

- (a) an amount which constitutes a unit of foreign currency in cash or cash equivalent, held primarily for the regular payment of personal expenses; or
 - (b) any one account held in the relevant foreign currency with a banking institution from which funds can be immediately withdrawn, which account is used primarily for the regular payment of personal expenses;
- “valuation date” means—
- (a) 1 March 2003; or
 - (b) where a person becomes a resident of the Republic after 1 March 2003, the date that such person becomes a resident.

Application of this Part

85. This Part applies in respect of—

- (a) the acquisition and disposal of any foreign currency asset; and
- (b) the settlement or part settlement of any foreign currency liability, by any person who is a resident (other than a resident in respect of whom section 24I of the Act applies in respect of any foreign currency asset of that person in the relevant foreign currency).

Foreign currency capital gain and foreign currency capital loss

- 86.** (1) Despite anything to the contrary contained in the Act, a person's foreign currency capital gain for the year of assessment in respect of—
- (a) the disposal of a foreign currency asset (other than a personal foreign currency asset), is the amount by which the foreign currency proceeds exceed the foreign currency base cost; or
 - (b) the settlement or part settlement of any foreign currency liability due by that person, is the amount determined in accordance with paragraph 93(1).
- (2) Despite anything to the contrary contained in the Act, a person's foreign currency capital loss for the year of assessment in respect of—
- (a) the disposal of a foreign currency asset (other than a personal foreign currency asset) is the amount by which the foreign currency base cost in respect of that asset exceeds the foreign currency proceeds; or
 - (b) any settlement or part settlement of any foreign currency liability due by that person, is the amount determined in accordance with paragraph 93(2).
- (3) The amount of any foreign currency capital gain or foreign currency capital loss of a person during any year of assessment, as contemplated in subparagraphs (1) and (2), respectively, shall be treated as a capital gain or capital loss, as the case may be, for purposes of determining the aggregate capital gain or aggregate capital loss of that person for that year in terms of this Schedule.

Disposal of foreign currency asset

87. A disposal of a foreign currency asset includes—

- (a) the conversion, sale, donation, expropriation, cession, exchange or any alienation or transfer of that foreign currency asset;
- (b) the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry, abandonment or loss of that foreign currency asset; or
- (c) the vesting of any foreign currency asset of a trust in a beneficiary of that trust.

Events treated as acquisition or disposal of foreign currency asset

- 88.** (1) A person must be treated as having acquired on valuation date all foreign currency assets (other than personal foreign currency assets) of that person which have not been disposed of by that person before that date.
- (2) Where a person—

- (a) ceases to be a resident; or
 - (b) who is a resident, is as a result of the application of any agreement entered into by the Republic with any other country for the avoidance of double taxation, treated as not being a resident,
- that person must be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) acquired and not disposed of by that person before so ceasing to be or treated as not being a resident. 5
- (3) Where the provisions of section 24I become applicable to a person in respect of any foreign currency asset of that person, that person must, for the purposes of this Part, be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) of that person which were not disposed of immediately before section 24I became applicable. 10
- (4) Where the provisions of this Part become applicable to a person, that person must, for the purposes of this Part, be treated as having acquired all foreign currency assets (other than personal foreign currency assets) of that person which were not disposed of immediately before this Part became applicable. 15
- (5) Where a person commences to hold a foreign currency asset which is included in the foreign currency asset pool, as a personal foreign currency asset, that person must be treated as having disposed of that foreign currency asset on the date that the person so commences to hold that foreign currency asset as a personal foreign currency asset. 20
- (6) Where a person ceases to hold a foreign currency asset as personal foreign currency asset, that person must be treated as having acquired that foreign currency asset on the date that the person so ceases to hold that foreign currency asset as a personal foreign currency asset. 25

Exchange of foreign currency assets denominated in same foreign currency

89. (1) Subject to subparagraph (2), where a person exchanges one foreign currency asset for another foreign currency asset which is denominated in the same currency, there shall, for the purposes of this Part— 30
- (a) be no disposal by that person of the foreign currency asset which is surrendered in exchange for that other foreign currency asset, to the extent that the value in foreign currency of that foreign currency asset so surrendered does not exceed the value in foreign currency of that other foreign currency asset; and 35
 - (b) be no acquisition by that person of the foreign currency asset which is obtained in exchange for that other foreign currency asset, to the extent that the value in foreign currency of that foreign currency asset so obtained does not exceed the value in foreign currency of that other foreign currency asset. 40
- (2) Subparagraph (1) does not apply to the extent that the foreign currency asset obtained or surrendered in exchange for the other foreign currency asset constitutes a personal foreign currency asset. 45

Foreign currency asset pool

90. (1) A person must maintain a foreign currency asset pool for each foreign currency in which any foreign currency asset of that person is denominated, which must— 50
- (a) include the total amount in foreign currency of all foreign currency assets (other than personal foreign currency assets) acquired on or after valuation date, (including any amount of interest which is deemed to have accrued for purposes of the Act in respect of any foreign currency asset); and 55
 - (b) be reduced by the amount in foreign currency of any foreign currency asset included therein, which has been disposed of by that person on or after valuation date.

(2) The total asset pool base cost in respect of the foreign currency asset pool contemplated in subparagraph (1), is determined as the sum of the values in foreign currency of each foreign currency asset contemplated in subparagraph (1)(a), translated into the currency of the Republic at the average exchange rate for the year of assessment during which the relevant foreign currency asset was acquired, subject to paragraphs 95 and 96, reduced by the foreign currency base cost of any foreign currency assets disposed of as contemplated in subparagraph (1)(b).

Foreign currency base cost of foreign currency asset

91. The base cost of a foreign currency asset disposed of by a person is an amount which bears to the total asset pool base cost determined in terms of paragraph 90(2) prior to that disposal, the same ratio as the value in foreign currency of that foreign currency asset so disposed of bears to the total value in foreign currency of the relevant foreign currency asset pool determined in terms of paragraph 90(1) prior to that disposal.

