

REPUBLIC OF SOUTH AFRICA

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# TAXATION LAWS SECOND AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. 29961 of 1 June 2007)  
(The English text is the official text of the Bill)*

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(MINISTER OF FINANCE)

**[B 19—2007]**

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[                    ]    Words in bold type in square brackets indicate omissions from existing enactments.

                        Words underlined with a solid line indicate insertions in existing enactments.

**To amend the—**

- **Income Tax Act, 1962**, so as to effect certain textual and consequential amendments;
- **Customs and Excise Act, 1964**, so as to amend provisions relating to international agreements and to effect certain textual and consequential amendments;
- **Value-Added Tax Act, 1991**, so as to extend the payments basis to certain persons; to provide for the right to object against a decision not to remit interest or penalties; to amend and further provide for the issuing of binding VAT class rulings and VAT rulings; and to further regulate issues regarding recordkeeping and tax invoices;
- **Tax on Retirement Funds Act, 1996**, so as to provide for the settlement of disputes;
- **Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006**, so as to include certain trusts in the amnesty process;
- **Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006**, so as to effect a textual amendment; and
- **Revenue Laws Second Amendment Act, 2006**, so as to provide for the effective date of certain provisions; and to effect certain textual and consequential amendments;

and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004 and section 2 of Act 21 of 2006**

1. (1) Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

(4) Any decision of the Commissioner under the following provisions of this Act shall be subject to objection and appeal, namely—

- (b) the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’, ‘retirement annuity fund’ and ‘spouse’ in section 1[**L**];

section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 30, section 30A, section 31, section 35(2), section 37A, section 38(4), **[section 41(4)]** section 44(13)(a), section 47(6)(c)(i), section 57, section 76A, section 80B and section 80S[.];

(c) paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule[.]; 5

(d) **[paragraph (b) of the definition of ‘formula A’ in paragraph 1 and]** paragraph 4 of the Second Schedule[.];

(e) paragraphs 18, 19(1), 20, 21, 24 and 27 of the Fourth Schedule[.];

(f) paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule; and

(g) paragraphs 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(e) of the Eighth 10  
Schedule[. **shall be subject to objection and appeal.**”.

(2) Subsection (1), to the extent that it deletes the expression “paragraph (b) of the definition of ‘formula A’ in paragraph 1 and”, shall come into operation on 1 October 2007.

**Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 15  
1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of  
1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76  
of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88  
of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85  
of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 20  
of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104  
of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94  
of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65  
of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90  
of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 25  
of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act  
113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act  
21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act  
28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of  
Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, 30  
section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002,  
section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004,  
section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005,  
section 23 of Act 9 of 2006 and section 10 of Act 20 of 2006**

2. (1) Section 10 of the Income Tax Act, 1962, is hereby amended by the substitution 35  
in subsection (1) for the proviso to paragraph (t) of the following proviso:

“: Provided that **[all entities]** any entity contemplated in this paragraph must  
comply with such reporting requirements as the Commissioner may determine;”.

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2007 and 40  
shall apply in respect of any year of assessment ending on or after that date.

**Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006**

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

(a) by the substitution for subsections (11), (16) and (17), respectively, of the 45  
following subsections:

“(11) In respect of each year of assessment during which any taxpayer  
is eligible for any deduction contemplated in **[subsections]** subsection  
(1) or (2), **[or would be so eligible were it not for the provisions of**  
**subsection (8)]** whether or not that deduction is limited in terms of this 50  
section, that taxpayer must submit to the Minister of Science and  
Technology such information as that Minister may require in such form  
and manner (including electronically) and at such place and within such  
time as that Minister may from time to time prescribe.”;

“(16) Any person who contravenes the provisions of subsection **[(13)]**  
(11) shall be guilty of an offence and liable on conviction to a fine or to 55  
imprisonment for a period not exceeding **[12]** 24 months and any person  
who has been so convicted shall, if he or she fails within any period  
deemed by the Minister of Science and Technology to be reasonable and  
of which notice has been given to him or her by that Minister, to submit

the information in respect of which the offence was committed, be guilty of an offence and liable on conviction to a fine of R50 for each day during which such default continues or to imprisonment without the option of a fine for a period not exceeding 12 months.

