

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN REVENUE SERVICE AMENDMENT BILL, 2002

1. PURPOSE OF BILL

The South African Revenue Service Act, 1997 ("SARS Act"), came into operation on 1 October 1997. This Act established SARS as an organ of state within the broad public administration, but as an institution outside the public service. This Act granted SARS administrative autonomy. Although SARS is no longer subject to the provisions of the Public Service Act, 1994, it remains subject to the basic values and principles governing public administration outlined in section 195 of the Constitution.

Since the promulgation of the SARS Act in 1997, there have been a number of factors that have given rise to the need to review some of the provisions of the Act. One factor is the promulgation of the Public Finance Management Act, 1999 (Act No. 1 of 1999) ("the PFM Act"), which regulates the financial management in the national and provincial governments. The PFM Act also regulates the accountability and responsibilities of the accounting authorities, as well as other financial matters of public entities listed in Schedules 2 and 3 to that Act, which includes SARS.

A number of practical problems relating to the current provisions of the SARS Act have also been identified and it is therefore proposed that some of these provisions be reviewed.

2. RATIONALE BEHIND AMENDMENTS

This Bill proposes the following amendments to the SARS Act:

2.1 Objectives and functions of SARS

The SARS Act currently provides that the objective of SARS is the efficient and effective collection of revenue. In conjunction with this, the functions of SARS include the following -

- to secure the efficient and effective and widest possible enforcement of national legislation (as listed in the Act) and any other legislation concerning the collection of revenue that may be assigned to SARS; and
- to advise the Minister on all matters concerning revenue.

SARS, however, also performs certain other functions which do not necessarily involve the collection of revenue. These functions relate to

the control over the import, export, manufacture, movement, storage or use of certain goods which are performed by the customs administration division within SARS. This Bill, therefore, introduces amendments relating to the objectives and functions of SARS to specifically incorporate these customs functions.

Furthermore, although SARS reports to the Minister of Finance and administers revenue laws for which that Minister is responsible, there is from the customs perspective a linkage with the Department of Trade and Industry (DTI), as SARS -

- implements the tariff amendments requested by DTI; and
- administers incentive schemes devised by DTI to facilitate trade and stimulate economic growth.

In this regard, SARS also fulfils the function of advising the Minister of Trade and Industry on matters concerning the control over the import, export, movement, storage or use of certain goods. The Bill therefore proposes an amendment to the SARS Act to reflect this function.

2.2 Appointment of Commissioner

Currently the SARS Act provides that the Minister of Finance must appoint the Commissioner after consulting Cabinet and the SARS Board. This Bill proposes a change to provide that the Commissioner must be appointed by the President.

2.3 Public Finance Management Act, 1999

In terms of the current provisions of the SARS Act, SARS exercises its powers and performs its functions under the policy control of the Minister of Finance and subject to the directives and guidelines on policy matters issued by that Minister.

When the SARS Act came into operation in 1997, the PFM Act had not yet been promulgated. The purpose of the PFM Act is to prescribe a system of financial management in the national and provincial spheres of government and to regulate the accountability of the public sector.

Chapter 6 of this Act specifically deals with public entities and outlines the fiduciary and other responsibilities of the accounting authorities of these entities. SARS is included in Schedule 3 to the PFM Act, which covers public entities with lesser degrees of autonomy.

As the PFM Act already ensures an effective financial accountability system with regard to public entities, the necessity that SARS still be accountable to the Minister of Finance in terms of the SARS Act has to a large extent fallen away. The Bill therefore proposes an amendment to the Act to delete the reference to the specific powers of the Minister of Finance in the SARS Act where they are dealt with in terms of the PFM Act.

2.4 DISESTABLISHMENT OF SARS ADVISORY BOARD AND APPOINTMENT OF SPECIALIST COMMITTEES

The SARS Advisory Board was established by section 11 of the SARS Act. The function of this Board is to act as an advisory and consultative body for the Minister of Finance and the Commissioner on matters concerning the administration of the revenue collecting system of SARS.

This Board is somewhat unique in nature, as it has mainly an advisory function and is not really involved in policy and decision making.

SARS as an organisation has changed in the past few years since administrative autonomy was granted to it. The role and functioning of the Board has been debated in several forums and at the Board meetings, because the members of the Board felt that the role of the Board was not clearly defined. Taking into account the nature of the SARS Act in relation to other legislation governing the functioning of SARS, including the PFM Act and the reporting relationship between the Minister, the Commissioner and the Advisory Board, it is proposed that the existing Board be dissolved. The Bill provides that a number of specialist committees be appointed by the Minister to advise him or her and the Commissioner on technical matters such as Human Resources, Information Technology and Asset Management.

2.5 HUMAN RESOURCES

Currently the SARS Act provides that the terms and conditions of employment of SARS employees must be determined -

- after collective bargaining between SARS and the recognised trade unions; and
- with the approval of the Minister.

SARS must obtain the approval of the Minister of Finance before determining the terms and conditions of employment of employees of SARS.

This Bill proposes that the Commissioner, as chief executive officer of SARS, may approve the terms and conditions of employment of SARS employees (other than certain employees in the management structure of SARS mentioned below). The specialist committee will have the function of advising the Commissioner on human resource issues and the ultimate responsibility in this regard will lie with the Commissioner. A provision is also inserted in the SARS Act that requires adequate reporting by the Commissioner to the Minister with regard to the terms and conditions of employment for these employees.

The Bill proposes that the Minister of Finance must, on the advice of the specialist committee, approve the terms and conditions of employment of any class of employees in the management structure of SARS, to be agreed between the Minister and the Commissioner.

2.6 MEMBERSHIP OF GOVERNMENT EMPLOYEES' PENSION FUND

In terms of section 19 of the SARS Act, any person appointed by SARS as an employee becomes a member of the Government Employees' Pension Fund (hereinafter referred to as "the GEPF"). Although section 19 of the SARS Act obliges employees to become members of the GEPF, section 19 cannot override the provisions of the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996, hereinafter referred to as "the GEP Law"), which incorporates the rules governing the GEPF in Schedule 1 thereto.

Although a contract employee must in terms of section 19 of the SARS Act become a member of the GEPF, such employee may be excluded from the Fund in terms of section 5 of the GEP Law. The need has therefore arisen to amend the SARS Act to bring it in line with the provisions of the rules and laws of the GEPF.

2.7 METHOD OF DETERMINING FUNDS OF SARS

Section 25 of the SARS Act deals with the chief source of income of SARS, i.e. the money appropriated annually by Parliament. This amount is calculated in accordance with the estimates of income and expenditure prepared by SARS, which are prescribed in the SARS Act, but which are also regulated in terms of the PFM Act.

The Bill proposes an amendment to provide that a method of determining SARS's funds may be agreed between the Minister and the Commissioner, subject to the approval of Cabinet.

3. FINANCIAL IMPLICATIONS FOR STATE

None

4. OTHER DEPARTMENTS/BODIES CONSULTED

All Cabinet members (Cabinet Memorandum)

SARS Board members

5. PARLIAMENTARY PROCEDURE

The South African Revenue Service and State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.