Foreign currency proceeds

92. Subject to paragraphs 95 and 96, the proceeds from the disposal by a person of a foreign currency asset is an amount determined by translating the value in foreign currency of that asset into the currency of the Republic at the average exchange rate for the year of assessment during which that asset is disposed of and—

(a) reducing that amount by—

(i) any capital gain determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part), which was included in that amount; or

(ii) any other amount included therein, which is or was during any year of assessment included in the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset; or

(b) increasing that amount by any capital loss determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part).

Settlement of foreign currency liability

93. (1) A person must be treated as having a foreign currency capital gain from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred, exceeds that amount translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled.

(2) A person must be treated as having a foreign currency capital loss from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled, exceeds that amount translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred.

(3) A person must disregard any foreign currency capital gain or foreign currency capital loss determined during any year of assessment in respect of the settlement of any foreign currency liability, to the extent that the amount of that foreign currency liability was utilised otherwise than to—

(a) acquire any right in terms of a forward exchange contract or a foreign currency option contract;

- (b) acquire any foreign currency asset other than a personal foreign currency asset;
 - (c) acquire any foreign equity instrument or any asset in local currency as contemplated in paragraph 43; or
 - (d) refinance any foreign currency liability which was utilised to acquire any asset contemplated in item (a), (b) or (c),
- which was not disposed of by that person during any previous year of assessment.

Involuntary disposal of foreign currency asset

94. A person must disregard any foreign currency gain or foreign currency loss determined in respect of an involuntary disposal of any foreign currency asset by way of expropriation, theft or physical loss.

Transfer of foreign currency assets between spouses

- 95.** Where a person disposes of any foreign currency asset to his or her spouse—
- (a) that person must be treated as having disposed of that foreign currency asset for proceeds equal to the foreign currency base cost of that foreign currency asset; and
 - (b) that spouse must, for purposes of paragraph 90(2), treat that foreign currency base cost as the value of that asset in the currency of the Republic on the date of acquisition.

Application of provisions of Eighth Schedule

96. (1) The provisions of paragraphs 11(2)(a), (e) and (i), 12(1), 12(2)(a), 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80 and 82 and 83 of the Eighth Schedule to the Act, shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain or foreign currency capital loss resulting from the disposal of any foreign currency asset.

(2) For purposes of paragraph 96(1), any reference in any provision referred to in that paragraph to—

- (a) the market value shall be treated as a reference to the relevant value in foreign currency translated to the currency of the Republic at the average exchange for the relevant year of assessment; and
- (b) the base cost shall be treated as a reference to the foreign currency base cost.”

(2) Subsection (1) shall come into operation on 1 March 2003 and shall apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 86 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 35 of Act 19 of 2001 and section 112 of Act 60 of 2001

101. Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby renumbered as paragraph 97.

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 and section 119 of Act 60 of 2001

102. Section 18 of the Customs and Excise Act, 1964, is hereby amended—

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

“(a) except as otherwise prescribed by rule—

- (i) the importer or owner of any imported goods landed in the Republic;

- (ii) the licensee of any customs and excise manufacturing warehouse in which excisable or fuel levy goods are manufactured;
 - (iii) the licensee of any storage warehouse in which excisable or fuel levy goods are stored;
 - (iv) the licensee or owner of any imported goods stored in a customs and excise storage warehouse; or
 - (v) any clearing agent licensed in terms of section 64B appointed by such importer, owner of licensee,
- may enter such goods for removal in bond and may remove such goods or cause such goods to be removed—
- (aa) in the case of goods contemplated in subparagraph (i), to any place in the Republic appointed as a place of entry or warehousing under this Act or to any place outside the Republic: Provided that any goods which are in transit through the Republic as contemplated in subsection (1A), may only be so entered and removed or caused to be so removed by such licensed clearing agent; or
 - (bb) in the case of goods contemplated in subparagraphs (ii), (iii) or (iv), to any warehousing place in the Republic or to any place in any other country in the common customs area appointed as a warehousing place for rewarehousing at that place in another such warehouse.”;
- (b) by the addition to subsection (1) of paragraph (f) of the following paragraph:
- “(f) Any goods entered for removal in bond may, except if exempted by rule, when carried by road only be transported by a licensed remover of goods in bond contemplated in section 64D, whether or not the goods are wholly or partly transported by road.”;
- (c) by the substitution for subsection (2) of the following subsection:
- “(2) In addition to any liability for duty incurred by any person under any provision of this Act, but subject to the provisions of section 99(2), the person who [removes] enters any goods for removal in bond or who may remove in bond any goods contemplated in subsection (1) and who removes or causes such goods to be so removed, shall subject to the provisions of subsection (3), be liable for the duty on all goods which [he so removes] are so entered and so removed in bond.”.

Insertion of section 37B of Act 91 of 1964

103. (1) The following section is hereby inserted in the Customs and Excise Act, 1964 after section 37A:

“Provisions relating to the manufacture, storage, disposal and use of biofuel, biodiesel or bioethanol

37B. (1) For the purposes of this Act, unless the context otherwise indicates—

‘biofuel’ means any goods used as liquid fuel manufactured from any vegetable or other material, not being any material from which mineral fuels, oils or other goods are obtained as provided in Chapter 27 of Part 1 of Schedule No. 1;

‘biodiesel’ means a biofuel as specified in and described in any note to any heading or in any subheading of Part 1 of Schedule No. 1, any item of Section A of Part 2 or Part 5 of the said Schedule No. 1 or any item of Schedule No. 3, 4, 5 or 6 capable of use as a substitute for or an additive to distillate fuel;

‘bioethanol’ means a biofuel as specified in and described in any note to any heading or in any subheading of Part 1 of Schedule No. 1, any item of Section A of Part 2 or Part 5 of the said Schedule no. 1 or any item of Schedule No. 3, 4, 5 or 6 capable of use as a substitute for or additive to petrol;

‘distillate fuel’ or ‘diesel’ means distillate fuel defined in the Notes to Chapter 27 of Part 1 of Schedule No 1 and liable to customs duty as

specified in the said Part 1 and to excise duty and fuel levy as specified in Section A of Part 2 and Part 5, respectively, of Schedule No. 1;

'manufacture' in relation to biofuel includes mixing biofuel with distillate fuel or petrol;

'petrol' means petrol as defined in the Notes to Chapter 27 of Part 1 of Schedule No 1 and liable to customs duty as specified in the said Part 1 and to excise duty and fuel levy as specified in Section A of Part 2 and Part 5, respectively, of Schedule No. 1.