(17) Any person who contravenes the provisions of subsection [(11) or (14)] (13) shall be guilty of an offence and liable on conviction to a fine [of R50 for each day that he or she is so in contravention] or to imprisonment [without the option of a fine] for a period not exceeding [12 months] 24 months.”; and

(b) by the addition of the following subsection: 10

“(18) Any person employed or engaged as contemplated in subsection (13) who carries out any of the provisions of this section before he or she has taken the prescribed oath or solemn declaration shall be guilty of an offence and liable on conviction to a fine not exceeding R500.”.

(2) Subsection (1) shall be deemed to have come into operation on 2 November 2006. 15

#### **Amendment of section 76G of Act 58 of 1962, as inserted by section 12 of Act 34 of 2004**

4. (1) Section 76G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(d) for subparagraph (ii) of the following subparagraph:

“(ii) alternative courses of action by the applicant (or requests or requires the [rendering] rendering of an opinion, conclusion or determination regarding such alternative courses of action); or”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2006.

#### **Amendment of section 79 of Act 58 of 1962, as amended by section 26 of Act 69 of 1975, section 23 of Act 91 of 1982, section 32 of Act 21 of 1995, section 23 of Act 36 of 1996, section 26 of Act 5 of 2001, section 14 of Act 34 of 2004 and section 33 of Act 20 of 2006**

5. (1) Section 79 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for subparagraph (ee) of paragraph (iv) of the proviso of the following subparagraph: 30

“(ee) the settlement of a dispute in terms of Part IIIA of Chapter III of this Act, [unless the Commissioner is satisfied that the decision, order, concession or resolution of the dispute or the settlement in question was obtained by fraud or misrepresentation or non-disclosure of material facts; or]”; and 35

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

“unless the Commissioner is satisfied that the decision, order, concession or resolution of the dispute or the settlement in question was obtained by fraud or misrepresentation or non-disclosure of material facts; or”.

(2) Subsection (1) shall be deemed to have come into operation on 7 February 2007.

#### **Amendment of section 80O of Act 58 of 1962, as inserted by section 6 of Act 21 of 2006**

6. (1) Section 80O of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection: 45

“(4) The reportable arrangement must be disclosed within 60 days after any amount is first received by or accrued to any participant or is first paid or actually incurred by any participant in terms of the arrangement.”.

(2) Subsection (1) shall come into operation when section 80O of the Income Tax Act, 1962, comes into operation. 50

#### **Amendment of section 80P of Act 58 of 1962, as inserted by section 6 of Act 21 of 2006**

7. (1) Section 80P of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of the following paragraph: 55

“(b) a detailed description of the assumed tax benefits for all participants, including, but not limited to, tax deductions and deferred income;”.

(2) Subsection (1) shall come into operation when section 80P of the Income Tax Act, 1962, comes into operation.

**Amendment of section 102 of Act 58 of 1962 as substituted by section 28 of Act 69 of 1975, amended by section 27 of Act 91 of 1982, section 44 of Act 30 of 1998 and section 61 of Act 60 of 2001, substituted by section 30 of Act 30 of 2002 and amended by section 35 of Act 20 of 2006** 5

8. Section 102 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (1) of the following subsection: 10

“(1A) The Commissioner may refuse to authorise a refund under subsection (1), if that person—

(a) has failed to furnish a return for any year of assessment as required by this Act, until that person has furnished such return as required; or 15

(b) has failed to furnish the Commissioner in writing with particulars of that person’s banking account or account with a similar institution to enable the Commissioner to transfer a refund, if any, to that account.”; and 20

(b) by the deletion in subsection (2) of paragraphs (c) and (d). 20

**Amendment of section 102A of Act 58 of 1962, as inserted by section 40 of Act 94 of 1983 and amended by section 28 of Act 36 of 1996**

9. The Income Tax Act, 1962, is hereby amended by the substitution in section 102A for the words following paragraph (b) of the following words:

“the amount of his or her liability for normal tax for the said year either exceeds or falls short of the aggregate of the amounts of employees tax deducted or withheld from the said remuneration under the provisions of the Fourth Schedule, such excess shall not be recoverable by the Commissioner from the said person if the amount thereof is less than R25 or such other amount as the Commissioner may determine by notice in the Gazette, or such shortfall shall not be refundable by the Commissioner to the said person if the amount thereof is less than R2 or such other amount as the Commissioner may so determine.”. 25 30

**Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 30 of Act 60 of 1989, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 34 of Act 34 of 1997, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 66 of Act 32 of 2004, section 85 of Act 31 of 2005 and section 7 of Act 21 of 2006** 35 40

10. Section 1 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 45

“In this section, except in the definition of ‘**package**’, and in sections 4, 6, 7, 18, 38, 44, 64A, 87(2) and [106] 107, ‘**container**’ means transport equipment of tariff heading 86.09—”.

