

**MEMORANDUM ON THE OBJECTS OF THE REVENUE LAWS
SECOND AMENDMENT BILL, 2007**

1. PURPOSE OF BILL

The Bill seeks to amend administrative provisions of the Transfer Duty Act, 1949 (Act No. 14 of 1949), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Stamp Duties Act, 1968 (Act No. 77 of 1968), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and the Tax on Retirement Funds Act, 1996 (Act No. 38 of 1996).

2. OBJECTS OF BILL

2.1 Amendment of section 14 of Transfer Duty Act, 1949

Subclause (a): The proposed amendment serves to expand the current wording of section 14 so as to include the electronic submission of transfer duty declarations through the South African Revenue Service (SARS) e-Filing system.

Subclause (b): As payments are now also received electronically, the reference to acknowledgement of payment "by the use of a machine" is no longer relevant. The proposed amendment deletes this phrase.

Subclause (c): The proposed amendment intends to align the Transfer Duty Act, 1949, with the provisions of the Value-Added Tax (VAT) Act, 1991, and Income Tax Act, 1962, regarding the Commissioner's acceptance of the electronic signature on declarations as being valid and introduces provisions relating to the use of electronic signatures on documents.

2.2 Amendment of section 17B of Transfer Duty Act, 1949

The proposed amendment to section 17B introduces an offence for the misuse of electronic communications.

2.3 Amendment of section 3 of Income Tax Act, 1962

It is proposed in the Revenue Laws Amendment Act, 2007, that short-term insurers will be allowed to deduct liabilities contemplated in section 32(1)(a), (b) and (d) of the Short-Term Insurance Act, 1998. This deduction is subject to adjustment by the Commissioner of SARS. The proposed amendment will subject any such adjustment to objection and appeal by the insurer.

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

Subclause (1)(a): The definition of "person" is proposed to be amended to accord with the definition in the Income Tax Act, 1962.

Subclause (1)(b): The proposed amendment to section 1(3) is consequential to the amendments proposed to the definitions of "customs duty" and to clarify that all the provisions of the Act relating to the movement of goods also apply to movements of goods between the Republic and SACU Member States. This will come into operation on a date fixed by the President by proclamation in the *Gazette*.

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

Subclause (1)(a): This section prohibits an officer from having a financial interest in certain activities in respect of goods to which the Act relates. The proposed amendment is essentially a technical correction which includes exportation, environmental levy goods and Road Accident Fund levy goods in the activities and goods mentioned in the section. The section is also restructured.

Subclauses (1)(b) to (d): The various amendments of section 4(3) and section 4(3A) correct the references to the Statistician General and the Statistics Act, 1999 (Act No. 6 of 1999), and the reference to the South African Police Service Act, 1995 (Act No. 68 of 1995). The amendments contained in sub-clauses (1)(a) to (d) will come into operation on the date of promulgation of this Act.

Subclause (1)(e): This paragraph empowers the Controller or an officer to substitute the detention or a part thereof by the detention of any or all of the goods in accordance with the counterfeit legislation provided for in Chapter XB. This will come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

2.6 Amendment of section 10 of Customs and Excise Act, 1964

The commercial cargo clearing facility at the proposed Lebombo-Ressano Garcia one stop border will be situated within the territory of Mozambique. The amendment of section 10(2) by inclusion of a reference to section 50A will allow goods to be deemed imported into the Republic although still in the territory of Mozambique

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

The expression "Service enterprise" is deleted as it is not referred to elsewhere in the section

2.8 Amendment of section 43 of Customs and Excise Act, 1964

The amendment proposed in sub-clause 1 is consequential to the insertion of Chapter XB in respect of counterfeit goods so as to adapt the provisions of section 43 in so far as it relates to the disposal of counterfeit goods. This will come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

2.9 Amendment of section 46 of Customs and Excise Act, 1964

Amendment of subsection (5) is proposed so as to require a person entering any imported goods to produce a declaration of origin if the imported goods are liable to a provisional payment in terms of section 57A or an anti-dumping duty imposed under section 56 or a countervailing duty as imposed under section 56A or a safeguard measure imposed under section 57, and further, where imported goods are subject to any restriction in terms of any other law when imported from a specified country or specified countries. Such a declaration is required in terms of the proposed amendment where the goods are imported from a country or countries other than the country or countries or a supplier in respect of which such a payment, duty or restriction is prescribed. This amendment is necessary for the control of imports in respect of which such duties or restrictions are prescribed.