(2) (a) Except where otherwise provided—

- (i) in this section;
 - (ii) by the Minister in any amendment of any Schedule in terms of any provision of this Act; or
 - (iii) by the Commissioner in any rule,
- the provisions of this Act governing the administration of excisable goods or fuel levy goods, including the levying of duty and granting of any rebate or refund of duty on such goods, shall apply *mutatis mutandis* to biofuel.

(b) The Minister may, in prescribing any licence for the manufacture of biofuel in any item of Schedule No. 8 under the provisions of section 60, 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.

(3) Notwithstanding anything to the contrary contained in this Act, the Minister may, in any amendment of any Schedule under any provision of this Act, specify—

- (a) in which proportion distillate fuel and biodiesel or petrol and bioethanol may be mixed to be classifiable under any tariff heading or item;
- (b) a different rate of duty and extent of rebate or refund on the basis of the proportionate content of distillate fuel or biodiesel or petrol or bioethanol in any such mixture.

(4) The Commissioner may—

- (a) require any seller of biofuel to register in terms of section 59A;
- (b) make rules—
 - (i) to exempt any person who is required to licence under any provision of this Act from furnishing security;
 - (ii) concerning payment of duty, accounts to be kept and procedures regulating the manufacture, storage, disposal or use of biofuel;
 - (iii) to delegate, subject to section 3(2), any power which may be exercised and assign any duty that shall be performed by the Commissioner in terms of this Act to any officer;
 - (iv) regarding all matters which are required or permitted in terms of this section to be prescribed by rule;
 - (v) in respect of any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section."

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

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

104. (1) Section 47 of the Customs and Excise Act, 1964 is hereby amended by the substitution for the words following paragraph (a)(iv) of subsection (8) of the following words:

"shall be subject to the International Convention on the Harmonized Commodity Description and Coding System done in Brussels on 14 June 1983 and to the Explanatory Notes to the Harmonised System issued by the Customs Co-operation

Council, Brussels (now known as the World Customs Organisation) from time to time: Provided that where the application of any part of such Notes or any addendum thereto or any explanation thereof is optional the application of such part, addendum or explanation shall be in the discretion of the Commissioner.”.

(2) Subsection (1) shall be deemed to have come into operation on 12 December 2001. 5

Amendment of section 50 of Act 91 of 1964, as inserted by section 66 of Act 30 of 1998

105. The following section is hereby substituted for section 50 to the Customs and Excise Act, 1964: 10

“Provisions relating to the disclosure of information in terms of agreements and conventions

50. Notwithstanding the provisions of section 4(3)—

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|--|----|
| (a) the Commissioner may, in accordance with— | 15 |
| (i) any agreement or convention in respect of customs co-operation to which the Republic is a party; or | |
| (ii) any other international agreement or convention to which the Republic is a party and in circumstances where the Commissioner is, on good cause shown, satisfied that the international or regional interest or national public interest in the disclosure of information outweighs any potential harm to the person, firm or business to whom or to which such information relates— | 20 |
| (aa) disclose, or, for the purpose of subparagraph (i), in writing authorise any officer to disclose, any information relating to any person, firm or business acquired by an officer in carrying out any duty under this Act; | 25 |
| (bb) render mutual and technical assistance in accordance with any convention or agreement contemplated in subparagraph (i); and | |
| (cc) in writing authorise any officer to exercise any power under this Act which may be considered necessary for the purposes of rendering such assistance or obtaining such information; | 30 |
| (b) the Commissioner may, in the circumstances contemplated in paragraph (a)— | 35 |
| (i) disclose, such information or as contemplated in paragraph (a)(i), authorise such disclosure, to a person authorised to act on behalf of any international agency, institution or organisation with which an agreement has been entered into with the Republic; and | |
| (ii) specify the purpose for which such disclosure is authorised and the manner in which or the conditions under which such disclosure is to be made.”. | 40 |

Insertion of section 50A in Act 91 of 1964

106. The following section is hereby inserted after section 50 of the Customs and Excise Act, 1964: 45

“Joint, one-stop or juxtaposed international land border posts

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| 50A. (1) The Commissioner may by rule in accordance with any international agreement concerning joint, one-stop or juxtaposed international land border posts and places of entry for the Republic and an adjoining state— | 50 |
| (a) in respect of such places situated in the territory of the Republic— | |
| (i) allow and appoint any such place as a place of entry for the adjoining state through which goods may be imported or exported and where goods may be entered for customs and excise | |