**Amendment of section 8 of Act 91 of 1964, as inserted by section 36 of Act 19 of 2001 and amended by section 117 of Act 60 of 2001**

11. (1) The following section is hereby substituted for section 8 of the Customs and Excise Act, 1964:

**“Cargo Reports**

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8. (1) Notwithstanding the provisions of sections 7 and 12, the Commissioner may by rule prescribe requirements in respect of the report of cargo and may prescribe that—

- (a) any report including any manifest or other report listing and describing cargo carried by or loaded or to be loaded on to any ship[, **aircraft, railway train**] or **[other]** vehicle arriving at or departing from any place in the Republic, as the case may be; or
- (b) any outturn report or other report concerning goods landed from or unpacked from or packed into or loaded on to or to be packed into or to be loaded on to any such ship or **[aircraft]** vehicle, as the case may be; or
- (c) any outturn report or other report in respect of any imported goods received or unpacked while under the control of any person after landing thereof at any place **[approved by the Commissioner]** licensed in terms of this Act,

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shall be in such form containing such particulars and shall be submitted to the Controller by such person in such circumstances and at such times as may be specified in such rule.

(2) Where the Commissioner prescribes that any report must be submitted prior to cargo for export being packed into or loaded on to a ship or vehicle, no cargo shall be so packed or loaded before—

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- (a) such report is received by the Controller; and
- (b) release of the cargo has been granted as prescribed in the rules.

(3) (a) Any such outturn report or other report shall reflect full particulars concerning any excess or deficiency in respect of any goods landed, received, unpacked, packed or loaded, as the case may be, according to any manifest or other report contemplated in subsection (1).

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(b) Where any imported goods reported in any manifest or other report are not landed or—

- (i) any such goods not reported are landed; or
- (ii) any container or package is landed with visible evidence of tampering or any deficiency is suspected,

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any person completing any outturn report on landing of the goods shall examine and report on such goods in the presence of the carrier or the agent of the carrier, as may be prescribed by rule.

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(4) (a) Any exporter who—

- (i) packs or loads cargo or causes cargo to be packed or loaded in contravention of subsection (2); or
- (ii) fails to report cargo or makes any false or misleading statement in connection with any report to which this section relates,

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shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

(b) Such cargo shall be liable to forfeiture in accordance with the provisions of this Act.”.

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

**Amendment of section 49 of Act 91 of 1964, as substituted by section 55 of Act 53 of 1999 and amended by section 60 of Act 30 of 2000, section 127 of Act 60 of 2001, section 46 of Act 30 of 2002 and section 24 of Act 34 of 2004**

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12. Section 49 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words:

“Whenever any international agreement which binds the Republic as contemplated in section 231 of the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)], is an agreement [with the government of any country or countries or group of countries]—”;  
and

(b) by the addition of the following subsection:

“(10) Notwithstanding anything to the contrary contained in this Act, the Commissioner may, for the purposes of administering any provision of any agreement relating to customs administration which is not enacted into law as contemplated in this section—

(a) decide on or determine any matter, perform any duty or function, exercise any power or impose any condition in connection with a provision so administered; and

(b) make rules concerning any matter contemplated in paragraph (a);”.

**Amendment of section 15 of Act 89 of 1991, as amended by paragraph 8 of Government Notice 2695 of 8 November 1991, section 20 of Act 136 of 1992, section 31 of Act 27 of 1997, section 90 of Act 30 of 1998, section 46 of Act 9 of 2006 and section 37 of Act 21 of 2006**

13. (1) Section 15 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) the vendor is—

(i) a public authority[.];

(ii) any water board or any other institution which has powers similar to those of any such board listed in Part B of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), which would have complied with the definition of ‘local authority’ in section 1 prior to the deletion of that definition by section 40(1)(i) of the Small Business Amnesties and Taxation Laws Act, 2006 (Act No. 9 of 2006);

(iii) a regional electricity distributor established after 30 June 2005 that is—  
(aa) a public entity regulated under the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(bb) 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

(cc) a company contemplated in paragraph (a) of the definition of ‘company’ in section 1 of the Income Tax Act, which is wholly owned by one or more municipalities;

(iv) a ‘municipal entity’ as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), where that municipal entity supplies—

(aa) electricity, gas or water; or

(bb) the services consisting of the drainage, removal or disposal of sewage or garbage;

(v) a municipality; or

(vi) an association not for gain; or”.

