MEMORANDUM ON THE SECOND REVENUE LAWS AMENDMENT BILL, 2006

1. OBJECTS OF THE BILL

1.1 This Bill seeks to amend the Estate Duty Act, 1955 (Act No. 45 of 1955), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Value-Added Tax Act, 1991 (Act No. 89 of 1991) the Unsertificated Securties Tax Act 1998 (Act No. 31 of 1998), the Revenue Laws Amendment Act, 2001 (Act No. 19 of 2001), the Second Revenue Laws Amendment Act, 2004 (Act No. 34 of 2004), the Taxation Laws Second Amendment Act, 2005 (Act No. 10 of 2005), the Revenue Laws Second Amendment Act, 2005 (Act No. 31 of 2005), and the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 10 of 2006).

1.2 **Insertion of sections 12A and 12B of the Estate Duty Act, 1955**

This proposed amendment aligns the Estate Duty Act with the agency provisions that already exist in other Acts administered by the Commissioner, and allows the Commissioner to declare as an agent of the person liable for estate duty under section 11 of the Estate Duty Act (i.e. “the taxpayer”), a person that holds monies on behalf of that taxpayer or that is indebted to that taxpayer, and to require the agent to pay any amount of duties and interest due by that taxpayer out of such monies.

1.3 **Income Tax Act, 1962**

Income Tax: Amendment of section 3 of the Income Tax Act, 1962

The proposed amendment enables a taxpayer to lodge an objection and appeal against an assessment issued in terms of the new proposed section 80B.

Amendment of section 4 of the Income Tax Act, 1962

The proposed amendment extends the institutions in respect of which the secrecy provisions of the Income Tax Act, 1962, to all institutions contemplated in section 3(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

Amendment of section 4A of the Income Tax Act, 1962

The proposed amendment provides that the Minister of Finance may delegate his or her powers and duties under the Income Tax Act, 1962.

Insertion of Part IIB of Chapter III of the Income Tax Act, 1962

REPORTABLE ARRANGEMENTS: PROPOSED SECTIONS 80M TO 80T

Current Law

Section 76A of the Income Tax Act, 1962, provides for the reporting of two classes of arrangement. The first relates to arrangements that result in a tax benefit and are subject to an agreement that provides for the variation of interest, fees etc. if the actual tax benefits from the arrangement differs from the anticipated tax benefit. The second relates to a special inclusion list, which currently deals with two types of hybrid debt and equity instruments. Section 76A is intended to give the South African Revenue Service (SARS) early warning of arrangements that are potentially tax driven. SARS is then in a position to take appropriate action to counter abuse more quickly than would otherwise be the case.

Reasons for Change

The number and nature of the transactions disclosed to SARS since the promulgation of section 76A have proven disappointing. Taxpayers have raised a number of technical points to argue that they need not disclose the arrangements they have entered into. Whether or not these arguments have merit, the practical result is that the desired level of reporting is not being achieved.
The proposal of a new General Anti-Avoidance Rule (GAAR) also provides for the opportunity to link the reportable arrangements legislation to the factors that are indicative of a lack of commercial substance for GAAR purposes.

Proposal

Subject to the exclusion list discussed below, the proposed reportable arrangements legislation is generally triggered where an arrangement—

- provides for interest, finance costs, fees or other charges that are partly or wholly dependent on the assumptions relating to the tax treatment of that arrangement (otherwise than by reason of any change in any law administered by the Commissioner);
- has any of the characteristics of, or characteristics which are substantially similar to, the indicators of a lack of commercial substance in terms of the proposed GAAR;
- is or will be disclosed by any participant as a financial liability for purposes of Generally Accepted Accounting Practice but not for income tax purposes;
- does not result in a reasonable expectation of a pre-tax profit for any participant; or

- results in a reasonable expectation of a pre-tax profit for any participant that is less than the value of those tax benefits to that participant on a present value basis.

