate amounts to be refunded; to make provision that the Minister of Finance may issue regulations prescribing the circumstances under which the Commissioner may waive, write off or compromise any amount of tax, duty, levy, charge or other amounts; to amend the Customs and Excise Act, 1964, so as to delete a provision for a right of appeal to the Minister where the Commissioner determines certain matters in respect of imported goods; to amend the definition of “circumvention” in provisions relating to the export of certain goods; to prescribe requirements in respect of the removal in bond of cigarettes for transit through the Republic; to amend the heading in respect of the provisions for limitation on refund claims; to further regulate internal administrative appeal; to amend the heading in respect of the provisions for administrative penalties; to amend provisions relating to notice of action and the period for bringing action; to delete certain restrictions in respect of the manufacture of excisable goods by natural persons for own use; to amend the long title to include Road Accident Fund levy and to effect certain consequential amendments; to amend the Stamp Duties Act, 1968, so as to amend and delete certain definitions; to provide for the phasing out of adhesive revenue stamps and impressed stamps; to amend the Value-Added Tax Act, 1991, so as to allow the Commissioner to prescribe the form and manner in which payment and returns must be submitted; to amend the Uncertificated Securities Tax Act, 1998, so as to effect certain consequential amendments resulting from the deletion of uncertificated securities tax on the issue of securities; and to provide for matters in connection therewith.

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

Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957, section 1 of Act 65 of 1960, section 7 of Act 77 of 1964, section 3 of Act 92 of 1971, section 9 of Act 106 of 1980, section 5 of Act 86 of 1987, section 7 of Act 87 of 1988, section 6 of Act 97 of 1993, section 2 of Act 140 of 1993, section 8 of Act 88 of 1996, section 5 of Act 27 of 1997, section 34 of Act 34 of 1997, section 7 of Act 53 of 1999, section 6 of Act 30 of 2000, section 1 of Act 59 of 2000 and section 3 of Act 5 of 2001 5

1. (1) Section 1 of the Estate Duty Act, 1955, is hereby amended—
 - (a) by the substitution in subsection (1) for the definition of “fair market value” of the following definition:

“‘**fair market value**’, means—

 - (a) the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm’s length in an open market; or 15
 - (b) in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic, the amount determined by reducing the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm’s length in an open market by 30 per cent;” 20
 - (b) by the deletion of subsection (2).
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of the estate of any person who dies on or after that date.

Amendment of section 8 of Act 45 of 1955, as amended by section 4 of Act 59 of 1957 and section 12 of Act 77 of 1962 25

2. Section 8 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) If the Commissioner on receipt of any return referred to in section [seven] 7 —

 - (a) is dissatisfied with any value at which any property [**other than property whereof the fair market value has been determined in accordance with the provisions of subsection (2) of section one**] is shown in any such return; 30
 - or
 - (b) is of the opinion that the amount claimed to represent the dutiable amount as disclosed in the return does not represent the correct dutiable amount, 35

he or she shall adjust such value or amount and determine the dutiable amount accordingly.”

- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of the estate of any person who dies on or after that date.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 34 of Act 34 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, 40 45 50 55

section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004 and section 3 of Act 32 of 2004

3. (1) Section 1 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the definition of “average exchange rate” of the following definition: 5
- “**average exchange rate**’ in relation to a year of assessment means[—
- (a) the average determined by using the closing spot rates at the end of daily[, **weekly**] or monthly intervals during that year of assessment[; or 10
- (b) **the weighted average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment during which income is received or accrued or expenditure is incurred, which average must be based on—**
- (i) **the net amount of receipts and accruals (excluding those of a capital nature) and deductible expenditure during each such period; and 15**
- (ii) **the net amount of capital gains or capital losses determined in respect of any disposal of assets during that period,** which must be consistently applied within that year of assessment;”;
- (b) by the insertion after the definition of “average exchange rate” of the following definition: 20
- “ ‘beneficiary’ in relation to a trust means a person who has a vested or contingent interest in all or a portion of the receipts or accruals or the assets of that trust;”;
- (c) by the deletion in the definition of “connected person” of the words following paragraph (e); 25
- (d) by the substitution in the definition of “dividend” for paragraph (a) of the following paragraph: 30
- “(a) in relation to a company that is being wound up, [or] liquidated[,] or deregistered or the corporate existence of which is finally terminated, any profits [**distributed, whether in cash or otherwise,**] (other than those of a capital nature earned before or during the winding-up, [or] liquidation, deregistration or final termination from the disposal of any asset before 1 October 2001) [**(any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company)**] which are distributed, whether in cash or otherwise, in the course or in anticipation of the winding up, liquidation, deregistration or final termination of that company: Provided that— 35
- (i) any profits distributed by the liquidator of the company is deemed for purposes of this definition to have been distributed by the company; and 40
- (ii) the amount of any capital profits [**so**] distributed which are attributable to the disposal of any asset on or after 1 October 2001, but which was acquired by that company before that date [**shall**] must, for the purposes of this definition be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset as contemplated in paragraph 29 of the Eighth Schedule;” 50
- (e) by the insertion after the definition of “**foreign equity instrument**” of the following definition: 55
- “ ‘government grant’ means an appropriation, grant in aid, subsidy or contribution, in cash or kind, paid by a department listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), (other than a provincial administration), but does not include any amount paid in respect of the supply of any goods or services to that department;”;
- (f) by the deletion of paragraph (1B) of the definition of “gross income”; 60
- (g) by the substitution in the definition of “gross income” for paragraph (n) of the following paragraph:

- “(n) any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer’s income and that amount must—
- (i) for the purposes of this paragraph [**all amounts which in terms of subsection (4) of section eight are required to be included in the taxpayer’s income shall**] be deemed to have been received by or to have accrued to the taxpayer; and
 - (ii) in the case of any amount required to be included in the taxpayer’s income in terms of section 8(4), be deemed to have been received or accrued from a source within the Republic notwithstanding that such amounts may have been recovered or recouped outside the Republic:”;
- (h) by the substitution for the definition of “group of companies” of the following definition:
- “**‘group of companies’** means two or more companies in which one company (hereinafter referred to as the **‘controlling group company’**) directly or indirectly holds shares in at least one other company (hereinafter referred to as the **‘controlled group company’**), to the extent that—
- (a) at least **[75] 70** per cent of the equity shares of each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and
 - (b) the controlling group company directly holds **[75]** at least 70 per cent **[or more]** of the equity shares in at least one controlled group company;”;
- (i) by the substitution in the definition of “resident” for items (aa) and (bb) of subparagraph (ii) of paragraph (a) of the following items:
- “(aa) for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the **[three]** five years of assessment preceding such year of assessment; and
- (bb) for a period or periods exceeding **[549] 915** days in aggregate during **[such three]** those five preceding years of assessment;”;
- (j) by the substitution in the definition of “resident” for paragraph (A) of the proviso to subparagraph (ii) of paragraph (a) of the following paragraph:
- “(A) a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a ‘port of entry’ as contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 200), or at any other place **[in the case of a person authorised by]** as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of [section 31(2)(c) of] that Act; and”;
- (k) by the deletion of the definition of “South African Revenue Service” and the insertion of the following definition after the definition of “shareholder”:
- “**‘South African Revenue Service’** means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;”;
- (l) by the insertion after the definition of “specified period” of the following definition:
- “**‘spot rate’** means the appropriate quoted exchange rate at a specific time by any authorised dealer in foreign exchange for the delivery of currency;”.
- (2) (a) Subsection (1)(a) is deemed to have come into operation on 8 November 2005 and applies in respect of years of assessment ending on or after that date.
- (b) Subsection (1)(d) shall come into operation on 8 November 2005 and applies in respect of any dividend declared on or after that date.
- (c) Subsection (1)(h) is deemed to have come into operation on 8 November 2005.
- (d) Subsection (1)(i) shall—
- (i) in respect of any person who by virtue of paragraph (a)(ii) of the definition of “resident” was a resident on 28 February 2005, come into operation on

1 March 2006 and applies in respect of any year of assessment commencing on or after that date; and

- (ii) in respect of any other person, is deemed to have come into operation on 1 March 2005 and applies in respect of any year of assessment commencing on or after that date.

(e) Subsection (1)(j) is deemed to have come into operation on 1 July 2005.

(f) Subsection (1)(l) is deemed to have come into operation on 8 November 2005 and applies in respect of years of assessment ending on or after that date.

