

REPUBLIC OF SOUTH AFRICA

SECOND REVENUE LAWS AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill)
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 25—2004]

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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 Transfer Duty Act, 1949, so as to prescribe further requirements for the estate agent in respect of the declaration to be furnished; to provide for a penalty where the estate agent fails to comply with the reporting requirements; to introduce provisions to deal with offences in respect of the evasion of duty; and to regulate the provisions relating to the publication of names of offenders and reporting of unprofessional conduct; to amend the Income Tax Act, 1962, so as to further regulate the provision which prescribes the notice to be issued by the Commissioner requiring returns for assessment of tax and the manner of furnishing returns; to make provision that a taxpayer must inform the Commissioner of any change of the taxpayer's address; to make provision for the registration of tax practitioners; to further regulate the duty of certain persons to furnish returns; to provide that it shall be an offence where a taxpayer fails to inform the Commissioner of any change in address or where a tax practitioner fails to register; to make provision for advance tax rulings; to further regulate the provisions relating to additional assessments; to further regulate the provisions relating to objection and appeal; and to make provision that any decision by the Commissioner not to remit certain penalties shall be subject to objection and appeal; to amend the Customs and Excise Act, 1964, so as to further regulate provisions relating to declarations by persons entering or leaving the Republic; to make provision for the storage of goods free of duty in a customs and excise warehouse; to provide for the payment of salvage from the proceeds of sale of uncleared goods; to further regulate provisions relating to international agreements requiring customs administration; to make provision for certain consequential changes arising from the provisions of the International Trade Administration Act, 2002; to amend obsolete references to "department"; to further regulate the limitation on refund and drawback claims; to effect textual amendments to the provisions relating to the institution of legal proceedings; to further regulate the provisions relating to electronic communication; to further regulate the provisions relating to wreck; to amend the Stamp Duties Act, 1968, so as to introduce provisions to deal with offences in respect of duty relating to marketable securities; to amend the Value-Added Tax Act, 1991, so as to make provision for a change in use adjustments; and to provide for advance tax rulings; to amend the Uncertificated Securities Tax Act, 1998, so as to provide for advance tax rulings; and to provide for a short title and commencement date; and to provide for matters relating thereto.

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

Amendment of section 14 of Act 40 of 1949, as amended by section 6 of Act 88 of 1974

1. Section 14 of the Transfer Duty Act, 1949, is hereby amended— 5
 - (a) by the substitution for subsection (1) of the following subsection:

“(1) Declarations appropriate to the manner of the acquisition of property in any particular case shall, in substance as near as possible to the wording of the forms prescribed by the Commissioner **[by notice in the Gazette]**, be completed by the parties to the transaction whereby the property has been acquired and, if the Commissioner so directs, also by the agent, auctioneer, broker or other person who acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.”; and 10
 - (b) by the addition of the following subsection after subsection (2):

“(3) An estate agent as contemplated in section 1 of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), who is entitled to any remuneration or other payment in respect of services rendered in connection with a transaction in terms of which a person acquired property contemplated in paragraphs (d), (e) or (f) of the definition of ‘property’, must within six months of the date of acquisition of that property submit details of that transaction to the Commissioner in a form prescribed by the Commissioner.” 15 20

Amendment of section 16 of Act 40 of 1949, as amended by section 6 of Act 45 of 2003 25

2. Section 16 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any person who has been appointed as an agent **[and has in his or her possession the documents referred to in subsection (1)]**, but fails to furnish **[these]** the documents contemplated in subsection (1) and the name of the person on whose behalf he or she is acting to the seller or his or her agent on the date specified in subsection (1) shall, for the purpose of the payment of the duty payable in respect of the acquisition of the property in question, be presumed, unless the contrary is proved, to have acquired the property for himself or herself.” 30 35

Amendment of section 17 of Act 40 of 1949, as amended by section 5 of Act 77 of 1964 and section 6 of Act 46 of 1996

3. Section 17 of the Transfer Duty Act, 1949, is hereby amended—
 - (a) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs: 40

“(c) without good cause, fails to—

 - (i) comply with any requirement; or
 - (ii) reply to or answer truly and fully any questions put to him, by any person acting under section 11C, 11D or 11E; **[or]**

(d) obstructs or hinders any officer in the carrying out of his duties; or”; and 45
 - (b) by the addition to subsection (1) of the following paragraph:

“(e) fails to comply with section 14(3).”

Insertion of section 17B in Act 40 of 1949

4. The following section is hereby inserted in the Transfer Duty Act, 1949, after section 17A: 50

“Offences and penalties in respect of the evasion of duty

17B. (1) Any person who with intent to evade the payment of any duty levied under this Act or to obtain any refund of duty under this Act to which

that person is not entitled or with intent to assist any other person to evade the payment of the duty payable by such other person under this Act or to obtain any refund of duty under this Act to which such other person is not entitled—

- (a) makes or causes or allows to be made any false statement or entry in any declaration prescribed by the Commissioner in terms of this Act, or signs any statement or declaration so rendered without reasonable grounds for believing it to be true; or 5
 - (b) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Commissioner or any person duly authorised by the Commissioner or any officer contemplated in section 10(2); or 10
 - (c) makes use of any fraud, art or contrivance whatsoever, or authorises the use of fraud, art or contrivance; or
 - (d) makes any false statement for the purposes of obtaining any refund of or exemption from duty, 15
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 60 months.

(2) A conviction for an offence in terms of this Act shall not exempt the person convicted from the payment of any duty, additional duty or penalty payable in accordance with the provisions of this Act.” 20

Substitution of section 20A of Act 40 of 1949, as inserted by section 12 of Act 30 of 1998

5. The following section is hereby substituted for section 20A of the Transfer Duty Act, 1949: 25

“Publication of names of offenders

20A. (1) The Commissioner may from time to time publish for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of such offence in terms of— 30

- (a) section 15 or 17;
- (b) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a), after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor. 35

(2) Every publication in terms of this section may specify—

- (a) the name and address of such person;
- (b) such particulars of the offence as the Commissioner may think fit;
- (c) the amount or estimated amount of the duty evaded;
- (d) the amount (if any) of the additional duty imposed and the particulars of the fine or sentence imposed.” 40

Insertion of sections 20C and 20D in Act 40 of 1949

6. (1) The following sections are hereby inserted in the Transfer Duty Act, 1949, after section 20B:

“Reporting of unprofessional conduct 45

20C. (1) For the purposes of this section ‘controlling body’ means any professional association, body or board which—

- (a) has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation; and 50
- (b) has power to take disciplinary action against any person who in the carrying on of such profession, calling or occupation fails to comply with or contravenes any rules or code of conduct laid down by that association, body or board.

(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any other person, done or omitted to do anything which in the opinion of the Commissioner—

(a) was intended to enable or assist that other person to avoid or unduly postpone the performance of any duty or obligation imposed on that other person by or under this Act, or to obtain any refund of duty under this Act to which that other person is not entitled, or by reason of negligence on the part of that person resulted in the avoidance or undue postponement of the performance of any such duty or obligation or the obtaining of any such refund; and

(b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by the body,

the Commissioner may lodge a complaint with the said controlling body.

(3)(a) The Commissioner may in lodging any complaint under subsection (2) disclose such information relating to the client's affairs as in the opinion of the Commissioner is necessary to lay before the controlling body to which the complaint is made.

(b) Before lodging any complaint or disclosing any information, the Commissioner must deliver or send to the client and the person against whom the complaint is to be made, a written notification of his or her intended action setting forth particulars of that information.

(c) The client or the said person may within 30 days after the date of the written notification lodge in writing with the Commissioner any objection he or she may have to the lodging of the complaint.