A special inclusion list is retained but the five year threshold for reporting hybrid equity and debt instruments is extended to ten years to ensure that restructuring these instruments to fall outside the legislation will be more commercially challenging.
The existing exclusion list of arrangements that are unlikely to be tax driven, such as "plain vanilla" loans and leases, is largely retained, as is the Minister's authority to include or exclude arrangements for disclosure by way of regulation.
The responsibility for disclosing a reportable arrangement is principally placed on its promoter, as this is the person most likely to have full insight into its operation. In the absence of a promoter who is a resident, the responsibility falls on all participants, although this responsibility falls away if another participant confirms in writing that the required disclosure has been made. This ensures that disclosure is made in the most comprehensive manner while minimising the duplication of disclosure submissions.

The information to be disclosed is similar to that currently required, except that it is proposed that a list of the arrangement's agreements be submitted instead of a complete set of agreements. This will reduce the compliance cost with respect to the initial disclosure of an arrangement. Once the required information has been disclosed SARS will issue a reportable arrangement number to each participant in an arrangement for administrative purposes only. Additional information, including agreements, may be requested if an arrangement is selected for further analysis.

Finally, an amendment is proposed to the penalty provision to ensure that it serves as a deterrent for non-disclosure of reportable arrangements. A penalty of R1 million is proposed, but may be reduced where—

- there are extenuating circumstances and the non-disclosure is remedied within a reasonable time; or
- it is disproportionate in relation to the assumed tax benefit of the arrangement.

The proposed maximum penalty of R1 million reflects the substantial amounts typically at stake in reportable arrangements, with minimum funding levels of R20 million being common.

1.4 **Customs and Excise Act, 1964**

Amendment of section 1 of the Customs and Excise Act, 1964

Clients currently use different bills of entry for the different customs and excise procedures. The SAD form is a single administrative document that may be used

for different customs and excise procedures throughout the Southern African Customs Union (SACU). The format of the SAD form was agreed with the BLNS countries (Republic of Botswana, Kingdom of Lesotho, Republic of Namibia and Kingdom of Swaziland) who will also implement the form in their jurisdictions. SARS plans to implement the use of the SAD form nationally and as the Customs and Excise Act, 1964, contains only references to bill of entry, the proposed amendment inserts a definition of "bill of entry" to include any SAD form.

The definitions of "break bulk goods", "bulk goods', "bulk goods terminal", "bulk goods terminal operator", "combination terminal', "combination terminal operator", "container terminal operator", "road vehicle terminal ", "road vehicle terminal operator", 'transit shed" and "transit shed operator" are inserted as a result of the proposed amendment to license all port, terminal and similar operations (whether private or public).

Similarly the definitions of "container depot", "container operator", "container terminal", "depot operator", "master" and "pilot" are amended.

Section 1(2) defines a "container" as transport equipment having an internal volume of not less than one cubic metre and which are designed for the transport of goods by any means of carriage without requiring intermediate reloading. These containers are classified in tariff heading 86.09.

In practice there are many types of containers or packages in daily commercial use which are often mistakenly considered to be "containers" as defined in the Customs and Excise Act, 1964.

The proposed amendment aims to introduce the added requirement of tariff classification within tariff heading 86.09 being "containers (including containers for the transport of fluids) specially designed and equipped for carriage by one or more modes of transport" in order to more clearly define "container" for the purpose of the Customs and Excise Act, 1964.

The inclusion of sections 4 and 107 in the definition of container is consequential to the amendments to sections 4(8A) and 107 in terms of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act (Act No.10 of 2006), which also inserted the word "container" into those sections.

The reference to section 44 originally omitted due to an oversight, is now included in the definition.

Subsection (4) is amended to include a definition for the expression "goods under customs control", "goods subject to customs control" or "goods under control of the Commissioner" for the purpose of application of the provisions of the Customs and Excise Act, 1964. Section 4 (8A)*(b)*(ii) containing a similar definition is accordingly substituted.