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983, section 21 of Act 21 of 1994, section 39 of Act 59 of 2000, section 32 of Act 74 of 2002 and section 48 of Act 45 of 2003

4. Section 35 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph (f).

Amendment of section 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004

5. (1) Section 35A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (10) of the following subsection:

“(10) (a) The Commissioner may having regard to the circumstances of the case remit the whole or any part of the penalty imposed under subsection (9)(b).

(b) Any decision by the Commissioner under paragraph (a) shall be subject to objection and appeal.”

(2) Subsection (1) shall come into operation on the date that section 35A of the Income Tax Act, 1962, comes into operation.

Amendment of section 55 of Act 58 of 1962, as amended by section 25 of Act 90 of 1988, section 22 of Act 28 of 1997 and section 37 of Act 30 of 2000

6. (1) Section 55 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the definition of “fair market value” of the following definition:

“ ‘fair market value’, means—

(a) the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm’s length in an open market; or

(b) in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic, the amount determined by reducing the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm’s length in an open market by 30 per cent;”

- (b) by the deletion of subsection (2).

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of any donation which takes effect on or after that date.

Amendment of section 62 of Act 58 of 1962, as amended by section 8 of Act 114 of 1977, section 36 of Act 101 of 1990, section 23 of Act 28 of 1997 and section 33 of Act 53 of 1999

7. (1) Section 62 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If the Commissioner is of the opinion that the amount shown in any return as the fair market value of any property [other than property whereof the fair market value has been determined in accordance with the provisions of subsection (2) of section fifty-five,] is less than the fair market value of [such] that property, he or she may fix the fair market value of that property, and the value so fixed [shall] is, subject to the provisions of section [sixty-three] 63, [be] deemed for the purposes of this Part to be the fair market value of such property.”

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of any donation which takes effect on or after that date.

Substitution of section 65 of Act 58 of 1962

8. The following section hereby substitutes section 65 of the Income Tax Act, 1962:

“Returns and payment to be in form and submitted at place prescribed by Commissioner

65. All forms of returns and other forms required for the administration of this Act [shall] and all payments required to be made in terms of this Act must be in such form and be submitted in such manner (including electronically and at such place as may be prescribed by the Commissioner [from time to time].”

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001, section 26 of Act 30 of 2002, section 38 of Act 74 of 2002, section 61 of Act 45 of 2003, section 18 of Act 16 of 2004 and section 7 of Act 34 of 2004

9. (1) Section 66 of the Income Tax Act, 1962, is hereby amended—

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

“(1) The Commissioner must annually give public notice that all persons who are personally or in a representative capacity liable to taxation under this Act or who are required by the Commissioner to furnish returns for the assessment of tax, must furnish returns within the period prescribed in that notice, or such longer period as the Commissioner may allow, for the purposes of assessments in respect of the years of assessment specified in that notice.”;

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

“(1A) The Commissioner may, in the notice given in terms of subsection (1), exempt any person who would otherwise be required to furnish a return for the assessment of tax, from the obligation of furnishing such a return.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2005 and applies in respect of any year of assessment ending on or after that date.

Amendment of section 67A of Act 58 of 1962, as inserted by section 9 of Act 34 of 2004

10. (1) Section 67A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

“(a) provides advice or completes or assists in completing any document, as contemplated in subsection (1), 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 advice contemplated in subsection (1) solely in anticipation of or in the course of any litigation to which the Commissioner is a party[, or in the course of such litigation] or where the Commissioner is a complainant;”.

(2) Subsection (1) is deemed to have come into operation on 24 January 2005.

Amendment of section 72A of Act 58 of 1962, as inserted by section 46 of Act 59 of 2000 and amended by section 42 of Act 74 of 2002 and substituted by section 65 of Act 45 of 2003

11. (1) Section 72A of the Income Tax Act, 1962, is hereby amended—

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

“(1) Every resident who on the last day of the foreign tax year of a controlled foreign company or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least

10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissioner together with the return contemplated in section 66 in respect of that year of assessment, a return containing[-] such information as may be prescribed by the Commissioner.”; 5

(b) by the deletion in subsection (1) of paragraphs (a) to (f);

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

“(2) A resident must **[together with the return contemplated in subsection (1), submit]** have available for submission to the Commissioner when so requested, a copy of the financial statements of the controlled foreign company [(prepared in accordance with generally accepted accounting practice)] for the relevant foreign tax year, as defined in section 9D, of that controlled foreign company **[in respect of which there is an inclusion in the income of that resident in terms of section 9D].**”; 10 15

(d) by the deletion in subsection (3) of paragraph (a).

(2) Subsection (1) is deemed to have come into operation on 8 November 2005 and applies in respect of foreign tax years ending on or after that day.

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996, section 39 of Act 53 of 1999, section 44 of Act 30 of 2000, section 23 of Act 5 of 2001, section 18 of Act 19 of 2001, section 52 of Act 60 of 2001, section 45 of Act 74 of 2002, section 68 of Act 45 of 2003, section 19 of Act 16 of 2004 and section 11 of Act 34 of 2004 20

12. Section 75 of the Income Tax Act, 1962, is hereby amended— 25

(a) by the insertion in subsection (1) after paragraph (aB) of the following paragraphs:

“(aC) fails to deduct or withhold any amount of tax on foreign entertainers and sportspersons or pay any amount deducted or withheld over as contemplated in section 47D and 47E; 30

(aD) fails to inform the Commissioner of any specified activity as contemplated in section 47K.”;

(b) by the addition in subsection (1) of the word “or” at the end of paragraph (j); and

(c) by the addition to subsection (1) of the following paragraphs: 35

“(k) (i) is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 18A; or

(ii) is the accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies, 40

who intentionally fails to comply with any provision of section 18A or 30, as the case may be, or a provision of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of section 18A or 30.” 45

Amendment of section 76A of Act 58 of 1962, as inserted by section 69 of Act 45 of 2003 50

13. Section 76A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words in paragraph (a) of the definition of “reportable arrangement” following subparagraph (iii) of the following words:

“but does not include any arrangement contemplated in subsection (1A) or any arrangement identified by the Minister by notice in the Gazette, which is not likely to lead to any undue tax benefit;” 55

- (b) by the substitution in subsection (1) for paragraph (b) of the definition of “reportable arrangement” of the following paragraph:
 “(b) any arrangement contemplated in subsection (1B) or which has certain characteristics identified by the Minister by notice in the *Gazette* which are likely to lead to an undue tax benefit;”;
- (c) by the insertion after subsection (1) of the following subsections:
 “(1A) Paragraph (a) of the definition of ‘reportable arrangement’ does not include any arrangement which constitutes—
 (a) a loan, advance or debt in terms of which—
 (i) the borrower receives an amount of cash and agrees to repay at least the same amount of cash to the lender at a determinable future date; or
 (ii) the borrower receives a fungible asset and agrees to return an asset of the same kind and of the same or equivalent quantity and quality to the lender at a determinable future date;
 (b) a lease;
 (c) a transaction undertaken through an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004);
 (d) a transaction in participatory interests in a scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002):
 Provided that—
 (i) the arrangement is—
 (aa) undertaken on a stand-alone basis and is not directly or indirectly connected to, or directly or indirectly dependent upon, any other arrangement (whether entered into between the same or different parties); or
 (bb) an arrangement that would have qualified as having been undertaken on a stand-alone basis as required by paragraph (aa), were it not for a connected arrangement that is entered into for the sole purpose of providing security and no tax benefit is obtained or enhanced by entering into such security arrangement; and
 (ii) that arrangement is not entered into—
 (aa) with the main purpose of obtaining or enhancing a tax benefit; or
 (bb) in a specific manner or form with the main purposes of obtaining or enhancing a tax benefit.
 (1B) Paragraph (b) of the definition of ‘reportable arrangement’ includes—
 (a) any arrangement which would have qualified as a hybrid equity instrument as defined in section 8E, if the prescribed periods in that section had been five years; or
 (b) any arrangement which would have qualified as a hybrid debt instrument as defined in section 8F, if the prescribed periods in that section had been five years, but does not include any instrument listed on an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004).”.

