

**MEMORANDUM ON THE SECOND SMALL BUSINESS TAX  
AMNESTY AND AMENDMENT OF TAXATION LAWS BILL, 2006**

**1. OBJECTS OF THE BILL**

1.1 This Bill introduces administrative provisions of the Tax Amnesty Act and amendments to the administrative provisions of the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, and the Value-Added Tax Act, 1991.

1.2 **Clauses 1 to 8 of Chapter I**—This Chapter contains administrative provisions of the Small Business Tax Amnesty and Amendment of Taxation Laws Bill.

**1.3 Clause 9 of Chapter II—Income Tax: Amendment of section 4 of the Income Tax Act, 1962**

National Treasury only has access to data relating to classes of taxpayers for purposes of policy design and revenue estimation. This limited access is insufficient in the case of public entities given National Treasury's role in appropriating funds. The National Treasury is now given access to individual taxpayer data to the extent that the taxpayer involved is an entity as listed in the Public Finance Management Act, 1999, or the Local Government: Municipal Finance Management Act, 2003.

**1.4 Clauses 10 and 11 of Chapter II—Customs and Excise: Amendment of section 4 of the Customs and Excise Act, 1964**

The proposed amendment to subsection (8A)(a) is aimed at providing for the stopping, detention and examination of all goods under the control of the Commissioner, including ships, vehicles or any container contemplated in section 1(2), whether for the purposes of the Customs and Excise Act or any other law as contemplated in section 107(2)(a). The amendment also clearly vests the general power of examination which is required to give effect to the aims of the subsection in a customs officer.

**1.5 Clause 12 of Chapter II—Stamp Duties: Amendment of section 1 of the Stamp Duties Act, 1968**

The proposed amendment is consequential upon the introduction of electronic stamping. Adhesive revenue stamps and impressed stamps (franking machines) will be phased out and these provisions will become obsolete. The proposed amendment will come into operation on a date fixed by the President by proclamation in the *Gazette*.

**1.6 Clause 13 of Chapter II—Value-Added Tax: Amendment of section 6 of the Value-Added Tax Act, 1991**

National Treasury only has access to data relating to classes of taxpayers for purposes of policy design and revenue estimation. This limited access is insufficient in the case of public entities and municipalities given National Treasury's role in appropriating funds. The National Treasury is now given access to individual taxpayer data to the extent that the taxpayer involved is an entity as listed in the Public Finance Management Act, 1999, or the Local Government: Municipal Finance Management Act, 2003.

**1.7 Clause 14 of Chapter II—Value-Added Tax: Amendment of section 23 of the Value-Added Tax Act, 1991**

The proposed amendment is consequential upon the deletion of paragraph (c) of the definition of "enterprise" in section 1. Furthermore the proposed amendment to paragraph (b) is also consequential upon the amendments contained in the Revenue Laws Amendment Act, 2005, to cater for foreign donor projects.

**1.8 Clause 15 of Chapter II—Value-Added Tax: Amendment of section 46 of the Value-Added Tax Act, 1991**

The term "local authority" is replaced by the term "municipality".

The proposed amendment is due to the term "local authority" becoming redundant as various Acts applicable to the local sphere of Government now refer to "municipalities". The proposed amendments to sections 1 (definitions of "grant" and "person"), 8(5), 8(5A), 10(14), 11(2)(s), 15(2A), 46(c), the proviso to sections 46, 48 and paragraph 5 of Schedule 1, are consequential upon the deletion of the definition of "local authority" and the insertion of the definition of "municipality" in section 1 of the VAT Act.

**1.9 Clause 16 of Chapter II—Value-Added Tax; Amendment of section 48 of the Value-Added Tax Act, 1991**

See the notes on Clause 15 above.

**1.10 Clause 17 of Chapter II—Value-Added Tax: Amendment to section 55 of the Valued Added Tax Act, 1991**

The proposed amendment changes the references to the relevant provisions in the Income Tax Act.

## **2. PERSONS AND INSTITUTIONS CONSULTED**

The amendments introduced by this Bill were published on the SARS and National Treasury websites for public comment. Comments were received from interested parties. These included professional bodies and business institutions. The following made written representations to the Portfolio Committee on Finance:

- Association for the Advancement of Black Accountants of Southern Africa;
- Banking Association South Africa;
- Business Unity South Africa;
- Deneys Reitz;
- PricewaterhouseCoopers;
- South African Institute of Chartered Accountants;
- South African Institute of Professional Accountants.

## **3. FINANCIAL IMPLICATIONS TO THE STATE**

As the changes relate to the administration of the various tax Acts, it is not possible to quantify the financial implications for the State.

## **4. CONSTITUTIONAL IMPLICATIONS**

None.

## **5. PARLIAMENTARY PROCEDURE**

5.1 The State Law Advisers, The South African Revenue Service and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution, as it contains no provisions to which the procedure set out in section 76 of the Constitution applies.

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