The definition of "bill of entry" will come into operation on 1 October 2006 as this date was agreed with the other SACU members as the date of implementation and the rest will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 3B of the Customs and Excise Act, 1964

Under section 75(14B) the Director-General of Agriculture is empowered to issue permits or certificates authorizing entry of certain goods under rebate, drawback or a refund of duty in respect of goods which may be entered in terms of any item of Schedule 3, 4, 5 or 6.
Since the said Director-General exercises these powers solely in terms of the Customs and Excise Act, 1964, provision is now made for the delegation of any duty imposed or any power conferred on the said Director-General in the Act as a result of a request received from the Department of Agriculture.

Amendment of section 4 of the Customs and Excise Act, 1964

Subsection 4(3)*(b)* empowers the Commissioner or any officer to disclose any information relating to any person, firm or business acquired in the performance of his duties or by order of a competent court when required to do so as a witness in a court of law.
This provision is being abused by litigants who call customs officers as witnesses in proceedings not related to or for purposes of the Customs and Excise Act, 1964, e.g. in divorce proceedings, to testify to the financial dealings of clients.
The proposed amendment deletes this provision and aligns the wording of the subsection with the Income Tax Act, 1962.
Subsection (8A)*(a)* empowers officers specifically with regard to section 107(2)*(a)*, to stop or detain goods.
The proposed amendment now also empowers officers to examine any goods in order to ascertain whether the provisions of the Act or other law have been complied with.
Subsection (8A)*(b)*(ii) is substituted and the proposed amendment extends any reference to "examine" in subsection (8A)*(b)* to include the use of an X-ray scanner or other non-intrusive inspection methods. It also makes provision for examinations to take place in the absence of any person having control of such goods, creates offences in respect of such examinations and empowers the Commissioner to make rules regarding matters related to such examinations.
Subsection (13) provides that no person shall be entitled to any compensation for any loss or damage arising out of any *bona fide* action of an officer under section 4 of the Customs and Excise Act, 1964.
The proposed amendment now extends the application of the subsection to include any loss or damage arising out of any examination of goods by means of non –intrusive inspection methods.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 6 of the Customs and Excise Act, 1964

Section 6 empowers the Commissioner to appoint *inter alia* places of entry, warehousing places and authorized roads and routes. To achieve more effective

customs control, the proposed amendment empowers the Commissioner to appoint places where transit sheds, combination terminals, bulk goods terminals and road vehicle terminals may be established.
The proposed amendment to paragraph *(g)* limits the type of goods that may be removed to a transit shed to break bulk goods and removes the requirement that the goods can only be removed to the transit shed before due entry.
Subsection (6) is inserted to provide that no person may deal with any imported goods landed from any ship or vehicle or load any goods for export unless such a person is a licensee of premises licensed in terms of the Customs and Excise Act, 1964. This amendment will ensure more effective control over the movement of goods.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 6A of the Customs and Excise Act, 1964

Section 6A is consequential to the insertion of section 6(1)(*a*A). The proposed amendment empowers the Commissioner to control the movement of goods and persons in, into or from a customs controlled area and to determine, after consultation with the relevant person or authority, how such areas must be secured and signposted. The Commissioner is further empowered to specify the limits of any customs controlled area by rule and to make further rules relating to access control, identification of persons entering or leaving such areas, or any other matter that may be necessary to achieve the effective control over goods or persons in customs controlled areas.

Amendment of section 7 of the Customs and Excise Act, 1964

Section 7 deals with the report of arrival or departure of ships or aircraft. The proposed amendment empowers the Commissioner to prescribe by rule persons who shall electronically submit arrival reports, schedule reports and departure reports.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 8 of the Customs and Excise Act, 1964

Section 8 deals with the submission of cargo reports. The proposed amendment now prohibits the packing or loading of the cargo into or onto a ship or vehicle for export before the Controller receives a cargo report and release has been granted. Provision is further made for appropriate penal provisions.
The amendment will provide SARS with advance information on exports, which will be used for risk management purposes.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 11 of the Customs and Excise Act, 1964

