

REPUBLIC OF SOUTH AFRICA

**REVENUE LAWS
SECOND AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75)); explanatory summary of
Bill published in Government Gazette No. 29340 of 31 October 2006
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 34—2006]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Estate Duty Act, 1955, so as to provide for the declaration of an agent; to regulate the rights and duties of that agent; to amend the Income Tax Act, 1962, so as to extend the application of the objection and appeal procedure; to extend the exceptions to the secrecy provisions; to provide for the delegation of powers and duties by the Minister; to amend the regulation of reportable arrangements; to amend the Customs and Excise Act, 1964, so as to insert, amend and delete certain definitions; to provide for powers and duties of the Director-General: Agriculture; to further regulate the circumstances in which the Commissioner or any officer may disclose information; to provide that goods may be examined by using an X-ray scanner or other non-intrusive inspection methods and matters relating thereto; to further provide for places that may be appointed, prescribed or designated where imported goods may be landed or from where goods may be exported; to provide for special provisions in relation to customs controlled areas; to further regulate reporting of the arrival and departure of a foreign-going ship or aircraft; to further regulate provisions relating to cargo reports; to amend provisions relating to the landing of imported goods and the loading of goods for export; to provide for seals and sealing of containers, sealing of packages and vehicles and goods to be secured by other fastenings and matters incidental thereto; to further regulate the removal of goods in bond by a container operator or pilot of an aircraft or an airline; to further regulate the storage and entry of goods free of duty in a customs and excise warehouse; to amend definitions and delete a reference to a customs controlled area enterprise permit in provisions for the administration of a customs controlled area in an industrial development zone; to repeal section 31; to amend provisions in respect of biofuel so as to allow the Commissioner to exempt by rule any person or class of persons from licensing and to exempt a registered manufacturer from payment of duty as may be prescribed by rule; to amend the provisions relating to the time of entry of goods for export, when goods are deemed to have been exported and to require that the Controller must be informed concerning a change in mode of transport of goods as may be prescribed by rule; to delete an obsolete appeal provision; to provide for licensing of container terminals, combination terminals, road vehicle terminals, bulk goods terminals, container operators and transit sheds; to provide for a penal provision; to provide that notice must be delivered where any person applies to the High Court for the sale of arrested property under the Admiralty Jurisdiction Regulations (Act No. 105 of 1983); to provide for the licensing of an agent of a master, pilot or other carrier and to define airline and shipping line; to further regulate the handling of and dealing with goods; to further regulate provisions empowering the Commissioner to make rules; to amend the Value-Added Tax Act, 1991, so as to extend the exceptions to the secrecy provisions; to extend the list of

vendors who may account for VAT on the payments basis; to amend the minimum amount required in respect of acquisition of second-hand goods; to amend and further provide for the issuing of binding VAT rulings; to amend the Uncertificated Securities Tax Act, 1998, so as to clarify the provisions regulating the recovery of tax by a member or participant; to amend the Revenue Laws Amendment Act, 2001, so as to repeal section 42 thereof; to amend the Second Revenue Laws Amendment Act, 2004, so as to delete the Advance Tax Ruling provisions from the Value-Added Tax Act; to amend the Taxation Laws Second Amendment Act, 2005, so as to delete the Advance Tax Ruling provisions from the Value-Added Tax Act; to amend the Revenue Laws Second Amendment Act, 2005, so as to further regulate a request for reasons; to amend the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, so as to provide that the rules relating to objection and appeal apply to the amnesty for small business; to exempt an auditor from certain provisions of the Auditing Profession Act, 2005; and to effect certain textual and consequential amendments; and to provide for matters connected therewith.

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

Insertion of sections 12A and 12B in Act 45 of 1955

1. The following sections are hereby inserted in the Estate Duty Act, 1955, after section 12:

“Power to appoint agent

12A. For the purposes of this Act, the Commissioner may declare any person to be the agent of any other person, and the person so declared an agent—

- (a) shall be the agent of that other person in respect of the payment of any amount of duty or interest under this Act; and
- (b) may be required to make payment of that duty or interest from any moneys which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be:

Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

12B. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any duty or interest and in such a full and ample manner.”.

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

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

“(4) Any decision of the Commissioner under the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’, ‘retirement annuity fund’ and ‘spouse’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 10(1)(cH), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I,

section 25D, section 27, section 30, section 30A, section 31, section 35(2), section 37A, section 38(4), section 41(4), section 57, section 76A, section 80B and section 80S, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of 'formula A' in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 24 and 27 of the Fourth Schedule, paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(e) of the Eighth Schedule, shall be subject to objection and appeal.”. 5

(2) Subsection (1) shall come into operation when Part IIA of Chapter III of the Income Tax Act, 1962, comes into operation. 10

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998, by section 11 of Act 53 of 1999, section 14 of Act 30 of 2000, section 19 of Act 60 of 2001, section 8 of Act 74 of 2002, section 34 of Act 12 of 2003, section 14 of Act 45 of 2003 and section 9 of Act 10 of 2006 15

3. Section 4 of the Income Tax Act, 1962, is hereby amended by the substitution in the proviso to subsection (1) for subparagraph (i) of paragraph (e) of the following subparagraph: 20

“(i) any taxpayer which is [a public entity] an institution contemplated in section 3(1)[(b)] of the Public Finance Management Act, 1999 (Act No. 1 of 1999), or an entity contemplated in section 3 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), to the extent necessary for performing the functions and exercising the powers of the National Treasury in terms of those Acts; or” 25

Insertion of section 4A of Act 58 of 1962

4. The following section is hereby inserted in the Income Tax Act, 1962, after section 4:

“Exercise of powers and performance of duties by Minister 30

4A. The powers conferred and the duties imposed upon the Minister by or under the provisions of this Act may be exercised or performed by the Minister personally or delegated by the Minister to the Director-General of the National Treasury and the Director-General may in turn delegate the powers and duties so delegated to him or her to any officer or person under his or her control, direction or supervision.” 35

Repeal of section 76A of Act 58 of 1962, as inserted by section 69 of Act 45 of 2003 and amended by section 13 of Act 32 of 2005

5. (1) Section 76A of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*. 40

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

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

“Part IIB Reportable Arrangements

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Reportable arrangements

80M. (1) An arrangement is a reportable arrangement if it is listed in subsection (2) or if any tax benefit is or will be derived or is assumed to be derived by any participant by virtue of that arrangement and the arrangement—

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- (a) contains provisions in terms of which the calculation of ‘interest’ as defined in section 24J, finance costs, fees or any other charges is wholly or partly dependent on the assumptions relating to the tax treatment of that arrangement (otherwise than by reason of any change in the provisions of this Act or any other law administered by the Commissioner);
- (b) has any of the characteristics or characteristics which are substantially similar to those contemplated in section 80C(2)(b);
- (c) is or will be disclosed by any participant as giving rise to a financial liability for purposes of Generally Accepted Accounting Practice but not for purposes of this Act;
- (d) does not result in a reasonable expectation of a pre-tax profit for any participant; or
- (e) results in a reasonable expectation of a pre-tax profit for any participant that is less than the value of that tax benefit to that participant if both are discounted to a present value at the end of the first year of assessment when that tax benefit is or will be derived or is assumed to be derived on a consistent basis and using a reasonable discount rate for that participant.

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(2) The following arrangements are reportable arrangements:

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- (a) Any arrangement which would have qualified as a ‘hybrid equity instrument’ as defined in section 8E, if the prescribed period had been 10 years;
- (b) any arrangement which would have qualified as a ‘hybrid debt instrument’ as defined in section 8F, if the prescribed period in that section had been 10 years, but does not include any instrument listed on an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004); or
- (c) any arrangement identified by the Minister by notice in the *Gazette* as an arrangement which is likely to result in any undue tax benefit.

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(3) This section does not apply to any excluded arrangement contemplated in section 80N.

Excluded arrangements

80N. (1) An arrangement is an excluded arrangement if it is—

- (a) a loan, advance or debt in terms of which—
 - (i) the borrower receives or will receive an amount of cash and agrees to repay at least the same amount of cash to the lender at a determinable future date; or
 - (ii) the borrower receives or will receive a fungible asset and agrees to return an asset of the same kind and of the same or equivalent quantity and quality to the lender at a determinable future date;
- (b) a lease;
- (c) a transaction undertaken through an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004); or

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- (d) a transaction in participatory interests in a scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).
- (2) Subsection (1) applies only to an arrangement that—
- (a) is undertaken on a stand-alone basis and is not directly or indirectly connected to, or directly or indirectly dependent upon, any other arrangement (whether entered into between the same or different parties); or
- (b) would have qualified as having been undertaken on a stand-alone basis as required by paragraph (a), were it not for a connected arrangement that is entered into for the sole purpose of providing security and where no tax benefit is obtained or enhanced by virtue of that security arrangement.
- (3) Subsection (1) does not apply to any arrangement that is entered into—
- (a) with the main purpose of obtaining or enhancing a tax benefit; or
- (b) in a specific manner or form that enhances or will enhance a tax benefit.
- (4) The Minister may determine an arrangement to be an excluded arrangement by notice in the *Gazette*, if he or she is satisfied that the arrangement is not likely to lead to an undue tax benefit.