(d) If on the expiry of the period of 30 days no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may thereupon lodge the complaint as contemplated in subsection (2).

(4) The complaint must be considered by the controlling body to which it is made and may be dealt with by it in such manner as the controlling body in terms of its rules sees fit: Provided that any hearing of the matter shall not be public and may only be attended by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.

(5) The controlling body with which a complaint is lodged and its members shall at all times preserve and aid in preserving secrecy in regard to such information as to the affairs of the client as may be conveyed to them by the Commissioner or as may otherwise come to their notice in the investigation of the Commissioner's complaint and shall not communicate such information to any person whatsoever other than the client concerned or the person against whom the complaint is lodged, unless the disclosure of such information is ordered by a competent court of law.

Advance Tax Rulings

20D. (1) The provisions relating to advance tax rulings contained in Part 1A of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for purposes of this Act.

(2) Any procedures and guidelines issued by the Commissioner in terms of section 76S of the Income Tax Act, 1962, for implementation and operation of the advance tax ruling system apply *mutatis mutandis* for purposes of this Act.”.

(2) Subsection (1) shall—

(a) to the extent that it inserts section 20C in the Transfer Duty Act, 1949, come into operation on the date of promulgation of this Act; and

(b) to the extent it inserts section 20D in the Transfer Duty Act, 1949, come into operation on the date or dates that Part 1A of Chapter III of the Income Tax Act, 1962, comes into operation.

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001, section 26 of Act 30 of 2002, section 38 of Act 74 of 2002, section 61 of Act 45 of 2003 and section 18 of Act 16 of 2004 5

7. Section 66 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Commissioner **[shall]** must annually give public notice that all persons who are personally or in a representative capacity liable to taxation under **[the provisions of]** this Act or who are required to furnish returns for the assessment of tax, **[shall within sixty days after the date of such notice, or within such further time as the Commissioner may for good cause allow,]** must furnish returns within the period prescribed in that notice, or such longer period as the Commissioner may allow, for the purposes of assessments in respect of the years of assessment specified in **[such]** that notice.”. 10 15

Amendment of section 67 of Act 58 of 1962, as inserted by section 62 of Act 45 of 2003

8. Section 67 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (1) of the following subsection: 20

“(1A) If a person’s address which is normally used by the Commissioner for any correspondence with that taxpayer at any time changes, that person must, within 60 days after that change, inform the Commissioner of the new address for correspondence.”; and

(b) by the substitution for subsection (2) of the following subsection: 25

“(2) **[Subsection (1) does]** Subsections (1) and (1A) do not apply in respect of any person whose income is derived solely from net remuneration, as defined in paragraph 11B of the Fourth Schedule, and the employees’ tax required to be deducted or withheld from that net remuneration under the Fourth Schedule consists solely of Standard Income Tax on Employees.”. 30

Insertion of section 67A in Act 58 of 1962

9. The following section is hereby inserted in the Income Tax Act, 1962, after section 67:

“Registration of tax practitioners 35

67A. (1) Every natural person who—

(a) provides advice to any other person with respect to the application of any Act administered by the Commissioner; or
(b) completes or assists in completing any document to be submitted to the Commissioner by any other person in terms of any such Act, must register with the Commissioner as a tax practitioner, in such form as the Commissioner may determine, at the later of 30 June 2005 or 30 days after the date on which that person for the first time so provides advice or completes or assists in completing any such document. 40

(2) The provisions of this section do not apply in respect of a person who— 45

(a) provides advice or completes or assists in completing any document, as contemplated in subsection (1), solely for no consideration to that person or his or her employer or connected person in relation to that employer; 50
(b) provides advice contemplated in subsection (1) solely in anticipation of any litigation to which the Commissioner is a party, or in the course of such litigation;
(c) provides advice contemplated in subsection (1) solely as an incidental or subordinate part of providing goods or other services to another person; 55

- (d) provides advice or completes or assists in completing any document, as contemplated in subsection (1) solely—
 - (i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of that employer and connected persons in relation to that employer; or
 - (ii) under the direct supervision of any person who is registered as a tax practitioner in terms of subsection (1); or
- (e) provides advice solely with respect to the application of the Customs and Excise Act, 1964 (Act No. 91 of 1964), or completes or assists in completing any documents for purposes of that Act.”.

Amendment of section 69 of Act 58 of 1962, as amended by section 41 of Act 30 of 1998 and section 39 of Act 74 of 2002

10. Section 69 of the Income Tax Act, 1962, is hereby amended by the addition to subsection (1) of the following paragraphs:
- “(g) all amounts received by or accrued to or in favour of any employee or former employee of that person in respect of the disposal of any qualifying equity share contemplated in section 8B within 5 years from the date of grant of that qualifying equity share;
 - (h) in the case where that person is a medical scheme contemplated in paragraph (b) of the definition of ‘benefit fund’—
 - (i) the names and addresses of all the members who contribute to that medical scheme;
 - (ii) the amounts of those contributions; and
 - (iii) all amounts paid by that medical scheme on behalf of any member which must be refunded to the medical scheme by the member;
 - (i) in the case where that person is a pension fund, a provident fund or a retirement annuity fund—
 - (i) the names and addresses of all the members who contribute to that fund; and
 - (ii) the amounts of those contributions;”.

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996, section 39 of Act 53 of 1999, section 44 of Act 30 of 2000, section 23 of Act 5 of 2001, section 18 of Act 19 of 2001, section 52 of Act 60 of 2001, section 45 of Act 74 of 2002, section 68 of Act 45 of 2003 and section 19 of Act 16 of 2004

11. (1) Section 75 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (aA) of the following paragraph:
 - “(aA) any person who fails to register as a taxpayer or to inform the Commissioner of any change in address as contemplated in section 67;”;
 - (b) by the insertion in subsection (1) after paragraph (aA) of the following paragraph:
 - “(aB) any person who fails to register as a tax practitioner as contemplated in section 67A;”.
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any failure on or after that date.

Insertion of Part IA in Chapter III of Act 58 of 1962

12. (1) The following Part is hereby inserted in Chapter III of the Income Tax Act, 1962, after Part I:

“PART IA

ADVANCE TAX RULINGS

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Definitions

76B. For purposes of this Part, unless the context otherwise indicates—

‘**advance tax ruling**’ means a written statement issued by the Commissioner regarding the interpretation or application of the Act and is limited to a binding general ruling under section 76P, a binding private ruling under section 76Q, or a binding class ruling under section 76R; 10

‘**applicant**’ means a person who applies for a binding private ruling under section 76Q or a binding class ruling under section 76R;

‘**application**’ means an application for a binding private ruling under section 76Q or a binding class ruling under section 76R; 15

‘**binding class ruling**’ means an advance tax ruling regarding the application or interpretation of the Act to a specific class of persons in respect of a proposed transaction that is issued in accordance with the requirements of section 76R in response to an application by an applicant;

‘**binding general ruling**’ means an advance tax ruling, issued in accordance with the requirements of section 76P, regarding— 20

(a) the interpretation of the Act; or

(b) the application or interpretation of the Act in respect of a particular set of facts and circumstances or transaction;

‘**binding private ruling**’ means an advance tax ruling regarding the application or interpretation of the Act in respect of a proposed transaction that is issued in accordance with the requirements of section 76Q in response to an application by an applicant; 25

‘**class member**’ means a member of the class to which a binding class ruling applies, such as a shareholder in a company or an employee participant in a share investment scheme; 30

‘**entity**’ means a person, other than a natural person, which may apply for a binding class ruling on behalf of its shareholders or members in respect of a proposed transaction to which it is a party and includes a company, close corporation or trade association: Provided that an entity does not include a professional firm acting or purporting to act on behalf of a client; 35

‘**nonbinding private opinion**’ means a written statement issued by the Commissioner in response to an inquiry by a person in order to provide the person with informal guidance in respect of the tax treatment of a particular set of facts and circumstances or transaction, but which does not have any binding effect within the meaning of section 76H; 40

‘**transaction**’ means any transaction, deal, business, arrangement, operation or scheme (collectively, ‘transaction’) and includes a series of transactions. 45

Purpose

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76C. The purpose of the advance tax ruling system is to promote clarity, consistency, and certainty regarding the interpretation and application of the Act.

