MEMORANDUM ON THE REVENUE LAWS SECOND 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 valuators, 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 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 valuators, 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 so called 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.

1.8 **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 to 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.