(2) Subsection (1) shall be deemed to have come into operation on 1 July 2006.

**Amendment of section 20 of Act 89 of 1991, as amended by paragraph 11 of Government Notice 2695 of 8 November 1991, section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004 and section 38 of Act 21 of 2006**

14. Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the deletion in subsection (5) of the further proviso.

**Amendment of section 32 of Act 89 of 1991, as amended by section 38 of Act 27 of 1997, section 97 of Act 30 of 1998, section 95 of Act 53 of 1999, section 159 of Act 60 of 2001 and section 182 of Act 45 of 2003**

15. Section 32 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the addition to subsection (1)(a) of the following subparagraph: 5  
 “(vi) refusing to remit, in whole or in part, any interest or penalty in terms of section 39(7); or”; and
  - (b) by the substitution for subsections (4) and (5), respectively, of the following subsections:
    - “(4) The Commissioner may on receipt of a notice of objection to a 10  
decision, direction, supplementary direction or an assessment alter the decision, direction, supplementary direction or assessment or may disallow the objection and must send the [taxpayer] person notice of such alteration or disallowance, and record any alteration or disallowance made in the decision, direction, supplementary direction or assessment. 15
    - (5) Where no objection is lodged against any decision, direction, supplementary direction or assessment by the Commissioner as contemplated in subsection (1), or where any objection has been **[disallowed]** allowed in full or withdrawn **[or any decision has been altered or any assessment has been altered, as the case may be]**, such decision, direction, supplementary direction, assessment or altered decision, direction, supplementary direction or [such assessment or altered] assessment, as the case may be, is final and conclusive.” 20

**Amendment of section 41 of Act 89 of 1991, as amended by section 32 of Act 136 of 1992, section 36 of Act 97 of 1993, section 41 of Act 27 of 1997, section 98 of Act 30 of 1998, section 167 of Act 60 of 2001, section 40 of Act 32 of 2005 and section 39 of Act 21 of 2006** 25

16. (1) Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following further proviso: 30  
 “: Provided further that paragraphs (a), (b) and (c) shall not apply to—
- (i) a written decision or a general written ruling issued by the Commissioner prior to 1 January 2007 in respect of supplies which are or will be made or goods imported on or after 1 January 2007, except to the extent that the Commissioner prescribes in writing that the written decision or the general written ruling has binding effect on or after that date; or 35
  - (ii) a written decision or a general written ruling issued by the Commissioner on or after 1 January 2007.”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 January 2007.

**Insertion of section 41B of Act 89 of 1991** 40

17. (1) The following section is hereby inserted in the Value-Added Tax Act, 1991, after section 41A:

**“VAT class ruling and VAT ruling**

- 41B.** (1) The Commissioner may issue a VAT class ruling or a VAT ruling and in applying the provisions relating to Part IA of Chapter III of the Income Tax Act, a VAT class ruling or a VAT ruling must be dealt with as if it were a binding class ruling or a binding private ruling, respectively: Provided that— 45
- (i) the provisions of sections 76E (other than subsection 76E(2)(m)) and 76F of the Income Tax Act shall not apply to any VAT class ruling or VAT ruling; 50
  - (ii) an application for a VAT class ruling or a VAT ruling in terms of this section shall not be accepted by the Commissioner if the application—
    - (aa) is for an advanced tax ruling that qualifies for acceptance in terms of section 41A; and 55

(bb) falls within a category of rulings prescribed by the Minister by regulation for which applications for rulings in terms of this section may not be accepted.

(2) For the purposes of this section—

‘**VAT class ruling**’ means a written statement issued by the Commissioner to a class of vendors or persons regarding the interpretation or application of this Act;

‘**VAT ruling**’ means a written statement issued by the Commissioner to a person regarding the interpretation or application of this Act.

(3) Notwithstanding Part IA of Chapter III of the Income Tax Act, the Commissioner may not publish a VAT class ruling or a VAT ruling that is the same as a VAT class ruling, a VAT ruling or a binding general ruling already published.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2007.