Scope

76D. The Commissioner may make an advance tax ruling on any provision of this Act. 50

Form and content of applications

- 76E.** (1) Subject to the minimum requirements set forth in subsection (2) of this section, an application must be made in such manner and in such form as the Commissioner may prescribe.
- (2) An application must state the following minimum information—
- (a) the applicant's name, applicable identification or tax registration number, postal address and telephone number;
 - (b) the name, postal address and telephone number of the applicant's representative, if any;
 - (c) a complete description of the proposed transaction in respect of which the ruling is sought;
 - (d) a complete description of the impact the proposed transaction may have upon the tax liability of the applicant or, where relevant, any connected person in relation to the applicant, including any and all relevant information regarding the financial or tax implications of the proposed transaction;
 - (e) a complete description of any transactions entered into by the applicant prior to submitting the application or that may be undertaken after the completion of the proposed transaction which may have a bearing on the tax consequences of the proposed transaction or may be considered to be part of a series of transactions involving the proposed transaction;
 - (f) the proposed ruling being sought;
 - (g) the relevant statutory provisions or issues;
 - (h) the reasons why the applicant believes that the proposed ruling should be granted;
 - (i) a statement of the applicant's interpretation of the relevant statutory provisions or issues, as well as an analysis of any relevant authorities either considered by the applicant or of which the applicant is aware, whether those authorities support or are contrary to the proposed ruling being sought;
 - (j) a statement, to the best of the applicant's knowledge, that the same or substantially similar issue upon which the ruling is sought is not the subject of an audit, examination, investigation, ruling application, objection and appeal, or other proceeding currently before the Commissioner or the courts involving the applicant or a connected person in relation to the applicant;
 - (k) a draft version of the binding private ruling or binding class ruling to be issued;
 - (l) a description of the information that the applicant believes should be deleted from the final ruling before publication in order to protect the applicant's confidentiality; and
 - (m) the applicant's consent to the publication of the ruling by the Commissioner in accordance with section 76O.
- (3) In addition to the minimum information required by subsection (2) of this section, an application for a binding class ruling must also state the following minimum information—
- (a) a description of the class members; and
 - (b) the impact the proposed transaction may have upon the liability of the class members or, where relevant, any connected person in relation to the applicant or to any class member.
- (4) The Commissioner may request additional information from an applicant at any time.
- (5) An application must be accompanied by the application fee prescribed by the Commissioner pursuant to section 76F(1).

Fees

- 76F.** (1) In order to defray the cost of the advance tax ruling system, the Commissioner must prescribe fees for the issuance of binding private rulings and binding class rulings, including—
- (a) an application fee; and

(b) a cost recovery fee.

(2) Following the acceptance of an application, the Commissioner must, if requested, provide the applicant with an estimate of the cost recovery fee anticipated in connection with that application and must notify the applicant if it subsequently appears that this estimate may be exceeded.

(3) The fees imposed by this section constitute fees imposed by SARS within the meaning of section 5(1)(h) the South African Revenue Services Act, 1997, and constitute funds of SARS within the meaning of section 24 of that Act.

Exclusions, refusals and rejections

76G. (1) Notwithstanding any provision to the contrary in this Act, the Commissioner may not accept an application for an advance tax ruling in any of the following circumstances—

- (a) the application requests or requires the rendering of an opinion, conclusion or determination regarding or in respect of any of the following:
 - (i) the market value of an asset;
 - (ii) the application or interpretation of the laws of a foreign country;
 - (iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant (or to a class member in the case of an application for a binding class ruling);
 - (iv) the constitutionality of any tax law; or
 - (v) a proposed transaction that is hypothetical or not seriously contemplated;
 - (b) the application relates to the duty of an employer to determine whether a person is an independent contractor, labour broker, personal service company or personal service trust;
 - (c) the application is submitted for academic purposes; or
 - (d) the application presents, contains, or raises—
 - (i) a frivolous or vexatious issue;
 - (ii) alternative courses of action by the applicant (or requests or requires the rendering of an opinion, conclusion or determination regarding such alternative courses of action); or
 - (iii) an issue that is the same as or substantially similar to an issue that is—
 - (aa) currently before the Commissioner in connection with an audit, examination, investigation or other proceeding involving the applicant or any connected person in relation to the applicant (or, in the case of a binding class ruling, in relation to the applicant or any class member);
 - (bb) the subject of draft legislation; or
 - (cc) pending before the courts.
- (2) In addition to the exclusions and refusals set forth in subsections (1) of this section, the Commissioner may reject any application regarding or in respect of any of the following—
- (a) the application or interpretation of any general or specific anti-avoidance provision, including but not limited to section 103 of this Act, as well as the application or interpretation of any anti-avoidance doctrine, principle or mechanism;
 - (b) an issue—
 - (i) that is of an inherently or distinctly factual nature;
 - (ii) in respect of which material facts cannot be established at the time of the application;
 - (iii) the resolution of which would depend upon assumptions to be made regarding a future event or other matters which cannot be reasonably determined at the time of the application;
 - (iv) which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation;

- (v) which is the same as or substantially similar to an issue upon which the applicant has already received a ruling;
 - (vi) in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction and that other party has not applied for a ruling; or
 - (vii) in respect of a transaction that is part of another transaction which has a bearing on that issue and the details of that other transaction have not been disclosed; or
- (c) a matter the resolution of which would be unduly time-consuming or resource intensive.
- (3) In addition to the exclusions and refusals set forth in subsections (1) and (2) of this section, the Commissioner may publish lists of issues in respect of which applications will not be accepted.
- (4) If the Commissioner requests additional information in respect of or in connection with an application and the applicant fails or refuses to provide that information, the Commissioner may reject that application without any refund or rebate of any applicable fees imposed under section 76F.

Binding effect

- 76H.** (1) Except to the extent otherwise provided in sections 76K, 76L and 76M, if an advance tax ruling applies to a person in accordance with section 76J, then the Commissioner must interpret or apply the Act to that person in accordance with that advance tax ruling (referred to as “binding effect” for purposes of this Part).
- (2) An advance tax ruling does not have any binding effect upon the Commissioner unless that advance tax ruling applies to that person in accordance with section 76J.
- (3) A binding general ruling may be cited by the Commissioner or any person in any proceeding before the Commissioner or the courts.
- (4) A binding private ruling may not be cited in any proceeding before the Commissioner or the courts other than a proceeding involving the applicant for that ruling.
- (5) A binding class ruling may not be cited in any proceeding before the Commissioner or the courts by any person other than a proceeding involving the applicant for that ruling or an affected class member identified in the ruling.
- (6) A publication or other written statement issued by the Commissioner does not have any binding effect unless it is a binding general ruling under section 76P, a binding private ruling under section 76Q, or a binding class ruling under section 76R.