Disclosure obligation

- 80O.** (1) The promoter must disclose such information in respect of a reportable arrangement as is contemplated in section 80P.
- (2) If there is no promoter in relation to an arrangement or if the promoter is not a resident, all other participants must disclose the information contemplated in section 80P in respect of the reportable arrangement.
- (3) A participant need not disclose the information in respect of a reportable arrangement if that participant obtains a written statement from—
- (a) the promoter that the promoter has disclosed that reportable arrangement as required by this Part; or
- (b) any other participant, if subsection (2) applies, that the other participant has disclosed that reportable arrangement as required by this Part.
- (4) The reportable arrangement must be disclosed within 60 days after any amount is received by or accrued to any participant or is paid or actually incurred by any participant in terms of the arrangement.
- (5) The Commissioner may grant extension for disclosure for a further 60 days, if reasonable grounds exist for that extension.

Information to be submitted

- 80P.** The promoter or participant, as the case may be, must submit, in relation to the reportable arrangement, in the form and manner (including electronically) and at such place as may be prescribed by the Commissioner—
- (a) a detailed description of all its steps and key features;
- (b) a detailed description of the assumed tax benefits for all participants, including but not limited to tax deductions and deferred income;
- (c) the names, registration numbers and registered addresses of all participants;
- (d) a list of all its agreements; and
- (e) any financial model that embodies its projected tax treatment.

Reportable arrangement reference number

80Q. (1) The Commissioner must, after receipt of the information contemplated in section 80P, issue a reportable arrangement reference number to each participant.

(2) The issuing of a reportable arrangement reference number is for administrative purposes only.

Request for additional information

80R. (1) The Commissioner may, in relation to any arrangement, require a participant or any other person to furnish such information (whether orally or in writing), documents or things as the Commissioner may require.

(2) The information, documents or things must be submitted to the Commissioner in such form and manner (including electronically) and at such place as may be prescribed by the Commissioner.

Penalties

80S. (1) Any participant who fails to disclose the information in respect of a reportable arrangement as required by section 80O or section 80R shall be liable to a penalty of R1 million.

(2) The Commissioner may reduce the penalty contemplated in subsection (1), if—

- (a) there are extenuating circumstances and the participant remedies the non-disclosure within a reasonable time; or
- (b) if the penalty is disproportionate to the assumed tax benefit.

Definitions

80T. For the purposes of this Part—

‘arrangement’ means any transaction, operation or scheme;

‘financial benefit’ means any reduction in the cost of finance, including interest, finance charges, costs, fees, and discounts in the redemption amount;

‘participant’ in relation to a reportable arrangement means—

- (a) any promoter; or
- (b) any company or trust which directly or indirectly derives or assumes that it derives a tax benefit or financial benefit by virtue of a reportable arrangement;

‘pre-tax profit’ in relation to an arrangement, means the profit of a participant resulting from that arrangement before deducting any normal tax, which profit must be determined in accordance with Generally Accepted Accounting Practice after taking into account all costs and expenditure incurred by that participant in connection with the arrangement and after deducting any foreign taxes paid or payable by that participant;

‘promoter’ in relation to a reportable arrangement means any person who is principally responsible for organising, designing, selling, financing or managing that reportable arrangement;

‘reportable arrangement’ means any arrangement as contemplated in section 80M;

‘tax’ includes any tax, levy, duty or other liability imposed by this Act or any other Act administered by the Commissioner;

‘tax benefit’ includes any avoidance, postponement or reduction of any liability for tax.”

(2) Subsection (1) comes 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 IIB of Chapter III of the Income Tax Act, 1962.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1996, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 1 of Act 32 of 2004 and section 85 of Act 31 of 2005

7. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the insertion in subsection (1) after the definition of “**agricultural distiller**” of the following definition: 10
 “**‘bill of entry’** includes any SAD form, except as otherwise provided in any Schedule, rule or the Schedule to the rules;”;
- (b) by the insertion in subsection (1) after the definition of “**bill of entry**” of the following definitions: 15
 “**‘break bulk goods’** means goods shipped in packages stored in or on the carrying ship or vehicle;
 ‘bulk goods’ means a large quantity of unpacked dry or liquid homogenous goods shipped loose in the hold of a ship or transported loose by a vehicle or in any receptacle; 20
 ‘bulk goods terminal’ means any terminal contemplated in section 6(1)(hE) and licensed in terms of this Act;
 ‘bulk goods terminal operator’ means the licensee of a bulk goods terminal;
 ‘combination terminal’ means any terminal for containerized and break bulk goods contemplated in section 6(1)(hD) and licensed in terms of this Act; 25
 ‘combination terminal operator’ means the licensee of a combination terminal;”;
- (c) by the substitution in subsection (1) for the definitions of “**container depot**”, “**container operator**” and “**container terminal**” of the following definitions, respectively: 30
 “**‘container depot’** means any container depot contemplated in section 6(1)(hB) and licensed in terms of this Act;
 ‘container operator’ means any person providing international transportation of containerized goods, and licensed [approved by the Commissioner, under section 96A,] in terms of this Act for operating containers in the Republic; 35
 ‘container terminal’ means any container terminal contemplated in section 6(1)(hA) and licensed in terms of this Act;”;
- (d) by the insertion in subsection (1) after the definition of “**container depot**” of the following definition: 40
 “**‘container depot operator’** means the licensee of any container depot;”;
- (e) by the insertion in subsection (1) after the definition of “**container terminal**” of the following definition: 45
 “**‘container terminal operator’** means the licensee of a container terminal;”;
- (f) by the insertion in subsection (1) after the definition of “**Controller**” of the following definition: 50
 “**‘customs controlled area’** means any customs controlled area contemplated in section 6(1)(aA);”;
- (g) by the deletion in subsection (1) of the definition of “**depot operator**”;
- (h) by the substitution in subsection (1) for the definition of “**master**” of the following definition: 55
 “**‘master’**, in relation to any ship, means any person (other than a pilot) having charge of such ship and includes any agent appointed by such master as contemplated in section 97;”;

- (i) by the substitution in subsection (1) for the definition of “**pilot**” of the following definition:
 “**‘pilot’**, in relation to any aircraft, means any person having charge of such aircraft and includes any agent appointed by such pilot as contemplated in section 97;”;
- (j) by the insertion in subsection (1) after the definition of “**Road Accident Fund levy goods**” of the following definitions:
 “**‘road vehicle terminal’** means any terminal contemplated in section 6(1)(hF) and licensed in terms of this Act;
‘road vehicle terminal operator’ means a licensee of a road vehicle terminal;”;
- (k) by the insertion in subsection (1) after the definition of “**this Act**” of the following definitions:
 “**‘transit shed’** means any transit shed contemplated in section 6(1)(g) and licensed in terms of this Act;
‘transit shed operator’ means the licensee of a transit shed;”;
- (l) by the substitution for subsection (2) of the following subsection:
 “(2) In this section, except in the definition of “**package**”, and in sections 4, 6, 7, 18, 38, 44, 64A [and], 87(2) and 106, “**container**” means transport equipment of tariff heading 86.09—
 (a) having an internal volume of not less than one cubic metre; and
 (b) designed for the transport of goods by any means of carriage, without intermediate reloading,
 and in this Act “containerized” has a corresponding meaning.”;
- (m) by the addition of the following subsection:
 “(5) The expression ‘goods under customs control’, ‘goods subject to customs control’ or ‘goods under control of the Commissioner’ and any cognate expression shall, unless the context otherwise indicates, be deemed to include, but is not limited to, any goods to which this Act relates or any ship, vehicle or container contemplated in section 1(2) that—
 (a) are entering or leaving the Republic;
 (b) are in, on or at any premises licensed, registered or approved for any purpose in terms of this Act;
 (c) are in, on or at any premises or at any place appointed, prescribed or designated in terms of section 6;
 (d) are in transit within or through the Republic or conveyed for transhipment to any place outside the Republic as may be specified by rule; or
 (e) are deemed in terms of any provision of this Act to be under customs control.”.
- (2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 October 2006.
 (b) Subsection (1)(b), (c), (d), (e), (f), (g), (h), (i), (j), (k), (l) and (m) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Insertion of section 3B of Act 91 of 1964

8. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 3A:

“Duties and powers of Director-General: Agriculture

3B. (1) Any duty imposed or power conferred by this Act on the Director-General: Agriculture, may be performed or exercised by him or her personally or by an officer under delegation from or under the control or direction of the said Director-General.

(2) Any decision made under subsection (1) by any such officer may be withdrawn or amended by the said Director-General or by the officer (with effect from the date of making such a decision or the date of withdrawal or amendment thereof) and shall, until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made by that Director-General.”.