Section 11 lists the premises where imported goods may be placed into or delivered to, before due entry thereof. The proposed amendment adds combination terminals, bulk goods terminals, road vehicle terminals to the places where goods may be removed to on landing. These places are in terms of the proposed definitions, licensed places. Further, the proposed amendment also removes the limitation that only unentered goods could be placed in these facilities.
The purpose of the amendment is to improve the control over the movement of imported goods into temporary storage facilities pending the further removal thereof under a customs procedure e.g. warehousing, duty paid, etc.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 11A of the Customs and Excise Act, 1964

SARS may under the general provisions of the Customs and Excise Act, 1964, affix security seals. In order to facilitate compliance and service delivery, the proposed amendment introduces specific provisions for the affixing of seals by SARS and other parties e.g. external economic and logistic operators, in safeguarding goods in transit. The proposed amendment also empowers the Commissioner to determine a date by rule where after all goods under customs controls have to be sealed. Provisions relating to the risk and expense of fixing seals have also been made and a penal provision has been inserted relating to the tampering or damaging of seals. The amendment will improve the security of and control over goods. This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 18 of the Customs and Excise Act, 1964

Section 18 provides for the removal of goods in bond. The proposed amendment to subsection (1)*(d)* makes removals in bond by a container operator subject to the provisions of section 44, which deal with the container operators' liability for duty as a carrier. The current exemption in respect of security is deleted.
Subsection (1)*(e)* allows for the removal in bond of goods by the pilot of an aircraft under cover of an air cargo transfer manifest from place in the Republic where the goods were landed to their place of entry in the Republic. The proposed amendment limits such removal to a licensed transit shed in the common customs area and extends the category of persons who can remove such goods to include the airline. The current exemption in respect of security is deleted.
The deletion of the exemption of security will allow the Commissioner to exercise his discretion to call for security or not. The amendment aligns the position of container operators and airlines with other carriers of goods.

The amendment to subsection (1)*(e)* will improve the control over air cargo and the inclusion of the reference to the airline reflects current industry and operational realities.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 21 of the Customs and Excise Act, 1964

Section 21 allows for the warehousing of duty free goods for export and subsection 21(3)*(d)*(iii) provides for, *inter alia,* where the importer fails to export duty free goods warehoused for export, within the prescribed time that the goods may be entered for home consumption and payment of duty.
Clients may enter goods for export without any intention of exporting them in order to take advantage of the VAT deferment allowed on duty free goods warehoused for export. They would then rely on the provisions of subsection 21(3)*(d)*(iii) to enter those goods for home consumption. This is contrary to the intention of section 21 and therefore the amendment proposes the deletion of the entry of goods for home consumption and payment of duty option.

Amendment of section 21A of the Customs and Excise Act, 1964

Section 21A contains provisions for the administration of customs controlled areas within industrial development zones. The Department of Trade and Industry does not intend to make regulations under the Manufacturing Development Act, 1993 (Act No. 187 of 1993), relating to industrial development zones and therefore reference to making of regulations under the said Act is accordingly deleted.

Amendment of section 31 of the Customs and Excise Act, 1964

Section 31 provides for the entry of spirits for use in manufacture of other products. With the publication of the amended Schedule No. 6 of the Customs and Excise Act on 31 March 2006, the provisions of section 31 have become superfluous as the matter regarding the entry of spirits for use in manufacture of other products are now dealt with in Schedule No. 6 of the Customs and Excise Act and the proposed amendment accordingly deletes section 31.

Amendment of section 37B of the Customs and Excise Act, 1964

Section 37B provides for the manufacture, storeage, disposal and use of biofuel, biodiesel and bioethanol.
Subsection (2)*(b)* empowers the Minister to, in terms of any licence prescribed in Schedule No. 8 to the Act, exempt any person from the requirement to license for the manufacture of biofuel or any goods used in the production of biofuel.
Due to the fact that the rules for section 37B provide the criteria for distinguishing between different categories of biofuel manufacturers, it is considered more