Nonbinding private opinions and other written statements

- 76I.** (1) The Commissioner may issue a nonbinding private opinion to a person regarding the tax treatment of a particular set of facts and circumstances or a particular transaction.
- (2) A nonbinding private opinion does not have any binding effect upon the Commissioner.
- (3) A nonbinding private opinion may not be cited in any proceeding before the Commissioner or the courts other than a proceeding involving the person to whom the nonbinding private opinion was issued.
- (4) With respect to any written statement issued by the Commissioner prior to the effective date of this Part, the Commissioner may prescribe, in writing, the extent to which, if any, such statement has binding effect.
- (5) Except to the extent the Commissioner prescribes otherwise in accordance with subsection (4) of this section, any written statement issued by the Commissioner prior to the effective date of this Part is to be treated as and have the effect of a nonbinding private opinion.

Applicability of advance tax rulings

- 76J.** (1) For purposes of section 76H, an advance tax ruling applies to a person only if all of the following conditions have been satisfied—
- (a) the provision or provisions of the Act at issue are the subject of the advance tax ruling; 5
 - (b) the set of facts and circumstances or the transaction presented by the person are the same as the particular set of facts and circumstances or the particular transaction specified in the advance tax ruling; 10
 - (c) the person's set of facts and circumstances or transaction fall entirely within the effective period for the effective period of the advance tax ruling; and
 - (d) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the advance tax ruling have been satisfied or carried out. 15
- (2) In addition to the requirements set forth in subsection (1) of this section—
- (a) in the case of a binding private ruling, the ruling applies to a person only if that person is the applicant identified in the ruling; and
 - (b) in the case of a binding class ruling, the ruling applies to a person only if that person is either the applicant identified in the ruling or a class member identified in the ruling. 20

Rulings rendered void due to fraud, misrepresentation, etc

- 76K.** (1) Notwithstanding any provision to the contrary in this Act, a binding private ruling or binding class ruling is rendered void *ab initio* under any of the following circumstances— 25
- (a) the facts stated in the application regarding the proposed transaction are materially different from the transaction actually carried out;
 - (b) there is fraud, misrepresentation or nondisclosure of a material fact; or
 - (c) any condition or assumption stipulated by the Commissioner is not satisfied or carried out. 30
- (2) For purposes of this section, a fact is considered material if it would have resulted in a different ruling had the Commissioner been aware of it when the original ruling was made.

Impact of subsequent changes in tax law

- 76L.** (1) Notwithstanding any provision to the contrary contained in this Act, an advance tax ruling ceases to be effective upon the occurrence of any of the following circumstances— 35
- (a) if the provision of the Act that was the subject of the advance tax ruling is repealed or amended, the advance tax ruling will cease to be effective from the date that such repeal or amendment is effective; 40
 - (b) if a court overturns or modifies an interpretation of the Act on which the advance tax ruling is based, the advance tax ruling will cease to be effective from the date of judgment unless—
 - (i) the decision is under appeal;
 - (ii) the decision is fact-specific and the general interpretation upon which the advance tax ruling was based was unaffected; or 45
 - (iii) the reference to the interpretation upon which the advance tax ruling was based was *obiter dicta*.
- (2) An advance tax ruling ceases to be effective immediately upon the occurrence of the circumstances described in subsection (1) of this section, whether or not the Commissioner publishes a notice of withdrawal or modification. 50

Withdrawal or modification

76M. (1) The Commissioner may withdraw or modify an advance tax ruling at any time, subject to the requirements of this section.

(2) Notice of the withdrawal or modification of an advance tax ruling must be published in such manner and media as the Commissioner may deem appropriate. 5

(3) The notice of withdrawal or modification may be made in such manner and in such form as the Commissioner may prescribe: Provided that such notice must include the following information—

(a) the title or number of the advance tax ruling being withdrawn or modified; 10

(b) if a modification, a summary of the changes made; and

(c) the effective date of the withdrawal or modification.

(4) If the advance tax ruling is either a binding private ruling or a binding class ruling, the Commissioner must first provide the applicant with notice of the proposed withdrawal or modification and a reasonable opportunity to state any proposition of law or fact relevant to the decision to withdraw or modify the ruling. 15

Retrospective Effect

76N. (1) The Commissioner may withdraw or modify an advance tax ruling with retrospective effect, subject to the requirements of this section. 20

(2) The effective date for the withdrawal or modification of a binding general ruling issued in error may not be earlier than the date of publication of the notice of that withdrawal or modification.

(3) The Commissioner may withdraw or modify a binding private ruling or a binding class ruling retrospectively if that ruling was made in error and any of the following circumstances apply— 25

(a) the applicant has not yet commenced the proposed transaction;

(b) there is any person other than the applicant (or class member, in the case of a binding class ruling) who will suffer significant tax disadvantage if the ruling is not withdrawn or modified and the applicant will suffer comparatively less if the ruling is withdrawn or modified; or 30

(c) the effect of the ruling will materially erode the South African tax base and it is in the public interest to withdraw or modify the ruling retrospectively. 35

(4) A binding general ruling which is interpretative and is limited to providing details, supplementary information, examples, illustrations or elaborations of existing tax law, policy, or practice, applies from the effective date of the provision which is the subject of that ruling unless otherwise stated in that general binding ruling. 40

Publication and protection of confidentiality

76O. (1) A person applying for an advance tax ruling must consent to the publication of the advance tax ruling in accordance with this section.

(2) Binding private rulings and binding class rulings must be published by the Commissioner for general information in such form as does not reveal the identity of the applicants or class members. 45

(3) Information that may reveal the identity of an applicant or class member includes the following—

(a) the name, address, and other identifying details of the applicant, as well as any person identified or referred to in the ruling; 50

(b) in the case of a binding class ruling, the name, address, and other identifying details of the applicant for the ruling, as well as of any member of the class to which the ruling applies; and

(c) any information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. 55

(4) Pursuant to section 76Q(7) or section 76R(7), the Commissioner must consider, prior to publication, any comments and proposed edits and

deletions submitted by an applicant: Provided that the Commissioner's determination regarding the contents of the published ruling is final.

(5) The application or interpretation of the Act to a transaction does not constitute and may not be treated as information that may reveal the identity of an applicant or class member or constitute an unwarranted invasion of personal privacy within the meaning of subsection (3) of this section.

(6) An applicant for a binding class ruling may consent in writing to the inclusion of information identifying it or the proposed transaction in order to facilitate communication with the class members.

(7) The Commissioner must treat the publication of the withdrawal or modification of a binding private ruling or a binding class in the same manner and subject to the same requirements as the publication of the original ruling.

Binding General Rulings

76P. (1) The Commissioner may, at any time, make binding general rulings.

(2) A binding general ruling may be effective for either—

- (a) a particular year of assessment or other definite period; or
- (b) an indefinite period.

(3) A binding general ruling must state—

- (a) that it is a binding general ruling made under this section;
- (b) the provisions of the Act which are the subject of the binding general ruling; and
- (c) either—

- (i) the year of assessment or other definite period for which it applies; or

- (ii) in the case of a binding general ruling for an indefinite period, that it is for an indefinite period and the date or year of assessment from or beginning with which it applies.

(4) Subject to the minimum requirements set forth in subsection (3) of this section, binding general rulings may be issued in such form and in such manner as the Commissioner may prescribe, including but not limited to interpretation notes and practice notes.

(5) A publication or other written statement does not constitute and may not be considered or treated as a binding general ruling unless it contains the information prescribed by subsection (3) of this section.

Binding Private Rulings

76Q. (1) The Commissioner may issue binding private rulings regarding the application or interpretation of a provision or provisions of the Act to a proposed transaction upon application by a person in accordance with the requirements of section 76E.

(2) The Commissioner may make a binding private ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding private ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner must issue the final binding private ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued.