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003 and section 10 of Act 10 of 2006 5

9. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution in subsection (3) for the words preceding the proviso of the following words: 10
- “The Commissioner or any officer shall not disclose any information relating to any person, firm or business acquired in the performance of his duties, except[—
- (a) for the purposes of this Act; or**
- (b) when required to do so as a witness in a court of law] in the performance of his or her duties under this Act or by order of a competent court”;** 15
- (b) by the substitution in subsection (8A) for paragraph (a) of the following paragraph:
- “(a) An officer may stop and detain and examine any goods while under customs control in order to determine whether the provisions of this Act or any other law have been complied with in respect of such goods as contemplated in section 107(2)(a).”; and 20
- (c) by the substitution in subsection (8A)(b) for subparagraph (ii) of the following subparagraph: 25
- “(ii) (aa) (A) For the purposes of this subsection, unless the context otherwise indicates, “examine” includes using an X-ray scanner or any other non-intrusive inspection methods.
- (B) No person shall enter any restricted area where non-intrusive equipment is operated unless authorised by the Controller. 30
- (bb) The Commissioner may by rule prescribe—
- (A) any requirement any person must comply with in connection with such non-intrusive inspection;
- (B) notwithstanding the provisions of section 8, any additional advance information required in respect of any goods that will be imported or exported in such form and at such time as may be specified in such rule; 35
- (C) any other matter which the Commissioner considers necessary and useful for the purpose of the effective and efficient use of such equipment and the results obtained from its operation. 40
- (cc) Notwithstanding anything to the contrary in this Act, any non-intrusive or other examination may take place in the absence of any importer, exporter, port or airport authority, container operator, agent or any licensee or any other person having control of the goods concerned.
- (dd) Any person who— 45
- (A) without authorisation by the Controller enters any restricted area where non-intrusive equipment is operated;
- (B) with the intent to deceive, does anything to prevent equipment from producing a true image of the contents of any container or package, shall be guilty of an offence and liable on conviction— 50
- (C) in the case of item (A) to a fine not exceeding R10 000 or imprisonment for a period not exceeding three years or both such fine or imprisonment; and
- (D) in the case of item (B) to a fine not exceeding R100 000 or treble the value of the goods in respect of which the offence was committed whichever is the greater or imprisonment for a period not exceeding five years or both such fine and imprisonment and the goods concerned shall be liable to forfeiture in accordance with the provisions of this Act.”. 55
- (2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 60

Amendment of section 6 of Act 91 of 1964, as amended by section 2 of Act 71 of 1975, section 1 of Act 52 of 1986, section 6 of Act 59 of 1990, section 3 of Act 45 of 1995, section 116 of Act 60 of 2001 and section 134 of Act 45 of 2003

10. (1) Section 6 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution for the heading of the following heading: 5
“[Appointment of] Power to appoint, prescribe or designate places of entry, ports, customs and excise airports, customs controlled areas, secure premises, authorized roads and routes, entrances and exits, etc.”;
- (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10
“The Commissioner may, notwithstanding the provisions of any other Act and subject to such conditions as he or she may specify, by rule appoint, [or] prescribe or designate—”;
- (c) by the insertion in subsection (1) after paragraph (a) of the following paragraph: 15
“(aA) the area of any place including the area of any port, customs and excise airport or land border or any part or parts thereof or any other place through or from which goods or persons enter or leave the Republic as a customs controlled area;”; 20
- (d) by the substitution in subsection (1) for paragraph (g) of the following paragraph:
“(g) places where secure premises to be known as transit sheds may be established—
(i) into or to which imported break bulk goods may be removed 25
from a ship or vehicle; or
(ii) from which break bulk goods for export may be packed into or loaded on to any ship or vehicle;”;
- (e) by the deletion in subsection (1) of paragraph (gA);
- (f) by the substitution in subsection (1) for paragraph (h) of the following paragraph: 30
“(h) entrances and exits, general or special, to or from any dock or wharf area or any other place in any port, customs and excise airport, land border, customs controlled area or any other place through or from which goods or persons may enter or leave the Republic;” 35
- (g) by the insertion in subsection (1) after paragraph (hC) of the following paragraphs:
“(hD) combination terminals—
(i) where containerised and break bulk imported goods may be landed for— 40
(aa) transit or coastwise carriage;
(bb) delivery of the containerised goods to a container depot;
(cc) delivery of break bulk goods to a transit shed; or
(dd) delivery, after their contents have been duly entered, to the importer or the importer’s agent; or 45
(ii) from where containerised or break bulk goods may be shipped for export;
(hE) bulk goods terminals—
(i) wherein bulk imported goods may be discharged from a ship or vehicle; or 50
(ii) wherefrom bulk goods may be loaded into or on to any ship or vehicle for export;
(hF) road vehicle terminals, where—
(i) imported vehicles on wheels may be landed; or
(ii) vehicles on wheels may be loaded into or onto a ship or vehicle 55
for export;”; and
- (h) by the addition of the following subsection:
“(6) Except where the Commissioner determines otherwise by rule, no person shall—
(a) be in control of, or receive, deliver, remove, store or otherwise deal 60
with any imported goods landed from any ship or vehicle; or

(b) load any goods or cause goods to be loaded into or on to any ship or vehicle for export, unless such person is a licensee of premises licensed in terms of this Act.”.

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*. 5

Insertion of section 6A of Act 91 of 1964

11. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 6:

“Special provisions in respect of customs controlled areas 10

6A. (1) The Commissioner may control the importation, exportation, manufacture or use of goods and the movement of persons or goods in a customs controlled area.

(2) The Commissioner may after consultation with any person or authority who administers any activity in any customs controlled area, determine the manner in which any such controlled area— 15

(a) must be secured; and

(b) must be signposted so as to give persons present in the area a clear indication that it is an area under customs control.

(3) (a) An officer stationed at an entrance or exit contemplated in section 6(1)(h) may stop any person from entering or leaving a customs controlled area and he or she may search such person or a vehicle under the control of such person. 20

(b) If such person fails to stop, the officer may take such action, including the use of force, as may reasonably be necessary to stop such person or vehicle. 25

(4) Any person entering, leaving or present in a customs controlled area must comply with such controls and procedures as the Commissioner may prescribe by rule.

(5) The Commissioner may by rule— 30

(a) specify the limits of any customs controlled area;

(b) prescribe—

(i) any conditions relating to the entry or exit of goods and persons into or from a customs controlled area;

(ii) measures relating to the appropriate identification of persons entering, present in or leaving a customs controlled area; 35

(iii) any other matter which is necessary to prescribe or useful to achieve the efficient and effective control of goods and persons in a customs controlled area.”.

Amendment of section 7 of Act 91 of 1964, as amended by section 3 of Act 105 of 1969, section 3 of Act 71 of 1975, section 1 of Act 105 of 1976, section 4 of Act 98 of 1980, section 1 of Act 101 of 1985, section 7 of Act 59 of 1990 and section 4 of Act 45 of 1995 40

12. (1) Section 7 of the Customs and Excise Act, 1964, is hereby amended by the insertion after subsection (1A) of the following subsection: 45

“(1B) Notwithstanding subsections (1) and (1A), an arrival report and a schedule report or departure report relating to any foreign-going ship or aircraft calling at any place in the Republic shall be submitted electronically by such persons at such times as may be prescribed by rule.”.

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

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

13. (1) Section 8 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of the following words:

“Notwithstanding the provisions of sections 7 and 12, the Commissioner may by rule prescribe requirements in respect of the report of cargo and that—”; and

(b) by the addition of the following subsections, the current section becoming subsection (1):

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

(a) such report is received by the Controller; and

(b) release of the cargo has been granted as prescribed in the rules.

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

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

(i) any such goods not reported are landed; or

(ii) any container or package is landed with visible evidence of tampering or any deficiency is suspected,

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

(4) (a) Any exporter who—

(i) packs or loads cargo or causes cargo to be packed or loaded in contravention of subsection (2); or

(ii) fails to report cargo or makes any false or misleading statement in connection with any report to which this section relates,

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

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

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

Substitution of section 11 of Act 91 of 1964, as substituted by section 6 of Act 45 of 1995

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

“Landing of imported goods and loading of goods for export

11. (1) All goods—

(a) imported into the Republic, shall, except if the Commissioner determines otherwise by rule, when landed be—

(i) placed into or delivered to a—

(aa) container terminal;

(bb) combination terminal;

(cc) transit shed;

(dd) bulk goods terminal;

(ee) road vehicle terminal;

(ff) container depot;

(gg) degrouping depot; or

(ii) delivered to—

(aa) the State warehouse; or

- (bb) any other place, with the permission of the Commissioner;
- (b) exported, shall—
- (i) except if the Commissioner determines otherwise by rule, be delivered to the licensee of any of the premises contemplated in paragraph (a)(i) and loaded therefrom on to the ship or vehicle by means of which the goods are exported;
 - (ii) be delivered to such premises at such time prior to export as the Commissioner may determine by rule.
- (2) The master, pilot or other carrier shall, where goods have not been duly entered and released before landing, be liable for the duty on all goods that have been landed and not placed into or delivered as contemplated in subsection (1)(a).”
- (2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Insertion of section 11A in Act 91 of 1964

15. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 11:

“Seals and sealing of containers and sealing of packages and vehicles

- 11A.** (1) (a) For the purposes of security of goods under customs control—
- (i) any container contemplated in section 1(2);
 - (ii) any vehicle with built up closed body;
 - (iii) any road tanker;
 - (iv) any other vehicle or part of a vehicle; or
 - (v) any package as may be determined by rule,
- must have such security seals affixed thereto or the goods must be otherwise secured by such fastenings in such a manner and in compliance with such standards or other specifications as may be prescribed by rule.
- (b) The Commissioner may fix a date by rule whereafter all goods under customs control must be so secured before being entered or declared, removed or otherwise dealt with in terms of any procedure to which this Act relates.
- (c) (i) Such seals or fastenings must be supplied and affixed at the risk and expense of any person contemplated in section 107(1)(a).
- (ii) If any person fails to affix any such seal or fastening, an officer may at the risk and expense of the person concerned affix the seal or fastening on payment of the costs prescribed by rule.
- (d) Notwithstanding paragraph (c), the Commissioner may at any time affix a seal or fastening or any additional seal or fastening or replace any seal or fastening on any container.
- (2) Any person who tampers with or except as authorised by rule or on good cause shown, removes, breaks or damages any seal or fastening contemplated in this section while the goods are under customs control, shall be guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding five years or to both such fine and such imprisonment.
- (3) The Commissioner may make rules—
- (a) regarding the keeping and affixing of seals and recording of seal numbers;
 - (b) specifying records to be kept of the inspection of seals or fastenings while goods are under customs control and the circumstances in which, and the requirements that must be met when seals or fastenings are replaced;
 - (c) as to all matters which in this section are required or permitted to be prescribed by rule;
 - (d) in respect of 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 section.”

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

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, section 102 of Act 74 of 2002, section 21 of Act 34 of 2004 and section 87 of Act 31 of 2005 5

16. (1) Section 18 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraphs (d) and (e) of the following paragraphs, 10 respectively:

“(d) a container operator may, subject to section 44, remove any container in bond to the container depot or container terminal to which it was consigned, [without furnishing the security provided for in subsection (6) of this section,] and the manifest of the goods packed in such container shall be 15 deemed to be due entry for removal in bond of that container;

(e) the pilot of any aircraft or an airline may remove in bond any goods landed from any aircraft at a place in the Republic and for which an air cargo transfer manifest has been completed to [their place of entry for the Republic without furnishing the security provided for in subsection (6)] a licensed 20 transit shed in the common customs area, and such air cargo transfer manifest shall be deemed to be due entry for removal in bond of such goods;”.

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

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, section 22 of Act 34 of 2004 and section 1 of Act 10 of 2005 25

17. Section 21 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3)(d)(iii) for item (bb) of the following item:

“(bb) enter [all goods of] such [class or kind] goods for export or [home 30 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.”.

Amendment of section 21A of Act 91 of 1964, as inserted by section 121 of Act 60 of 2001 and amended by section 2 of Act 10 of 2005 35

18. 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**” or “**IDZ**” of the following definition:

“‘**Industrial Development Zone**’ or ‘**IDZ**’ means an area designated by the Minister of Trade and Industry in terms of [any regulation made in terms of] the Manufacturing Development Act, 1993 (Act No. 187 of 1993);”;

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

“(2) Any reference in this section, any Schedule or any rule to ‘regulations’ or ‘regulation’ shall, unless otherwise specified, be 45 a reference to [the regulations made in terms of the Manufacturing Development Act, 1993] the Industrial Development Zone Programme published by Government Notice No. R.1224 of 1 December 2000 and any amendment thereto.”; and

(c) by the substitution in subsection (9)(a) for subparagraph (ii) of the following subparagraph:

“(ii) the goods have been duly consumed or otherwise used in the manufacture or production of any goods by the CCA enterprise in accordance with [any CCA enterprise permit and] any relevant 55 provision of this Act;”.

Repeal of section 31 of Act 91 of 1964

19. Section 31 of the Customs and Excise Act, 1964, is hereby repealed.

Amendment of section 37B of Act 91 of 1964, as inserted by section 103 of Act 74 of 2002 and amended by section 114 of Act 32 of 2004

20. (1) Section 37B of the Customs and Excise Act, 1964, is hereby amended— 5
- (a) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 10
- “(b) The [Minister] Commissioner may, **[in prescribing any licence for the manufacture of biofuel in any item of Schedule No. 8 under the provisions of section 60,]** by rule exempt any person or class of persons from licensing in respect of any manufacturing process in the production of biofuel or any goods used in the production of biofuel.”;
- (b) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 15
- “(c) The Commissioner may, except if any provision of this Act otherwise provides, in respect of biofuel manufactured in the Republic by any person registered for such a purpose under section 59A—
- (i) (aa) by rule exempt for any period such person from payment of duty in respect of any quantity of biofuel manufactured by him or her; 20
- (bb) cancel any such exemption under circumstances prescribed by rule;
- (ii) prescribe, subject to paragraph (b), conditions and other requirements in respect of such exemption;
- (iii) prescribe procedures relating to the manufacture and removal of biofuel for home consumption.”; and 25
- (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph: 30
- “(a) require any manufacturer or seller of biofuel **[who is not a manufacturer]** to register in terms of section 59A₂”; and
- (2) Subsection (1)(a) and (b) shall be deemed to have come into operation on 29 March 2006.

Amendment of section 38 of Act 91 of 1964, as amended by section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 18 of Act 59 of 1990, section 28 of Act 45 of 1995, section 42 of Act 19 of 2001 and section 123 of Act 60 of 2001 35

21. (1) Section 38 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs, respectively: 40
- “(a) Every exporter of goods shall, unless exempted by rule, before such goods are exported from the Republic enter the goods at the office of the Controller at the times prescribed by rule.
- (b) For the purposes of paragraph (a), in relation to the **[delivery of a bill of entry]** entry of goods, the goods referred to therein shall be deemed to have been exported from the Republic— 45
- (i) in the case of goods to be exported in a ship, at the time when such goods are delivered to **[the port authority]**, a container depot operator, [the master of the ship concerned or a container operator, as the case may be] container terminal operator, combination terminal operator, transit shed operator, bulk goods terminal operator or road vehicle terminal operator; 50
- (ii) in the case of goods to be exported in an aircraft, at the time when such goods are delivered to the **[pilot of the aircraft concerned, or are brought within the control area of the airport authority concerned, as the case may be]** transit shed operator or degrouping operator; 55
- (iii) in the case of goods to be exported in a train, at the time when such goods are delivered to the railway authority;

(iv) in the case of goods to be exported overland in a vehicle (excluding an aircraft and a train), subject to the provisions of paragraph (a), at the time when such goods are loaded on the vehicle concerned.”; and

(b) by the addition to subsection (3) of the following paragraph:

“(c) If goods, removed in terms of any procedure regulated by this Act, are to be transferred from one mode of transport to another or from a particular mode of transport to a similar mode, the Controller where such procedure was authorised must be informed at the time and in the manner prescribed by rule.”.

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

Amendment of section 41 of Act 91 of 1964, as amended by section 15 of Act 105 of 1969, section 6 of Act 112 of 1977, section 3 of Act 93 of 1978, section 5 of Act 86 of 1982, section 2 of Act 85 of 1986, section 12 of Act 84 of 1987, section 20 of Act 59 of 1990, section 31 of Act 45 of 1995 and section 17 of Act 32 of 2005

22. Section 41 of the Customs and Excise Act, 1964, is hereby amended by the deletion in subsection (4) of paragraph (d).

Insertion of section 64H in Act 91 of 1964

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

“Licensing of container terminals

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

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

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

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

(2) (a) (i) The terminal operator shall—

(aa) be responsible for ensuring that goods for export are loaded on a ship for export; and

(bb) in addition to any liability for duty incurred by any person under any other provision of this Act, be liable for the duty on any goods received for export and such liability shall cease when it is proved that the goods have been loaded on a ship as contemplated in subparagraph (aa).

(ii) The terminal operator shall produce proof to the Controller as may be prescribed by rule that the goods have been loaded on a ship for export.

(iii) Goods received in a container terminal may not be opened or withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule.

(b) The receipt, storage and handling of containers in a container terminal shall be in accordance with requirements that may be prescribed by rule.

(c) Except where goods have been entered for home consumption and released thereafter, or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of any imported containers from a container terminal.

(3) The Controller may require any container to be detained in a container terminal for examination of the container or its contents, including by non-intrusive inspection methods contemplated in section 4(8A).

(4) (a) The Commissioner may refuse an application for a container terminal licence or cancel or suspend such a licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).

- (5) The Commissioner may prescribe by rule—
- (a) the security requirements regarding the premises and equipment of the container terminal and control measures to be observed in a container terminal;
 - (b) any procedure or obligation in connection with containers received which are—
 - (i) in excess of manifested quantities;
 - (ii) unmanifested excess containers; or
 - (iii) manifested but not received;
 - (c) reports and procedures relating to missing seals or seals and containers with signs of damage, tampering or other discrepancy;
 - (d) records to be kept in respect of the movement of containers and any other activity in the operation of the container terminal;
 - (e) all matters that are required or permitted in terms of this section to be prescribed by rule;
 - (f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of a container terminal.