The Commissioner is enabled to make rules prescribing forms and other matters for the purposes of the subsection

2.10 Amendment of section 46A of Customs and Excise Act, 1964

Section 46A relates to non-reciprocal preferential tariff treatment of goods exported from the Republic. The proposed amendments to the definitions to include a supplier of goods, who may be a producer or manufacturer of goods produced or manufactured for export. The provision is inserted for the purpose of making provision in certain rules for a supplier and a supplier's declaration where it is required as proof of the originating status of the goods

2.11 Amendment of section 47 of Customs and Excise Act, 1964

The present provisions regarding determination disputes only relate to the appeal procedure in Part A of Chapter XA, but the procedures in Part B and Part C may also apply. The amendments to section 47(9) are accordingly proposed so as to include a reference to any procedure contemplated in Chapter XA

2.12 Amendment of section 49 of Customs and Excise Act, 1964

This amendment proposes a textual amendment to a provision in section 49 relating to international agreements concerning customs co-operation, the exchange of information and the rendering of mutual and technical assistance in respect of customs co-operation

2.13 Amendment of section 52 of Customs and Excise Act, 1964

Section 52(a) is amended as customs union agreements are now provided for in section 49 and are published in Schedule No. 10 (as was done with the SACU Agreement)

2.14 Amendment of section 54B of Customs and Excise Act, 1964

Section 54B(2) is amended as customs union agreements are now provided for in section 49 and are published in Schedule No. 10 (as was done with the SACU Agreement)

2.15 Amendment of section 77C of Customs and Excise Act, 1964

Section 77C(1) is amended to combine existing provisions of subsections (1) and (3) as all the requirements for submission of an appeal are prescribed fully by rule.

2.16 Amendment of section 77G of Customs and Excise Act, 1964

Section 77G is amended as a decision may be appealed against and may also be dealt with in terms of any other procedure to which Chapter XA relates.

2.17 Insertion of Chapter XB into Customs and Excise Act, 1964

These proposals are intended to provide legal certainty and address the confusion relating to conflicting provisions in the Counterfeit Goods Act and Customs and Excise Act

SARS will act as a filter for all counterfeit goods while such goods are under customs control. Customs officers will be responsible for the detention and control of possible counterfeit goods. Once this detention has interrupted the movement of the goods, the intellectual property right holder will be required to apply to court for an order declaring the detained goods to be counterfeit goods.

The proposals are in line with the World Customs Organisation's (WCO) model provisions for national legislation to implement effective border measures by Customs authorities, consistent with the TRIPS agreement. The proposed amendment is further in line with the provisions of section 113(8) of the Customs and Excise Act, 1964, where goods suspected of being imported in contravention with any other law in South Africa are detained and then handed over to another authority for further action. In the proposed legislation, the goods are handed over for safe-keeping to the Counterfeit Goods Depot Operator as contemplated in the Counterfeit Goods Act, 1997, and further steps must be taken by the holder of the intellectual property right to ensure that the goods are not subsequently released into home consumption.

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

The proposed amendment inserts a reference to sections 35A(2), (3) and (4) and 54(2), (3) and (4) in section 80(1)(o) which provides for serious offences and their punishment. Section 35A relates to special provisions regarding cigarettes and cigarette tobacco manufactured in the Republic. The effect of the provision is that provision is now made for serious offences under the same section in respect of both imported and locally-produced cigarettes, which is considered necessary for the purposes of law enforcement.