practical to empower the Commissioner to also by rule prescribe the criteria for exempting a person from the requirement to license as a manufacturer of biofuel.
The proposed amendment empowers the Commissioner to exempt manufacturer of biodiesel from licensing in accordance with criteria stipulated in the rules.
Section 37B(2)*(c)* empowers the Commissioner to exempt by rule a manufacturer of biofule from the payment of duty on a specified quantity of biofule manufactured by him or her, provided that it is meant for the personal use of that person and that it is not put up for sale or otherwise disposed of. Currently policy requires that provision should rather be made for an exemption from the payment of duty on a specified quantity of biofuel manufactured and no further restrictions concerning the use or disposal of such fuel should be imposed.
The proposed amendment is required in order to amend the current biofuel exemption provisions so as to be in line with current policy in that regard.
Section 37B(4)*(a)* empowers the Commissioner to require any seller of biodiesel to register with him or her in terms of the provisions of section 59A.
It is considered essential, for purposes of control and audit, to register all manufacturers of biofuel irrespective of whether they are required, as non-exempted persons, to also be licensed for the manufacture of biofuels.
The proposed amendment empowers the Commissioner to require the registration of all manufacturers and sellers of biofuels.
This shall be deemed to have come into operation on 29 March 2006.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 38 of the Customs and Excise Act, 1964

Subsection 38(3)*(a)* provides that every exporter of any goods shall, before such goods are exported from the Republic, deliver a bill of entry to the Controller.
It is important for the purposes of conducting examinations, as provided for in the amendment of section 4(8A), of exports, that the bill of entry is delivered to the Controller with sufficient time remaining to conduct examinations before such goods are loaded on board an export vessel.
The proposed amendment allows the Commissioner to prescribe by rule the period within which export entries must be delivered to the Controller.
Subsection (5) is inserted to regulate by rule the transfer of goods from one mode of transport to another or from one such mode of transport to a similar mode of transport in order to better control the movement of goods.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 41 of the Customs and Excise Act, 1964

Paragraph *(d)* in subsection (4) is being deleted as the provisions of Chapter XA – Part A: Internal Administrative Appeal, cover the right of appeal contained in the said paragraph.

Insertion of section 64H of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.
Section 64H has accordingly been inserted to provide for the licensing of container terminals. This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 64I of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.
Section 64I has accordingly been inserted to provide for the licensing of combination terminals.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 64J of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.
Section 64J has accordingly been inserted to provide for the licensing of road vehicle terminals. This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 64K of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.
Section 64K has accordingly been inserted to provide for the licensing of bulk goods terminals. This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Customs and Excise: Insertion of section 64L of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.
Section 64L has accordingly been inserted to provide for the licensing of container operators. This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Insertion of section 64M of the Customs and Excise Act, 1964

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.
Section 64M has accordingly been inserted to provide for the licensing of transit shed operators.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 80 of the Customs and Excise Act, 1964

Section 80 deals with serious offences and their punishment. The proposed amendment creates offences relating to cargo reports, the landing of imported goods and loading of goods for export. This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Customs and Excise: Amendment of section 96 of the Customs and Excise Act, 1964

Section 96 deals with the notice of action and the period for bringing action.
The proposed amendment makes it mandatory for any person who applies to the High Court for an order for the sale of any arrested property as contemplated in the Admiralty Jurisdiction Regulations Act, 1983 (Act No. 105 of 1983), to deliver a notice of such an application to SARS.

Amendment of section 96A of the Customs and Excise Act, 1964

Section 96A provides for the approval of container operators. The proposed amendment deletes this provision. This amendment is consequential to the insertion of section 64M that provides for the licensing of container operators.