Amendment of section 88 of Act 58 of 1962, as amended by section 12 of Act 6 of 1963, section 44 of Act 85 of 1974, section 25 of Act 103 of 1976, section 24 of Act 91 of 1982, section 30 of Act 121 of 1984, section 17 of Act 70 of 1989, section 40 of Act 113 of 1993, section 14 of Act 140 of 1993 and section 60 of Act 60 of 2001

14. Section 88 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

- “(3) The provisions of section 102(3) apply *mutatis mutandis* in respect of any amount refundable and any interest payable by the Commissioner under subsection (1).”.

Insertion of section 91A in Act 58 of 1962

15. The following section is hereby inserted in the Income Tax Act, 1962, after section 91:

“Waiver, write off or compromise of amounts payable

91A. (1) The Minister may by regulation prescribe the circumstances under which the Commissioner may waive, write off or compromise in whole or in part any amount of tax, duty, levy, charge or other amount payable by a person in terms of any Act administered by the Commissioner, where that waiver, write off or compromise would be to the best advantage of the State. 5

(2) The Minister must in the regulations contemplated in subsection (1) prescribe— 10

- (a) the procedures to be followed by the Commissioner in waiving, writing off or compromising any amount; and
- (b) the requirements for reporting by the Commissioner of any amounts which have been waived, written off or compromised. 15

(3) Before the regulations contemplated in this section are published, the Minister must—

- (a) publish the draft regulations in the *Gazette* for public comment; and
- (b) submit the regulations to Parliament for parliamentary scrutiny at least 30 days before their promulgation.”. 20

Amendment of section 93 of Act 58 of 1962, as amended by section 34 of Act 28 of 1997

16. Section 93 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph: 25

“(b) if such person fails to comply with the notice or in answer to the notice denies his liability for the said amount or for any part thereof, and the President of the [special] tax court has certified that he has afforded the person concerned an opportunity of presenting his case, and that on the information submitted to him by the Commissioner and by such person (if any), the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such other country,”. 30

Amendment of section 41 of Act 91 of 1964, as amended by section 15 of Act 105 of 1969, section 6 of Act 112 of 1977, section 3 of Act 93 of 1978, section 5 of Act 86 of 1982, section 2 of Act 85 of 1986, section 2 of Act 84 of 1987, section 20 of Act 59 of 1990, section 31 of Act 45 of 1995 and section 41 of Act 45 of 1995 35

17. Section 41 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) If any particulars referred to in paragraph (a) of any imported goods are not declared in the prescribed invoice or certificate in respect thereof or if any change in the particulars declared in any prescribed invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Controller by the importer of such goods or if the Commissioner has reason to believe that an offence referred to in section 86(f) or (g) has been committed in respect of any imported goods the Commissioner may determine a transaction value, origin, date of purchase, quantity, description or the characteristics of such goods according to the best information available to him, which shall, subject to the provisions of this Act, [a right of appeal to the Minister,] be deemed to be the transaction value, origin, date of purchase, quantity, description or the characteristics of such goods.”. 40 45 50

Amendment of section 46A of Act 91 of 1964, as inserted by section 61 of Act 59 of 2000

18. Section 46A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the definition of “circumvention” of the following definition:

- “ ‘circumvention’ includes any circumvention of any provision of an enactment by—
- (a) trans-shipment, rerouting, false declaration concerning the country or place of origin or falsification of official documents; or
 - (b) making any false declaration concerning fibre content, quantities, description or classification of goods[, as provided in Article 5 of the Agreement on Textiles and Clothing included in Annex 1A of the Agreement established by the World Trade Organisation, kept by the Commissioner as contemplated in subsection (2)];

Amendment of section 54 of Act 91 of 1964, as amended by section 3 of Act 85 of 1968 and substituted by section 13 of Act 112 of 1977 and amended by section 43 of Act 45 of 1995 and substituted by section 141 of Act 45 of 2003

19. Section 54 of the Customs and Excise Act, 1964 is hereby amended by the insertion after subsection (3) of the following subsection:

- “(4) (a) No cigarettes in containers bearing the stamp impression referred to in subsection (2), may be entered for removal in bond as contemplated in section 18 for transit through the Republic.
- (b) Any cigarettes in containers bearing such stamp impression so entered for removal in bond shall be liable to forfeiture in accordance with the provisions of this Act.”.

Amendment of section 76B of Act 91 of 1964, as inserted by section 67 of Act 30 of 1998 and substituted by section 29 of Act 34 of 2004

20. Section 76B of the Customs and Excise Act, 1964, is hereby amended by the substitution for the heading of the following heading:

- “Limitation on the period for which refund and drawback claims will be considered and the period within which [such claims] applications therefor must be received by the [Commissioner] Controller [-]”.**

Amendment of section 77C of Act 91 of 1964, as inserted by section 147 of Act 45 of 2003

21. (1) Section 77C of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Any person who intends submitting an appeal as provided for in this Part must do so within such time as may be prescribed by the Commissioner by rule—”.

(2) Subsection (1) shall come into operation on the date Part A of Chapter XA comes into operation.

Amendment of section 77D of Act 91 of 1964, as inserted by section 147 of Act 45 of 2003

22. (1) Section 77D of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Request for reasons and [Time] time within which a request or an appeal must be considered”;

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

- “(1) (a) Any person contemplated in section 77B may request reasons for a decision.

(b) The Commissioner may prescribe by rule—

- (i) the procedures to be complied with when reasons are requested and the time within which such request must be delivered to the Commissioner;

- (ii) the period within which—
 (aa) a request for reasons; or
 (bb) an appeal,
 must be considered.
 (c) The Commissioner must notify in writing the person who—
 (i) requested reasons, of those reasons; or
 (ii) lodged an appeal, of the final decision,
within the periods prescribed in such rule.”; and
 (c) by the deletion of subsection (2).
 (2) Subsection (1) shall come into operation on the date Part A of Chapter XA comes
 into operation. 10

Amendment of section 77F of Act 91 of 1964, as inserted by section 147 of Act 45 of 2003

23. (1) Section 77F of the Customs and Excise Act, 1964, is hereby amended by the
 deletion of subsection (2). 15
 (2) Subsection (1) shall come into operation on the date Part A of Chapter XA comes
 into operation.

Insertion of section 77HA in Act 91 of 1964

24. (1) The Customs and Excise Act, 1964 is hereby amended by the insertion after
 section 77H of the following section: 20

“Implementation of Part A in respect of decisions

- 77HA. This Part applies in respect of any decision made on or after the
 date on which this Part comes into operation.”.
 (2) Subsection (1) shall come into operation on the date Part A of Chapter XA comes
 into operation. 25

Amendment of section 91 of Act 91 of 1964, as amended by section 133 of Act 60 of 2001

25. Section 91 of the Customs and Excise Act, 1964, is hereby amended by the
 substitution for the heading of the following heading: 30
 “[Admission of guilt] Administrative penalties”.

Amendment of section 96 of Act 91 of 1964, as amended by section 136 of Act 60 of 2001 and section 30 of Act 34 of 2004

26. (1) Section 96 of the Customs and Excise Act, 1964, is hereby amended —
 (a) by the substitution in subsection (1) for paragraph (a) of the following
 paragraph: 35
 “(a) (i) No process by which any legal proceedings are instituted
 against the State, the Minister, the Commissioner or an officer for
 anything done in pursuance of this Act may be served before the expiry
 of a period of one month after delivery of a notice in writing setting forth
 clearly and explicitly the cause of action, the name and place of abode of
 the person who is to institute such proceedings (in this section referred to
 as the “litigant”) and the name and address of his or her attorney or
 agent, if any. 40
 (ii) Such notice shall be in such form and shall be delivered in such
 manner and at such places as may be prescribed by rule. 45
 (iii) No such notice shall be valid unless it complies with the
 requirements prescribed in this section and such rules.”; and
 (b) by the substitution in subsection (1) for paragraph (b) of the following
 paragraph:
 “(b) Subject to the provisions of section 89, the period of extinctive 50
 prescription in respect of legal proceedings against the State, the
 Minister, the Commissioner or an officer on a cause of action arising out
 of the provisions of this Act shall be one year and shall begin to run on

the date when the right of action first arose[.] : Provided that where any proceedings are instituted concerning any decision defined in section 77A(1), such date shall begin to run on the date—

- (i) of a final decision as contemplated in the rules for Part A of Chapter XA;
- (ii) when the Commissioner advises the person who made use of the alternative dispute resolution procedures contemplated in the rules for Part B of Chapter XA that agreement has not been achieved at the conclusion or termination of such procedures; or
- (iii) on the date a dispute is not settled and the Commissioner advises the person concerned as contemplated in section 77O(5) of Part C of Chapter XA.”.