(5) A binding private ruling may be issued in such manner and in such form as the Commissioner may prescribe: Provided that it must state the following—

- (a) a statement identifying it as a binding private ruling made under this section;
- (b) the name, tax number, and postal address of the applicant;
- (c) the relevant statutory provisions or issues;
- (d) a description of the proposed transaction;

- (e) the specific ruling made;
 - (f) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling; and
 - (g) the period for which the ruling is valid.
- (6) Subject to the requirements of section 76O, binding private rulings must be published in such manner and in such form as the Commissioner may prescribe.
- (7) Prior to final publication, the Commissioner must provide the applicant with a draft copy of the edited ruling for review and comment.

Binding Class Rulings

- 76R.** (1) The Commissioner may issue binding class rulings regarding the application or interpretation of a provisions or provisions of the Act to a proposed transaction upon application by a person in accordance with the requirements of section 76E.
- (2) The Commissioner may make a binding class ruling subject to such conditions and assumptions as may be prescribed in the ruling.
- (3) The Commissioner must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding class ruling to be made would differ materially from the proposed ruling sought by the applicant.
- (4) The Commissioner must issue the final binding class ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued.
- (5) A binding class ruling may be issued in such manner and in such form as the Commissioner may prescribe: Provided that it must state the following—
- (a) a statement identifying it as a binding class ruling made under this section;
 - (b) the name, tax number, and postal address of the applicant;
 - (c) a list or a description of the affected class members;
 - (d) the relevant statutory provisions or issues;
 - (e) a description of the proposed transaction;
 - (f) the specific ruling made;
 - (g) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling; and
 - (h) the period for which the ruling is valid.
- (6) Subject to the requirements of section 76O, binding class rulings must be published in such manner and in such form as the Commissioner may prescribe.
- (7) Prior to final publication, the Commissioner must provide the applicant with a draft copy of the edited ruling for review and comment.
- (8) It is the sole and exclusive responsibility of the applicant to communicate with the affected class members regarding the application for the binding class ruling, the issuance, withdrawal or modification of such ruling, or any other information or matters pertaining to such ruling.

Procedures and Guidelines

- 76S.** The Commissioner may issue procedures and guidelines, in the form of binding general rulings, for implementation and operation of the advance tax ruling system established by this Part.”
- (2) Subsection (1) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette* and the President may fix different dates for different provisions of Part IA of Chapter III of the Income Tax Act, 1962.

Amendment of section 78 of Act 58 of 1962, as amended by section 25 of Act 5 of 2001, section 27 of Act 30 of 2002 and section 47 of Act 74 of 2002

13. Section 78 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1A) for item (ii) of paragraph (a) of the following item:

- “(ii) any funds in foreign currency or assets outside the Republic from which any income or capital gain would be attributable to that resident during the relevant year of assessment in terms of section 7 or Part X of the Eighth Schedule,”.

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 and section 26 of Act 5 of 2001

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

- (a) by the substitution in subsection (1) for paragraphs (i) and (ii) of the proviso of the following paragraphs:

- “(i) after the expiration of three years from the date of the assessment (if any) in terms of which any amount which should have been assessed to tax under such assessment was not so assessed or in terms of which the amount of tax assessed was less than the amount of such tax which was properly chargeable, unless—

(aa) the Commissioner is satisfied that the fact that the amount which should have been assessed to tax was not so assessed or the fact that the full amount of tax chargeable was not assessed, was due to fraud or misrepresentation or non-disclosure of material facts; or

(bb) the Commissioner and the taxpayer agree otherwise prior to the expiry of that three year period; or

- (ii) in respect of any tax referred to in paragraph (c), after the expiration of three years from the date of payment of any amount paid in respect of such tax unless—

(aa) the Commissioner is satisfied that the fact that such tax was not paid in full was due to fraud or misrepresentation or non-disclosure of material facts; or

(bb) the Commissioner and the taxpayer agree otherwise prior to the expiry of that three year period; or”; and

- (b) by the substitution in subsection (1) for the second proviso of the following proviso:

“Provided further that where the Commissioner has in respect of any year of assessment made an assessment upon any company for normal tax purposes, he or she shall not after the expiration of three years from the date of the said assessment (or, where more than one such assessment has been made, from the date of the latest of such assessments), or such longer period as the company and the Commissioner may agree prior to the expiry of that three year period, make any assessment in respect of any amount of **[undistributed profits tax or]** secondary tax on companies payable by the company in respect of **[the said]** any dividend declared during that year, unless the Commissioner is satisfied that the fact that an assessment in respect of the said amount was not previously made was due to fraud or misrepresentation or non-disclosure of material facts;”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any agreement entered into on or after that date.

Amendment of section 81 of Act 58 of 1962, as amended by section 27 of Act 69 of 1975, section 15 of Act 70 of 1989, section 53 of Act 60 of 2001 and section 71 of Act 45 of 2003

15. Section 81 of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (6).

Amendment of section 83 of Act 58 of 1962, as amended by section 21 of Act 90 of 1964, section 22 of Act 103 of 1976, section 15 of Act 104 of 1979, section 19 of Act 96 of 1985, section 16 of Act 70 of 1989, section 36 of Act 129 of 1991, section 36 of Act 113 of 1993, section 30 of Act 28 of 1997, section 45 of Act 30 of 2000, section 54 of Act 60 of 2001, section 29 of Act 30 of 2002 and section 72 of Act 45 of 2003 5

16. Section 83 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1C) for the words preceding paragraph (a) of the following words:

“(1C) The Commissioner may alter any assessment against which an appeal has been noted, as contemplated in subsection (1), where the Commissioner has conceded that appeal or resolved a dispute in terms of the alternative dispute resolution procedures prescribed in the rules contemplated in section 107A(2), in whole or in part, at any stage before—”.

Amendment of section 89quat of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984, substituted by section 22 of Act 65 of 1986 and amended by section 18 of Act 70 of 1989, section 42 of Act 113 of 1993, section 15 of Act 140 of 1993, section 33 of Act 21 of 1995, section 24 of Act 36 of 1996, section 50 of Act 59 of 2000, section 29 of Act 5 of 2001 and section 49 of Act 74 of 2002 15

17. Section 89quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “credit amount” of the following paragraph: 20

“(a) the provisional tax paid by the taxpayer under the provisions of paragraph 21 [22] or 23 of the Fourth Schedule in respect of such year;”.

Amendment of paragraph 6 of Fourth Schedule to Act 58 of 1962, as amended by section 83 of Act 45 of 2003

18. (1) Paragraph 6 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph: 25

“(4) Any decision by the Commissioner not to remit any penalty under subparagraph (2) or to impose any penalty under subparagraph (2A), shall be subject to objection and appeal.”.

(2) Subsection (1) shall be deemed to have come into operation on 22 December 2003. 30

Substitution of paragraph 11A of Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969 and amended by section 47 of Act 28 of 1997

19. The following paragraph hereby substitutes paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962: 35

“11A. (1) Where by virtue of the provisions of paragraph (b), (d) or (e) of the definition of ‘remuneration’ in paragraph 1, the remuneration of an employee includes—

- (a) any gain made by the exercise, cession, or release of any right to acquire any marketable security as contemplated in section 8A [of this Act]; 40
- (b) the market value of any qualifying equity share as defined in section 8B; or
- (c) any gain made are a result of the vesting of any equity instrument as contemplated in section 8C,

the amount of [such] that gain [shall] or that market value must for the purposes of this Schedule be deemed to be an amount of remuneration which is payable to [such] that employee by the employer by whom [such] that right was granted or from whom that equity instrument or qualifying equity share was acquired, as the case may be. 45

(2) [Employees] Employees’ tax in respect of the [said] amount of remuneration [shall] contemplated in subparagraph (1) must, unless the Commissioner has granted authority to the contrary, be deducted or withheld by [the said] that employer from any consideration paid or payable by him or her to [the said] that employee in respect of the cession, or release of [the said] that right or the disposal of that equity instrument or qualifying equity share, as the case may be, or from any cash remuneration paid or payable by [the said] that employer to [the said] that employee after [the said] that right has to the knowledge of [the said] that 50 55

employer been exercised, ceded, or released or that equity instrument has to the knowledge of that employer vested or that qualifying equity share has to the knowledge of that employer been disposed of.