2.19 Amendment of section 95 of Customs and Excise Act, 1964

The commercial cargo clearing facility at the proposed Lebombo-Ressano Garcia one stop border will be situated within the territory of Mozambique. The amendment of section 95(1A) by inclusion of a reference to section 50A will deem an offence committed at the commercial cargo facility as having been committed at any place in the Republic where the accused happened to be.

2.20 Amendment of section 111 of Customs and Excise Act, 1964

Section 111 is amended to clarify that where a vehicle manufactured in South Africa is re-imported after exportation also requires a certificate issued by an officer as contemplated in subsection (1) as it must be verified whether the duty and VAT due have been paid.

2.21 Repeal of section 113A of Customs and Excise Act, 1964

Section 113A is repealed as a consequence of the insertion of the counterfeit goods legislation in Chapter XB. This shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

2.22 Amendment of section 114A of Customs and Excise Act, 1964

Section 114A is amended to achieve uniformity with sections 105 and 114. In the past, fines were collected by the Department of Justice and paid over to the Controller, but this practice is no longer followed and the reference to "fine" is therefore deleted as fines are not recovered under the provisions of the Customs and Excise Act, 1964.

2.23 Amendment of section 114B of Customs and Excise Act, 1964

Section 114B is amended to achieve uniformity with sections 105, 114 and 114A. In the past, fines were collected by the Department of Justice and paid over to the Controller, but this practice is no longer followed and the reference to "fine" is therefore deleted as fines are not recovered under the provisions of the Customs and Excise Act, 1964.

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

Section 120 is amended to add section 49 as customs union agreements and other international agreements which require to be administered under customs legislation are now provided for under that section. This amendment will come into operation on the date of promulgation of this Act.

2.25 Amendment of section 1 of Stamp Duties Act, 1968

Subclause (a): The proposed amendment seeks to delete all provisions relating to marketable securities as those provisions will be catered for in the Securities Transfer Tax Act, which will come into effect on 1 July 2008.

Subclause (b): The proposed amendment seeks to insert a definition of "Republic" into the Stamp Duties Act. It is necessary to define the Republic as there are references to "Republic" in the Stamp Duties Act.

2.26 Amendment of section 6 of Value-Added Tax Act, 1991

The proposed amendment is of a textual nature as the head of Statistics South Africa is now referred to as the Statistician-General.

2.27 Amendment of section 8 of Value-Added Tax Act, 1991

Subclause (a): The proposed amendment is of a textual nature and inserts the number of the National Credit Act, 2005. The proposed amendment is effective from 1 June 2007.

Subclause (b): The proposed amendment seeks to clarify that the deemed amount in respect of which this section applies must be a standard rated supply and not a zero-rated supply.

2.28 Amendment of section 9 of Value-Added Tax Act, 1991

The proposed amendment is of a textual nature and inserts the number of the National Credit Act, 2005. The proposed amendment is effective from 1 June 2007.

2.29 Amendment of section 11 of Value-Added Tax Act, 1991

Subclause (a): The amendment is consequential upon the amendment to the definition of "foreign donor funded project" in section 1 of the VAT Act.

Subclause (b): The winnings paid by racing operators to horse owners are currently zero-rated in terms of section 72 of the VAT Act. The proposed amendment is to provide a zero-rating provision for the payment of winnings by racing operators to horse owners.

2.30 Amendment of section 16 of Value-Added Tax Act, 1991

Subclauses (a) to (c): A vendor is entitled to certain deductions in terms of section 16(3) of the VAT Act which are not subject to the documentary requirements contemplated in section 16(2) of the VAT Act. The proposed amendment is to provide the Commissioner with discretionary powers in order to prescribe acceptable documentary proof that a vendor must be in possession of before making such deductions. This amendment will not affect deductions of "input tax" as section 16(2) set out the documentary requirements.