**Amendment of section 55 of Act 89 of 1991, as amended by section 35 of Act 136 of 1992, section 38 of Act 97 of 1993, section 102 of Act 30 of 1998 and section 17 of Act 10 of 2006**

18. Section 55 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) The Commissioner may, subject to such conditions as **[he]** the Commissioner may determine, authorise the retention of the information contained in any records or documents referred to in subsection (3) (other than ledgers, cash books[,] and journals **[and paid cheques]**) in a form, including any electronic form, acceptable to **[him]** the Commissioner, in lieu of the retention of the originals of such records or documents.”.

**Amendment of section 16 of Act 38 of 1996, as amended by section 59 of Act 27 of 1997, section 69 of Act 59 of 2000**

19. (1) Section 16 of the Tax on Retirement Funds Act, 1996, is hereby amended—

(a) by the insertion after paragraph (f) of the following paragraph:

“(fA) the settlement of disputes;”;

(b) by the insertion after paragraph (v) of the following paragraph:

“(vA) the settlement of any dispute;”.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 2007.

**Insertion of section 11A in Act 9 of 2006**

20. (1) The following section is hereby inserted in the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 after section 11:

**“Reduced assessments and objections**

**11A.** No reduced assessment may be issued in terms of section 79A of the Income Tax Act and no objection may be made in terms of section 81 of that Act in respect of the 2006 year of assessment or any preceding year of assessment based on any relief granted in terms of section 8.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 August 2006.

**Amendment of section 2A of Act 10 of 2006, as inserted by section 45 of Act 21 of 2006**

21. (1) Section 2A of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The registered auditor must **[posses]** possess written proof of an appointment to assist or advise an entity in connection with an application or prospective application for amnesty in terms of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 9 of 2006), to qualify for the exemption provided for in subsection (1).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 August 2006.

### Amendment of long title to Act 21 of 2006

22. (1) The long title to the Revenue Laws Second Amendment Act, 2006, is hereby amended by the deletion of the following expression:

**“to amend the Second Revenue Laws Amendment Act, 2004, so as to delete the Advance Tax Ruling provisions from the Value-Added Tax Act; to amend the Taxation Laws Second Amendment Act, 2005, so as to delete the Advance Tax Ruling provisions from the Value-Added Tax Act;”.**

(2) Subsection (1) shall be deemed to have come into operation on 7 February 2007.

### Amendment of section 2 of Act 21 of 2006

23. (1) Section 2 of the Revenue Laws Second Amendment Act, 2006, is hereby amended—

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

“(2) Subsection (1), in so far as it relates to section 80B, shall come into operation when Part IIA of Chapter III of the Income Tax Act, 1962, comes into operation.”; and

(b) by the addition of the following subsection:

“(3) Subsection (1), in so far as it relates to section 80S, shall come into operation when Part IIB of Chapter III of the Income Tax Act, 1962, comes into operation.”.

(2) Subsection (1) shall be deemed to have come into operation on 7 February 2007.

### Repeal of section 13 of Act 21 of 2006

24. Section 13 of the Revenue Laws Second Amendment Act, 2006, is hereby repealed.

### Amendment of section 28 of Act 21 of 2006

25. Section 28 of the Revenue Laws Second Amendment Act, 2006, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 64L:

#### ‘Licensing of transit sheds

**64M.** (1) (a) Every transit shed shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence.

(b) Application for such a licence shall be made on the prescribed form and shall be supported by the documents and information specified in such form and as the Commissioner may require from each applicant.

(c) Before any licence is issued the applicant for a licence must furnish security as contemplated in section 60(1)(c): Provided that the Commissioner may on good cause shown, to the extent considered reasonable in each case, reduce the amount of such security or exempt any person from furnishing security.

(d) Before commencing operations, or from a date thereafter specified by the Commissioner by rule, every transit shed operator shall register for the purposes of electronic communication as a user and enter into a user agreement in terms of section 101A and the rules made thereunder.

(2) (a) (i) Except if determined otherwise by rule, break bulk goods for export must be delivered to and exported from a transit shed or a combination terminal.