(3) The provisions of this Schedule **[shall]** apply in relation to the amount of **[employees]** employees' tax deducted or withheld under subparagraph (2) as though **[such]** that amount had been deducted or withheld from the amount of the gain or in respect of the market value, as the case may be, referred to in subparagraph (1). 5

(4) Before deducting or withholding employees tax under subparagraph (2) in respect of remuneration contemplated in subparagraph (1)(a) or (c), the **[said]** employer **[shall]** must ascertain from the Commissioner the amount to be so deducted or withheld. 10

(5) If **[the said]** that employer is, by reason of the fact that the amount to be deducted or withheld by way of **[employees]** employees' tax exceeds the amount from which the deduction or withholding is to be made, unable to deduct or withhold the full amount of **[employees]** employees' tax during the year of assessment during which the gain arises or the qualifying equity share is disposed of, as the case may be, he **[shall]** or she must immediately notify the Commissioner of the fact. 15

(6) Where an employee has under any transaction to which the employer is not a party made any gain **[referred to]** or an employee has disposed of any qualifying equity share as contemplated in subparagraph (1), **[such]** that employee **[shall forthwith]** must immediately inform the employer thereof and of the **[fact that such gain has been made and of the]** amount of **[such]** that gain or the market value of that qualifying equity share, as the case may be. 20

(7) Any employee who without just cause shown by him or her fails to comply with the provisions of subparagraph (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000." 25

Amendment of section 15 of Act 91 of 1964, as amended by section 2 of Act 98 of 1970, section 2 of Act 89 of 1984, section 4 of Act 101 of 1985 and section 12 of Act 59 of 1990 30

20. Section 15 of the Customs and Excise Act, 1964, is hereby amended by the deletion in subsection (1)(a) of the word "or" at the end of subparagraph (ii) and the insertion in that subsection of the word "or" at the end of subparagraph (iii), and the addition to that subsection of the following subparagraph: 35

"(iv) were required to be declared before leaving the Republic as contemplated in paragraph (b).".

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, section 11 of Act 45 of 1995, section 48 of Act 53 of 1999, section 37 of Act 19 of 2001, section 119 of Act 60 of 2001 and section 102 of Act 74 of 2002 40

21. Section 18 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (8) of the following subsection:

"(8) Goods removed in bond shall not be delivered or removed from the control of the **[department]** Controller at the place of destination in the Republic except upon due entry according to the first account taken of such goods on landing or on entry for removal in bond thereof or according to the contents of the packages containing such goods as reflected on the invoice issued by the supplier in respect of such goods, and payment of any duty due, including, subject to the provisions of **[subsection (18) of section seventy five]** section 75(18) any duty due on any deficiency." 45 50

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

22. Section 21 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) (a) Notwithstanding anything to the contrary contained in this Act, the Commissioner may, subject to such exception or adaptation prescribed in this subsection or as the Commissioner may prescribe by rule, licence a special customs and excise storage warehouse in terms of the provisions of this Act for the storage—
- (i) for export of any imported goods which are free of duty; or
 - (ii) of any other goods for such purposes as may be prescribed by rule.
- (b) Notwithstanding anything to the contrary contained in any other provision of this Act, imported goods free of duty stored in such warehouse shall, for the purposes of the application of any provision of this Act, be deemed to be goods liable to duty.
- (c) For the purposes of paragraph (a) only importers accredited in terms of section 64E may store goods which are free of duty in such warehouse.
- (d) (i) Notwithstanding the provisions of section 19(9)(a), no goods to which this subsection relates shall be stored in such warehouse for a period of longer than 6 months from the time the goods were first entered for storage.
- (ii) The Commissioner may, on application by the importer before the period of 6 months expires, on good cause shown extend such period for not longer than 3 months.
- (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;
 - (bb) 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;
 - (cc) cause such goods to be abandoned or destroyed as provided in this Act.
- (e) The Commissioner may prescribe by rule—
- (i) the goods and activities that are allowed in such warehouse;
 - (ii) the person, other than the importer of duty free goods, who may store the goods specified in these rules in such warehouse;
 - (iii) the requirements to be complied with by applicants and licensees;
 - (iv) the procedures applicable to the operation of and removal of goods from such warehouse;
 - (v) the rules of conduct to be observed by the licensee;
 - (vi) all matters which are required or permitted in terms of this subsection to be prescribed by rule; and
 - (vii) any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this subsection.”.

Amendment of section 43 of Act 91 of 1964, as amended by section 124 of Act 60 of 2001 and section 45 of Act 30 of 2002

23. Section 43 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words:

“If after the expiration of 60 days from the date of removal to the State warehouse or other place indicated by the Controller or, where no such removal has taken place, from the date of expiry of the period prescribed in section 38 (1), any goods remain unentered the Commissioner may cause them, except if they have been imported in contravention of any law, to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the Commissioner, charges due to the Commissioner (including any State warehouse rent referred to in subsection (2)), a port or railway authority, the Department of Transport, a container operator or a depot operator, **[and]** freight and salvage as provided for in section 16 of the Wreck and Salvage Act, 1996

(Act No.94 of 1996), in that order, and the surplus if any, shall, upon application be paid to the owner of the said goods:”.

Amendment of section 49 of Act 19 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 and section 46 of Act 30 of 2002

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

(a) by the substitution for the heading of the following heading:

“Agreements in respect of rates of duty lower than general rates of duty and other agreements providing for matters requiring customs administration”; and

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(b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) in separate parts of such Schedule, any such agreement or any protocol or other part or provision of such agreement, including any annexure or appendix thereto for the purposes of subsection (1)(a);”.

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Amendment of section 63 of Act 91 of 1964, as amended by section 4 of Act 98 of 1970, section 9 of Act 57 of 1966 and section 45 of Act 45 of 1995

25. Section 63 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) If any agricultural distiller to whom a licence in respect of a still has been issued under this Act voluntarily abandons such still to the [department] Commissioner, the Commissioner may, out of moneys appropriated by Parliament for the purpose, pay to [him] that distiller, as compensation, such an amount as the Commissioner considers to be] the current market value of such still.”.

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Amendment of section 72 of Act 91 of 1964, as amended by section 11 of Act 105 of 1976 and section 11 of Act 98 of 1980

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26. Section 72 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) If there is no such free on board price, the export value shall be the value as if the goods would have been sold at a free on board price.”.

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Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, section 109 of Act 74 of 2002 and section 146 of Act 45 of 2003

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27. Section 75 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subsection (14) of the following subsection:

“(14) No refund or drawback of duty shall be paid by the Commissioner under the provisions of this section unless an application therefor, duly completed and supported by the necessary documents and other evidence to prove that such refund or drawback is due under this section is received by the [department] Controller—

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(a) in the case of goods exported—

(i) where the goods were exported by post, within a period of six months from the date on which such goods were posted; or

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(ii) where the goods were exported in any other manner, within a period of six months from the date of entry of such goods for export; and

(b) (i) in respect of any refund referred to in subsection (1A) within the period contemplated in subsection (4A)(b)(ii);

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- (ii) in all other cases, within a period of six months from the date on which such refund first becomes due:

Provided that **[the Commissioner may, in such circumstances as he may consider exceptional, pay a]** any refund or drawback [after expiration of the relevant period] shall be limited as contemplated in section 76B.”;

- (b) by the addition to subsection (14B) of the following paragraph:
“(d) Notwithstanding paragraphs (a), (b) and (c), any such refund or drawback shall be limited as contemplated in section 76B.”.

