

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS SECOND AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 27663 of 7 June 2005)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 20—2005]

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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 amend the Customs and Excise Act, 1964, so as to further regulate an offence regarding the failure to export goods within the specified period; to substitute a definition; and to require the Commissioner to keep certain Explanatory Notes and to provide for their evidentiary value; to amend the Stamp Duties Act, 1968, so as to delete a certain definition and substitute another; to make further provision for the manner in which instruments shall be written and stamped and for persons liable to stamp instruments; and to repeal a certain requirement in respect of debit entries; to amend the Value-Added Tax Act, 1991, so as to amend a definition; to further regulate the periods when returns must be submitted and to effect certain consequential amendments relating thereto; and to effect certain textual amendments; to amend the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, so as to further regulate the period for submission of tax returns; and to amend the Taxation Laws Amendment Act, 2004, so as to further regulate the authority and responsibility to collect the payments referred to in Schedule 3 to that Act; and to provide for matters connected therewith.

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

Amendment of section 21 of Act 91 of 1964, as amended by section 9 of Act 105 of 1969, section 44 of Act 30 of 2002 and section 22 of Act 34 of 2004

1. Section 21 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3) for subparagraph (iii) of paragraph (d) of the following subparagraph: 5

“(iii) Where the importer fails to export the goods before the period of 6 months or any extended period lapses, the importer shall [—

(aa)] be guilty of an offence and shall— 10

[(bb)](aa) [except if the goods are restricted or prohibited under any law, enter all goods of such class or kind for home consumption and payment of duty or for such other purposes as may be authorised under the rules for this section or any other provision of this Act] cause such goods to be abandoned or destroyed as provided in this Act; 15

or

[(cc)](bb) [cause such goods to be abandoned or destroyed as provided in this Act] enter all goods of such class or kind for home consumption and payment of duty or for such other purposes as may be authorised under the rules for this section or any other provision of this Act, unless those goods are restricted or prohibited under any law.” 5

Amendment of section 21A of Act 91 of 1964, as inserted by section 121 of Act 60 of 2001 and amended by section 112 of Act 32 of 2004

2. Section 21A of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution in subsection (1) for the definition of “Industrial Development Zone” of the following definition: 10
 “‘Industrial Development Zone’ or ‘IDZ’ means an area designated by the Minister of Trade and Industry in terms of any regulation made **[under section 10(1)] in terms** of the Manufacturing Development Act, 1993 (Act No. 187 of 1993);”;
- (b) by the substitution for subsection (2) of the following subsection: 15
 “(2) Any reference in this section, any Schedule or any rule to ‘regulations’ or ‘regulation’ shall, unless otherwise specified, be a reference to the regulations made **[under section 10(1)] in terms** of the Manufacturing Development Act, 1993.”;
- (c) by the substitution for subsection (11) of the following subsection: 20
 “(11) Any amendment contemplated in subsection **[(11)] (10)** may be made with retrospective effect from such date as may be specified in such notice.”; and
- (d) by the substitution for subsection (13) of the following subsection: 25
 “(13) The provisions of section 48(6) shall apply *mutatis mutandis* to any amendment to which subsections (10), (11) **and** (12) **[and (13)]** relates.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, sections 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 6 of Act 68 of 1989, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002 and section 138 of Act 45 of 2003 30 35

3. (1) Section 47 of the Customs and Excise Act, 1964, is hereby amended by the addition to subsection (8) of the following paragraphs:

“(b) The Commissioner shall obtain and keep in his office two copies of such Explanatory Notes and shall effect thereto any amendment of which he is notified by the said Council from time to time and shall record the date of effecting each such amendment and any such amendment shall, for the purposes of this Act, be effective from the date so recorded. 40

(c) Whenever in any legal proceedings any question arises as to the contents of such Explanatory Notes or as to the date upon which any amendment thereto was effected, a copy of such Explanatory Notes as amended in terms of this subsection shall be accepted as sufficient evidence of the contents thereof and of the effective date of any amendment thereto.” 45

(2) Subsection (1) shall be deemed to have come into operation on 12 December 2001.

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 and section 73 of Act 32 of 2004 5

4. Section 1 of the Stamp Duties Act, 1968, is hereby amended— 10
- (a) by the deletion of the definition of “instalment credit agreement”; and
 - (b) by the substitution for the definition of “instrument” of the following definition: 15
- “instrument’** includes any written document or writing [and for the purposes of the duty contemplated in Item 6 of Schedule 1 in respect of any debit entry in an account, such a debit entry];”.