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

Insertion of section 64I of Act 91 of 1964

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

“Licensing of combination terminals

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

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

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

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

(2) (a) (i) The combination terminal operator shall—

(aa) be responsible for ensuring that goods for export are loaded on a ship for export; and

(bb) in addition to any liability for duty incurred by any person under any other provision of this Act, be liable for the duty on any goods received for export and such liability shall cease when it is proved that the goods have been loaded on a ship as contemplated in subparagraph (aa).

(ii) The combination terminal operator shall produce proof to the Controller as may be prescribed by rule that the goods have been loaded on a ship for export.

(iii) Goods received in a combination terminal may not be opened or withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule.

(b) The receipt, storage and handling of goods in a combination terminal shall be in accordance with the requirements that may be prescribed by rule.

(c) Except where goods have been entered for home consumption and released thereafter or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of imported goods from a combination terminal.

(3) The Controller may require any container or package to be detained in a combination terminal for examination of the container or package or of its contents, including by non-intrusive inspection methods contemplated in section 4(8A).

(4) (a) The Commissioner may refuse an application for a combination terminal licence or cancel or suspend such a licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).

(5) The Commissioner may prescribe by rule—

(a) the security requirements regarding the premises and equipment of the combination terminal and control measures to be observed in a combination terminal;

(b) any procedure or obligation in connection with containers or packages received which are—

(i) in excess of manifested quantities;

(ii) unmanifested excess containers or packages; or

(iii) manifested but not received;

(c) reports and procedures relating to missing seals or seals, containers or packages with signs of damage, tampering or other discrepancy;

(d) records to be kept in respect of the movement of goods and any other activity in the operation of a combination terminal;

(e) all matters that are required or permitted in terms of this section to be prescribed by rule;

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of a combination terminal.”.

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

Insertion of section 64J of Act 91 of 1964

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

“Licensing of road vehicle terminals

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

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

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

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

- (2) (a) (i) A road vehicle terminal operator shall—
- (aa) be responsible for ensuring that goods for export are loaded on a ship for export; and
- (bb) in addition to any liability for duty incurred by any person under any other provision of this Act, be liable for the duty on any goods received for export and such liability shall cease when it is proved that the goods have been loaded on a ship as contemplated in subparagraph (aa).
- (ii) The road vehicle terminal operator shall produce proof to the Controller as may be prescribed by rule that the goods have been loaded on a ship for export.
- (iii) Goods received in a road vehicle terminal may not be withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule.
- (b) The receipt, storage and handling of vehicles in a road vehicle terminal shall be in accordance with requirements as may be prescribed by rule.
- (c) Except where vehicles have been entered for home consumption and released thereafter, or any other procedure is authorised by rule, the provisions of section 18 shall, subject to any adaptation or special requirement prescribed by rule, apply *mutatis mutandis* to any movement of imported vehicles from a road vehicle terminal.
- (3) The Controller may require any vehicle to be detained in a road vehicle terminal for examination, including by non-intrusive inspection methods contemplated in section 4(8A).
- (4) (a) The Commissioner may refuse an application for a road vehicle terminal license or cancel or suspend such a licence.
- (b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).
- (5) The Commissioner may prescribe by rule—
- (a) the security requirements regarding the premises and equipment of the road vehicle terminal and control measures to be observed in a road vehicle terminal;
- (b) any procedure or obligation in connection with vehicles received which are—
- (i) in excess of manifested quantities;
- (ii) unmanifested excess vehicles; or
- (iii) manifested, but not received;
- (c) reports and procedures relating to damaged vehicles;
- (d) records to be kept in respect of the movement of vehicles and any other activity in the operation of a road vehicle terminal;
- (e) all matters that are required or permitted in terms of this section to be prescribed by rule;
- (f) any other matter which is necessary and useful to achieve the efficient and effective administration of a road vehicle terminal.”.
- (2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Insertion of section 64K in Act 91 of 1964

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

“Licensing of bulk goods terminals

64K. (1) (a) (i) This section applies to a terminal for imported bulk goods or bulk goods for export that is not licensed as a customs and excise warehouse.

(ii) Every bulk goods terminal shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence.

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

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

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

(2) (a) (i) The bulk goods terminal operator shall—

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

(bb) in addition to any liability for duty incurred by any person under any provision of this Act, be liable for the duty on any goods received for export and such liability shall cease when it is proved that the goods have been loaded on a ship or vehicle as contemplated in subparagraph (aa).

(ii) The bulk goods terminal operator shall produce proof to the Controller as may be prescribed by rule that the goods have been loaded on a ship or vehicle for export.

(iii) Goods received in a bulk goods terminal may not be opened or withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule.

(b) The receipt, storage and handling of goods in a bulk goods terminal shall be in accordance with the requirements that may be prescribed by rule.

(c) Except where goods have been entered for home consumption and released thereafter or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of imported goods from a bulk goods terminal.

(3) The Controller may require any bulk goods to be detained in a bulk goods terminal for examination of the bulk goods, including by non-intrusive inspection methods contemplated in section 4(8A).

(4) (a) The Commissioner may refuse an application for a bulk goods terminal licence or cancel or suspend such a licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).

(5) The Commissioner may prescribe by rule—

(a) the security and control measures to be observed in a bulk goods terminal;

(b) any procedure or obligation in connection with bulk goods received which are—

(i) in excess of manifested quantities;

(ii) unmanifested excess bulk goods; or

(iii) manifested, but not received;

(c) reports and procedures relating to damaged bulk goods;

(d) records to be kept in respect of the storage or movement of goods and any other activity in the operation of a bulk goods terminal;

(e) all matters that are required or permitted in terms of this section to be prescribed by rule; and

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and administration of a bulk goods terminal.

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

Insertion of section 64L in Act 91 of 1964

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

“Licensing of container operators

64L. (1) (a) Every container operator shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence. 5

(b) Application for such a licence shall be made on the prescribed form which shall be supported by the documents and information specified in such form and as the Commissioner may require from each applicant. 10

(c) Before any licence is issued the applicant for a licence must furnish security as contemplated in section 60(1)(c): Provided that the Commissioner may on good cause shown, to the extent considered reasonable in each case, reduce the amount of such security or exempt any person from furnishing security. 15

(d) Before commencing operations or from a date thereafter specified by the Commissioner by rule, every container operator shall register for the purposes of electronic communication as a user and enter into a user agreement in terms of section 101A and the rules made thereunder. 20

(2) (a) Except if determined otherwise by rule, containerised goods for export must be delivered to and exported from a container terminal or a combination terminal. 25

(b) The receipt and handling of containers by the container operator shall be in accordance with requirements that may be prescribed by rule. 30

(c) Except where goods have been entered for home consumption and released thereafter or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of any containerised imported goods by the container operator. 35

(3) The Controller may require any container received by the container operator to be detained for examination of the container or its contents, including by non-intrusive inspection methods contemplated in section 4(8A) and, if the Controller so determines, the container operator must remove the container to a container depot for examination of its contents. 40

(4) (a) The Commissioner may refuse an application for a container operator licence or cancel or suspend such a licence. 45

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).

(5) The Commissioner may prescribe by rule—

(a) the security and control measures to be observed by the container operator; 50

(b) any procedure or obligation in connection with containers received and the movement of such containers;

(c) reports and procedures relating to missing seals or seals and containers with signs of damage, tampering or other discrepancy;

(d) records to be kept in respect of the movement of containers and any other activity in the operation of containers; 45

(e) all matters that are required or permitted in terms of this section to be prescribed by rule; and

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of the activities of a container operator.” 50

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

Insertion of section 64M in Act 91 of 1964

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

“Licensing of transit sheds

- 64M.** (1) (a) Every transit shed shall be licensed in accordance with the provisions of section 60, this section, any applicable note in Schedule No. 8 and any rule relating to such licence. 5
- (b) Application for such a licence shall be made on the prescribed form which shall be supported by the documents and information specified in such form and as the Commissioner may require from each applicant. 10
- (c) Before any licence is issued the applicant for a licence must furnish security as contemplated in section 60(1)(c): Provided that the Commissioner may on good cause shown, to the extent considered reasonable in each case, reduce the amount of such security or exempt any person from furnishing security. 15
- (d) Before commencing operations or from a date thereafter specified by the Commissioner by rule, every transit shed shall register for the purposes of electronic communication as a user and enter into a user agreement in terms of section 101A and the rules made thereunder.
- (2) (a) (i) Except if determined otherwise by rule, break bulk goods for export must be delivered to and exported from a transit shed or a combination terminal. 20
- (ii) The transit shed operator shall—
- (aa) be responsible for ensuring that goods for export are delivered to a combination terminal or are loaded on a ship or vehicle for export; and 25
- (bb) in addition to any liability for duty incurred by any person under any other provision of this Act, be liable for the duty on any goods received for export and such liability shall cease when it is proved that the goods have been delivered to a combination terminal or have been loaded on a ship or vehicle as contemplated in subparagraph (aa). 30
- (iii) The transit shed operator shall produce proof to the Controller as may be prescribed by rule that the goods have been delivered to a combination terminal or have been loaded on a ship or vehicle for export.
- (iv) Goods received in a transit shed may not be opened or withdrawn therefrom without the permission of the Controller and in compliance with such procedures as may be prescribed by rule. 35
- (v) The receipt, storage and handling of goods in a transit shed shall be in accordance with the requirements that may be prescribed by rule.
- (b) Except where goods have been entered for home consumption and released thereafter or any other procedure is authorised by rule, the provisions of section 18 shall apply *mutatis mutandis* to any movement of any imported goods by the transit shed operator. 40
- (3) The Controller may require any break bulk goods to be detained in a transit shed for examination of the package or its contents, including by non-intrusive inspection methods contemplated in section 4(8A). 45
- (4) (a) The Commissioner may refuse an application for a transit shed licence or cancel or suspend such a licence.
- (b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph (a).
- (5) The Commissioner may prescribe by rule— 50
- (a) the security requirements regarding the premises, equipment of the transit shed and control measures to be observed in a transit shed;
- (b) any procedure or obligation in connection with packages received which are— 55
- (i) in excess of manifested quantities;
- (ii) unmanifested excess consolidated packings or packages;
- (iii) manifested but not received;
- (c) reports and procedures relating to packages received with signs of damage, tampering or other discrepancy;

- (d) records to be kept in respect of the storage and movement of goods and any other activity in the operation of the transit shed;
- (e) all matters that are required or permitted in terms of this section to be prescribed by rule; and
- (f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of the activities of a transit shed.”.