(ii) The transit shed operator shall—

(aa) be responsible for ensuring that goods for export are delivered to a combination terminal or are loaded on a ship or vehicle for export; and

- (bb) in addition to any liability for duty incurred by any person under any other provision of this Act, be liable for the duty on any goods received for export and such liability shall cease when it is proved that the goods have been delivered to a combination terminal or have been loaded on a ship or vehicle as contemplated in subparagraph (aa). 5
- (iii) The transit shed operator shall produce such proof to the Controller as may be prescribed by rule that the goods have been delivered to a combination terminal or have been loaded on a ship or vehicle for export.
- (iv) Goods received in a transit shed may not be opened or withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule. 10
- (v) The receipt, storage and handling of goods in a transit shed shall be in accordance with the requirements that may be prescribed by rule.
- (b) Except where goods have been entered for home consumption and released thereafter or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of any imported goods from a transit shed. 15
- (3) The Controller may require any break bulk goods to be detained in a transit shed for examination of the package or its contents, including by non-intrusive inspection methods contemplated in section 4(8A). 20
- (4) (a) The Commissioner may refuse an application for a transit shed licence or cancel or suspend such a licence.
- (b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a). 25
- (5) The Commissioner may prescribe by rule—
- (a) the security requirements regarding the premises, equipment of the transit shed and control measures to be observed in a transit shed;
- (b) any procedure or obligation in connection with packages received which are— 30
- (i) in excess of manifested quantities;
- (ii) unmanifested excess consolidated packings or packages;
- (iii) manifested but not received;
- (c) reports to be made and procedures to be followed relating to packages received with signs of damage, tampering or other discrepancy;
- (d) records to be kept in respect of the storage and movement of goods and any other activity in the operation of the transit shed; 35
- (e) all matters that are required or permitted in terms of this section to be prescribed by rule; and
- (f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of the activities of a transit shed.’ ”. 40

#### **Repeal of section 37 of Act 21 of 2006**

26. Section 37 of the Revenue Laws Second Amendment Act, 2006, is hereby repealed.

#### **Amendment of section 39 of Act 21 of 2006**

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27. Section 39 of the Revenue Laws Second Amendment Act, 2006, is hereby amended by the deletion in subsection (1) of paragraph (b).

#### **Repeal of section 40 of Act 21 of 2006**

28. Section 40 of the Revenue Laws Second Amendment Act, 2006, is hereby repealed. 50

#### **Amendment of section 43 of Act 21 of 2006**

29. Section 43 of the Revenue Laws Second Amendment Act, 2006, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) shall come into operation on the date Part A of Chapter [X] XA comes into operation.”. 55

**Short title and commencement**

**30.** (1) This Act is called the Taxation Laws Second Amendment Act, 2007.

(2) Save in so far as is otherwise provided for in this Act or the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2008. 5

## **MEMORANDUM ON THE OBJECTS OF THE TAXATION LAWS SECOND AMENDMENT BILL, 2007**

### **1. PURPOSE OF BILL**

1.1 The Bill seeks to amend administrative provisions of 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 Second Small Business Tax Amnesty and Taxation Laws Amendment Act, 2006 (Act No. 10 of 2006), and the Revenue Laws Second Amendment Act, 2006 (Act No. 21 of 2006).

### **2. OBJECTS OF BILL**

#### **2.1 Amendment of section 3 of the Income Tax Act, 1962**

The proposed amendment to section 3 provides that any decision of the Commissioner in the context of sections 30A, 44(13)(a) and 47(6)(c)(i) are subject to objection and appeal. In addition, the proposed amendment provides for the re-arrangement of section 3 to allow for easier reading thereof and makes other consequential amendments.

#### **2.2 Amendment of section 10 of the Income Tax, 1962**

The proposed amendment changes the focus of the proviso from plural to singular.

#### **2.3 Amendment of section 11D of the Income Tax Act, 1962**

The proposed amendments clarify that a taxpayer who is eligible for section 11D R&D deductions must submit information to the Department of Science and Technology within such time as may be required by that Department (even if that R&D is limited by virtue of section 11D).

Lastly, the proposal also clarifies the consequences of non-compliance in respect of the abovementioned requirements. This amendment also clarifies the consequences should an official of the Department of Science and Technology fail to take an oath of secrecy prior to carrying out the provisions of this section.

#### **2.4 Amendment of section 76G of the Income Tax Act, 1962**

The proposed amendment corrects a spelling error.

#### **2.5 Amendment of section 79 of the Income Tax Act, 1962**

Section 79(1) provides that the SARS may not issue an additional assessment if a previous assessment was made pursuant to the decision of the tax board or tax court, concession of an appeal, the resolution of a dispute in terms of the Alternative Dispute Resolution procedure or the settlement of a dispute. However, this cut off does not apply if the SARS is satisfied that any of the above was obtained by fraud, misrepresentation or non-disclosure of material facts. There is an argument that it is only in the specific case of a settlement obtained by means of fraud, misrepresentation or non disclosure that an additional assessment may be issued. The proposed amendment clarifies that the additional assessment may be issued in the case of any of the aforesaid decision, concession, resolution or settlement if obtained by such fraud, misrepresentation or non disclosure.