Amendment of section 6 of Act 77 of 1968, as amended by section 10 of Act 114 of 1977, section 6 of Act 118 of 1984, section 20 of Act 87 of 1988, section 8 of Act 32 of 1999 and section 75 of Act 32 of 2004

5. Section 6 of the Stamp Duties Act, 1968, is hereby amended by the substitution for subsection (1) of the following subsection: 20
- “(1) Every instrument [(other than any debit entry contemplated in Item 6 of Schedule 1)] shall be written in such manner, and shall be so stamped, that the stamp appears on the face of the instrument.”.

Amendment of section 7 of Act 77 of 1968, as amended by section 18 of Act 103 of 1969, section 10 of Act 89 of 1972, section 8 of Act 66 of 1973, section 3 of Act 70 of 1975, section 5 of Act 87 of 1982, section 7 of Act 118 of 1984, section 5 of Act 69 of 1989, section 55 of Act 19 of 2001, section 43 of Act 12 of 2003, section 156 of Act 45 of 2003, section 38 of Act 16 of 2004 and section 76 of Act 32 of 2004 25

6. (1) Section 7 of the Stamp Duties Act, 1968, is hereby amended— 30
- (a) by the deletion in subsection (1) of paragraph (iB); and
 - (b) by the deletion of subsection (2).
- (2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any debit entry made in an account on or after that date.

Repeal of section 19 of Act 77 of 1968, as substituted by section 6 of Act 69 of 1989 and amended by section 75 of Act 53 of 1999 and substituted by section 87 of Act 32 of 2004 35

7. (1) Section 19 of the Stamp Duties Act, 1968, is hereby repealed.
- (2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any debit entry made in an account on or after that date.

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004 and section 92 of Act 32 of 2004 40 45

8. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the addition to the definition of “**consideration**” of the following proviso: 50
- “:Provided that a deposit (other than a deposit on a returnable container), whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;”.

(2) Subsection (1) shall be deemed to have come into operation on 24 January 2005.

Amendment of 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 and section 178 of Act 45 of 2003

9. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the insertion in subsection (4) of the following proviso: 5

“: Provided that where that person is a public entity listed in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), which was liable to be registered as a vendor for any supplies made on or before 31 March 2005, but did not register before 1 April 2005, the Commissioner must not register that person in respect of those supplies.” 10

Amendment of section 25 of Act 89 of 1991, as amended by section 96 of Act 30 of 1998 and section 94 of Act 53 of 1999

10. (1) Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after paragraph (d) of the following paragraph: 15

“(dA) any change whereby the provisions of section 27(4B)(a) cease to apply in respect of that vendor;”.

(2) Subsection (1) shall come into operation on 1 August 2005.

Amendment of section 27 of Act 89 of 1991, as amended by section 34 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 28 of Act 136 of 1992, section 78 of Act 30 of 2000 and section 40 of Act 34 of 2004 20

11. (1) Section 27 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition to subsection (1) after “**Category E**” of the following Category: 25

“**‘Category F’** means the category of vendors whose tax periods are periods of four months ending on the last day of June, October and February of the calendar year.”;

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 30

“(a) Every vendor, not being a vendor who falls within category C, D, [or] E or F as contemplated in subsection (3), (4), [or] (4A) or (4B), shall fall within Category A or Category B.”;

(c) by the substitution in subsection (3) for the proviso of the following proviso: 35

“: Provided that a vendor falling within Category C shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if the vendor has applied in writing to be placed within Category A, B, D, [or] E or F and the Commissioner is satisfied that by reason of a change in the vendor’s circumstances he satisfies the requirements of this section for placing within Category A, B, D, [or] E or F.”; 40

(d) by the substitution in subsection (4) for the proviso of the following proviso: 45

“: Provided that a vendor falling within Category D shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if written application is made by the person who made the application referred to in paragraph (e) for the vendor to be placed within Category A, B, C, [or] E or F or the Commissioner is satisfied that by reason of a change in circumstances that vendor should be placed within Category A, B, C, [or] E or F.”; 50

(e) by the substitution in subsection (4A) for paragraph (ii) of the proviso of the following paragraph: 50

“(ii) the Commissioner is satisfied that by reason of a change in circumstances, that vendor should be placed in Category A, B, C, [or] D or F; or”; and

(f) by the insertion after subsection (4A) of the following subsection:

“(4B) A vendor (other than a vendor registered under section 50), shall fall within Category F if—

- (a) the total value of the taxable supplies of the vendor—
 - (i) has in the period of 12 months ending on the last day of any month not exceeded R1 million; and
 - (ii) is not likely to exceed that amount in the period of 12 months commencing at the end of the period referred to in subparagraph (i); and
- (b) the vendor has made written application to the Commissioner in such form as the Commissioner may prescribe, to be placed in Category F:

Provided that a vendor falling within Category F shall cease to fall within that Category with effect from a date notified by the Commissioner if—

- (i) written application is made by the vendor to be placed in a different Category;
- (ii) the Commissioner is satisfied that by reason of a change in circumstances that vendor should be placed within Category A, B, C, D or E; or
- (iii) the vendor has repeatedly made default in performing any of his obligations in terms of this Act.”

(2) Subsection (1) shall come into operation on 1 August 2005 and shall apply in respect of any tax period commencing on or after that date.

Renumbering of section 54A of Act 89 of 1991, as inserted by section 42 of Act 34 of 2004

12. (1) Section 54A of the Value-Added Tax Act, 1991, is hereby renumbered as section 41A.

(2) Subsection (1) shall come into operation on the date that Part 1A of Chapter III of the Income Tax Act, 1962, comes into operation.

Amendment of section 20 of Act 12 of 2003, as amended by section 61 of Act 16 of 2004

13. Section 20 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

- “(a) in respect of the tax relief contemplated in section 15 or 17, where the applicant or facilitator, as the case may be, fails to submit the tax return for the last year of assessment ending on or before 28 February 2003 by the later of—
- (i) a date determined by the amnesty unit[, **in the case where the applicant or facilitator was not registered for tax or the registration of the applicant or facilitator was dormant at the time that the application for amnesty was submitted**]; or
 - (ii) 31 March 2004 [, **in any other case**]; or”.

Substitution of paragraph 3 of Schedule 3 to Act 16 of 2004

14. (1) The following paragraph hereby substitutes paragraph 3 of Schedule 3 to the Taxation Laws Amendment Act, 2004:

“**3.** (1) The Commissioner for the South African Revenue Service has the authority and responsibility to collect the payments referred to in paragraph 2.

(2) The provisions of the Income Tax Act, 1962, contemplated in subsection (3) apply *mutatis mutandis* in respect of—

- (a) the administration of this Schedule as regards the exercise of powers and performance of duties and the preservation of secrecy;
- (b) statements, the production of information, documents or things, enquiries, searches and seizures and evidence on oath for purposes of obtaining full information in respect of the calculation of the payments required in terms of this Schedule;

- (c) any assessment, objection, appeal and settlement of dispute relating to the payment required in terms of this Schedule;
 - (d) the payment, recovery or refund of any amount, interest or penalty required in terms of this Schedule;
 - (e) any representative of a holder of a mining right, production right or mining permit or any prospecting right with a permission to remove and dispose of minerals or petroleum; 5
 - (f) any transaction, operation or scheme entered into or carried out for the purposes of avoiding or postponing any liability for the payment required in terms of this Schedule or of reducing the amount of that payment; 10
 - (g) reporting of unprofessional conduct; and
 - (h) the jurisdiction of the courts.
- (3) The provisions of the Income Tax, 1962, which apply to this Schedule are those relating to— 15
- (a) the administration of the Act as contained in Chapter 1 of that Act;
 - (b) returns, the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
 - (c) assessments, objections, appeals and settlement of disputes;
 - (d) the payment, recovery and refund of tax, interest and penalties; 20
 - (e) representative taxpayers and representative employers;
 - (f) transactions, operations or schemes for purposes of avoiding or postponing liability for taxes on income or reducing the amount of taxes on income;
 - (g) the reporting of unprofessional conduct; and 25
 - (h) the jurisdiction of the courts.”.

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

Short title

15. This Act is called the Taxation Laws Second Amendment Act, 2005. 30

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

1. OBJECTS OF THE BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. PERSONS AND INSTITUTIONS CONSULTED

The amendments introduced by this Bill were published on the SARS and National Treasury websites for public comment. Comments were received from interested parties. These included professional bodies and business institutions. The following made written representations to the Parliamentary Committees:

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

3. FINANCIAL IMPLICATIONS TO THE STATE

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

4. CONSTITUTIONAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers, the South African Revenue Service and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, as it contains no provision to which the procedure set out in section 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.