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

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986, section 27 of Act 84 of 1987, section 32 of act 59 of 1990, section 8 of Act 105 of 1992, section 8 of Act 98 of 1993, section 68 of Act 30 of 1998, section 63 of Act 53 of 1999, section 62 of Act 59 of 2000 and section 148 of Act 45 of 2003

29. (1) Section 80 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (r) of the following paragraph:

“(s) fails to deal with goods as contemplated in section 11(1).”; and

- (b) by the substitution in subsection (1) for paragraph (o) of the following paragraph:

“(o) contravenes the provisions of section 4(12A)(b), 18(13), 18A(9), 20(4)bis, 21(3)(d), 35A(4), 37(9), 37A(1)(c), 37A(4)(a), 48(1A)(b), 60(1), 63(1), 75(7A), 75(19), 88(1)(bA), 99A, 113(2), 113(8)(c), 114(2A) or 114(2B).”.

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

Amendment of section 96 of Act 91 of 1964, as substituted by section 136 of Act 60 of 2001 and amended by section 30 of Act 34 of 2004 and section 26 of Act 32 of 2005

30. Section 96 of the Customs and Excise Act, 1964, is hereby amended by the insertion after subsection (2) of the following subsection:

“(3) Notwithstanding the provisions of the Admiralty Jurisdiction Regulations Act, 1983 (Act No. 105 of 1983), when any person applies to the High Court for an order for the sale of any arrested property, such person shall deliver a notice of such an application at the place prescribed in the rules.”.

Repeal of section 96A of Act 91 of 1964

31. (1) Section 96A of the Customs and Excise Act, 1964, is hereby deleted.

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

Substitution of section 97 of Act 91 of 1964, as substituted by section 137 of Act 60 of 2001

32. (1) The following section is hereby substituted for section 97 of the Customs and Excise Act, 1964:

“Appointment of agent by master, pilot or other carrier

97. (1) Notwithstanding anything to the contrary contained in this Act—

- (a) any master, pilot or other carrier to which this Act relates, may, and shall, except if the Commissioner otherwise determines by rule, in the circumstances specified in paragraph (b), instead of himself or herself performing any act, including the answering of questions required by or under any provision of this Act, appoint an agent to perform any such act;
- (b) where the means of transport concerned is not owned or chartered by a legal person registered in the Republic in accordance with the laws

of the Republic and which has its place of effective management in the Republic, or by a natural person who is ordinarily resident in the Republic and has a permanent business establishment in the Republic, such master, pilot or other carrier shall appoint an agent as required in terms of paragraph (a).

(2) (a) Any such agent shall be a legal person registered in the Republic in accordance with the laws of the Republic and which has its place of effective management in the Republic or a natural person who is ordinarily resident in the Republic and has a permanent business establishment in the Republic.

(b) Any act performed by such agent on behalf of such master, pilot or other carrier shall in all respects for the purposes of this Act be deemed to be the act of such master, pilot or other carrier.

(3) For the purposes of this section—

(a) “agent” includes, subject to subsection (2)(a), a person carrying on a business as an airline or a shipping line;

(b) “airline” means any transport enterprise offering or operating an international air service; and

(c) “shipping line” means any transport enterprise offering or operating an international shipping service.

(4) Any such agent must be licensed in terms of section 60 from a date determined by the Commissioner by rule.

(5) The Commissioner may make rules regarding—

(a) any matter required or permitted to be prescribed by rule;

(b) any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of this section.”

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

Amendment of section 101A of Act 91 of 1964, as inserted by section 51 of Act 19 of 2001 and amended by 153 of Act 45 of 2003 and section 32 of Act 34 of 2004

33. (1) Section 101A of the Customs and Excise Act, 1964, is hereby amended by the addition to subsection (2) of the following paragraph:

“(d) The Commissioner may require by rule any person or class of persons, participating in any activity regulated by this Act, unless exempted in such rule, to communicate electronically and register as a user in accordance with the provisions of this section.”

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

Amendment of section 107 of Act 91 of 1964, as amended by section 20 of Act 85 of 1968, section 31 of Act 105 of 1969, section 11 of Act 93 of 1978, section 6 of Act 89 of 1983, section 67 of Act 45 of 1995, section 33 of Act 34 of 2004 and section 11 of Act 10 of 2006

34. (1) Section 107 of the Customs and Excise Act, 1964, is hereby amended—

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

“(a) All handling of and dealing with goods for the purposes of this Act shall be performed by or at the expense and risk of—

(i) the importer, exporter, manufacturer, owner or other person, whoever is in control of the goods, except in the case of goods examined at a customs and excise warehouse, where such handling of and dealing with goods shall be performed at the expense and risk of the owner thereof or the licensee of such warehouse;

(ii) in the case of goods in transit through the Republic the person who enters the goods for such transit; or

(iii) in the case of goods for transhipment at any place in the Republic, the person who declares the goods on any cargo report for such transhipment.”; and

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

“(a) (i) Subject to the provisions of this Act, the Commissioner shall not, except on such conditions, including conditions relating to security, as may be determined by him or her, allow goods to pass from his or her control until the provisions of this Act or any law relating to the importation, exportation, transshipment or transit carriage through the Republic of goods, have been complied with in respect of such goods.”

(ii) The State or the Commissioner or any officer shall in no case be liable in respect of any claim arising out of the detention or examination of goods or for the costs of such detention or examination.

(iii) Such examination shall include any examination contemplated in section 4(8A).”

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

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 15 of Act 98 of 1980, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990, section 11 of Act 19 of 1994, section 73 of Act 45 of 1995 and section 74 of Act 30 of 1998

35. (1) Section 120 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) as to the reporting inwards and outwards of ships and aircraft (including such reporting of ships or aircraft calling or landing at places not appointed as places of entry or customs and excise airports under this Act), the entry or departure of vehicles overland, the landing, loading, removal, detention, release, examination, conveyance and handling of cargo (including transit and coastwise and transshipment cargo), goods under customs control, customs controlled area, the control of persons (including their baggage and goods) entering or leaving the Republic, the placing into or removal from any State warehouse of goods and the removal in bond of goods;”

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

Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998, section 66 of Act 19 of 2001, section 150 of Act 60 of 2001, section 116 of Act 74 of 2002, section 48 of Act 12 of 2003, section 45 of Act 16 of 2004 and section 13 of Act 10 of 2006

36. Section 6 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in paragraph (ii) of the proviso to subsection (1) for subparagraph (aa) of the following subparagraph:

“(aa) any person which is [a public entity] an institution contemplated in section [3(1)(b)] 3(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), or an entity contemplated in section 3 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), to the extent necessary for performing the functions and exercising the powers of the National Treasury in terms of those Acts; or”; and

- (b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) disclosing to the Chief of the Central Statistical Services such information in relation to any person as may be required by such Chief in connection with the collection of statistics in carrying out the provisions of the Statistics Act, [1976 (Act No. 66 of 1976)] 1999 (Act No. 6 of 1999), or any regulation thereunder;”

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

37. (1) Section 15 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 5

“(a) the vendor is—

- (i) a public authority;
- (ii) any water board or any other institution which has powers similar to those of any such board listed in Part B of Schedule 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), which would have complied with the definition of ‘local authority’ in section 1 prior to the deletion of that definition by section 40(1)(i) of the Small Business Amnesty and Taxation Laws Act, 2006 (Act No. 9 of 2006); 10
- (iii) a regional electricity distributor established after 30 June 2005 that is— 15
 - (aa) a public entity regulated under the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (bb) a wholly owned subsidiary or entity of that public entity if the operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity; or
 - (cc) a company as contemplated in paragraph (a) of the definition of ‘company’ in section 1 of the Income Tax Act, which is wholly owned by one or more municipalities; 20
- (iv) a ‘municipal entity’ as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), where that municipal entity supplies— 25
 - (aa) electricity, gas, water; or
 - (bb) drainage, removal or disposal of sewage or garbage;
- (v) a municipality; or
- (vi) an association not for gain; or”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2006. 30

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

38. Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (8) for the proviso of the following proviso:

“: Provided that this subsection shall not require that recipient to keep such records where the total consideration for that supply is in money and does not exceed [R20] R50 or an amount determined by the Commissioner”.