Amendment of section 76 of Act 91 of 1964, as substituted by section 30 of Act 59 of 1990 and amended by section 5 of Act 105 of 1992, section 54 of Act 45 of 1995 and section 62 of Act 30 of 2000

28. Section 76 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) No application for a refund or payment in terms of this section shall be considered by the Commissioner unless it is received by the Controller, duly completed and in the form as may be prescribed by rule and supported by the necessary documents and other evidence to prove that such refund or payment is due under this section—
- (a) within a period of two years from the date on which the charge to which the application relates was paid; or
- (b) in any other case within the relevant period specified in section 76B.”.

Substitution of section 76B of Act 91 of 1964, as inserted by section 67 of Act 30 of 1998

29. The following section is hereby substituted for section 76B of the Customs and Excise Act, 1964:

“Limitation on refund and drawback claims and the period within which such claims must be received by the Commissioner”;

- 76B.** (1) Notwithstanding any other provision of this Act, but subject to any provision for a set-off of duty in any Schedule in respect of goods to which section 19A relates or any refund as contemplated in section 75(4A), where any person becomes entitled to any refund or drawback of duty—
- (a) in the case of any determination, new determination or amendment of any such determination in terms of section 47(9), 65 or 69, such refund shall be limited to—
- (i) a refund in respect of goods entered for home consumption during a period of two years immediately preceding the date of such determination, new determination or amendment, whichever date occurs last: Provided that where any such determination, new determination or amendment has been appealed against, such two year period shall be calculated from such last date, notwithstanding the fact that a court may amend any determination of the Commissioner, or the Commissioner may, as a result of the finding of such court, amend such determination; and
- (ii) any application for such refund which is received by the Controller within a period of 12 months from the date of such determination, new determination or amendment of a determination; or
- (b) in the case of any internal appeal to the Commissioner or a finding of court which is not in respect of a determination contemplated in section 47(9), 65 or 69, any refund or drawback shall be limited to—
- (i) goods entered for home consumption during a period of two years prior to the date of—
- (aa) any final decision by the Commissioner; or
- (bb) any decision of the Commissioner to the extent that it is amended by or as a result of a finding of court; and

- (ii) any application for such refund or drawback which is received by the Controller within a period of 12 months from the date of such decision or amended decision; or
- (c) in the case where any Schedule to the Act is amended with retrospective effect, any such refund or drawback shall be limited to an application therefor received by the Controller within a period of 12 months from the date on which such amendment is published by notice in the *Gazette*; or 5
- (d) in the case of a permit or certificate issued with retrospective effect as contemplated in section 75(14B), any such refund or drawback shall, notwithstanding the effective date of such permit or certificate, be limited to— 10
 - (i) goods entered for home consumption during a period of two years prior to the date of issue of such permit or certificate; and
 - (ii) any application received by the Controller within a period of 12 months from the date of issue of such permit or certificate; or 15
- (e) other than a refund or drawback referred to in paragraphs (a), (b), (c) and (d), shall be limited to an application received by the Controller within a period of two years from the date of entry for home consumption of the goods to which the application relates. 20
- (2) For the purpose of subsection (1)—
- (a) any application received must comply in all respects with the requirements of section 76(4); and
- (b) ‘finding of court’ means a final judgment by the High Court or a judgement by the Supreme Court of Appeal or the Constitutional Court.”. 25

Amendment of section 96 of Act 91 of 1964, as amended by section 136 of Act 60 of 2001

- 30.** (1) Section 96 of the Customs and Excise Act, 1964, is hereby amended by— 30
- (a) the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) Subject to the provisions of section 89, the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall, **subject to the provisions of section 95A(7),** begin to run on the date when the right of action first arose.”; and 35
 - (b) the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) Subject to the provisions of section 89, the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall, subject to the provisions of section 77F(2), begin to run on the date when the right of action first arose.”. 40
- (2) (a) Subsection (1)(a) shall come into operation on the date of promulgation of this Act. 45
- (b) Subsection (1)(b) shall come into operation on the date Part A of Chapter XA comes into operation.

Amendment of section 99 of Act 91 of 1964, as amended by section 15 of Act 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 of 1977, section 12 of Act 110 of 1979, section 24 of Act 86 of 1982, section 62 of Act 45 of 1995, section 71 of Act 30 of 1998, section 68 of Act 53 of 1999, section 138 of Act 60 of 2001 and section 110 of Act 74 of 2002 50

- 31.** Section 99 of the Customs and Excise Act, 1964 is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words: 55

“Every shipping and forwarding agent and every agent acting for the master of a ship or the pilot of an aircraft and any other class of agent which the Commissioner may by rule specify shall, before transacting any business with the

[department] Commissioner, and any class of carrier of goods to which this Act relates which the Commissioner may by rule specify shall, before conveying any such goods, give such security as the Commissioner may from time to time require for the due observance of the provisions of this Act.”.

Amendment of section 101A of Act 91 of 1964, as inserted by section 51 of Act 19 of 2001 and amended by section 153 of Act 45 of 2003 5

32. Section 101A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (10)(d) for subparagraphs (i) and (ii) of the following subparagraphs, respectively:

“(i) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit, as prescribed by rule, any person who is registered as a user and has entered into a user agreement as contemplated in subsection (3), to submit electronically any **[report]** communication referred to in paragraph (a), by using the Internet. 10

(ii) Subject to such exceptions, adaptations or additional requirements as the Commissioner may prescribe by rule, the provisions of this section shall apply to the submission of such **[report]** communication.”. 15

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 and section 67 of Act 45 of 1995 20

33. Section 107 of the Customs and Excise Act, 1964 is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) Any goods remaining in the custody or under the control of the **[department]** Commissioner after expiry of a period of 28 days from the date of due entry thereof, may be removed by the Controller to the State warehouse or other place indicated by the Controller, and may thereupon be disposed of in terms of section 43(3).” 25

Amendment of section 112 of Act 91 of 1964, as amended by section 21 of Act 85 of 1986 and section 70 of Act 45 of 1995

34. Section 112 of the Customs and Excise Act, 1964, is hereby amended— 30

(a) by the substitution for subsection (1) of the following subsection:

“(1) For the purposes of this section “wreck” includes any—

- (a) flotsam, jetsam, lagan or derelict;
- (b) portion of a ship or aircraft lost, abandoned, stranded or in distress;
- (c) portion of the cargo, stores or equipment of any such ship or aircraft; and
- (d) portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress.”; and 35

(b) by the substitution for subsection (3) of the following subsection:

“(3) Wreck found in or brought into the Republic may, at any time after it has come under the control of the Controller, be disposed of by him in the manner set forth in section 43(3), but shall otherwise be subject to the provisions of this Act.” 40

Insertion of section 28C in Act 77 of 1968

35. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 28B: 45

“Offences in respect of duty relating to marketable securities

28C. Any—

- (a) person who transfers a marketable security in contravention of section 23(4); or
- (b) public officer as defined in section 1 of the Income Tax Act, 1962, in relation to a company or corporate body who fails to comply with the provisions of section 23(6) or (11), 50

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.”.

