

REPUBLIC OF SOUTH AFRICA

SECOND SMALL BUSINESS TAX AMNESTY AND AMENDMENT OF TAXATION LAWS BILL

*(As introduced in the National Assembly (proposed section 75); explanatory memorandum
of Bill published in Government Gazette No 28936 of 13 June 2006)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 15—2006]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To provide for a Small Business Tax Amnesty in respect of the voluntary disclosure by an applicant of any failure to comply with certain Acts administered by the Commissioner; to amend the Income Tax Act, 1962, so as to further regulate the National Treasury's access to certain information; to amend the Customs and Excise Act, 1964, so as to further provide for matters relating to powers of officers; to effect a consequential amendment; to amend the Stamp Duties Act, 1968, to effect certain consequential amendments in respect of the phasing out of adhesive revenue stamps and impressed stamps; to amend the Value-Added Tax Act, 1991, so as to provide for National Treasury to have access to certain information; and to effect certain textual and consequential amendments and to delete certain obsolete provisions; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER I

ADMINISTRATION OF THE SMALL BUSINESS TAX AMNESTY

Part I

Purpose and Objective of Tax Amnesty

Purpose and Objective 5

1. The purpose and objective of the tax amnesty provided for in this Chapter is to—
 - (a) broaden the tax base;
 - (b) facilitate the normalisation of the tax affairs of small businesses;
 - (c) increase and improve the tax compliance culture; and
 - (d) facilitate participation in the taxi recapitalisation programme. 10

Part II

Interpretation, Application and Administration

Definitions

2. For purposes of this Chapter, unless the context indicates otherwise, any meaning ascribed to a word or expression in Chapter I of the Tax Amnesty Act must bear the meaning so ascribed, and— 15

“**Tax Amnesty Act**” means the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006.

Administration of Chapter and Chapter I of the Tax Amnesty Act

3. This Chapter and Chapter I of the Tax Amnesty Act are administered by the Commissioner. 20

Exercise of powers of Commissioner

4. (1) Any power granted to the Commissioner under this Chapter and Chapter I of the Tax Amnesty Act may be exercised by the Commissioner personally or by any person designated by the Commissioner for that purpose. 25
- (2) The provisions of section 4 of the Income Tax Act, relating to secrecy and the waiver thereof, apply *mutatis mutandis* in respect of every person employed or engaged by the Commissioner in carrying out the provisions of this Chapter and Chapter I of the Tax Amnesty Act.

Part III 30

Relief in terms of Tax Amnesty

No prosecution for related offences

5. (1) An applicant whose application has been approved in terms of section 5 of the Tax Amnesty Act is deemed not to have committed any offence in terms of any Act to which Chapter I of the Tax Amnesty Act relates to the extent that relief has been granted in terms of section 8 of the Tax Amnesty Act. 35
- (2) Subsection (1) also applies to a person in so far as that person acted in a representative capacity on behalf of the applicant during the qualifying period.

Part IV

Review of decision of Commissioner

Objection against decision of Commissioner

6. (1) Any person aggrieved by a decision of the Commissioner under Chapter I of the Tax Amnesty Act may object and appeal against that decision. 5
- (2) Part III of Chapter III of the Income Tax Act, and the rules relating thereto, apply *mutatis mutandis* to any objection lodged and appeal noted against a decision of the Commissioner under this Chapter. 20
- (3) The tax court contemplated in section 83 of the Income Tax Act has jurisdiction to hear any appeal noted against any decision of the Commissioner under this Chapter and Chapter I of the Tax Amnesty Act. 10

Part V

Reporting

Reporting

7. (1) The Commissioner must provide to the Minister and the Auditor-General information of all applications for tax amnesty under Chapter I of the Tax Amnesty Act and must disclose— 15
- (a) the number of applications received and the number of applications approved and denied;
 - (b) the number of new taxpayers registered with the Commissioner per tax type;
 - (c) the total amount of all tax amnesty levies payable in terms of Part IV of Chapter I of the Tax Amnesty Act by all applicants;
 - (d) the number of new taxpayers registered with the Commissioner per tax type that are classified as active taxpayers on 31 March 2008 and 31 March 2009, respectively. 25
- (2) The information contemplated in subsection (1) must—
- (a) be in a form that does not disclose the identity of any applicant; and
 - (b) be submitted at such times as may be agreed between the Commissioner and the Minister or Auditor-General, as the case may be.
- (3) The Minister must report to Parliament on the information contemplated in subsection (1). 30

Part VI

Regulations

Regulatory powers

8. The Minister may make regulations regarding any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Chapter and Chapter I of the Tax Amnesty Act. 35

CHAPTER II

GENERAL AMENDMENTS TO TAXATION LAWS

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998, section 11 of Act 53 of 1999, section 14 of Act 30 of 2000, section 19 of Act 60 of 2001, section 8 of Act 74 of 2002, section 34 of Act 12 of 2003 and section 14 of Act 45 of 2003 40 45

9. Section 4 of the Income Tax Act, 1962, is hereby amended by the substitution in the proviso to subsection (1) for paragraph (e) of the following paragraph:

“(e) the Commissioner shall disclose to the Director-General of the National Treasury information in respect of—

- (i) any taxpayer which is a public entity contemplated in section 3(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), or an entity contemplated in section 3 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), to the extent necessary for performing the functions and exercising the powers of the National Treasury in terms of those Acts; or 5
- (ii) any other class of taxpayers [to the Director-General of the National Treasury], to the extent necessary for the purposes of tax policy design or revenue estimation.”. 10

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003 and section 133 of Act 45 of 2003 15

10. Section 4 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (8A)(a) of the following subsection:

- “(8A) (a) (i) For the purposes of this subsection, unless the context indicates otherwise, ‘goods’ includes any ship, vehicle or container contemplated in section 1(2). 20
- (ii) An officer may stop and detain and examine any goods in order to determine whether the provisions of this Act or any other law have been complied with in respect of such goods as contemplated in section 107(2)(a).”. 25

Amendment of section 107 of Act 91 of 1964, as amended by section 20 of Act 85 of 1968, section 31 of Act 105 of 1969, section 11 of Act 93 of 1978, section 6 of Act 89 of 1983, section 67 of Act 45 of 1995 and section 33 of Act 34 of 2004

11. Section 107 of the Customs and Excise Act, 1964, is hereby amended by the addition of the following subsection: 30

- “(4) For the purposes of subsections (1) and (2)(a), unless the context indicates otherwise, ‘goods’ includes any ship, vehicle or container contemplated in section 1(2).”.

Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 16 of Act 27 of 1997, section 34 of Act 34 of 1997, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001, section 54 of Act 19 of 2001, section 141 of Act 60 of 2001, section 42 of Act 12 of 2003, section 37 of Act 16 of 2004, section 73 of Act 32 of 2004, section 4 of Act 10 of 2005 and section 29 of Act 32 of 2005 35

12. (1) Section 1 of the Stamp Duties Act, 1968, is hereby amended by the substitution for paragraph (b) of the definition of “**stamp**” of the following paragraph:

- “(b) when used as a verb, means affix a stamp to[, or impress a stamp on,] an instrument: Provided that in the case where the payment of duty is not required to be denoted on an instrument [by means of an adhesive stamp or otherwise], “stamp”, when used as a verb, means to make payment of that duty.”. 45

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 50

Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998, section 66 of Act 19 of 2001, section 150 of Act 60 of 2001, section 116 of Act 74 of 2002, section 48 of Act 12 of 2003 and section 45 of Act 16 of 2004

13. Section 6 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph:

- “(ii) the Commissioner shall disclose to the Director-General of the National Treasury information in respect of—
- (aa) any person which is a public entity contemplated in section 3(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), or an entity contemplated in section 3 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), to the extent necessary for performing the functions and exercising the powers of the National Treasury in terms of those Acts; or
- (bb) any other class of persons [to the Director-General of the National Treasury], to the extent necessary for the purposes of tax policy design or revenue estimation.”.

Amendment to section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005 and section 36 of Act 32 of 2005

14. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively:

- “(a) that person is a ‘municipality’ as defined in section 1 or is carrying on any enterprise as contemplated in paragraph (b)(ii), (iii) or (v) [or (c)] of the definition of ‘enterprise’ in section 1; or
- (b) that person is carrying on any enterprise, other than—
- (i) as contemplated in paragraph (b)(ii) or (iii) [or (c)] of the definition of ‘enterprise’ in section 1; or
- (ii) as a ‘municipality’ as defined in section 1 and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R20 000; or”.
- (2) Subsection (1) is deemed to have come into operation on 1 July 2006.

Amendment to section 46 of Act 89 of 1991, as amended by section 185 of Act 45 of 2003 and section 41 of Act 32 of 2005

15. (1) Section 46 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for paragraph (c) of the following paragraph:
- “(c) on a [local authority] municipality shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such [local authority] municipality;” and
- (b) by the substitution for the proviso of the following proviso:
- “: Provided that nothing herein contained shall be construed as relieving any such company, public authority, [local authority] municipality, body or person or any member of a partnership referred to in section 51(3) from having to perform any duties imposed by this Act upon such company, public authority, [local authority] municipality, body or person which the first-mentioned person has failed to perform.”.
- (2) Subsection (1) is deemed to have come into operation on 1 July 2006.

Amendment to section 48 of Act 89 of 1991, as amended by section 99 of Act 53 of 1999, section 186 of Act 45 of 2003 and section 106 of Act 32 of 2004

16. (1) Section 48 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) in relation to any company, public authority, **[local authority]** municipality, body, trust fund or person referred to in section 46, the person who is in terms of that section responsible for performing the duties imposed under this Act on such company, public authority, **[local authority]** municipality, body, trust fund or person; and”;

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(b) by the substitution for subsection (7) of the following subsection:

“(7) Every person who becomes a representative vendor (other than a person representing a company, public authority or **[local authority]** municipality as contemplated in section 46(a), (b) or (c) or a person appointed as an agent under the provisions of section 47) shall within 21 days after becoming responsible for performing duties under this Act on behalf of any other person notify the Commissioner in such form as the Commissioner may prescribe, of the fact that he or she has become a representative vendor of that other person.”.