 40

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

39. (1) Section 41 of the Value-Added Tax Act, 1991, is hereby amended— 45

(a) by the substitution for the words preceding paragraph (a) of the following words:

“Notwithstanding anything to the contrary in this Act (other than the provisions of section 41A or 41B)—”; and

(b) by the addition to paragraph (c) of the following provisos: 50

“: Provided that this subsection shall not apply to a written decision issued by the Commissioner prior to 1 January 2007 in respect of supplies which are, or will be made on or after 1 January 2007, except to the extent to which, if any, the Commissioner prescribes in writing that the written decision has a binding effect: Provided further that this subsection shall not apply to a written decision issued by the Commissioner after 1 January 2007”.

 55

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

Insertion of section 41A of Act 89 of 1991

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

“VAT Rulings and VAT class rulings

41A. (1) The Commissioner may issue VAT rulings or VAT class rulings and in applying the provisions relating to Part IA of Chapter III of the Income Tax Act, VAT rulings or VAT class rulings must be dealt with as if it were binding private rulings or binding class rulings, respectively: Provided that the provisions of section 76E and 76F of that Act shall not apply to any VAT rulings or VAT class rulings.

(2) For the purposes of this section—

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

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

(3) Notwithstanding the provisions of Part IA of Chapter III of the Income Tax Act, the Commissioner will not publish VAT rulings or VAT class rulings that are the same or substantially similar to VAT rulings, VAT class rulings or binding general rulings already published.”

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

Substitution of section 12 of Act 31 of 1998

41. The following section is hereby substituted for section 12 of the Uncertificated Securities Tax Act, 1998:

“Tax recoverable from person [to whom] who acquires securities [were transferred] or any of the rights or entitlements in securities

12. A member or participant as the case may be, may recover the amount of the tax payable by such member or participant in terms of this Act, from the person [to whom the relevant securities were transferred] who—
(a) acquires beneficial ownership in a security; or
(b) cancels or redeems a security.”

Repeal of section 42 of Act 19 of 2001

42. Section 42 of Revenue Laws Amendment Act, 2001, is hereby repealed.

Amendment of section 22 of Act 32 of 2005

43. (1) Section 22 of the Revenue Laws Second Amendment Act, 2005, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

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

‘[(1)] (a) Any person contemplated in section 77B may request reasons for a decision.

(b) The Commissioner may prescribe by rule—

(i) the procedures to be complied with when reasons are requested and the time within which such request must be delivered to the Commissioner;

(ii) the period within which—
(aa) a request for reasons; or
(bb) or an appeal, must be considered.

(c) The Commissioner must notify in writing the person who—

(i) requested reasons, of those reasons; or
(ii) lodged an appeal, of the final decision, within the periods prescribed in such rule.’”

(2) Subsection (1) shall come into operation on the date Part A of Chapter X comes into operation.

Amendment of section 1 of Act 10 of 2006

44. Section 1 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The purpose and objective of the tax amnesty provided for in this Chapter and Chapter I of the Tax Amnesty Act is to—” 5

Insertion of section 2A in Act 10 of 2006

45. (1) The Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 10 of 2006), is hereby amended by the insertion after section 2 of the following section: 10

“Auditor exempted from certain provisions of Act 26 of 2005

2A. (1) Where a registered auditor of an entity assists or advises an entity in connection with an application or prospective application for amnesty in terms of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 9 of 2006), the registered auditor is exempted from the provisions of section 45 of the Auditing Profession Act, 2005 (Act No. 26 of 2005), in respect of any law administered by the Commissioner for the South African Revenue Service that may come to his or her attention in the course of providing that assistance or advice, whether such an application is in fact made by or on behalf of that entity or not. 15 20

(2) The registered auditor must possess written proof of an appointment to assist or advise an entity in connection with an application or prospective application for amnesty in terms of the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006 (Act No. 9 of 2006), to qualify for the exemption provided for in subsection (1).” 25

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

Amendment of section 6 of Act 10 of 2006

46. Section 6 of the Second Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006, is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively: 30

“(2) Part III of Chapter III of the Income Tax Act, and the rules relating thereto, apply *mutatis mutandis* to any objection lodged and appeal noted against a decision of the Commissioner under **[this]** Chapter I of the Tax Amnesty Act.

(3) The tax court contemplated in section 83 of the Income Tax Act has jurisdiction to hear any appeal noted against any decision of the Commissioner under **[this Chapter and]** Chapter I of the Tax Amnesty Act.” 35

Short title

47. (1) This Act is called the Revenue Laws Second Amendment Act, 2006.

(2) Except as otherwise provided in this Act or if the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, by this Act for purposes of assessments in respect of normal tax under this Act, shall be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2007. 40

**MEMORANDUM ON THE OBJECTS OF THE REVENUE LAWS
SECOND AMENDMENT BILL, 2006**

1. OBJECTS OF BILL

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

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

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

1.3 Income Tax Act, 1962

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

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

Amendment of section 4 of the Income Tax Act, 1962

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

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

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

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

REPORTABLE ARRANGEMENTS: PROPOSED SECTIONS 80M TO 80T

Current Law

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

Reasons for Change

The number and nature of the transactions disclosed to SARS since the promulgation of section 76A have proven disappointing. Taxpayers have raised a number of technical points to argue that they need not disclose the arrangements they have entered into.

Whether or not these arguments have merit, the practical result is that the desired level of reporting is not being achieved.

The proposal of a new General Anti-Avoidance Rule (GAAR) also provides for the opportunity to link the reportable arrangements legislation to the factors that are indicative of a lack of commercial substance for GAAR purposes.

Proposal

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

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

A special inclusion list is retained but the five year threshold for reporting hybrid equity and debt instruments is extended to ten years to ensure that restructuring these instruments to fall outside the legislation will be more commercially challenging.

The existing exclusion list of arrangements that are unlikely to be tax driven, such as “plain vanilla” loans and leases, is largely retained, as is the Minister’s authority to include or exclude arrangements for disclosure by way of regulation.

The responsibility for disclosing a reportable arrangement is principally placed on its promoter, as this is the person most likely to have full insight into its operation. In the absence of a promoter who is a resident, the responsibility falls on all participants, although this responsibility falls away if another participant confirms in writing that the required disclosure has been made. This ensures that disclosure is made in the most comprehensive manner while minimising the duplication of disclosure submissions.

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

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

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

The proposed maximum penalty of R 1million reflects the substantial amounts typically at stake in reportable arrangements, with minimum funding levels of R20 million being common.

1.4 Customs and Excise Act, 1964

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

Clients currently use different bills of entry for the different customs and excise procedures. The SAD form is a single administrative document that may be used for different customs and excise procedures throughout the Southern African Customs Union (SACU). The format of the SAD form was agreed with the BLNS countries

(Republic of Botswana, Kingdom of Lesotho, Republic of Namibia and Kingdom of Swaziland) who will also implement the form in their jurisdictions. SARS plans to implement the use of the SAD form nationally and as the Customs and Excise Act, 1964, contains only references to bill of entry, the proposed amendment inserts a definition of “bill of entry” to include any SAD form.

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

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

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

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

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

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

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

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

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

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

Under section 75(14B) the Director-General of Agriculture is empowered to issue permits or certificates authorizing entry of certain goods under rebate, drawback or a refund of duty in respect of goods which may be entered in terms of any item of Schedule 3, 4, 5 or 6.

Since the said Director-General exercises these powers solely in terms of the Customs and Excise Act, 1964, provision is now made for the delegation of any duty imposed or any power conferred on the said Director-General in the Act as a result of a request received from the Department of Agriculture.

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

Subsection 4(3)(b) empowers the Commissioner or any officer to disclose any information relating to any person, firm or business acquired in the performance of his duties or by order of a competent court when required to do so as a witness in a court of law.

This provision is being abused by litigants who call customs officers as witnesses in proceedings not related to or for purposes of the Customs and Excise Act, 1964, e.g. in divorce proceedings, to testify to the financial dealings of clients.

The proposed amendment deletes this provision and aligns the wording of the subsection with the Income Tax Act, 1962.

Subsection (8A)(a) empowers officers specifically with regard to section 107(2)(a), to stop or detain goods.

The proposed amendment now also empowers officers to examine any goods in order to ascertain whether the provisions of the Act or other law have been complied with.

Subsection (8A)(b)(ii) is substituted and the proposed amendment extends any reference to “examine” in subsection (8A)(b) to include the use of an X-ray scanner or other non-intrusive inspection methods. It also makes provision for examinations to take place in the absence of any person having control of such goods, creates offences in respect of such examinations and empowers the Commissioner to make rules regarding matters related to such examinations.

Subsection (13) provides that no person shall be entitled to any compensation for any loss or damage arising out of any bona fide action of an officer under section 4 of the Customs and Excise Act, 1964.