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

Amendment of section 30 of Act 77 of 1968, as amended by section 15 of Act 97 of 1993, section 20 of Act 27 of 1997 and section 77 of Act 53 of 1999

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36. (1) Section 30 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Recovery of duty, [and] interest, penalties and additional duty by action**”;

(b) by the substitution for subsection (1) of the following subsection:

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“(1) Any duty ~~[or], interest, penalty or additional duty~~ payable under this Act shall be a debt due to the State.”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) Nothing ~~contained~~ in this section ~~[contained]~~ shall be construed as depriving the Commissioner or any other officer of any other remedy for the recovery of duty ~~[or], interest, penalty or additional duty~~ mentioned in this Act, or as exempting from prosecution or punishment any person who is liable therefor under any other provision of this Act.”;

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(d) by the substitution for subsection (5) of the following subsection:

“(5) Where, in addition to any amount of duty which is payable by any person in terms of this Act, an amount of ~~interest, penalty or additional duty~~ is payable by him or her in terms of the provisions of this Act, any payment made by that person on or after 1 April 1994 in respect of ~~[such] that duty, [or] interest, penalty or additional duty~~ which is less than the total amount due by him or her in respect of ~~[such] that duty, [and] interest, penalty and additional duty~~ shall for the purposes of this Act be deemed to be made—

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(a) in respect of ~~[such] that~~ penalty; and

(b) to the extent that ~~[such] the~~ payment exceeds the amount of ~~[such] that~~ penalty, in respect of ~~[such duty] that~~ interest; and

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(c) to the extent that the payment exceeds the amount of that penalty and that interest, in respect of that duty and additional duty.”.

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(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of section 31 of Act 77 of 1968, as substituted by section 18 of Act 46 of 1996 and amended by section 81 of Act 30 of 1998, section 144 of Act 60 of 2001 and section 159 of Act 45 of 2003

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37. (1) Section 31 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for paragraph (c) of the definition of “**administration of this Act**” of the following paragraph:

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“(c) determination of the liability of any person for any duty or any ~~interest, penalty or any additional duty~~ in relation thereto leviable under this Act;”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of section 32 of Act 77 of 1968, as amended by section 83 of Act 30 of 1998 and section 9 of Act 32 of 1999

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38. (1) Section 32 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) the amount of any overpayment of the duty or any ~~interest, penalty or additional duty~~ properly chargeable in respect of any instrument, if application for the refund is made within two years after the date of ~~[such] that~~ overpayment;”.

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(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

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Insertion of section 32C in Act 77 of 1968

39. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 32B:

“Advance Tax Rulings

32C. (1) The provisions relating to advance tax rulings contained in Part 5
IA of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for
purposes of this Act.

(2) Any procedures and guidelines issued by the Commissioner in terms
of section 76S of the Income Tax Act, 1962, for implementation and
operation of the advance tax ruling system apply *mutatis mutandis* for 10
purposes of this Act.”.

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

Amendment of section 25 of Act 89 of 1991, as amended by section 96 of Act 30 of 15 1998 and section 94 of Act 53 of 1999

40. Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the insertion
after paragraph (f) of the following paragraph:

“(g) any change whereby the provisions of section 27(4)(c) are no longer
applicable in the case of that vendor:”.

Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 20 2000 and section 180 of Act 45 of 2003

41. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the
substitution in subsection (1) for paragraph (f) of the following paragraph:

“(f) any person who holds himself out as a person entitled to a refund or who
produces, furnishes, authorises, or makes use of any [false] tax invoice or 25
document or debit note and has obtained any undue tax benefit or refund under
the provisions of an export incentive scheme referred to in paragraph (d) of the
definition of ‘exported’ in section 1, to which such person is not entitled,”.

Insertion of section 54A in Act 89 of 1991

42. (1) The following section is hereby inserted in the Value-Added Tax Act, 1991, 30
after section 54:

“Advance Tax Rulings

54A. (1) The provisions relating to advance tax rulings contained in Part
IA of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for 35
purposes of this Act.

(2) Any procedures and guidelines issued by the Commissioner in terms
of section 76S of the Income Tax Act, 1962, for implementation and
operation of the advance tax ruling system apply *mutatis mutandis* for
purposes of this Act.”.

(2) Subsection (1) shall come into operation on the date on which Part 1A of Chapter 40
III of the Income Tax Act, 1962, comes into operation.

Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999, section 72 of Act 19 of 2001, section 173 of Act 60 of 2001 and section 119 of Act 74 of 2002 45

43. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the
substitution for paragraph (i) of the following paragraph:

“(i) fails to notify the Commissioner of anything of which he is required by section
24(3), 25 or 48(7) to notify the Commissioner; or”.

Insertion of section 17B in Act 31 of 1998

44.(1) The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 17A:

“Advance Tax Rulings

17B. (1) The provisions relating to advance tax rulings contained in Part 5
IA of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for
purposes of this Act.

(2) Any procedures and guidelines issued by the Commissioner in terms
of section 76S of the Income Tax Act, 1962, for implementation and
operation of the advance tax ruling system apply *mutatis mutandis* for
purposes of this Act.” 10

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

Short title and commencement

45.(1) This Act shall be called the Second Revenue Laws Amendment Act, 2004. 15

(2) Save in so far as is otherwise provided in this Act or the context otherwise
indicates, the amendments effected by this Act to the Income Tax Act, 1962, shall for
purposes of assessment 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 2005. 20

MEMORANDUM ON THE SECOND REVENUE LAWS AMENDMENT BILL, 2004

1. OBJECTS OF THE BILL

- 1.1 This Bill introduces amendments to the administrative provisions of the Transfer Duty Act, 1949, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991 and the Uncertificated Securities Tax Act, 1998.
- 1.2 The Transfer Duty Act, 1949, is amended to introduce provisions for the publication of names of offenders and the reporting of unprofessional conduct.
- 1.3 The Bill amends the Income Tax Act, 1962—
 - to simplify the provisions relating to the notice to be given by the Commissioner to require taxpayers to submit returns;
 - to require taxpayers to inform the Commissioner of any change of the taxpayer's address;
 - to make provision for the registration of tax practitioners in terms of which all persons who advise other persons on the application of the tax laws or who complete or assist in completing any documents for submission in terms of the tax laws, must register with the Commissioner;
 - to introduce an advance ruling system, which will also be applicable in respect of the Transfer Duty Act, the VAT Act, the Stamp Duties Act and the Uncertificated Securities Tax Act.
- 1.4 The Customs and Excise Act, 1964, is amended—
 - to modify the declarations to be made by persons who enter or leave the Republic;
 - to make provision for the storage of goods in customs and excise warehouses;
 - to provide for the payment of salvage from the proceeds of sale of any uncleared goods;
 - to change certain provisions relating to international agreements requiring customs administration;
 - to regulate the limitation on refund and drawback claims;
 - to effect certain changes to the provisions relating to electronic communication; and
 - to change the provisions relating to wrecks.
- 1.5 The Stamp Duties Act, 1968, is amended to introduce additional duty and interest provisions in the Act.
- 1.6 The Value-Added Tax Act, 1991, is amended to clarify certain administrative provisions.

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 a wide range of interested parties. These included professional bodies and business institutions. The following made written representations to the Parliamentary Committees:

- The South African Institute of Chartered Accountants
- JSE Securities Exchange South Africa
- PriceWaterhouseCoopers
- Banking Council of South Africa
- Business Unity South Africa
- Frank Gormley

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. The only change anticipated to give rise to significant additional cost will be the advance ruling system that is to be introduced in respect of binding class rulings and binding private rulings. This system, however, will be self-funding as provision is made for the recovery of cost from applicants for such rulings.

4. CONSTITUTIONAL IMPLICATIONS

None.

5. PARLIAMENTARY PROCEDURE

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.