(2) (a) Subsection (1)(a) shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)(b) shall come into operation on the date Part A and Part B of Chapter XA come into operation.

Amendment of section 116 of Act 91 of 1964, as amended by section 18 of Act 95 of 1965 and section 72 of Act 45 of 1995

27. Section 116 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“Notwithstanding anything to the contrary in this Act contained, the Commissioner may, in respect of any excisable goods [(except ethyl alcohol)] manufactured by natural persons [(except under item 604.00 of Schedule No. 6)] for their own use and not for sale or disposal in any manner—”.

Substitution of the long title of Act 91 of 1964, as substituted by section 42 of Act 59 of 1990, section 66 of Act 30 of 2000 and section 72 of Act 32 of 2004

28. (1) The long title for the Customs and Excise Act, 1964 is hereby substituted with the following title:

“**To provide for the levying of customs and excise duties and a surcharge; for a fuel levy, for a Road Accident Fund levy, for an air passenger tax and an environmental levy; the prohibition and control of the importation, export, manufacture or use of certain goods; and for matters incidental thereto.**”.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 16 of Act 27 of 1997, section 34 of Act 34 of 1997, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001, section 54 of Act 19 of 2001, section 141 of Act 60 of 2001, section 42 of Act 12 of 2003, section 37 of Act 16 of 2004, section 73 of Act 32 of 2004 and section 4 of Act 10 of 2005

29. (1) Section 1 of the Stamp Duties Act, 1968, is hereby amended—

- (a) by the deletion of the definition of “die”;
- (b) by the substitution of the definition of “duly stamped” of the following definition:

“ ‘**duly stamped**’ in relation to any instrument requiring to be stamped under this Act, means that such instrument has been stamped as required by this Act for the proper amount of duty and the amount of any interest, penalty or additional duty incurred under sections 9, 9A and 9B [and, where adhesive stamps have been used, that such stamps have been defaced as required by this Act];”; and

- (c) by the deletion in the definition of “stamp” of subparagraphs (i) and (ii) of paragraph (a);

(2) Subsections (1)(a), (b) and (c) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 5 of Act 77 of 1968, as amended by section 9 of Act 89 of 1972, section 7 of Act 66 of 1973, section 9 of Act 114 of 1977, section 5 of Act 118 of 1984, section 10 of Act 86 of 1987, section 19 of Act 87 of 1988, section 6 of Act 136 of 1991, section 6 of Act 136 of 1992, section 79 of Act 30 of 1998, section 68 of Act 30 of 2000 and section 74 of Act 32 of 2004

30. (1) Section 5 of the Stamp Duties Act, 1968, is hereby amended—
 (a) by the substitution in subsection (1) for the words preceding subparagraph (i) of the following words:

“(1) The payment of any duty, interest, penalty or additional duty incurred under sections 9, 9A or 9B shall, **[save as is otherwise specially provided in this Act,]** be denoted by means of **[adhesive revenue stamps]** a stamp for the amount of that duty, interest, penalty or additional duty, **and those stamps must be affixed to the instrument chargeable with the duty, interest, penalty or additional duty and be defaced as prescribed by this Act**: Provided that—”;

(b) by the deletion in subsection (1) of paragraph (i);
 (c) by the substitution in subsection (1) for paragraph (ii) of the following paragraph:

“(ii) **[the Commissioner may in his discretion, in lieu of the requirement that adhesive stamps be affixed to any such instrument, authorize]** upon the issue of a special receipt for the duty, interest, penalty or additional duty paid in respect of **[such]** an instrument[,], and **[upon]** the issue of **[such]** that receipt, the person by whom or under whose supervision **[the said]** that receipt is issued, **[shall]** must endorse upon the instrument concerned a certificate of the due payment of **[the said]** that duty, interest, penalty or additional duty.”;

(d) by the substitution in subsection (1) for paragraph (iii) of the following paragraph:

“(iii) **[where]** the Commissioner **[is satisfied that any person or class of persons cannot conveniently denote the duty in respect of any instrument in respect of which stamp duty is payable by means of stamps affixed to such instrument, he]** may, subject to **[such]** those conditions as he or she may impose and subject to the exercise of such control as he or she considers necessary, agree that payment of **[such]** that duty, interest, penalty or additional duty may be acknowledged by means of the issue of a special receipt, and **[any such]** that an instrument which bears on its face the words ‘duty paid’, shall for the purposes of this Act be deemed to be duly stamped.”; and

(e) by the deletion in subsection (1) of paragraph (v).

(2) (a) Subsections (1)(a), (b) and (e) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(b) Subsection (1)(c) shall—

- (i) to the extent that it inserts a reference to interest, penalty or additional duty, come into operation on the date of promulgation of this Act.
- (ii) to the extent that it amends the rest of paragraph (ii), come into operation on a date fixed by the President by proclamation in the *Gazette*.

(c) Subsection (1)(d) shall—

- (i) to the extent that it inserts a reference to interest, penalty or additional duty, come into operation on the date of promulgation of this Act; and
- (ii) to the extent that it amends the rest of paragraph (iii), come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 10 of Act 77 of 1968, as amended by section 5 of Act 95 of 1978, section 56 of Act 19 of 2001 and section 81 of Act 32 of 2004

31. (1) Section 10 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

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Amendment of section 26 of Act 77 of 1968, as amended by section 26 of Act 87 of 1988

32. (1) Section 26 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) in relation to the stamping of any instrument [**or the defacement of any stamp on any instrument**], without lawful excuse uses, enters or attests any date other than the true date; or”

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(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 27 of Act 77 of 1968, as amended by section 28 of Act 87 of 1988 and section 69 of Act 30 of 2000

33. (1) Section 27 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 28 of Act 77 of 1968

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34. (1) Section 28 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 28A of Act 77 of 1968, as inserted by section 12 of Act 88 of 1974 and amended by section 29 of Act 87 of 1988 and section 70 of Act 30 of 2000

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35. (1) Section 28A of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment to section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003 and section 9 of Act 10 of 2005

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36. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) that person is carrying on any enterprise as contemplated in paragraph (b)(ii), [or] (iii) or (v) or (c) of the definition of ‘enterprise’ in section 1; or”

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Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001, section 158 of Act 60 of 2001, section 118 of Act 74 of 2002 and section 179 of Act 45 of 2003

37. Section 28 of the Value-Added Tax Act, 1991, is hereby amended—

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

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“(a) furnish the Commissioner with a return [(in such form as the Commissioner may prescribe)] reflecting such information as may be required for the purpose of the calculation of tax in terms of section 16; and”

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(b) by the addition in subsection (1) of the following paragraph to the proviso:

“(v) the Commissioner may prescribe the form and manner (including electronically) in which returns must be submitted and payments must be made by a vendor.”

Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 2000, section 180 of Act 45 of 2003 and section 41 of Act 34 of 2004

38. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) any person fails to furnish any return as required by section 28, 29 or 30 or fails to furnish any declaration as required by section [13(4) or] 14; or”.

Amendment of section 38 of Act 89 of 1991, amended by section 165 of Act 60 of 2001

39. (1) Section 38 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:
“(1) Subject to the provisions of section 7(3)(d) and section 13(5) and (6), the tax payable under this Act must be paid in full within the time allowed by [section 13(4) or] section 14 or section 28 or section 29, whichever is applicable.
(2) Where the Commissioner is satisfied that due to circumstances beyond the control of the person liable for the payment of the tax the amount of tax due cannot be accurately calculated within the time allowed by [section 13(4) or] section 14 or section 28 or section 29, whichever is applicable, the Commissioner may in his or her discretion and subject to such conditions as he or she may impose, agree to accept a payment of a deposit by such person of an amount equal to the estimated liability of such person for such tax.”.

Amendment of section 41 of Act 89 of 1991, as amended by section 32 of Act 136 of 1992, section 36 of Act 97 of 1993, section 41 of Act 27 of 1997, section 98 of Act 30 of 1998 and section 167 of Act 60 of 2001

40. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (d) for subparagraph (ii) of the following subparagraph:
“(ii) any amount of tax chargeable under this Act in respect of the importation of goods was not paid[—
(A)
(B) if payment of such amount was required to be made within the period allowed in terms of section 13(4), within that period]; or”.

Amendment of section 46 of Act 89 of 1991, as amended by section 185 of Act 45 of 2003

41. Section 46 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph:
“(j) on a foreign donor funded project shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such foreign donor funded project.”.

Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999, section 72 of Act 19 of 2001, section 173 of Act 60 of 2001, section 119 of Act 74 of 2002 and section 43 of Act 34 of 2004

42. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (d) of the following paragraph:
“(d) fails to comply with the provisions of [section 13(4) or] section 14 or section 28(1) or (2), section 29 or section 30; or”.

Substitution of the long title of Act 31 of 1998

43. (1) The following long title hereby substitutes the long title of the Uncertificated Securities Tax Act, 1998:
“To provide for the levying of an uncertificated securities tax in respect of [the issue of, and] every change in beneficial ownership in[,] any securities which are

transferable without a written instrument and are not evidenced by a certificate; and to provide for matters connected therewith.”.

(2) Subsection (1) comes into operation on 1 January 2006.

Amendment of section 13 of Act 31 of 1998, as amended by section 181 of Act 60 of 2001 and section 193 of Act 45 of 2003

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44. (1) Section 13 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “**administration of this Act**” of the following paragraph:

“(a) obtaining of full information in relation to **[the issue of, or] every** change in beneficial ownership in[,] any security;”.

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(2) Subsection (1) comes into operation on 1 January 2006 and applies in respect of the issue of any security on or after that date.

Substitution of section 14A of Act 31 of 1998, as inserted by section 194 of Act 45 of 2003

45. The following section hereby substitutes section 14A of the Uncertificated Securities Tax Act, 1998:

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“Records

14A. Any **[issuer,] member, [or] participant or person** who acquires the beneficial ownership in securities, must keep such records of every **[issue of, or] change in beneficial ownership [in, any securities issued by the issuer or in respect of]** which **[a change in beneficial ownership]** has been effected by the member, or **[any transfer of securities]** by the participant, or by the person that has acquired the beneficial ownership in the securities, for a period of five years as may be required to enable the **[issuer,] member, [or] participant[,]** or the person that has acquired the beneficial ownership in the securities, as the case may be, to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed.”.

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(2) Subsection (1) comes into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

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Repeal of section 6B of Act 9 of 1999

46. Section 6B of the Skills Development Levies Act, 1999, is hereby repealed.

Short title and commencement

47. (1) This Act is called the Revenue Laws Second Amendment Act, 2005.

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(2) Save in so far as is otherwise provided in this Act or where the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, by this Act shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2006.

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**MEMORANDUM ON THE SECOND REVENUE LAWS
AMENDMENT BILL, 2005**

1. OBJECTS OF THE BILL

1.1 This Bill introduces amendments to the administrative provisions of the Estate Duty Act, 1955, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991, and the Uncertificated Securities Tax Act, 1998

1.2 Clause 1—Estate Duty: Amendment of section 1 of the Estate Duty Act, 1955

In terms of the definition of “fair market value” in the Estate Duty Act and the Income Tax Act as far as it relates to estate duty, donations tax and capital gains tax, persons carrying on *bona fide* farming operations can elect to value their immovable property at its fair market value or fair agricultural or pastoral value. The Land Bank Act read with the Estate Duty Act provided for the appointment of land bank valuers, the method of determining the agricultural or pastoral value and an appeal process for taxpayers dissatisfied with the valuation to the Land Bank Board. Applications for valuations were made to the magistrate of the district in which a property was situated. The Land Bank Act was replaced by the Land and Agricultural Development Bank Act, 2002, which no longer provides for the applications to magistrates and does not provide for the appeal process to the Land Bank Board. From an administrative point of view it has, therefore, become impossible to administer these provisions.

It is, therefore, proposed that the land bank valuation be replaced with the valuation applicable to all other property, namely, the price that could be obtained between a willing buyer and willing seller dealing at arm’s length in an open market, but must be reduced by 30 per cent in recognition of the fact that land bank valuations were lower than the fair market value. The reason for this reduction is that the land bank value represented the fair agricultural or pastoral value of the property and not the open market value.

1.3 Clause 2—Estate Duty: Amendment of section 8 of the Estate Duty Act, 1955

This amendment is consequential upon the amendments made to the definition of “fair market value” in section 1 of the Estate Duty Act.

1.4 Clause 3—Income Tax: Amendment of definitions in section 1 of the Income Tax Act, 1962

Subclause (a): In the Budget Review it was announced that the spot rate will again be allowed for the translation of foreign currency. This will enable businesses to use the exchange rates applied for financial reporting purposes for tax purposes. The weighted average method of calculating the average exchange rate is no longer required and will be deleted. It is proposed that the definition of average exchange rate be available for—

- translation of the net income of a controlled foreign company to determine the amount to be included in the income of a resident; and
- use at the election of individuals and non-trading trusts to translate their foreign income and expenditure.

Subclause (b): It was held in a recent Tax Court case that where the word “beneficiary” was used in the definition of “recipient” in section 64C(1) of the Income Tax Act, as it was contained in that Act at the time, it must be given a narrow meaning as only including beneficiaries with vested rights. It is proposed that a wider definition of “beneficiary” be introduced to clarify that the word includes contingent beneficiaries. This proposed definition must be read with the opening words to section 1, i.e. that unless the context of the provision otherwise indicates the definition applies. Where a provision of the Act requires a narrower meaning, this is specifically stated in the relevant provision.

Subclause (c): This amendment is consequential upon the insertion of the definition of “beneficiary” as mentioned above.

Subclause (d): Paragraph (a) of the definition of dividend provides for an exclusion of profits of a capital nature earned before 1 October 2001 which are distributed by a company that is being wound up, liquidated or the corporate existence of which is finally terminated. A similar exclusion is already contained in the STC provisions. It is proposed that the definition of dividend be aligned with the STC exemption as far as deregistration, final termination of a company and a distribution in the course or

anticipation of winding up, liquidation, deregistration or final termination of a company are concerned.

A provision is inserted which provides that in determining the excluded capital profits in respect of an asset of a company which became a resident after 1 October 2001 the capital profits must be determined as if the asset was acquired on the date the company became a resident for a cost equal to the market value at that date.

Subclause (e): Government has introduced a uniform system of dealing with value-added tax on government grants to public entities and private parties. It was announced in the Budget that the first steps would be taken to introduce a uniform system for income tax. It is proposed that a definition of “government grant” be introduced and that an enabling provision be introduced in section 10(1)(y) which gives the Minister of Finance the power to approve the different government grants as being exempt from tax in terms of a notice in the *Gazette* if they meet the requirements of the section. The requirements are that the schemes in terms of which the grants are paid meet government policy priorities and objectives in defined areas. The Minister must have regard to the financial implications for the Government and whether the tax implications have been taken into account in designing the scheme.

Subclause (f): This subclause deletes an obsolete provision.

Subclause (g): Paragraph (n) of the definition of “gross income” includes all amounts that are required to be included in the income of a taxpayer are deemed to be included in gross income. Certain of these amounts, such as imputed controlled foreign company income or an exchange difference determined in terms of section 24I, do not constitute receipts or accruals. This amendment ensures that all amounts that are required to be included in the income of a taxpayer are deemed to be receipts and accruals for the purposes of the definition of “gross income”.

Subclause (h): As announced in the 2005 Budget Review, the threshold to qualify as a group of companies is reduced from 75 per cent to 70 per cent to accommodate more intra-group tax-free transfers of assets.

Subclause (i): When the residence basis of taxation was introduced in South Africa in 2001, a three-year period commencing from the date on which an expatriate becomes resident in South Africa is allowed during which foreign income and capital gains of the expatriates are not taxed in South Africa. This period was allowed through the operation of the definition of “resident” and its purpose was to encourage visiting expatriates with scarce skills to work in South Africa.

It is clear from international benchmarking that this period is not in line with the tax treatment in other tax jurisdictions, particularly Australia and Canada which have the same comprehensive exit taxes as South Africa does. It is proposed that the period that a person is physically present in the Republic before he or she becomes a resident be extended to five years to bring it more in line with international practice and to make South Africa more attractive for expatriates.

It is proposed that the amendment be phased in so that the operation of the amendment does not result in a person who is resident as a result of the physical presence test from becoming non-resident and being subject to capital gains tax on his or her assets (excluding fixed property and assets attributable to a permanent establishment in South Africa).

The proposal is that for persons who were resident as a result of the physical presence test on 28 February 2005 the new provision comes into operation on 1 March 2006 and applies in respect of years of assessment commencing on or after that date. In respect of any other person it comes into operation on 1 March 2005 and applies in respect of years of assessment commencing on or after that date.