#### **2.6 Amendment of section 80O of the Income Tax Act, 1962**

Currently, there is an argument that reportable arrangements may be reported within 60 days of any payment in terms of that arrangement. This may lead to confusion where there is more than one payment involved. The proposed amendment clarifies that the reportable arrangements must be reported within 60 days of the first payment.

#### **2.7 Amendment of section 80P of the Income Tax Act, 1962**

The proposed amendment corrects punctuation.

## **2.8 Amendment of section 102 of the Income Tax Act, 1962**

The proposed amendment provides that the SARS may refuse to refund any payment made by that person in terms of the Income Tax Act if that person has failed to furnish a return required by such Act, or if that person has not provided the SARS with the details of a banking account for the purpose of the refund.

## **2.9 Amendment of section 102A of the Income Tax Act, 1962**

The proposed amendment will make provision for the SARS to determine the amount of employees' tax that may not be recovered or refunded if the amount of employees' tax withheld differs from the final liability.

## **2.10 Amendment of section 1 of the Customs and Excise Act, 1964**

This is a textual amendment whereby the incorrect reference to section 106 is replaced by the correct reference to section 107 in the definition of "package".

## **2.11 Amendment of section 8 of the Customs and Excise Act, 1964**

Section 8 deals with the submission of cargo reports. The proposed amendment now seeks to prohibit 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.

The proposed amendment to section 8 was contained in section 13 of the Revenue Laws Second Amendment Act, 2006, but a part of the contents drafted was erroneously omitted. The complete amendment to section 8 is now contained in this clause while clause 24 repeals the said section 13.

## **2.12 Amendment of section 49 of the Customs and Excise Act, 1964**

The proposed amendment of section 49 enables the Commissioner to make rules to give effect to those international agreements relating to customs administration that are not enacted into law as provided for in the section.

## **2.13 Amendment of section 15 of the Value-Added Tax Act, 1991**

The proposed amendment seeks to add persons to the list of persons that the Commissioner may direct to account for tax payable on the payments basis. The additional persons are water boards, other institutions that have similar powers to a water board, regional electricity distributors and municipal entities.

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

The proposed amendment seeks to delete the second proviso to section 20(5). The first proviso to section 20(5) provides that an abridged tax invoice cannot be issued in respect of a zero-rated supply. The second proviso is therefore superfluous as the vendor is not allowed to issue an abridged tax invoice for a zero-rated supply.

## **2.15 Amendment of section 32 of the Value-Added Tax Act, 1991**

The proposed amendment seeks firstly to allow a vendor to object and appeal against the decision not to waive penalties and interest. It also seeks to make provision for the Commissioner, on receipt of an objection by a person, to alter or disallow a decision, direction or supplementary direction made in terms of section 50A(3) or (4) of the Value-Added Tax Act, 1991, and to notify the person accordingly. The proposed amendment lastly seeks to make any decision, direction, supplementary direction, or altered decision, direction, supplementary direction or assessment, made by the Commissioner final and conclusive, where no objection has been lodged or the objection has been allowed in full or withdrawn.

## **2.16 Amendment of section 41 of the Value-Added Tax Act, 1991**

The proposed amendment provides that the provisions of sections 41(a), (b) or (c) of the Value-Added Tax Act, 1991, will not apply to any written decision issued by the Commissioner on or after 1 January 2007. In addition, those provisions will not apply to rulings issued by the Commissioner prior to 1 January 2007 in respect of supplies which are or will be made or goods imported on or after 1 January 2007. The Commissioner may, however, prescribe that a written decision issued prior to 1 January 2007 may have binding effect where the Commissioner informs the person in writing of such binding effect or the period of such binding effect. This binding status will be in terms of section 41A or 41B. The procedure and process applicable to this is set out in binding general ruling (VAT) No. 2 which is available on the SARS website ([www.sars.gov.za](http://www.sars.gov.za)). A person who has received a written decision in respect of any contractual obligation incurred by that person may rely on that written decision until the written decision has been withdrawn.