Subclause (d): The proposed deletion of the proviso in section 16(2) of the VAT Act is to eliminate the duplication of the proviso which is provided for in section 16(3) of the VAT Act.

Subclause (e): Where goods or services were supplied to a vendor during a tax period and the vendor was not in possession of e.g. a tax invoice, the vendor is not entitled to claim the input tax during that tax period. If the tax invoice is obtained in a subsequent tax period, the vendor can claim input tax in terms of section 16(3)(g). The proposed amendment to section 16(3)(g) is intended to allow a vendor to claim input tax or a deduction where the documentary requirements of section 16(2) are subsequently met.

2.31 Amendment of section 17 of Value-Added Tax Act, 1991

The proposed amendment is consequential upon the amendment to the definition of "foreign donor funded project" in section 1 of the VAT Act.

2.32 Amendment of section 28 of Value-Added Tax Act, 1991

The proposed amendment to subparagraph (ii) is to clarify that where the payment of the tax is effected by means a debit order, such payment will only be effected on the last business day of the month. However, the VAT 201 return must be submitted by the twenty-fifth day of the month.

Payment method	Returns	Payment
Cash	25th	25th
Cheque	25th	25th
Postal Order	25th	25th
Payment at any of the 4 major banks	25th	25th
VAT 201 (a) debit order	25th	Last business day
E-filing of return <u>and</u> payment via SARS e-filing	Last business day	Last business day
Electronic transfers (including Internet banking)	25th	25th

It is important to note that the return and/or payment must be received on or before the abovementioned dates for the particular payment method selected. In the event that such day falls on a Saturday, Sunday or public holiday (i.e. not a business day), the return and/or the payment must be received on the last business day before that date.

2.33 Amendment of section 31 of Value-Added Tax Act, 1991

The proposed amendment is consequential upon the amendment to the definition of "exported" in the Revenue Laws Amendment Bill, 2007. The proposed amendment will come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

2.34 Amendment of section 33 of Value-Added Tax Act, 1991

Subclause (a) and (b): The proposed amendment is consequential upon the amendment to section 32 of the VAT Act, which was included in clause 15 of the Taxation Laws Second Amendment Act, No. 9 of 2007.

2.35 Amendment of section 33A of Value-Added Tax Act, 1991

Subclause (a) and (b): The proposed amendment is consequential upon the amendment to section 32 of the VAT Act, which was included in clause 15 of the Taxation Laws Second Amendment Act, No. 9 of 2007.

2.36 Amendment of section 44 of Value-Added Tax Act, 1991

The proposed amendment is consequential upon the amendment to the definition of "exported" in the Revenue Laws Amendment Bill, 2007. The proposed amendment will come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

2.37 Amendment of section 55 of Value-Added Tax Act, 1991

The proposed amendment is consequential upon the amendment proposed to section 16(2)(f) (see clause 30). In terms of section 55(1) of the VAT Act, a vendor must keep, *inter alia*, such books of account and documentary proof that may enable the vendor to observe the requirements of the VAT Act and satisfy the Commissioner that the vendor has met such requirements. The result of the proposed amendment is that a vendor is required to keep the documents prescribed by the Commissioner in terms of section 16(2)(f) of the VAT Act, for the prescribed period.

2.38 Amendment of section 13 of Tax on Retirement Funds Act, 1996

The proposed amendment provides that the Commissioner may not issue an assessment in respect of unpaid taxes under the Tax on Retirement Funds Act after 31 August 2008 unless he or she is satisfied that the non-payment is due to fraud, misrepresentation or non-disclosure of material facts. The proposed amendment provides further that an assessment may not be issued under any circumstances after 28 February 2010.

3. CONSULTATION

The amendments proposed by this Bill were published on the National Treasury and SARS websites for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large were consulted in preparing the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications to the State was given in the 2007 Budget Review.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers 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 contains no provision pertaining to customary law or customs of traditional communities.

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