

**MEMORANDUM ON THE OBJECTS OF THE REVENUE LAWS
SECOND AMENDMENT BILL, 2008**

1. PURPOSE OF BILL

The Bill seeks to amend administrative provisions of 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 Revenue Laws Second Amendment Act, 2006 (Act No. 21 of 2006), the Securities Transfer Tax Administration Act, 2007 (Act No. 26 of 2007), and the Revenue Laws Amendment Act, 2007 (Act No. 35 of 2007).

2. OBJECTS OF BILL

2.1 Amendment of section 9 of Estate Duty Act, 1955

The proposed amendment creates a deemed assessment in respect of certain estates filed with the Master's office and a simplified procedure when additional property is found after the estate is wound up. The proposed amendment provides certainty in the process of the winding up of an estate by creating a five year cut-off date for purposes of the additional assessment under section 9A of the Estate Duty Act, 1955. The amendment therefore effectively creates a deemed assessment date based on the provisions of the Administration of Estates Act, 1965 (Act No. 66 of 1965). In addition, the proposed amendment creates simplified administrative rules for situations in which additional property is found after the estate is wound up.

2.2 Amendment of section 3 of Income Tax Act, 1962

The proposed amendment makes provision for a right of objection and appeal in respect of a decision made by the Commissioner under section 12B(6) of the Income Tax Act, 1962.

2.3 Amendment of section 35A of Income Tax Act, 1962

The proposed amendments are consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962.

2.4 Amendment of section 66 of Income Tax Act, 1962

The proposed amendment clarifies the fact that the penalty referred to in this section is an "administrative penalty" that falls under the administrative penalty framework set out in section 75B of the Income Tax Act, 1962.

2.5 Amendment of section 73B of Income Tax Act, 1962

The proposed amendment effects a technical correction.

2.6 Amendment of section 74 of Income Tax Act, 1962

The proposed amendment expands the powers of the Commissioner to obtain information in administering the Act.

2.7 Amendment of section 75B of the Income Tax Act, 1962

Section 75B of the Income Tax Act makes provision for the imposition, by the Commissioner, of administrative penalties in respect of non-compliance with any procedural or administrative action or duty imposed or requested in terms of the Income Tax Act. The proposed amendment clarifies the existing wording.

2.8 Amendment of section 76G of Income Tax Act, 1962

The proposed amendments clarify wording and are consequential to amendments proposed by the Revenue Laws Amendment Bill, 2008

2.9 Amendment of section 76O of Income Tax Act, 1962

In terms of section 76O of the Income Tax Act, 1962, the Commissioner is obliged to publish binding private rulings and binding class rulings. The purpose of the proposed amendment is to decrease the administrative workload of the Commissioner by providing that the Commissioner is not obliged to publish such a ruling where it is the same as a ruling that has already been published

2.10 Amendment of section 80R of Income Tax Act, 1962

The proposed amendment changes the title of section 80R to align it with the content of the section.

2.11 Insertion of section 89*sept* into Income Tax Act, 1962

Where the date for the submission of a return or the payment of tax, penalties or interest is the last day of the financial year of the government, the proposed amendment allows the Minister to prescribe any other date for submission of such return and payment. The date so prescribed by the Minister may not fall on a day more than two business days prior to the last day of that year.

2.12 Substitution of section 93 of Income Tax Act, 1962

The double taxation agreements entered into between South Africa and other countries make provision for reciprocal assistance by the Commissioner in the collection of taxes due to the governments of those countries. Section 93 of the Income Tax Act, 1962, provides the administrative framework for this reciprocal assistance. It is proposed that section 93 be amended in order to streamline this administrative framework.

2.13 Amendment of section 101 of Income Tax Act, 1962

The proposed amendments are consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962.

2.14 Amendment of paragraph 6 of Fourth Schedule to Income Tax Act, 1962

The proposed amendments are consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962.

2.15 Amendment of paragraph 12 of Fourth Schedule to Income Tax Act, 1962

The proposed amendment provides for two additional grounds for the issuing of an estimated assessment by the Commissioner for employees' tax due by the employer. In terms of the proposed amendment, such estimated assessments may be issued where the employer failed to furnish a return as required in terms of paragraph 14(1) or where the employer has furnished a return but the Commissioner is not satisfied with the return.