## **2.17 Insertion of section 41B of the Value-Added Tax Act, 1991**

The proposed amendment allows the Commissioner to issue binding “VAT class rulings” or “VAT rulings”. A “VAT class ruling” or “VAT ruling” is a written statement by the Commissioner in respect of an application or interpretation of the Value-Added Tax Act, 1991. The proposed amendment further seeks to ensure that the provisions and procedural requirements applicable to “advance tax rulings” catered for in the Income Tax Act will apply *mutatis mutandis*. A “VAT class ruling” will be issued under the provisions and procedural requirements of “binding class rulings” whereas a “VAT ruling” will be issued under the provisions and procedural requirements of “binding private rulings”. The “VAT class rulings” and “VAT rulings” will not be subject to any fees as envisaged in the Income Tax legislation governing “advance tax rulings”. In addition, the applicant for a “VAT class ruling” or “VAT ruling” must consent to the publication of such ruling. Failure to provide the Commissioner with the consent to publish such ruling will result in the Commissioner not issuing the requested ruling. In terms of the proposed amendment, the Commissioner will only be required to publish decisions that set a new precedent.

The proposed amendment provides that advance tax rulings will not be dealt with under section 41B where the Minister issues a regulation to exclude certain types of rulings from section 41B. As a result, these applications will be dealt with under the advance tax rulings provisions referred to in section 41A of the Value-Added Tax Act, 1991.

## **2.18 Amendment of section 55 of the Value-Added Tax Act, 1991**

The proposed amendment seeks to allow vendors to retain paid cheques in electronic form by way of scanned images. The original cheques need to be retained for one year, while the scanned images thereof must be retained for five years. This amendment will align the provisions with those in section 73A of the Income Tax Act.

## **2.19 Amendment of section 16 of the Tax on Retirement Funds Act, 1996**

The proposed amendment provides that the provisions of the Income Tax Act, 1962, which relate to the settlement of disputes shall apply to the Tax on Retirement Funds Act, 1996.

## **2.20 Insertion of section 11A of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006**

The concern has been raised that there are circumstances where a strict reading of the income tax legislation could result in the taxation of relief granted in terms of the small business amnesty legislation. This was not the intention.

Section 9A(1) provides an explicit income tax exemption and capital gains exclusion in respect of small business amnesty relief in terms of section 8, while section 9A(3) provides an explicit capital gains exclusion in respect of the waiver of additional tax, penalty or interest in terms of section 13 and its associated regulations. Equally, however, successful amnesty applicants should not be permitted to abuse these

provisions by attempting to deduct third party claims relating to the exempt or excluded amounts or by restating returns. Sections 9A(3) and 11A give effect to these matching anti-abuse measures.

**2.21 Amendment of section 2A of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006**

The proposed amendment corrects a spelling error.

**2.22 Amendment of the long title to the Revenue Laws Second Amendment Act, 2006**

The proposed amendment seeks to amend the long title to the Revenue Laws Amendment Act, 2006.

**2.23 Amendment of section 2 of the Revenue Laws Second Amendment Act, 2006**

The proposed amendment aligns the dates from which a person may object and appeal against a decision taken in terms of a newly introduced provision with the date on which that provision takes effect.

**2.24 Repeal of section 13 of the Revenue Laws Second Amendment Act, 2006**

Section 13 is proposed to be repealed in view of the amendment proposed to section 8 of the Customs and Excise Act, 1964.

**2.25 Amendment of section 28 of the Revenue Laws Second Amendment Act, 2006**

These are proposed technical amendments to include a word that was omitted and to amend a provision relating to the movement of goods from a transit shed.

**2.26 Repeal of section 37 of the Revenue Laws Second Amendment Act, 2006**

The proposed amendment is a technical correction. See proposed amendment of section 15 of the Value-Added Tax Act, 1991.

**2.27 Repeal of section 39 of the Revenue Laws Second Amendment Act, 2006**

The proposed amendment is a technical correction. See proposed amendment to section 41 of the Value-Added Tax Act, 1991.

**2.28 Repeal of section 40 of the Revenue Laws Second Amendment Act, 2006**

The proposed amendment is a technical correction. See proposed amendment to section 41B of the Value-Added Tax Act, 1991.

**2.29 Amendment of section 43 of the Revenue Laws Second Amendment Act, 2006**

This is a proposed technical amendment to rectify a typographical error by changing an incorrect reference.

### **3. CONSULTATION**

The amendments proposed by this Bill were published on the National Treasury and SARS websites for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large were consulted in preparing the Bill.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

An account of the financial implications to the State was given in the 2007 Budget Review.

### **5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers 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 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 contains no provision pertaining to customary law or customs of traditional communities.





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