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

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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 and section 102 of Act 30 of 1998

17. Section 55 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

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“(a) required to be kept in terms of subsection (1) and section **[75(1)(f)] 73A** of the Income Tax Act, shall be retained and carefully preserved by the vendor for the period referred to in the said section **[75(1)(f)] 73A**; and”;

and

(b) by the substitution in subsection (3)(b) for the words preceding subparagraph (i) of the following words:

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“required to be kept in terms of subsection (1), but in respect of which a return referred to in the said section **[75(1)(f)] 73A** need not be submitted, shall—”.

Short title

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18. This Act is called the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006.

MEMORANDUM ON THE SECOND SMALL BUSINESS TAX AMNESTY AND AMENDMENT OF TAXATION LAWS BILL, 2006

1. OBJECTS OF THE BILL

1.1 This Bill introduces administrative provisions of the Tax Amnesty Act and amendments to the administrative provisions of the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, and the Value-Added Tax Act, 1991.

1.2 **Clauses 1 to 8 of Chapter I**—This Chapter contains administrative provisions of the Small Business Tax Amnesty and Amendment of Taxation Laws Bill.

1.3 **Clause 9 of Chapter II—Income Tax: Amendment of section 4 of the Income Tax Act, 1962**

National Treasury only has access to data relating to classes of taxpayers for purposes of policy design and revenue estimation. This limited access is insufficient in the case of public entities given National Treasury's role in appropriating funds. The National Treasury is now given access to individual taxpayer data to the extent that the taxpayer involved is an entity as listed in the Public Finance Management Act, 1999, or the Local Government: Municipal Finance Management Act, 2003.

1.4 **Clauses 10 and 11 of Chapter II—Customs and Excise: Amendment of section 4 of the Customs and Excise Act, 1964**

The proposed amendment to subsection (8A)(a) is aimed at providing for the stopping, detention and examination of all goods under the control of the Commissioner, including ships, vehicles or any container contemplated in section 1(2), whether for the purposes of the Customs and Excise Act or any other law as contemplated in section 107(2)(a). The amendment also clearly vests the general power of examination which is required to give effect to the aims of the subsection in a customs officer.

1.5 **Clause 12 of Chapter II—Stamp Duties: Amendment of section 1 of the Stamp Duties Act, 1968**

The proposed amendment is consequential upon the introduction of electronic stamping. Adhesive revenue stamps and impressed stamps (franking machines) will be phased out and these provisions will become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the *Gazette*.

1.6 **Clause 13 of Chapter II—Value-Added Tax: Amendment of section 6 of the Value-Added Tax Act, 1991**

National Treasury only has access to data relating to classes of taxpayers for purposes of policy design and revenue estimation. This limited access is insufficient in the case of public entities and municipalities given National Treasury's role in appropriating funds. The National Treasury is now given access to individual taxpayer data to the extent that the taxpayer involved is an entity as listed in the Public Finance Management Act, 1999, or the Local Government: Municipal Finance Management Act, 2003.

1.7 **Clause 14 of Chapter II—Value-Added Tax: Amendment of section 23 of the Value-Added Tax Act, 1991**

The proposed amendment is consequential upon the deletion of paragraph (c) of the definition of "enterprise" in section 1. Furthermore the proposed amendment to paragraph (b) is also consequential upon the amendments contained in the Revenue Laws Amendment Act, 2005, to cater for foreign donor projects.

1.8 **Clause 15 of Chapter II—Value-Added Tax: Amendment of section 46 of the Value-Added Tax Act, 1991**

The term "local authority" is replaced by the term "municipality".

The proposed amendment is due to the term "local authority" becoming redundant as various Acts applicable to the local sphere of Government now refer to "municipalities". The proposed amendments to sections 1 (definitions of "grant" and "person"), 8(5), 8(5A), 10(14), 11(2)(s), 15(2A), 46(c), the proviso to sections 46, 48 and paragraph 5 of Schedule 1, are consequential upon the deletion of the definition of "local authority" and the insertion of the definition of "municipality" in section 1 of the VAT Act.

1.9 **Clause 16 of Chapter II—Value-Added Tax; Amendment of section 48 of the Value-Added Tax Act, 1991**

See the notes on Clause 15 above.

1.10 **Clause 17 of Chapter II—Value-Added Tax: Amendment to section 55 of the Valued Added Tax Act, 1991**

The proposed amendment changes the references to the relevant provisions in the Income Tax Act.

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 Portfolio Committee on Finance:

- Association for the Advancement of Black Accountants of Southern Africa;
- Banking Association South Africa;
- Business Unity South Africa;
- Deneys Reitz;
- PricewaterhouseCoopers;
- South African Institute of Chartered Accountants;
- South African Institute of Professional Accountants.

3. FINANCIAL IMPLICATIONS TO THE STATE

As the changes relate to the administration of the various tax Acts, it is not possible to quantify the financial implications for the State.

4. CONSTITUTIONAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, The South African Revenue Service and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, as it contains no provisions to which the procedure set out in section 76 of the Constitution applies.

5.2 The State Law Advisers, the South African Revenue Service and the National Treasury 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.