2.16 Amendment of paragraph 14 of Fourth Schedule to Income Tax Act, 1962

Subclause (a): The proposed amendment provides the Commissioner with the discretion to allow the issuing of employees' tax certificates by the employer in the absence of a return as required by this paragraph.

Subclause (b): The proposed amendment is consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962.

2.17 Amendment of paragraph 16 of Fourth Schedule to Income Tax Act, 1962

The proposed amendments are consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962.

2.18 Amendment of paragraph 19 of Fourth Schedule to Income Tax Act, 1962

This amendment is consequential to the proposed amendment to paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962.

2.19 Amendment of paragraph 20 of Fourth Schedule to Income Tax Act, 1962

A deficiency currently exists in the Fourth Schedule to the Income Tax Act, 1962. Taxpayers are required to make estimates of their taxable incomes for the current year for provisional tax purposes. However, taxpayers are able to avoid additional tax on underestimates of their second provisional tax payments if their payments exceed the *lower of* the basic amount or 90 per cent of the actual taxable income for the year. This frequently leads to estimates that are significantly lower than the actual taxable income for the year because the basic amount does not take account of changes in business circumstances since the taxpayers were last assessed. The shortfalls are only made up in their third provisional tax payments six or seven months later. A legislative amendment deleting the option of relying on the basic amount to avoid the additional tax is thus proposed. It is also proposed that the threshold of 90 per cent be reduced to 80 per cent.

2.20 Repeal of paragraph 27 of Fourth Schedule to Income Tax Act, 1962

The proposed amendment is consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962.

2.21 Amendment of paragraph 31 of Fourth Schedule to Income Tax Act, 1962

The proposed amendment is consequential to the new administrative penalty framework set out in section 75B of the Income Tax Act, 1962.

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

The proposed amendments are of a technical nature. It is proposed that the definitions of "goods" and "manufacture" be amended in order to clarify any uncertainty in these definitions. The proposed amendments also widen the scope of the definition of "goods under customs control" to include other activities regulated and premises controlled in terms of the provisions of the Customs and Excise Act, 1964.

2.23 Substitution of section 3A of Customs and Excise Act, 1964

It is proposed that sections 3A and 3B of the Customs and Excise Act, 1964, be substituted by a general provision empowering any Director-General to exercise the powers conferred by those sections.

2.24 Repeal of section 3B of Customs and Excise Act, 1964

The proposed amendment is consequential to the amendment to section 3A of the Customs and Excise Act, 1964.

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

The proposed amendment to section 4(9) of the Customs and Excise Act, 1964, is a consequence of the insertion of sections 4A to 4C regarding powers of arrest and the carrying of firearms and patrolling of borders in order to empower the commanding officer of a customs patrol boat to stop, board and search any ship or person thereon for purposes described in the subsection. It is proposed that these powers be limited to situations where the ship is in the Republic, in its territorial waters or in the contiguous zone of the Republic, and that these powers may also be exercised by an officer in respect of vehicles.

2.26 Insertion of sections 4A, 4B and 4C into Customs and Excise Act, 1964

Increased trade requires a visible and effective enforcement capability. The Customs Border Control Unit (CBCU) was established in 2006 to provide an advanced enforcement function.

The proposed amendment supports that function by empowering the Commissioner to determine by rule a category of officers to carry out an arrest and possess and use firearms and non lethal weapons for the purpose of enforcing this Act. The amendment also empowers the Commissioner in the proposed section 4C to acquire and use equipment for border control purposes.

2.27 Insertion of section 7A into Customs and Excise Act, 1964

The proposed amendment makes compulsory the electronic furnishing of Advance Passenger Information to SARS. Advance Passenger Information is collected by airlines at departure and electronically forwarded to the border control authorities at destination. This information enables border control authorities to more precisely target customs control by assessing the risk posed by a traveller prior to arrival in the country concerned.

The use of Advance Passenger Information from the traveller's perspective means that the required information regarding the vast majority of travellers will have been assessed prior to their arrival in a country and will thus be subject to minimal customs control. The use of Advance Passenger Information will also be an important tool for effectively processing the large volume of travellers expected to visit the Republic for the purpose of the 2010 FIFA World Cup Soccer Tournament.

The proposed amendment requires the operators of airlines providing an international passenger service to provide the Commissioner with Advance Passenger Information within periods to be specified by rule.