The proposed amendment now extends the application of the subsection to include any loss or damage arising out of any examination of goods by means of non-intrusive inspection methods.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

Section 6 empowers the Commissioner to appoint inter alia places of entry, warehousing places and authorised roads and routes. To achieve more effective customs control, the proposed amendment empowers the Commissioner to appoint places where transit sheds, combination terminals, bulk goods terminals and road vehicle terminals may be established.

The proposed amendment to paragraph (g) limits the type of goods that may be removed to a transit shed to break bulk goods and removes the requirement that the goods can only be removed to the transit shed before due entry.

Subsection (6) is inserted to provide that no person may deal with any imported goods landed from any ship or vehicle or load any goods for export unless such a person is a licensee of premises licensed in terms of the Customs and Excise Act, 1964. This amendment will ensure more effective control over the movement of goods.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

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

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

Section 7 deals with the report of arrival or departure of ships or aircraft. The proposed amendment empowers the Commissioner to prescribe by rule persons who shall electronically submit arrival reports, schedule reports and departure reports.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

Section 8 deals with the submission of cargo reports. The proposed amendment now prohibits the packing or loading of the cargo into or onto a ship or vehicle for export before the Controller receives a cargo report and release has been granted. Provision is further made for appropriate penal provisions.

The amendment will provide SARS with advance information on exports, which will be used for risk management purposes.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

Section 11 lists the premises where imported goods may be placed into or delivered to, before due entry thereof. The proposed amendment adds combination terminals, bulk goods terminals, road vehicle terminals to the places where goods may be removed to on landing. These places are in terms of the proposed definitions, licensed places. Further, the proposed amendment also removes the limitation that only unentered goods could be placed in these facilities.

The purpose of the amendment is to improve the control over the movement of imported goods into temporary storage facilities pending the further removal thereof under a customs procedure e.g. warehousing, duty paid, etc.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

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

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

Section 18 provides for the removal of goods in bond. The proposed amendment to subsection (1)(d) makes removals in bond by a container operator subject to the provisions of section 44, which deal with the container operators' liability for duty as a carrier. The current exemption in respect of security is deleted.

Subsection (1)(e) allows for the removal in bond of goods by the pilot of an aircraft under cover of an air cargo transfer manifest from place in the Republic where the goods were landed to their place of entry in the Republic. The proposed amendment limits such removal to a licensed transit shed in the common customs area and extends the category of persons who can remove such goods to include the airline. The current exemption in respect of security is deleted.

The deletion of the exemption of security will allow the Commissioner to exercise his discretion to call for security or not. The amendment aligns the position of container operators and airlines with other carriers of goods.

The amendment to subsection (1)(e) will improve the control over air cargo and the inclusion of the reference to the airline reflects current industry and operational realities.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

Section 21 allows for the warehousing of duty free goods for export and subsection 21(3)(d)(iii) provides for, inter alia, where the importer fails to export duty free goods warehoused for export, within the prescribed time that the goods may be entered for home consumption and payment of duty.

Clients may enter goods for export without any intention of exporting them in order to take advantage of the VAT deferment allowed on duty free goods warehoused for export. They would then rely on the provisions of subsection 21(3)(d)(iii) to enter those goods for home consumption. This is contrary to the intention of section 21 and therefore the amendment proposes the deletion of the entry of goods for home consumption and payment of duty option.

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

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

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

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

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

Section 37B provides for the manufacture, storage, disposal and use of biofuel, biodiesel and bioethanol.

Subsection (2)(b) empowers the Minister to, in terms of any licence prescribed in Schedule No. 8 to the Act, exempt any person from the requirement to license for the manufacture of biofuel or any goods used in the production of biofuel.

Due to the fact that the rules for section 37B provide the criteria for distinguishing between different categories of biofuel manufacturers, it is considered more practical to empower the Commissioner to also by rule prescribe the criteria for exempting a person from the requirement to license as a manufacturer of biofuel.

The proposed amendment empowers the Commissioner to exempt manufacturers of biodiesel from licensing in accordance with criteria stipulated in the rules.

Section 37B(2)(c) empowers the Commissioner to exempt by rule a manufacturer of biofuel from the payment of duty on a specified quantity of biofuel manufactured by him or her, provided that it is meant for the personal use of that person and that it is not put up for sale or otherwise disposed of. Current policy requires that provision should rather be made for an exemption from the payment of duty on a specified quantity of biofuel manufactured and no further restrictions concerning the use or disposal of such fuel should be imposed.

The proposed amendment is required in order to amend the current biofuel exemption provisions so as to be in line with current policy in that regard.

Section 37B(4)(a) empowers the Commissioner to require any seller of biodiesel to register with him or her in terms of the provisions of section 59A.

It is considered essential, for purposes of control and audit, to register all manufacturers of biofuel irrespective of whether they are required, as non-exempted persons, to also be licensed for the manufacture of biofuels.

The proposed amendment empowers the Commissioner to require the registration of all manufacturers and sellers of biofuels.

This shall be deemed to have come into operation on 29 March 2006.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

Subsection 38(3)(a) provides that every exporter of any goods shall, before such goods are exported from the Republic, deliver a bill of entry to the Controller.

It is important for the purposes of conducting examinations, as provided for in the amendment of section 4(8A), of exports, that the bill of entry is delivered to the Controller with sufficient time remaining to conduct examinations before such goods are loaded on board an export vessel.

The proposed amendment allows the Commissioner to prescribe by rule the period within which export entries must be delivered to the Controller.

Subsection (5) is inserted to regulate by rule the transfer of goods from one mode of transport to another or from one such mode of transport to a similar mode of transport in order to better control the movement of goods.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

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

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

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.

Section 64H has accordingly been inserted to provide for the licensing of container terminals. This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

The Minister of Finance in his 2006 Budget Review announced that legislative changes will be made to provide for licensing of all port, terminal and similar operations (whether private or public) to achieve more effective customs control.

Section 64I has accordingly been inserted to provide for the licensing of combination terminals.

This will come into operation on a date fixed by the President by Proclamation in the *Gazette*.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.5 Value-Added Tax Act, 1991

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

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

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

With the introduction in the Taxation Laws Amendment Act, 2006 (Act No. 9 of 2006) (TLA 2006), of the new definition of “municipality” in section 1 of the Value-Added Tax Act, 1991, certain entities which previously fell within the definition of a “local authority” in section 1 of the Value-Added Tax Act, 1991, prior to its deletion in the TLA 2006 no longer fell within the definition of “municipality” in section 1 of the Value-Added Tax Act, 1991. As a result, these entities would not qualify to account for Value-Added Tax (VAT) on the payments basis. The basis for extending the list to the vendors mentioned below to account for VAT on the payments basis is that these vendors are rendering similar services, e.g. electricity, gas, water, drainage, removal or disposal of sewage or garbage to that of municipalities.

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

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

- (a) any water board or any other institution which has powers similar to those of any such board which is listed in Part B of Schedule 3 to the Public Finance Management Act, 1999, and which entity would have fallen within the definition of “local authority” in section 1 of the Value-Added Tax Act, 1991, as it read prior to that definition being deleted as from 1 July 2006;
- (b) a regional electricity distributor, being an electricity distribution services provider established after 30 June 2005 that is—
 - a public entity regulated under the Public Finance Management Act, 1999;
 - a wholly owned subsidiary or entity of that public entity if the operations of the subsidiary or entity are ancillary or complementary to the operations of that public entity; or
 - a company as contemplated in paragraph (a) of the definition of ‘company’, which is wholly owned by one or more Municipalities;”;
- (c) municipal entities as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), and which supplies electricity, gas, water, drainage, removal or disposal of sewage or garbage.

The proposed amendment will be effective from 1 July 2006.

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

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

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

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

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

Any written decision issued prior to 1 January 2007 in respect of supplies made after 1 January 2007, shall not be binding, except to the extent that the Commissioner confirms, in writing, that such written decision is binding. The proposed amendment, allows the Commissioner to withdraw any written decision issued prior to 1 January 2007 where the Commissioner prescribes that the written decision does not have binding effect. Such withdrawal will be from the date of the written notification thereof by the Commissioner.

The withdrawal of the written decision where any contractual obligation was incurred in accordance with the written decision given by the Commissioner to the person concerned before such withdrawal to supply or receive the goods or services concerned, may not affect the liability or non-liability of that person for the payment of tax in accordance with such decision or his entitlement or otherwise to a deduction of tax, as determined in accordance with such decision.

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

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

The “VAT rulings” and “VAT class rulings” will not be subject to any fees as envisaged in the Income Tax legislation governing “advance tax rulings”.

In terms of the proposed amendment, the Commissioner will only be required to publish decisions that set a new precedent.

1.6 Uncertificated Securities Tax, 1998

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

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

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

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

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

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

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

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

The amendment is consequential in nature.

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

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

2. PERSONS AND INSTITUTIONS CONSULTED

The amendments introduced by this Bill were published on the SARS and National Treasury websites for public comment. Comments were received from interested parties.

3. FINANCIAL IMPLICATIONS TO STATE

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

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