- purposes in accordance with the national legislation of the adjoining state; and
- (ii) allow officers of the competent customs authority of the adjoining state to perform such duties and functions and exercise such powers as may be required and prescribed by the national legislation of the adjoining state to effect entry and clearance of goods through such place and matters incidental thereto; and 5
- (b) in respect of such places situated in the territory of the adjoining state—
- (i) deem such a place to be a place of entry for the Republic through which goods may be imported or exported and where goods may be entered for customs and excise purposes; and 10
 - (ii) allow officers to exercise their powers and perform their duties and functions under the Act in such places.
- (2) Notwithstanding anything to the contrary in any other law contained, for purposes of this Act— 15
- (a) any such place situated in the territory of an adjoining state shall be deemed to be a place situated in the Republic; and
 - (b) whenever, within such a place, situated within an adjoining state—
 - (i) any goods are detained for purposes of this Act, such goods shall as soon as practicable be removed to the State Warehouse or other place indicated by the Controller within the territory of the Republic; or 20
 - (ii) any person is detained for purposes of this Act, such person shall without delay be secured in an office of the South African Police Service closest to such place. 25
- (3) Whenever such a place is situated within the territory of the Republic, and the national legislation of the adjoining state provides for the detention of goods or persons at such place, the Commissioner shall allow for the removal of such detained goods or persons by the competent customs authorities of the adjoining state from such a place to the territory of the adjoining state. 30
- (4) The Commissioner may in administering the provisions of this section, notwithstanding anything to the contrary in this Act or in any other law contained— 35
- (a) decide or determine any matter or perform any duty or impose any condition in connection with the provisions so administered;
 - (b) make rules—
 - (i) where reference is made in such agreement to customs or competent authorities, to domestic national or customs law or any other matter which requires either expressly or by implication application of customs legislation; 40
 - (ii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;
 - (iii) prescribing forms or procedures or specifying any condition to be complied with to give effect to any agreement contemplated in this section; 45
 - (iv) to delegate subject to section 3(2) any power, duty or function to any officer or any other person; and
 - (v) regarding any other matter which may be necessary or useful for purposes of administering such places.”. 50

Amendment of section 61 of Act 91 of 1964, as amended by section 22 of Act 84 of 1987

107. Section 61 of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsection (4) of the following subsection: 55

“(4) (a) Not more than one licence shall be issued in respect of any customs and excise warehouse: Provided that the Commissioner may, on such conditions as [he] the Commissioner may in each case impose, issue a licence—

- (i) to the owner or person in possession or control of any customs and excise storage or manufacturing warehouse in which excisable or fuel levy goods are stored or manufactured; and 60

(ii) to each person who obtains for distribution **[for] on [his]** own account these goods from **[that] any** such warehouse.

(b) The owner or person in possession or control of such warehouse who is so licensed shall be liable for the fulfilment of all obligations under this Act in respect of such goods in such warehouse. Provided that each person to whom a licence is so issued shall be liable for any liability incurred under this Act in respect of goods so obtained **[taken by him]** from such warehouse.”

Insertion of section 64F of Act 91 of 1964

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

“Licensing of distributors of fuels obtained from the licensee of a customs and excise manufacturing warehouse

64F. (1) For the purposes of this Act, unless the context otherwise indicates—

‘licensed distributor’ means any person who—

- (a) is licensed in accordance with the provision of section 60 and this section;
- (b) obtains at any place in the Republic for delivery to a purchaser in any other country of the common customs area for consumption in such country or for export (including supply as ships’ or aircraft stores), fuel, which has been or is deemed to have been entered for payment of excise duty and fuel levy, from stocks of a licensee of a customs and excise manufacturing warehouse; and
- (c) is entitled to a refund of duty in terms of any provision of Schedule No. 6 in respect of such fuel which has been duly delivered or exported as contemplated in paragraph (b);

‘fuel’ means any goods classifiable in any item of Section A of Part 2 of Schedule No. 1 liable to excise duty and goods classifiable in any item of Part 5 of Schedule No. 1 liable to fuel levy, used as fuel.

(2) (a) No person, except a licensee of a customs and excise warehouse, who removes to any other country in the common customs area or exports any fuel, which has been entered or is deemed to have been entered shall be entitled to any refund of duty unless such person is a licensed distributor as contemplated in this section.

(b) Application for such a licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and with any additional requirement that may be prescribed in any other rule and as may be determined by the Commissioner in each case.

(c) Before any licence is issued the applicant 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, exempt any person from furnishing such security or reduce the amount of such security.

(3) (a) In addition to any other provision of this Act relating to refunds of duty, any refund of duty contemplated in this section shall be subject to compliance with the requirements specified in the item of Schedule No. 6 providing for such refund and any rule prescribing any requirement in respect of the movement of such fuel to any such country or for export.

(b) Notwithstanding anything to the contrary contained in this Act, the Commissioner may pay any such refund at such intervals for such periods and on such conditions as may be prescribed by rule.

(4) The Commissioner may make rules—

- (a) prescribing the forms to be completed and the procedures to be followed and other requirements to be observed for the purposes of administering the provisions of this section and the provisions for a refund of duty in Schedule No. 6;
- (b) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule;

(c) in respect of any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.

(5) (a) (i) Any person who in any application for a refund of duty in terms of the provisions of Schedule No. 6 makes a false statement shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any duty refunded as a result of the false statement for refund, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act.

(ii) For the purposes of subparagraph (i), any forfeiture amount in respect of such fuel shall be calculated on the basis of the usual retail price thereof on the date the false statement was submitted or on the date of assessment of such amount, whichever is greater.”

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

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

109. (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended by the insertion after subsection (11) of the following subsection:

“(11A) (a) Where any applicant for a refund of duty in terms of any item of Schedule No. 6, which relates to circumstances other than those referred to in subsection (11), if required to prove payment of duty on the goods in respect of which the refund is claimed in terms of any Note to such item, is unable to prove such payment by production of an entry or deemed entry for home consumption as provided in this Act, the Commissioner may, notwithstanding anything to the contrary contained in this Act, allow such refund—

- (i) on the basis of any evidence produced by such applicant; and
- (ii) by taking into account any other evidence contained in accounts or invoices or other documents relating to the removal of the goods concerned from any customs and excise manufacturing or storage warehouse, any other records required to be kept in terms of the Act or any other facts that may be available or requested by the Commissioner,

if, in the relevant circumstances of each case, the Commissioner considers that such evidence is reasonably sufficient to allow such refund: Provided that where it is so specified in the relevant item of Schedule No. 6, the duty refundable shall be calculated at the lowest rate operative during any period not exceeding 12 months prior to the date the goods were placed under the procedure specified in such item.

(b) Any such refund provision in Schedule No. 6 may include—

- (i) goods found to be off-specification or which have become contaminated or have undergone post-manufacturing deterioration and are returned to a customs and excise manufacturing warehouse for reprocessing or destruction; and
- (ii) any fuel levy goods removed to another country in the common customs area or for export or to a customs and excise storage warehouse.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2002.