2.28 Amendment of section 13 of Customs and Excise Act, 1964

Section 13(6) currently only imposes an obligation to submit an invoice to the postmaster in respect of goods imported, but not in respect of goods exported. The postmaster also does not have any power to detain any goods intended for export to be removed to the Controller for examination. The proposed amendment extends the existing provisions relating to goods imported to goods exported.

2.29 Amendment of section 15 of Customs and Excise Act, 1964

Sub-clause (1)(a): Duty-free shops on arrival: There is currently no obligation on the traveller to declare any goods bought at a duty-free shop on arrival. The proposed amendment seeks to place an obligation on all travellers to declare to SARS all the goods in their possession, which would include goods purchased in a duty-free shop on arrival in the Republic.

Sub-clause (1)(b): Declaration of goods for export by a person leaving the Republic: The proposed amendment aligns the requirements for exports in paragraph (b) with those relating to imports in paragraph (a). Accordingly, a person leaving the Republic will now be specifically required to declare, before leaving, goods that are—

- carried on behalf of another person;
- intended for remodel, process or repair abroad;
- prohibited, restricted or controlled under any law; or
- goods which a person who temporarily entered the Republic was required to declare upon entering the Republic.

2.30 Amendment of section 19 of Customs and Excise Act, 1964

Section 19 regulates the licensing of customs and excise warehouses. This section also imposes appropriate liabilities and obligations on the licensee of such a warehouse concerning the safekeeping and accounting of warehoused goods.

The proposed amendment empowers the Commissioner to allow an accredited licensee of a customs and excise warehouse to use his or her own electronic warehouse management system to manage the manufacture, receipt and removal of goods instead of only keeping prescribed documentary records in the form currently approved by the Controller. This permission is granted subject to certain specific conditions in order to ensure that control over and the accounting of goods is properly maintained and that the required information is made available to officers for purposes of audit.

2.31 Amendment of section 19A of Customs and Excise Act, 1964

The proposed amendment empowers the Commissioner to prescribe by rule simplified procedures in respect of any excisable goods specified in Section A of Part 2 of Schedule No. 1 or fuel levy goods or any class or kind of such goods manufactured in the Republic.

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

Section 38 regulates the entry of goods and also prescribes the periods within which such entry must be made.

Subclause 1(a): Under current law, the Commissioner cannot, as required by the revised International Convention on the Simplification and Harmonization of Customs Procedures ("the Kyoto Convention") extend the time limit for making entry of goods on application by an importer. The proposed amendment addresses this deficiency.

Subclause 1(b) and (c): Under current law, there is no equivalent entry procedure for exports as provided for certain goods enumerated in section 38 on imports. The proposed amendment accordingly aligns the provisions for exports.

2.33 Amendment of section 39 of Customs and Excise Act, 1964

Section 39(2A) requires that every person who has removed goods from a customs and excise warehouse by means of a certificate, invoice or other prescribed or approved document must present to the Controller a validating entry and pay the duty due on those goods at a time and manner specified by rule.

The proposed amendment makes the subsequent receipt of a periodic validating bill of entry a requirement in the circumstances contemplated in section 38(5).

2.34 Insertion of sections 39B, 39C and 39D into Customs and Excise Act, 1964

Subclause 1(a): The insertion of section 39B is proposed as part of the intention of government to ensure the successful implementation of the General Annex to the Kyoto Convention. The proposed amendment makes provision for the use of incomplete, provisional and supplementary bills of entry as required by the Convention.

Subclause 1(b): The insertion of section 39C is proposed in order to allow authorised persons to make use of periodic supplementary bills of entry as required by the Kyoto Convention.

Subclause 1(c): The insertion of section 39D is proposed in order to allow the immediate release of goods in certain circumstances followed by the subsequent delivery of a bill of entry in respect of those goods as required by the Kyoto Convention.

2.35 Amendment of section 40 of Customs and Excise Act, 1964

Subclause 1(a): Section 40(1)(d) currently seems to suggest that the validity of entry for export is not subject to the requirement of the production of a correct and sufficient invoice, as is the case for imports. The proposed amendment seeks to create similar requirements for both imports and exports.

Subclause 1(b): Section 40(3)(a)(i) is amended to include a provision for the adjustment of a bill of entry by cancellation and substitution of a fresh bill of entry

Section 40(3)(a)(ii) regulates the circumstances under which the Commissioner will allow the substitution of a bill of entry by a fresh bill of entry and the cancellation of the original bill of entry.

