

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

**1. OBJECTS OF THE BILL**

1.1 This Bill introduces amendments to the administrative provisions of the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991, the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 and the Taxation Laws Amendment Act, 2004.

1.2 *Clause 1—Customs and Excise: Amendment of section 21 of the Customs and Excise Act, 1964*

Subparagraph (iii) of subsection 3(d) is restructured to clarify its provisions

*Clause 2—Customs and Excise: Amendment of section 21A of the Customs and Excise Act, 1964*

*Subclauses (a) and (b):* Reference to section 10 is removed as it is not the only provision in the Manufacturing Development Act, 1993, empowering the Minister of Trade and Industry to regulate matters in terms of that Act by publication of a notice or a regulation

*Subclauses (c) and (d):* These amendments are of a technical nature.

*Clause 3—Customs and Excise: Amendment of section 47 of the Customs and Excise Act, 1964*

When section 47(8)(a) was amended in 2001, the amendment was inadvertently enacted as a substitution of the whole of subsection (8), with the result that paragraphs (b) and (c) no longer formed part of the subsection. It is proposed that paragraphs (b) and (c) be reinstated with effect from the date on which they were incorrectly deleted, i.e. 12 December 2001.

*Clauses 4 to 7 Stamp Duties: Amendment of section 1 of the Stamp Duties Act, 1968*

These amendments are consequential upon the abolition of stamp duties in respect of debit entries and instalment credit agreements.

*Clause 8—Value-Added Tax: Amendment of section 1 of the Value-Added Tax Act, 1991*

The definition of “consideration” in section 1 of the Value-Added Tax Act, 1991, was amended last year to replace the reference to unconditional gift with a reference to a donation. With this amendment, the proviso to the definition was inadvertently deleted. The proviso ensures that a deposit given in respect of a supply of goods or services must not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration or the deposit is forfeited. It is proposed that this proviso be reinstated

*Clause 9—Value-Added Tax: Amendment of section 23 of the Value-Added Tax Act, 1991*

The proposed amendment is consequential upon other amendments pertaining to public authorities and public entities contained in the Revenue Laws Amendment Act, 2003 (Act No. 45 of 2003), and the Revenue Laws Amendment Act, 2004 (Act No. 32 of 2004), which came into effect from 1 April 2005.

As from 1 April 2005 public entities listed in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) (the PFMA), which are registered as vendors are to be deregistered, and only in very limited circumstances will they be required to register as vendors. The proposal in terms of section 23 is that with effect from 1 April 2005, the Commissioner may not register a public entity in respect of any enterprise activities carried on prior to 1 April 2005. The intended effect being that public entities who have not registering in the past will not be able to register, account for the input tax and output tax on their transactions, and then deregister with effect from 1 April 2005. The reason for this is that these entities are largely funded by Government and if there were unbudgeted flows of funds to these entities their allocations of funds would have to be adjusted.

*Clause 10—Value-Added Tax; Amendment of section 25 of the Value-Added Tax Act, 1991*

This amendment is consequential upon the introduction of the proposal that VAT returns be submitted every four months in respect of certain vendors who fall within the new proposed Category F which is introduced in section 27 of the VAT Act.

***Clause 11 Value-Added Tax: Amendment of section 27 of the Value-Added Tax Act, 1991***

Small businesses regard the filing of VAT returns as a substantial part of their compliance costs. This is partially due to the requirement to file and partially due to the need to maintain accurate and up-to-date accounting records in order to complete the return.

The Minister of Finance announced in his Budget Review this year that as a further measure to keep the VAT compliance costs of small businesses to a minimum and to assist with the cash flow, small businesses with an annual turnover of less than R1 million may elect to only file a VAT return every four months. Registered VAT vendors may also elect to remain on the two-monthly return cycle if so desired. This amendment gives effect to that proposal and comes into operation on 1 August 2005 and applies in respect of tax periods commencing on or after that date.

***Clause 12—Value-Added Tax: Renumbering of section 54A of the Value-Added Tax Act, 1991***

This amendment is of a technical nature and it intended to position the provisions relating to advance tax rulings with the provisions relating to VAT rulings made by SARS.

***Clause 13—Exchange Control Amnesty: Amendment of section 20 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003***

The original deadline for applications for the exchange control and related tax amnesty was 30 November 2003, with a deadline for the submission of tax returns for 2003 of 29 February 2004. A number of tax advisers and publications advised that applicants should not submit their returns until such time as they had received confirmation that amnesty had been granted, in the expectation that confirmations would be received before the deadline for returns. This was only possible in a very small number of cases due to the immense interest in the amnesty and the extension of the deadline for applications to 29 February 2004. A significant number of applicants followed this early advice and overlooked the deadline for tax returns. Rather than exclude them from the amnesty process it is proposed that they may submit their returns within a period (usually 30 days) specified by the Amnesty Unit. Provisions of the Income Tax Act, 1962, relating to imposition of penalties for late submission of a return will be unaffected by this concession.

***Clause 14—Transitional Mineral and Petroleum Provisions: Amendment of paragraph 3 of Schedule 3 of the Taxation Laws Amendment Act, 2004***

In 2004, transitional mineral and petroleum provisions were introduced to provide for the continuation of certain lease, royalty or similar payments to the State which applied before a mining right, production right, mining permit or a prospecting right with a permission to remove and dispose of minerals was converted in terms of the Mineral and Petroleum Resources Development Act, 2002.

Paragraph 3 of the transitional provisions currently provides that the Minister of Minerals and Energy has the authority and responsibility to collect these payments. It is proposed that these functions be shifted to the South African Revenue Service (SARS) as a matter of overall efficiency. These amendments give effect to this proposal and enable SARS to collect these amounts.

## **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:

- Banking Association of South Africa
- Business Unity South Africa
- Chambers of Commerce and Industry South Africa
- Institute of Certified Public Accountants
- KPMG

## **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 of the Republic of South Africa, 1996, 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.