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

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110. (1) Section 99 of the Customs and Excise Act 1964, is hereby amended—

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

- “(a) (i) (aa) An agent appointed by any importer, exporter, manufacturer, licensee or any other principal, hereinafter referred to as the principal; and
 (bb) any person who represents him- or herself as such an agent to any officer and is accepted as such by the officer concerned,
 shall in respect of the matter in question be liable for the fulfilment of all obligations imposed by this Act on such principal. 10
 (ii) The fulfilment of such obligations shall include—
 (aa) the payment of all duties and charges;
 (bb) the payment of penalties; and 20
 (cc) the payment of amounts demanded under section 88(2)(a),
 which may be incurred in respect of the matter in question.
 (iii) Whenever an agent or any person contemplated in subparagraph (i)(bb) delivers any document of whatever nature required to be completed and presented for any purpose under this Act wherein— 25
 (aa) any principal contemplated in subparagraph (i)(aa) has not been disclosed; or
 (bb) the name of such agent or the name of another agent is stated as the principal as contemplated in section 64B(6); 30
 or
 (cc) any principal is a person outside the Republic,
 such agent or person shall, notwithstanding paragraph (iv), in all respects be liable for the fulfilment of all the obligations imposed on such a principal under this Act. 35
 (iv) Except as provided for in paragraph (iii), the agent or person contemplated in this section shall cease to be so liable if such agent or person proves that—
 (aa) such agent or person exercised reasonable care to ensure that every document completed and presented and every act performed or procedure followed for purposes of this Act by such agent or person complied in all respects with the requirements of this Act, the rules, any prescribed procedures or requirements of the Commissioner and the terms and conditions of any agreement entered into with the Commissioner; and 40
 (bb) all reasonable steps were taken by such agent or person, including those mentioned in any agreement contemplated in subparagraph (aa), to prevent any non-fulfilment of the provisions of this Act. 45
 (v) For purposes of subparagraph (iv) reasonable care or steps shall not include reliance solely on information supplied by the principal.”; and 50

(b) by the deletion of subsection (5). 55

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

Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 and amended by section 65 of Act 45 of 1995, section 72 of Act 30 of 1998, section 6 of Act 32 of 1999 and section 63 of Act 30 of 2000

111. (1) Section 105 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) the interest so payable shall be paid at a rate [which] the Minister of Finance [may from time to time fix by notice in the *Gazette*] determines in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).”

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

Amendment of section 114 of Act 91 of 1964, as substituted by section 33 of Act 105 of 1969, section 12 of Act 71 of 1975, as inserted by section 36 of Act 112 of 1977, as substituted by section 13 of Act 101 of 1985, section 32 of Act 84 of 1987, section 37 of Act 59 of 1990, section 34 of Act 34 of 1997, section 71 of Act 53 of 1999 and section 140 of Act 60 of 2001

112. Section 114 of the Customs and Excise Act, 1964 is hereby amended—

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

“(a) (i) Any amount of any duty, interest, fine, penalty or forfeiture incurred under this Act and which is payable in terms of this Act, shall, when it becomes due or is payable, be a debt due to the State by the person concerned and shall be recoverable by the Commissioner in the manner hereinafter provided.

(ii) If any person fails to pay any amount of any duty, interest, fine, penalty or forfeiture incurred under this Act, when it becomes due or is payable by such person, the Commissioner may file with the clerk or registrar of any competent court a statement certified by him as correct and setting forth the amount thereof so due or payable by that person, and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were a civil judgement lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(iii) (aa) The Commissioner may by notice in writing addressed to the clerk or registrar, withdraw the statement referred to in subparagraph (ii), and such statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under that subsection in respect of any duty, interest, fine, penalty or forfeiture referred to in the withdrawn statement.

(bb) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of subparagraph (ii) with the clerk of the magistrate's court having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

(cc) Pending the conclusion of any proceedings, whether internally or in any court, regarding a dispute as to the amount of any duty, interest, fine, penalty or forfeiture payable, the statement filed in terms of subparagraph (ii) shall, for purposes of recovery proceedings contemplated in subparagraph (ii), be deemed to be correct.

(iv) (aa) Any imported or excisable goods, vehicles, machinery, plant or equipment, any goods in any customs and excise warehouse, any goods in a rebate store room, any goods in the custody or under the control of the Commissioner and any goods in respect of which an excise duty or fuel levy is prescribed, and any materials for the manufacture of such goods, belonging to such person whether imported, exported or manufactured before or after the debt

- became so due and whether or not such goods are found in or on any premises in the possession or under the control of the person by whom the debt is due; and
- (bb) any imported or excisable goods, vehicles, machinery, plant or equipment, in the possession or under the control of such person or in or on any premises in the possession or under the control of such person and in respect of which such person has entered into any credit agreement as contemplated in the Credit Agreements Act, 1980 (Act No. 75 of 1980) and of which the right, title or interest of such person may be readily established and excused, may be detained in accordance with the provisions of subsection (2) and shall subject to subparagraph (vi)(cc) be subject to a lien until such debt is paid.
- (v) Whenever any of the goods mentioned in subparagraph (iv)(bb) are subject to a lien the person concerned shall without delay advise the Commissioner, or the officer detaining and subjecting such goods to a lien, of the existence of any such agreement setting forth at least the following—
- (aa) The name and address of the credit grantor as intended in the said Credit Agreement Act;
- (bb) The amount of the principal debt as intended in the Usury, 1968 (Act 73 of 1968) in respect of the applicable credit agreement;
- (cc) The duration of the agreement;
- (dd) The outstanding balance due; and
- (ee) A copy of such agreement.
- (vi) (aa) The Commissioner shall without delay advise the credit grantor concerned of such detention and lien and shall enquire as to the right, title or interest of such person in such goods.
- (bb) The credit grantor concerned shall, where such right, title or interest is determinable, without delay advise the Commissioner of such right, title or interest of the person concerned in the goods, expressed as a liquid amount, and the lien shall thereafter serve as security for such liquid amount and such amount may be recovered as provided for in paragraph (ii).
- (cc) In circumstances where such credit grantor advises the Commissioner that the right, title or interest of the person concerned is economically insignificant or does not exist, the Commissioner shall without delay remove such goods from the operation of the lien.
- (dd) Any person who, without reasonable cause fails to advise the Commissioner of the existence of any credit agreement contemplated in subparagraph (v) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000,00 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.
- (ee) In the absence of evidence to the contrary which raises a reasonable doubt, proof by the Commissioner of the failure to advise the Commissioner of the existence of such credit agreement shall be sufficient evidence of the absence of reasonable cause.”; and
- (b) by the substitution for paragraph (b) of the following paragraph:
- “(b) (i) The claims of the State shall have priority over the claims of all persons upon anything subject to a lien contemplated in paragraph (a), (aA), (aB) or (aC) and may be enforced in accordance with the provisions of this section if the debt is not paid upon demand after the person by whom the debt is due is in writing advised of such debt and of the date on which such debt becomes due and is payable.
- (ii) The Commissioner and the credit grantor concerned may, notwithstanding anything to the contrary in this Act or any other law