What the phasing in is intended to prevent can best be illustrated by an example.

Example

A person is physically present in South Africa for 190 days each year of assessment from the year ending 28 February 2002 to the year ending 28 February 2007 and no period of absence in these years equals or exceeds 330 days.

On 28 February 2005 the person had been in South Africa for a period exceeding 91 days in that year of assessment and also for the three preceding years of assessment. The person also had been physically present in South Africa for periods exceeding 549 days in the three years preceding the year ending 28 February 2005 and was therefore a “resident as defined”.

In the year ending 28 February 2006 the person would have been physically present in South Africa for periods exceeding 91 days in that year of assessment but also only four of the preceding years. The person would also have been physically present in

South Africa in the five preceding years for periods of less than 915 days (i.e. 190 days x 4 = 760 days). If the operation of the amendment had not been phased in the person would have ceased to be a resident in the year ending 28 February 2006 and been subject to capital gains tax in terms of paragraph 12(2) of the Eighth Schedule to the Income Tax Act.

Subclause (j): This amendment is consequential upon the amendment of the Immigration Act, 2002 on 1 July 2005.

Subclause (k): This amendment is of a textual nature and moves the definition of “South African Revenue Service” to correct the alphabetical order of the definitions.

Subclause (l): The introduction of a definition of “spot rate” is consequential upon the rules allowing the use of the spot rate to translate amounts in foreign currency to Rand.

1.5 Clause 4—Income Tax: Amendment of section 35 of the Income Tax Act, 1962

Section 35 of the Income Tax Act, 1962, was amended in 2000 to provide that the withholding tax on royalties shall be a final withholding tax. Section 35(2)(f) requires the person in respect of whom the tax applies to render a return of income for the relevant year of assessment. This paragraph is deleted as it has become obsolete.

1.6 Clause 5—Income Tax: Amendment of section 35A of the Income Tax Act, 1962

Section 35A was introduced in 2004 to provide for a withholding tax on foreign sellers of immovable property in the Republic. This section will only come into operation on a date to be fixed by the President by proclamation in the *Gazette*. Section 35A, however, does not allow a taxpayer to object and appeal against a decision by the Commissioner not to remit any penalty imposed in terms of this section if the tax was not paid within the prescribed period. It is, therefore, proposed that a provision be inserted to allow objection and appeal.

1.7 Clause 6—Donations Tax: Amendment of section 55 of the Income Tax Act, 1962

In terms of the definition of “fair market value” in the Estate Duty Act and the Income Tax Act as far as it relates to donations tax and capital gains tax, persons carrying on *bona fide* farming operations can elect to value their immovable property at its fair market value or fair agricultural or pastoral value. The Land Bank Act read with the Estate Duty Act provided for the appointment of land bank valuers, the method of determining the agricultural or pastoral value and an appeal process for taxpayers dissatisfied with the valuation to the Land Bank Board. Applications for valuations were made to the magistrate of the district in which a property was situated. The Land Bank Act was replaced by the Land and Agricultural Development Bank Act, 2002, which no longer provides for the applications to magistrates and does not provide for the appeal process to the Land Bank Board. From an administrative point of view it has, therefore, become impossible to administer these provisions.

It is proposed that the land bank valuation be replaced with the valuation applicable to all other property, namely, the price that could be obtained between a willing buyer and willing seller dealing at arm’s length in an open market, but must be reduced by 30 per cent in recognition of the fact that land bank valuation were lower than the fair market value. The reason for this reduction is that the land bank value represented the fair agricultural or pastoral value of the property and not the open market value.

1.8 Clause 7—Donations Tax: Amendment of section 62 of the Income Tax Act, 1962

The amendments are consequential on the amendment of the definition of “fair market value”.

1.9 Clause 8—Income Tax: Amendment of section 65 of the Income Tax Act, 1962

As was announced in the Budget Review this year, in an attempt to streamline return processing, compulsory e-filing for certain returns will be introduced. This amendment gives effect to this proposal and enables the Commissioner to prescribe that returns must be submitted electronically and that the payment of the tax relating to the return must also be paid through the e-filing system of SARS.

1.10 Clause 9—Income Tax: Amendment of section 66 of the Income Tax Act, 1962

Section 66 of the Income Tax Act, 1962, was amended in 2004 to simplify the provisions and to delete the period within which returns must be furnished and to allow the Commissioner to determine the period within which returns must be so furnished. It is proposed that section 66 be amended to clarify that certain persons are required to submit returns in order to enable the Commissioner to determine whether they are liable to taxation under the Act. These persons include, *inter alia*, South African companies who, by virtue of the application of the provisions of a double taxation agreement with any other country are regarded solely as residents of that other country and, therefore, no longer fall within the definition of “resident”. It is also proposed that it be expressly provided that the Commissioner may exempt any person from submitting a return.

1.11 Clause 10—Income Tax: Amendment of section 67A of the Income Tax Act, 1962

Section 67A of the Income Tax Act, 1962, requires tax practitioners to register with SARS. This includes all persons who for reward provide advice or assist with the completion of any returns or forms that are required to be submitted to SARS. Certain persons are excluded from the provisions, such as persons providing advice in anticipation of litigation or as an incidental or subordinate part of providing goods or other services to another person. There is also an exclusion for persons who provide advice or assist in completing returns solely for no consideration to that person or his or her employer or connected person in relation to his or her employer. It is proposed that a reference also be inserted to a connected person in relation to the person providing the advice or assisting to complete the return to ensure that consideration may also not be paid to these connected persons for the advice or assistance.

Furthermore, there is an exclusion for persons who provide advice in anticipation of or in the course of litigation where the Commissioner is a party. It is proposed that this provision be extended to provide for criminal litigation where the Commissioner is not a party to the litigation, but where the Commissioner is a complainant.

1.12 Clause 11—Income Tax: Amendment of section 72A: Amendment of section 72A of the Income Tax Act, 1962

Subclauses (a), (b) and (d): The reporting requirement in respect of CFCs is simplified by deleting references to the specific information to be submitted and now only requires a return containing the information as may be prescribed by the Commissioner.

Subclause (c): In order to reduce the compliance burden on residents who have interests in numerous CFCs, it will no longer be required that the financial statements of all CFCs be submitted with the IT10 return. However, the financial statements of CFCs must be available for submission to the Commissioner when so requested.

1.13 Clause 12—Income Tax: Amendment of section 75 of the Income Tax Act, 1962

Subclause (a): These amendments are consequential upon the introduction of the tax on foreign entertainers and sportspersons and provide that it is a criminal offence if a resident fails to withhold the tax from any payment made to these entertainers and sportspersons or where the person who is primarily responsible for founding, organisation or facilitating a specified activity in the Republic fails to inform SARS of the performance as provided for in the new Part IIIA.

Subclauses (b) and (c): Section 30 of the Income Tax Act, 1962, currently provides that it is a criminal offence if any person in a fiduciary capacity responsible for the management or control of the income and assets of a public benefit organisation intentionally fails to comply with any provisions of that section or of the constitution, will or other written instrument under which that organisation is established. It is proposed that a similar criminal provision be inserted for failure to comply with section 18A. These provisions are both inserted in section 75 and the corresponding provision in section 30(12) is therefore deleted.

1.14 Clause 13—Income Tax: Amendment of section 76A of the Income Tax Act, 1962

Section 76A of the Income Tax Act, 1962, makes provision for the reporting of certain arrangements which contain certain elements which are likely to lead to an undue tax benefit. The Minister of Finance may by notice in the *Gazette* identify certain types of arrangements which are not likely to lead to an undue tax benefit, as well as arrangements which contain characteristics which may lead to undue tax benefits. The

Minister identified certain transactions for purposes of section 76A in Government Gazette 27209 of 28 January, 2005.

Section 69 of the Revenue Laws Amendment Act, 2003, which inserted the reportable arrangement provisions in the Income Tax Act, 1962, provides that any arrangement identified by the Minister in terms of section 76A must be tabled in Parliament within 12 months from the date of publication of the notice for incorporation into the Income Tax Act, 1962. This clause gives effect to this provision and incorporates the arrangements so identified by the Minister in the Act.