Amendment of section 97 of the Customs and Excise Act, 1964

Section 97 deals with the appointment of an agent by a master, pilot or other carrier. The current provisions do not make the appointment of an agent mandatory. The proposed amendment now makes the appointment of an agent mandatory where the means of transport is not owned or chartered by a legal person registered in the Republic in accordance with the laws of the Republic.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 101A of the Customs and Excise Act, 1964

Section 101A makes provision for electronic communication for the purpose of customs and excise procedures. The Minister of Finance announced in his 2006 Budget Review that large clearing and forwarding agents, importers, carriers and other supply chain participants will be required to communicate electronically with SARS to facilitate risk management, reduce error rates and speed up processing. The proposed amendment is aimed at empowering the Commissioner to make rules prescribing the persons or class of persons for whom electronic communication is mandatory. The amendment also empowers the Commissioner to exempt persons from mandatory electronic communication. This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 107 of the Customs and Excise Act, 1964

Section 107 deals with the expenses of landing, examination, weighing, analysis, etc. The proposed amendment extends the application of the said section to transit and transhipment goods. It also extends the meaning of examination to include any examination contemplated in section 4(8A). This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 120 of the Customs and Excise Act, 1964

Subsection (1)*(d)* empowers the Commissioner to make rules regarding the reporting, handling and movement of cargo. The proposed amendment thereto now also empowers the Commissioner to make rules regarding transhipment cargo, goods under customs control and goods in a customs controlled area.
This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

1.5 **Value-Added Tax Act, 1991**

Amendment to section 6 of the Value-Added Tax Act, 1991

The proposed amendment is of a textual nature by replacing the reference to the Statistics Act, 1976 (Act No. 66 of 1976), which became obsolete, with the new reference to the Statistics Act, 1999 (Act No. 6 of 1999).

Amendment to section 15 of the Value-Added Tax, 1991

With the introduction in the Taxation Laws Amendment Act, 2006 (Act No. 9 of 2006), of the new definition of “municipality” in section 1 of the Value-Added Tax Act, 1991, certain entities which previously fell within the definition of a “local authority” in section 1 of the Value-Added Tax Act, 1991, prior to its deletion in the TLA 2006 no longer fell within the definition of “municipality” in section 1 of

the Value-Added Tax Act, 1991. As a result, these entities would not qualify to account for Value-Added Tax (VAT) on the payments basis. The basis for extending the list to the vendors mentioned below to account for VAT on the payments basis is that these vendors are rendering similar services, e.g. electricity, gas, water, drainage, removal or disposal of sewage or garbage to that of municipalities.

Regional electricity distributors (REDS) will be assuming the duties of providing electricity and collecting the fees for such services from the general public. The proposed amendment will therefore ensure that the REDS account for VAT on the payments basis. As a result, the transfer of the electricity distribution businesses to the REDS will not result in an adjustment in terms of section 2(4)*(a)* of the Value-Added Tax Act, 1991.

The proposed amendment extends the list of vendors who may account for VAT on the payments basis to that of—

(a) any water board or any other institution which has powers similar to those of any such board which is listed in Part B of Schedule 3 of the Public Finance Management Act, 1999, and which entity would have fallen within the definition of "local authority" in section 1 of the Value-Added Tax Act, 1991, as it read prior to that definition being deleted as from 1 July 2006;

(b) a regional electricity distributor, being an electricity distribution services provider established after 30 June 2005 that is—

- a public entity regulated under the Public Finance Management Act, 1999;
- a wholly owned subsidiary or entity of that public entity if the operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity; or
- a company as contemplated in paragraph *(a)* of the definition of 'company', which is wholly owned by one or more municipalities;";

(c) municipal entities as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and which supplies electricity, gas, water, drainage, removal or disposal of sewage or garbage.

The proposed amendment will be effective from 1 July 2006.

Amendment of section 20 of the Value-Added Tax Act, 1991

A vendor, being the recipient of second-hand goods (not being a taxable supply), is not required to keep records as envisaged in terms of section 20(8) of the Value-Added Tax Act, 1991, where the consideration in money for the supply of second-hand goods does not exceed R20. The proposed amendment is to reduce compliance costs of vendors, by increasing the total consideration in money for the supply from R20 to R50 or an amount determined by the Commissioner. The requirements to keep records in terms of section 20(8) of the Value-Added Tax Act, 1991, must be complied with when the supply exceeds R50 or such other amount as determined by the Commissioner.