contained, and subject to such conditions as may be agreed upon, agree to dispose of any goods contemplated in paragraph (a)(iv)(bb) in order to preserve and secure the interests of all parties in such goods and in the proceeds of the disposal of such goods pending the resolution of any dispute in respect of which an interest in such goods is secured by such lien. 5

(iii) In the event of any goods subjected to a lien being attached pursuant to a warrant of execution, such goods shall, notwithstanding anything to the contrary contained in the said Magistrates' Court Act, 1944 (Act No.32 of 1944) or its rules, where such goods are not detained in the State Warehouse, be removed by an officer to the State Warehouse and such goods may thereupon be disposed of in accordance with the provisions of this section. 10

(iv) Where, in addition to any amount of duty which is due or is payable by any person in terms of this Act, any fine, penalty, forfeiture or interest is incurred under this Act and is payable by such person, any payment made by that person or any amount recovered pursuant to any sale of such goods as contemplated in this section shall be utilised by the Commissioner to discharge such payment or amount in the order of— 15

(aa) any duty, interest, fine, penalty, forfeiture, expenses incurred by or charges due to the Commissioner; and 20

(bb) payment of the overplus, on application, if any, to the person by whom the debt was due.”.

Amendment of Item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 86 of Act 30 of 1998, section 79 of Act 53 of 1999, section 72 of Act 30 of 2000, section 63 of Act 59 of 2000, section 42 of Act 5 of 2001, section 147 of Act 60 of 2001 and section 56 of Act 30 of 2002 25 30 35

113. Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in *Exemptions from the duty under paragraph (1) or (2)* for paragraph (g) of the following paragraph:

“(g) The original issue of any share by a company to any other company in terms of an intra-group transaction contemplated in section [44] 45 of the Income Tax Act, 1962 (Act 58 of 1962), where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transaction complies with the provisions contained in section [44] 45 of that Act;”;

(b) by the substitution in the *Exemptions from the duty under paragraph (3)* for paragraph (x) of the following paragraph: 45

“(x) Any registration of transfer of any marketable security acquired by a [company] person—

(i) in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act 58 of 1962); 50

(ii) in terms of a share-for-share transaction contemplated in section 43 of that Act;

(iii) in terms of an amalgamation transaction contemplated in section 44 of that Act;

(iv) in terms of an intra-group transfer contemplated in section [44] 45 of that Act; 55

(v) in pursuance of a distribution in specie in the course of an unbundling transaction contemplated in section [45] 46 of that Act; [or]

(vi) in terms of a liquidation distribution contemplated in section [46] 47 of that Act; or 60

(vii) in terms of any transaction contemplated in subparagraph (v) or transaction which would have constituted a transaction or distribution contemplated—

(aa) in subparagraph (i), (iv) or (vi) had an election been made for the provisions of that section to apply; and

(bb) in subparagraph (i), (ii) or (iii) had the market value of the asset transferred in exchange for those marketable securities exceeded the base cost or the amount taken into account in respect thereof, as contemplated in section 42(1)(a), 43(1)(a) or 44(6) of that Act,

where the public officer of [that] the relevant company has made a sworn affidavit or solemn declaration that such [company formation transaction, share-for-share transaction, intra-group transfer, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45, 46, as the case may be, of that Act] transfer of marketable security complies with the provisions of this paragraph.”

(c) by the addition to the *Exemptions from the duty under paragraph (3)* of the following paragraph:

“(y) Any registration of transfer of a marketable security in a residential property company, as defined in section 1 of the Transfer Duty Act, 1949, to the extent that any transfer duty is payable in respect of the transfer of that marketable security.”

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001 and section 148 of Act 60 of 2001

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

(a) by the substitution for paragraph (vii) of the proviso to the definition of “enterprise” of the following paragraph:

“(vii) the activities of the [Multilateral Motor Vehicles Accidents Fund] Road Accident Fund contemplated in the [Multilateral Motor Vehicles Accidents Fund Act, 1989 (Act No. 93 of 1989) Road Accident Fund Act, 1996 (Act No. 56 of 1996), shall be deemed not to be the carrying on of an enterprise;” and

(b) by the substitution for the definition of “prescribed rate” of the following definition:

“‘prescribed rate’ in relation to any interest payable in terms of this Act means a rate equal to the rate fixed from time to time by the Minister by notice in the *Gazette* in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);”

(c) by the substitution in the definition of “welfare organisation” for the words preceding paragraph (a) of the following words:

“‘welfare organisation’ means any association not for gain which is registered under the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) and is exempt from income tax in terms of section [30] 10(1)(cN) of the Income Tax Act, if it carries on or intends to carry on any welfare activity determined by the Minister for purposes of this Act to be of a philanthropic or benevolent nature, having regard to the needs, interests and well-being of the general public, relating to those activities that fall under the headings—”

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

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, paragraph 2 of Government Notice 2695 of 8 November 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997, section 87 of Act 30 of 1998, section 82 of Act 53 of 1999 and section 149 of Act 60 of 2001

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115. Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for item (vi) of the following item:

- “(vi) ‘participatory security’ means a [unit] participatory interest as defined in section 1 of the [Unit Trust Control Act, 1981 (Act No. 58 of 1981)] Collective Investment Schemes Control Act, 2002, but does not include an equity security, a debt security, money or a cheque;”.