1.15 Clause 14—Income Tax: Amendment of section 88 of the Income Tax Act, 1962

Section 88 of the Income Tax Act, 1962, provides that the obligation to pay any tax is not suspended by an appeal, but if an assessment is altered on appeal, and an adjustment is made, the amounts paid by the taxpayer is refundable with interest. Although the refund is effectively made under the general provisions of the Act, it is proposed that it be clarified that the set off provisions relating to refunds as contained in section 102(3) of the Act are also applicable in respect of these refunds of amounts paid pending the outcome of an appeal.

1.16 Clause 15—Income Tax: Insertion of section 91A in the Income Tax Act, 1962

Most of the main tax statutes provide that any tax or interest payable shall be deemed to be a debt due to the State and shall be payable to the Commissioner of SARS. As from 1 April 2003 SARS has the power to settle a disputed tax liability other than through a Court of law. Provisions which have been incorporated into the tax laws prescribe the circumstances under which it would be appropriate as well as when it would be inappropriate to settle. As far as the waiver or write off of undisputed tax debts due to the State are concerned, the Exchequer Act (prior to its repeal) created a mechanism which enabled the then Commissioner for Inland Revenue, as part of Treasury, to write off the whole or any portion of a tax claim. Thus the Commissioner could only accept an arrangement if the statutory requirements as laid down by the Exchequer Act were complied with.

The Exchequer Act was repealed upon the commencement of the Public Finance Management Act, 1999 (“the PFMA”), and section 76(1) of the PFMA and regulations issued in terms thereof provide for:

- the writing off of losses of state money or other state assets or amounts owed to the state;
- the settlement of claims by or against the state;
- the waiver of claims by the state; and
- the remission of money due to the National Revenue Fund, refunds of revenue and payments from the National Revenue Fund, as an act of grace.

However, section 76(1) and consequently the regulations issued thereunder are not applicable to SARS. The reason for this is that section 76(1) of the PFMA states that the National Treasury must make regulations or issue instructions applicable to departments, thus excluding SARS which is defined in the PFMA as a “public entity” listed in Schedule 3A of the PFMA).

It is proposed that a mechanism be provided to SARS to rid itself of bad debts or to compromise a tax debt under certain circumstances where it is evident that the full amount of tax will not be collectable. It is, therefore, proposed that enabling legislation be incorporated into the Income Tax Act to grant the Minister of Finance the power to prescribe by regulation the circumstances for waiver, write off or compromise of undisputed tax debts. A provision is also inserted to provide that the Minister must publish the draft regulations in the *Gazette* for public comment and that the regulations must be submitted to Parliament for parliamentary scrutiny at least 30 days before their promulgation.

1.17 Clause 16—Income Tax: Amendment of section 93 of the Income Tax Act, 1962

This amendment is of a textual nature.

1.18 Clause 17—Customs and Excise: Amendment of section 41 of the Customs and Excise Act, 1964

Section 41 provides for invoices to be rendered and the particulars to be reflected on such invoices. Subsection (4)(c) empowers the Commissioner to, subject to a right of

appeal to the Minister, determine the transaction value, origin, date of purchase, quantity, description or characteristics of goods, where such particulars have not been declared on an invoice or certificate, or where a person commits certain offences in respect of such invoices or certificates. Due to the introduction of internal administrative appeal, alternative dispute resolution and settlement procedures in Chapter XA of the Act, the right of appeal to the Minister has become obsolete. The proposed amendment now deletes this obsolete right of appeal to the Minister.

1.19 Clause 18—*Customs and Excise: Amendment of section 46A of the Customs and Excise Act, 1964*

Section 46A provides for the non-reciprocal preferential tariff treatment of goods exported from the Republic, for example, goods exported to the United States of America under AGOA. The reference to the “Agreement on Textiles and Clothing” (established by the World Trade Organisation) contained in the definition of “circumvention” in subsection (1), has become obsolete due to the lapse of that Agreement on 1 January 2005. The proposed amendment retains the definition for “circumvention” and only deletes the reference to the above Agreement.

1.20 Clause 19—*Customs and Excise: Amendment of section 54 of the Customs and Excise Act, 1964*

Section 54 provides for special provisions regarding the importation of cigarettes. Subsection (2) places a prohibition on the importation of cigarettes, unless certain requirements are complied with. In recent court cases cigarettes in transit were found to bear the diamond stamp impression (as proof that the excise duty thereon has been paid) and health warnings that are required in respect of cigarettes intended to be entered for home consumption. These types of cigarettes were previously found in the Republic in circumstances that suggested that diversion had taken place. Attempts to detain the transit cigarettes were frustrated, due to the fact that the current wording of subsection (2) does not prohibit the transit of cigarettes bearing the abovementioned marks.

The proposed insertion of subsection (4) aims to specifically prohibit cigarettes in containers entered for removal in bond through the Republic to bear the diamond stamp impression and further provides that any cigarettes in containers bearing such a stamp impression and entered for removal in bond through the Republic shall be liable to forfeiture under the provisions of the Act.

1.21 Clause 20—*Customs and Excise: Amendment of section 76B of the Customs and Excise Act, 1964*

Section 76B provides for non-discretionary prescription periods in respect of refund and drawback claims and the period within which such claims must be received by the Controller. The proposed amendment is a textual amendment aimed at correcting the heading of section 76B by clarifying the periods that are referred to, replacing the reference to “claims” received with a reference to “applications” received and by deleting the reference to the “Commissioner” and replacing it with a reference to the “Controller”.

1.22 Clause 21—*Customs and Excise: Amendment of section 77C of the Customs and Excise Act, 1964*

Section 77C provides for the submission of appeals. Subsection (1) provides for the periods within which internal administrative appeals must be submitted to the Commissioner in certain circumstances. Prescribing set submission periods hampers the flexibility required to administer internal administrative appeals in some instances. For example, the person concerned may elect first to enter into correspondence regarding the decision, or request more detailed reasons be provided, before deciding whether an internal administrative appeal would be appropriate.

The proposed amendment to subsection (1) is aimed at improving the administrative arrangements surrounding internal administrative appeals and increasing flexibility by providing for the periods within which appeals must be submitted, in the rules to the Act.

1.23 Clause 22—*Customs and Excise: Amendment of section 77D of the Customs and Excise Act, 1964*

Section 77D was inserted by section 147 of Act No. 45 of 2003 and prescribes the time in which internal administrative appeals as contemplated in Part A of Chapter XA of the Act must be considered.

The heading of section 77D is amended as provision will now be made in the rules where reasons for a decision are requested and also the times within which such a request and an appeal may be submitted.

Subsection (1) prescribes that an internal administrative appeal must be considered by the Commissioner within a period of 90 days from the date of the lodging of the appeal.

It is considered that the 90 day limitation period may in practice be detrimental to the appellant in that, for example, sufficient time may not be available for an appellant to obtain information in support of his or her appeal from overseas suppliers or manufacturers.

The proposed amendment to subsection (1) empowers the Commissioner to prescribe the procedures to be complied with by a person requesting reasons for a decision and the time within which such a request must be delivered, as well as the period within which a request for reasons or an appeal will be considered by rule. This amendment will make it possible for the Commissioner to manage the complete internal administrative appeal process by making rules, coupled to prescribed limitation periods and sufficient provision for extensions on proper grounds, in respect of the various sub-processes that collectively make up the internal administrative appeal process.

Subsection (2) provides that no appeal shall, unless the period is on good cause shown extended by the Commissioner, be considered later than 180 days after the date of the decision.

The proposed deletion of subsection (2) is consequential to the amendment of subsection (1).

1.24 Clause 23—*Customs and Excise: Amendment of section 77F of the Customs and Excise Act, 1964*

Section 77F provides for the decision of the Commissioner or an appeal committee relating to an appeal. Subsection (2) provides that the period within which a person may institute judicial proceedings following the consideration of his or her appeal, shall commence on the day the Commissioner or chairperson of the committee advises the person concerned of the final decision of the appeal.

Provisions relating the institution of judicial proceedings against the State, the Minister, the Commissioner or an officer are contained in section 96 and should not be duplicated elsewhere in the Act. The proposed amendment deletes subsection (2) consequential to the amendment of section 96, which now provides for the period of extinctive prescription in respect of matters decided under various dispute resolution procedures, including the internal administrative appeal procedure.

1.25 Clause 24—*Customs and Excise: Insertion of section 77HA in the Customs and Excise Act, 1964*

In terms of the new section 77HA, which is to come into operation on the date Part A of Chapter XA comes into operation, Part A of Chapter XA will apply to decisions made on or after Part A comes into operation.