Section 40(3)(a)(ii) is restrictive in that it only permits such substitutions in instances where a bill of entry has been passed in error by reason of duty having been paid on

goods intended for storage or manufacture in a customs and excise warehouse or for purposes or use of under rebate of duty.

In practice, substitution is also required for a number of other valid reasons. For example, bulk goods originally stored for purposes of warehouse for export may be required to address an unforeseen shortage of such goods on the domestic market, requiring the cancellation of the original entry and the substitution thereof with a bill of entry for warehousing purposes (i.e. the storage of goods intended for local use).

The proposed amendment empowers the Commissioner, on good cause shown, to allow the substitution of any bill of entry for another in appropriate circumstances.

Subclause (1)(c): Section 40(3)(b) is amended to include a time limit for the additional provision for substitution in section 40(3)(a)(ii). A period of one month is allowed, but a longer period may be prescribed by rule or could be determined in a particular instance.

2.36 Amendment of section 64E of Customs and Excise Act, 1964

Currently, section 64E provides for accredited status of clients, but not for different levels of accredited status. The proposed amendment empowers the Commissioner to determine by rule different levels of accredited client status with each having its own set of criteria and benefits, as well as for a control programme, regular re-validations and a time frame for operating on a specific level. A transitional period is provided for the existing clients to be re-validated per level. This change enables SARS to concentrate their resources in higher risk areas, while still having control and security over low risk clients. It also makes the requirements of section 64E (1)(b) mandatory and standard for each level of accredited client status.

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

The proposed amendment is consequential to the insertion of sections 39B, 39C and 39D and creates offences for any contravention or failure to comply with those provisions.

2.38 Insertion of section 101B into Customs and Excise Act, 1964

Advance Passenger Information contains some personal information. As a result, the transmission of Advance Passenger Information to a foreign government is generally protected by the data privacy and protection legislation applicable to a foreign carrier in terms of that carrier's domestic legislation. The proposed amendment is consequential to the insertion of section 7A in the Act requiring the compulsory furnishing of electronic air passenger information by airlines. The South African Law Reform Commission has drafted a "Protection of Personal Information Bill" to regulate the processing of personal information in the Republic. In view of the importance of Advance Passenger Information in successfully dealing with the expected influx of travellers for the purposes of the 2010 FIFA World Soccer Cup, the proposed amendment incorporates into the Act the principal data protection principles reflected in the draft Bill and found in most international data privacy and protection legislation. The amendment enables foreign airlines bound by those laws domestically to transmit Advance Passenger Information to SARS.

2.39 Amendment of section 106 of Customs and Excise Act, 1964

In practice, officers take samples of goods for export. The proposed amendment codifies this practice.

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

Section 120(1)(c) contains provisions in terms of which rules may be made in respect of goods under customs control. As a consequence of the insertion of section 6A regarding the special provisions in respect of customs controlled areas, and the definition of goods under customs control in section 1(5), this paragraph is now amended to empower the Commissioner to make rules regarding transshipment cargo, goods under customs control and the customs controlled areas.

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

Where the date for the submission of a return or the payment of tax, penalties or interest is the last day of the financial year of the government, the proposed amendment allows the Minister to prescribe any other date for submission of such return and payment. The date so prescribed by the Minister may not fall on a day more than two business days prior to the last day of that year.

2.42 Amendment of section 41B of Value-Added Tax Act, 1991

The proposed amendment provides for certain information to be supplied when applying for a VAT ruling or VAT class ruling. Furthermore, the proposed amendment continues to allow a discretion to the Commissioner not to publish a ruling that is the same as a ruling already published.

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

The proposed amendment permits only non-resident companies and subsidiary companies of a holding company to use the bank account of third parties (and, in the case of subsidiaries, the bank of its holding company) for purposes of obtaining a refund. Due to concerns involving fraud, no other third-party bank accounts of this nature will be permitted.

This amendment will be effective from 1 April 2009 in order to allow vendors affected by this proposed amendment an opportunity to inform SARS of their banking particulars.

2.44 Amendment of section 45 of the Value-Added Tax Act, 1991

The proposed amendment provides clarity that the Commissioner will only pay interest after 21 days of receiving the vendor's banking particulars. If a vendor uses a bank account of a third party (in terms of the proviso to section 44(3)(d)) and has completed a VAT form 119i, the 21-day interest free period commences from the date that the VAT form 119i is received by the Commissioner.