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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 and section 150 of Act 60 of 2001

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

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- (a) by the substitution for the proviso to paragraph (b) of subsection (2A) of the following proviso:

“Provided that [(i) any information, document or thing obtained in terms of section 57C(17)(a) may not be disclosed in terms of this subsection; and (ii)] any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 57A, [or] 57B or 57C which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph (a).”; and

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

“(2C) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (2A) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his [of] or her duties for purposes of—
(a) any investigation of, or prosecution for, an offence contemplated in subsection (2A); or
(b) dealing with any such public safety or environmental risk as contemplated in subsection (2A).”; and

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- (c) by the substitution for subsection (2D) of the following subsection:

“(2D) The Director-General or any person acting under the Direction and control of such Director-General [as contemplated in subsection (2)(e)] shall not disclose any information supplied under [to subsection (2)(e)] proviso (ii) to subsection (1) to any other person or permit any other person to have access thereto, except in the performance of any function contemplated in proviso (ii) to subsection (1).”

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Amendment of section 12 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 86 of Act 53 of 1999, section 69 of Act 19 of 2001 and section 154 of Act 60 of 2001

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117. Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for paragraph (c) of the following paragraph:

“(c) the supply of—

- (i) a dwelling under an agreement for the letting and hiring thereof;

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(ii) lodging or board and lodging—

- (aa) by the employer of the recipient (including an employer as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act), where the recipient is entitled to occupy the accommodation as a benefit of his or her office or employment and his or her right thereto is limited to the period of his or her employment or the term of his or her office or a period agreed upon by the supplier and the recipient; 5
 - (bb) by the employer of the recipient, where the employer operates a hostel or boarding establishment mainly for the benefit of the employees otherwise than for the purpose of making profit; or 10
 - (cc) by a local authority which operates a hostel or boarding establishment otherwise than for the purpose of making profit;”; and 15
- (b) by the substitution in subparagraph (ii) of paragraph (h) thereof for the words preceding the proviso thereto of the following words:
- “(ii) the supply by a school, university, technikon or college solely or mainly for the benefit of its learners or students of goods or services (including domestic goods and services) necessary for and subordinate and incidental to the supply of services referred to in subparagraph (i) of this paragraph, if such goods or services are supplied for a consideration in the form of school fees, tuition fees or payment for board and lodging.” 20 25

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001 and section 158 of Act 60 of 2001

118. Section 28 of the Value-Added Tax Act, 1991 is hereby amended by the addition of the following subsections: 30

“(8) Where in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a person affixed to any return as contemplated in subsection (6), was used with or without the consent and authority of that person, it shall, in the absence of proof to the contrary, for purposes of this Act be assumed that such signature was so used with the consent and authority of that person. 35

(9) (a) Notwithstanding anything contained to the contrary in this Act or in any other law, whenever in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, it is necessary to prove the authenticity, the veracity, the origin, the contents, an electronic signature or any other aspect of any electronic communication transmitted to and received by the Commissioner under this section, the provisions and conditions of any agreement (entered into in accordance with any regulations made by the Minister in terms of subsection (7)) establish the basis upon which any court of competent jurisdiction shall determine such issues. 40 45

(b) Notwithstanding anything to the contrary contained in any other law, nothing in the application of the rules of evidence shall be applied so as to deny the admissibility of any electronic communication under this section for purposes of this Act in evidence— 50

- (i) on the sole grounds that it is an electronic data message; or
- (ii) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in original form.

(c) (i) Information in the form of a data message shall be given due evidential weight. 55

(ii) In assessing the evidential weight of a data message a court shall have regard to—

- (aa) the reliability of the manner in which the data message was generated, stored and communicated;
- (bb) the reliability of the manner in which the integrity of the information was maintained; 60

- (cc) the manner in which its originator was identified;
- (dd) whether these functions were in compliance with the agreement and
- (ee) the requirements of this section, and any other relevant factor.”

Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999, section 72 of Act 19 of 2001 and section 173 of Act 60 of 2001 5

119. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph:

- “(p) uses an electronic or digital signature of any other person in any electronic communication to the Commissioner for any purpose, without the consent and authority of such person.” 10

Substitution of section 70 of Act 89 of 1991

120. The following section is hereby substituted for section 70 of the Value-Added Tax Act, 1991:

“Jurisdiction of courts” 15

70. A person charged with an offence under this Act may[, **notwithstanding anything to the contrary in any law,**] be tried in respect of that offence by any court having jurisdiction within any area in which that person resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.” 20

Amendment of Schedule 1 to Act 89 of 1991, as substituted by section 106 of Act 53 of 1999 and section 177 of Act 60 of 2001 and amended by section 58 of Act 30 of 2002

121. Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for item 407.02/00.00/01.00 of the following item: 25
 - “407.02/00.00/01.00 Other new or used goods, of a total value not exceeding R1 250 per person (or such other amount as the Minister may fix by notice in the Gazette)”;
- (b) by the addition of the following subitem to Item 407.02: 30
 - “407.02/00.00/02.00 Additional goods, new or used, of a total value not exceeding R10 000 per person (or such other amount as the Minister may fix by way of a notice in the Gazette), excluding goods of a class or kind specified in Item Nos. 407.02/ 22.00, 407.02/24.02, 407.02/24.03 and 407.02/33.03.”;
- (c) by the substitution for subparagraph 4(b) of the Notes to item 407.00 of the following subparagraph:
 - “(b) only entitled to the exemption in terms of item 407.02/00.00/01.00 40
 - if the total value of the goods declared under this item does not exceed R200-00 (or such other amount as the Minister may fix by notice in the Gazette).”;
- (d) by the addition of the following subparagraph to paragraph 4 of the Notes to item 407.00: 45
 - “(c) only entitled to the exemption in terms of Item 407.02/00.00/02.00 provided the total value of goods declared under this item does not exceed R1 500 (or such other amount as the Minister may fix by notice in the Gazette).”;
- (e) by the insertion of the following paragraphs after paragraph 4 of the Notes to Item 407.00: 50
 - “4A The exemption in item 407.02/00.00/02.00 is only applicable if the total value of the goods declared under item 407 (excluding goods provided for in item 407.01) does not exceed R10 000 (or such other amount as the Minister may fix by way of a notice in the Gazette).” 55

- 4B If the person concerned so desires and indicates accordingly before the goods are cleared, the goods in respect of which the exemption in item 407.02/00.00/02.00 is applicable, may be cleared at the rates of duty specified in Schedule 1 to the Customs and Excise Act and with payment of VAT at the standard rate. 5
- 4C If a person contravenes any provision of this Act, the Customs and Excise Act or any other law relating to the importation of goods, the Commissioner may refuse to grant any exemption provided for in Item 407.02."

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999, section 87 of Act 30 of 2000, section 75 of Act 19 of 2001, section 180 of Act 60 of 2001 and section 60 of Act 30 of 2002 10

122. (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for subparagraph (ix) of paragraph (b) of the following subparagraph: 15

- "(x) if the beneficial ownership is acquired by a person—
- (aa) in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act 58 of 1962);
 - (bb) in terms of a share-for-share transaction contemplated in section 43 of that Act; 20
 - (cc) in terms of an amalgamation transaction contemplated in section 44 of that Act;
 - (dd) in terms of an intra-group transfer contemplated in section 45 of that Act;
 - (ee) in pursuance of a distribution in specie in the course of an unbundling transaction contemplated in section 46 of that Act; 25
 - (ff) in terms of a liquidation distribution contemplated in section 47 of that Act; or
 - (gg) in terms of any transaction contemplated in subparagraph (ee) or transaction which would have constituted a transaction or distribution contemplated—
 - (A) in subparagraph (aa), (dd) or (ff) had an election been made for the provisions of that section to apply; and 30
 - (B) in subparagraph (aa), (bb) or (cc) had the market value of the asset transferred in exchange for those marketable securities exceeded the base cost or the amount taken into account in respect thereof, as contemplated in section 42(1)(a), 43(1)(a) or 44(6) of that Act, where the public officer of the relevant company has made a sworn affidavit or solemn declaration that such transfer of marketable security complies with the provisions of this paragraph." 35

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

Substitution of section 11 of Act 9 of 1999 40

123. The following section hereby substituted for section 11 of the Skills Development Levies Act, 1999:

"Interest on late payment

11. If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of 'prescribed rate' in section 1 of the Income Tax Act, calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be." 50

Substitution of section 20A of Act 9 of 1999, as inserted by section 77 of Act 19 of 2001

124. The following section substituted for section 20A of the Skills Development Levies Act, 1999:

“Jurisdiction of courts

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20A. A person charged with an offence under this Act may[, **notwithstanding anything to the contrary in any law,**] be tried in respect of that offence by any court having jurisdiction within any area in which that person resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.”

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Amendment of section 4 of Act 30 of 2000

125. (1) Section 4 of the Revenue Laws Amendment Act, 2000, is hereby amended by the addition of the following subsection:

“(2) Subsection (1) shall, in so far as it amends section 6quat of the Income Tax Act, 1962 (Act No. 58 of 1962), to withdraw subitem (BBB) of item (bb) of subparagraph (i) of the proviso to subsection (1B)(b), come into operation on the date of promulgation of this Act, and shall apply in respect of secondary tax on companies in respect of dividends declared on or after that date.”

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(2) Subsection (1) shall be deemed to have come into operation on 6 December 2000.

Amendment of section 3 of Act 5 of 2001

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126. Section 3 of the Taxation Laws Amendment Act, 2001, is hereby amended by the addition of the following subsection:

“(2) Subsection (1) shall be deemed to have come into operation on 27 April 1994.”

Amendment of section 51 of Act 19 of 2001, as amended by section 65 of Act 30 of 2002

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127. (1) Section 51 of the Revenue Laws Amendment Act, 2001, is hereby amended by the addition to the Afrikaans text of the following subsection:

“(2) Subartikel (1) tree in werking op ’n datum deur die President by proklamasie in die Staatskoerant bepaal.”

(2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

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Amendment of section 118 of Act 60 of 2001

128. (1) Section 118 of the Second Revenue Laws Amendment Act, 2001, is hereby amended by the substitution in subsection (1) in the proposed section 11(1) of the Customs and Excise Act, 1964, for the words preceding paragraph (a) of the following words:

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“All goods imported into the Republic by ship, aircraft or other vehicle shall, except where the Commissioner otherwise prescribes by rule, [if] when landed [before due entry thereof] be—”

(2) Subsection (1) shall be deemed to have come into operation on the date on which section 116(1) of the Second Revenue Laws Amendment Act, 2001, comes into operation.

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Amendment of section 134 of Act 60 of 2002

129. (1) Section 134 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The provisions contained in the regulations prescribing the circumstances under which the Commissioner may [waive any claim for purposes of the settlement of] settle any dispute and the reporting requirements, as contemplated in section 93A of the Customs and Excise Act, 1964, must be [incorporated into that Act] tabled in Parliament within a period of 12 months from the date that the

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regulations come into operation for incorporation into the Customs and Excise Act, 1964".

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

Short title and commencement

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130. (1) This Act shall be called the Revenue Laws Amendment Act, 2002.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act to the Income Tax Act, 1962, shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment 10 ending on or after 1 January 2003.