1.26 Clause 25—*Customs and Excise: Amendment of section 91 of the Customs and Excise Act, 1964*

Section 91 empowers the Commissioner to administratively deal with contraventions of the Act as an alternative to prosecution. The imposition of a penalty under section 91 is not regarded as a conviction in respect of a criminal offence. The proposed amendment of the heading of section 91 aims to better convey the objectives of the section.

1.27 Clause 26—*Customs and Excise: Amendment of section 96 of the Customs and Excise Act, 1964*

Subsection (1)(a) deals with the notice of action and the period for bringing action where judicial proceedings are instituted against the State, the Minister, the Commissioner or an officer. Problems are experienced in practice as a result of notices not being in a standardised format or not being delivered correctly to the Commissioner.

The proposed amendment to subsection (1)(a) introduces empowering provisions to enable the Commissioner to prescribe by rule the form of the notice and the manner in which it must be delivered. The amendment further provides that any notice not complying with the requirements stated in the rules shall be deemed to be invalid.

Subsection (1)(b) deals with the period of extinctive prescription relating to the institution of legal proceedings against the State, the Minister, the Commissioner or an officer. No specific provisions currently exists in section 96 to stipulate how the extinctive prescription period relating to judicial proceedings referred to in that section will be interrupted in respect of matters first dealt with under the internal administrative appeal, alternative dispute resolution or settlement procedures.

The proposed amendment to subsection (1)(b) stipulates the date on which extinctive prescription begins to run relating to matters decided under the internal administrative appeal, the alternative dispute resolution or settlement procedures.

1.28 Clause 27—*Customs and Excise: Amendment of section 116 of the Customs and Excise Act, 1964*

Section 116(1) provides, subject to a few exceptions, for the manufacture of any excisable goods solely for the use by manufacturer thereof for own use. Ethyl alcohol is currently excluded from this provision.

The recent review of Schedule No. 6 also had as its aim the levelling of the playing fields, thereby resulting in the need to delete the exceptions referred to in subsection (1).

The proposed amendment to section 116(1) is as a result of the review of Schedule No. 6 and deletes the references to ethyl alcohol, as well as the references to item 604.00 in Schedule No. 6.

1.29 Clause 28—*Customs and Excise: Substitution of long title of the Customs and Excise Act, 1964*

The long title to the Customs and Excise Act, as substituted by section 72 of Act No. 32 of 2004, is amended to include a reference to the levying of the Road Accident Fund levy as a result of the announcement by the Minister of Finance in the 2005 Budget that SARS will become the agency responsible for collecting the Road Accident Fund levy.

1.30 Clause 29—*Stamp Duties: Amendment of section 1 of the Stamp Duties Act, 1968*

The proposed amendments are consequential upon the introduction of electronic stamping. Adhesive revenue stamps and impressed stamps (franking machines) will be phased out and these provisions will become obsolete. The proposed amendments will come into operation on a date fixed by the President by proclamation in the *Gazette*.

1.31 Clause 30—*Stamp Duties: Amendment of section 5 of the Stamp Duties Act, 1968*

Subclauses (a), (b) and (e): The proposed amendments are consequential upon the introduction of electronic stamping. Adhesive revenue stamps and impressed stamps (franking machines) will be phased out and these provisions will become obsolete. The proposed amendments will come into operation on a date fixed by the President by proclamation in the *Gazette*.

Subclauses (c) and (d): The proposed amendments are consequential upon the introduction of electronic stamping. Adhesive revenue stamps and impressed stamps (franking machines) will be phased out and these provisions will become obsolete. The proposed amendments will come into operation on a date fixed by the President by proclamation in the *Gazette*.

The proposed amendments are also consequential following the amendment of section 9 and the insertion of sections 9A and 9B, in the Revenue Laws Amendment Act No. 32 of 2004, and will come into operation on the date of promulgation of the Act.

1.32 Clause 31—*Stamp Duties: Amendment of section 10 of the Stamp Duties Act, 1968*

The proposed amendment is consequential upon the introduction of electronic stamping. Adhesive revenue stamps will be phased out and the defacing of stamps will become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the *Gazette*.

1.33 Clauses 32 to 35—*Stamp Duties: Amendment of sections 26, 27, 28 and 28A of the Stamp Duties Act, 1968*

As a result of the implementation of electronic stamping, the offences relating to stamping or defacement of stamps (section 26), offences relating to dies and stamps (section 27), presumption in case of possession or sale of forged stamps (section 28), and

offences in respect of adhesive stamps (section 28A) have become obsolete. The proposed amendments will come into operation on a date fixed by the President by proclamation in the *Gazette*.

1.34 Clause 36—Value-Added Tax: Amendment of section 23 of the Value-Added Tax Act, 1991

The proposed amendment results in a foreign donor funded project being able to register voluntarily.

1.35 Clause 37—Value-Added Tax: Amendment of section 28 of the Value-Added Tax Act, 1991

The proposed amendment enables the Commissioner to prescribe that returns must be submitted electronically and that the payment of the tax relating to the return must also be paid through the e-filing system of SARS.

1.36 Clauses 38, 39 40 and 42—Value-Added Tax: Amendment of sections 31, 38, 41 and 58 of the Value-Added Tax Act, 1991

The proposed amendments are consequential following the deletion, in the Revenue Laws Amendment Act No. 32 of 2004, of section 13(4).

1.37 Clause 41—Value-Added Tax: Amendment of section 46 of the Value-Added Tax Act, 1991

The proposed amendment makes provision for the person responsible for the accounting of the receipt and payment of moneys on behalf of the foreign donor funded project to be the representative vendor.

1.38 Clause 43—Uncertificated Securities Tax: Substitution of long title of the Uncertificated Securities Tax Act, 1998

The proposed amendment to the heading of the Uncertificated Securities Tax Act is consequential upon the deletion of stamp duty on the issue of marketable securities with effect from 1 January 2006.

1.39 Clause 44—Uncertificated Securities Tax: Amendment of section 13 of the Uncertificated Securities Tax Act, 1998

The proposed amendment is consequential upon the deletion of uncertificated securities tax on the issue of securities with effect from 1 January 2006.

1.40 Clause 45—Uncertificated Securities Tax: Amendment of section 14A of the Uncertificated Securities Tax Act, 1998

The proposed amendment is consequential upon the deletion of uncertificated securities tax on the issue of securities with effect from 1 January 2006, and upon the insertion of section 5A into the Uncertificated Securities Tax Act. The proposed amendment will come into operation on 1 January 2006.

1.41 Clause 46—Skills Development Levies: Repeal of section 6B of the Skills Development Levies Act

Section 6B of the Skills Development Levies Act, 1999, makes provision for the electronic submission of returns and provides that the Commissioner may accept electronic or digital signatures as valid signatures. It further provides that the Minister of Finance may make rules and regulations prescribing the procedures for submitting any statement in electronic format and setting out the requirements for an electronic or digital signature.

Section 13 of that Act makes provision for the applicability of certain provisions of the Income Tax Act, 1962, which includes provisions relating to returns and the payment of tax. These provisions apply *mutatis mutandis* in respect of the payment of the skills development levy and the submission of a statement in terms of the Skills Development Act, 1999.

As the Income Tax Act, 1962, already makes provision for the electronic submission of returns and empowers the Commissioner to prescribe the form and manner in which returns must be submitted and payments must be made (including electronically), it is proposed that section 6B of the Skills Development Act, 1999, be repealed.

2. PERSONS AND INSTITUTIONS CONSULTED

The amendments introduced by this Bill were published on the SARS and National Treasury websites for public comment. Comments were received from interested parties. These included professional bodies and business institutions. The following made written representations to the Parliamentary Committees:

- Aids Law Project
- Banking Association South Africa
- Business Unity South Africa
- Independent Producers' Organisation
- Life Offices' Association of South Africa
- Methodist Church of Southern Africa
- Non-Profit Consortium
- PricewaterhouseCoopers
- South African Council of Churches
- South African Institute of Chartered Accountants

3. FINANCIAL IMPLICATIONS TO THE STATE

As the changes relate to the administration of the various tax Acts, it is not possible to quantify the financial implications for the State.

4. CONSTITUTIONAL IMPLICATIONS

None

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, the South African Revenue Service 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, as it contains no provision to which the procedure set out in section 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 does not contain provisions pertaining to customary law or customs of traditional communities.

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