2.45 Amendment of section 7 of the Revenue Laws Second Amendment Act, 2006

The definition of "container" in section 1(2) of the Customs and Excise Act, 1964, was amended by section (1)(f) in the Revenue Laws Second Amendment Act, 2006, with a date of implementation to be fixed by the President by proclamation in the *Gazette*. This amendment contained an incorrect reference to section 106 which should have been a reference to section 107. Section 10 of the Taxation Laws Amendment Act, 2007, corrected the reference to section 107 and section (1)(f) of the Revenue Laws Second Amendment Act, 2006, is accordingly deleted.

2.46 Repeal of section 21 of Revenue Laws Second Amendment Act, 2006

Section 21 of the Revenue Laws Amendment Act, 2006, amended section 38 of the Customs and Excise Act, 1964, in respect of the entry of goods for export and would have come into operation by proclamation. However, the need to amend section 38 more extensively also with regard to the clearance of imported goods was addressed in the amendments contained in clause 34(1) which are to come into operation by proclamation.

Certain provisions of clause 34(1) of this Bill in effect substitutes the amendments contained in section 21(1) and for this reason the latter provision is repealed.

2.47 Amendment of section 29 of Revenue Laws Second Amendment Act, 2006

Section 29(1)(a) of the Revenue Laws Second Amendment Act, 2006, inserted section 80(1)(s) of the Customs and Excise Act, 1964, which is to come into operation by proclamation. However, provision had to be made for an offence regarding section 39B, 39C or 39D which is inserted by clause 41 of this Bill as section 80(1)(s) of the Customs and Excise Act, 1964. This amendment will also come into operation by

proclamation, but is expected to come into operation before the amendment in section 29(1)(a). Consequently, section 29(1)(a) of the Revenue Laws Second Amendment Act, 2006, is amended by clause 53 of this Bill to refer to section 80(1)(t) of the Customs and Excise Act, 1964.

2.48 Repeal of section 35 of Revenue Laws Second Amendment Act, 2006

Section 35(1) of the Revenue Laws Second Amendment Act, 2006, amended section 120 of the Customs and Excise Act, 1964, to include powers to make rules in respect of transshipment cargo, goods under customs control and custom controlled areas. Section 35(2) provided that subsection (1) would come into operation by proclamation.

Because section 6A has been inserted into the Customs and Excise Act, 1964, to provide for special provisions in respect of customs controlled areas and because the scope of the definition of goods under customs control in section 1(5) of that Act has been extended by the amendment in clause 22, the amendment in section 35 is now included in clause 40. There is now no need for the amendment in section 35 and it is accordingly repealed.

2.49 Amendment of section 3 of Securities Transfer Tax Administration Act, 2007

It is proposed that section 3(1)(b) of the Securities Transfer Tax Administration Act, 2007, ("the STT Administration Act") be extended to also require the company which issued the listed security which was transferred to pay STT in certain instances. If no member or participant (CSDP) is holding a listed security in custody, the payment of tax is required to be made by the company that has issued the transferred listed security. In most instances that would mean that the company's agent (i.e. the transfer secretaries) would effect such a payment. However, the liability to pay STT remains with such company.

Regarding the amendment of section 3(2) of the STT Administration Act, it is proposed that all persons who are liable to pay STT to SARS be required to submit prescribed declarations electronically to SARS by the final date of payment of the tax. This amendment aligns the legislation with existing procedures regarding the e-STT system. It enables the current practice of requiring the electronic submission of declarations to apply equally to any person who has an obligation to pay STT, be it for listed or unlisted shares.

2.50 Amendment of section 90 of the Revenue Laws Amendment Act, 2007

Section 90 of Act 35 of 2007 amended the definitions of "customs duty", "excisable goods" and "manufacture" in section 1 of the Customs and Excise Act in view of the amendments in respect of excise duty which will come into operation by proclamation. The amended definition of "manufacture" also includes references to "environmental levy goods" and "Road Accident Funds levy goods".

However, because the definition of "manufacture" in the Customs and Excise Act had to be amended in respect of the generation of electricity liable to environmental levy, the amendment to the definition in section 90(1)(d) of Act 35 of 2007 is now included. The definition in section 90 is accordingly deleted.

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 2008 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.

Printed by Creda Communications

ISBN 978-1-77037-459-1