Amendment of section 41 of the Value-Added Tax, 1991

Subclause *(a)*: The proposed amendment is to ensure that the provisions of section 41A or 41B of the Value-Added Tax Act, 1991, will, where applicable, apply to section 41 of that Act.

Sub-clause *(b)*: The proposed amendment, which inserts the second proviso, allows the Commissioner to withdraw any written decision issued prior to 1 January 2007 where the Commissioner prescribes that the written decision does not have binding effect. Such withdrawal will be from the date of the written notification thereof by the Commissioner. The withdrawal of the written decision where any contractual obligation was incurred in accordance with the written decision given by the Commissioner to the person concerned before such withdrawal to supply or receive the goods or services concerned, may not affect the liability or non-liability of that person for the payment of tax in accordance with such decision or the entitlement or otherwise to a deduction of tax, as determined in accordance with such decision, as the case may be.
The proposed amendment is to restrict the operation of the provisions of section 41*(c)* to written decisions issued on or before 31 December 2006.
Any written decision issued prior to 1 January 2007 in respect of supplies made after 1 January 2007, shall not be binding, except to the extent that the Commissioner confirms, in writing, that such written decision is binding. The proposed amendment allows the Commissioner to withdraw any written decision issued prior to 1 January 2007 where the Commissioner prescribes that the written decision does not have binding effect. Such withdrawal will be from the date of the written notification thereof by the Commissioner.
The withdrawal of the written decision where any contractual obligation was incurred in accordance with the written decision given by the Commissioner to the person concerned before such withdrawal to supply or receive the goods or services concerned, may not affect the liability or non-liability of that person for the payment of tax in accordance with such decision or his entitlement or otherwise to a deduction of tax, as determined in accordance with such decision.

Amendment of section 41A of the Value-Added Tax, 1991

The proposed amendment allows the Commissioner to issue binding "VAT rulings" or "VAT class rulings", which is a written statement by the Commissioner in respect of the application or the interpretation of the VAT Act Value-Added Tax Act, 1991. The proposed amendment furthermore, ensures that the provisions applicable to "advance tax rulings" catered for in the Income Tax Act, will apply *mutatis mutandis.*

"VAT rulings" will be issued under the provisions of 'binding private rulings' whereas "VAT class rulings" will be issued under the provisions of "binding class rulings".

The “VAT rulings” and “VAT class rulings” will not be subject to any fees as envisaged in the Income Tax legislation governing “advance tax rulings”.
In terms of the proposed amendment, the Commissioner will only be required to publish decisions that set a new precedent.

1.6 **Uncertificated Securities Tax, 1998**

Amendment of section 12 of the Uncertified Securities Tax Act, 1998

The proposed amendment is to clarify that the member or participant may recover the uncertificated securities tax payable on the acquisition of securities or rights or entitlements in securities or the cancellation or redemption of those securities from the person who acquires those securities, rights or entitlements in securities or who cancels or redeems those securities.

1.7 ***Amendment of section 42 of the Revenue Laws Amendment Act, 2001***

In view of the amendment to section 38(3), this section is no longer applicable and is therefore repealed with immediate effect.

1.8 ***Amendment of section 22 of the Revenue Laws Second Amendment Act, 2005***

Section 77D was inserted by section 147 of the Revenue Laws Amendment Act, 2003 (Act No. 45 of 2003), and then amended by section 22 of the Revenue Laws Second Amendment Act, 2005 (Act No. 32 of 2005) where subsection (2) of section 77D was deleted. Due to this deletion, the reference to subsection (1) of section 77D is being deleted. All these amendments will only come into operation on the date Part A of Chapter X comes into operation, which will be promulgated on a later date.

1.9 ***Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006***

Amendment of section 1 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The amendment is consequential in nature.

Amendment of section 6 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006

The proposed amendment extends the application of the objection and appeal procedure to decisions of the Commissioner made pursuant to the provisions of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 9 of 2006).

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.

3. FINANCIAL IMPLICATIONS TO STATE

As the changes related 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 Advisors, 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, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisors 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.