

MEMORANDUM ON OBJECTS OF CUSTOMS AND EXCISE AMENDMENT BILL, 2013

1. BACKGROUND

- 1.1 Customs and excise legislation is currently contained in the Customs and Excise Act, 1964 (Act No. 91 of 1964), which basically provides for the levying of customs and excise duties, and also certain other taxes such as fuel levies, Road Accident Fund levies, environmental levies and air passenger tax. To enable the administration and collection of these taxes, the Act prescribes an extensive system of customs control focussed on the import, export, manufacture and use of goods. For purposes of convenience and common sense these control mechanisms also serve a secondary purpose, viz. to enforce legislative restrictions on the import and export of certain specific regulated goods, and especially to combat the smuggling of counterfeit and other illicit goods into and out of the Republic.
- 1.2 The Customs and Excise Act, 1964, was written to cater for the needs of the time when the focus was on control, and although the Act was extensively amended over the years to keep pace with new approaches and to soften and modernise the system, the basic structure of the Act remained unchanged and still contains a strong undercurrent of rigidity reminiscent of the era in which it was written. As such it is no longer structurally suitable to serve as a vehicle for implementing a modern system of customs control in accordance with current international trends and best practice. It was accordingly decided to undertake a fundamental restructuring of our customs and excise legislation not only to give effect to the Revised Kyoto Convention and other binding international instruments but also to establish a sound, clear and logical legislative framework that would enhance and “speak to” the many other legislative instruments that rely for their implementation on customs control.
- 1.3 When the redrafting of the new legislative framework commenced, the approach was to split the Customs and Excise Act, 1964, into three separate pieces of legislation to eventually replace the 1964 Act, viz—
 - (a) a Customs Control Act that will establish a system for the customs control of all goods imported into or exported from the Republic and for all means of transport and persons entering or leaving the Republic;
 - (b) a Customs Duty Act, that will provide for the imposition, assessment and collection of customs duties on goods imported into the Republic, and if needed in future also for duties on exported goods; and
 - (c) an Excise Duty Act, that will provide for the imposition, assessment and collection of excise duties, fuel levies, Road Accident Fund levies and environmental levies on goods imported into or manufactured in the Republic and also for the collection of air passenger tax.
- 1.4 The dissection of the Customs and Excise Act, 1964, and the rewrite of the current customs and excise legislation is a mammoth task that will and has already taken several years to complete. For that and other reasons it was from the outset decided to split the customs and the excise aspects of the task and to complete the project in two phases, the first phase being the drafting of the two Customs Bills and the second the drafting of the Excise Bill. The intention is to proceed, at this stage, only with the two Customs Bills and to retain the current Customs and Excise Act, 1964, in an amended form for the continued administration of excise duties and the relevant levies until the proposed new Excise Act comes into effect. The position would thus be that the two Customs Bills would replace the provisions of the current Customs and Excise Act, 1964, in relation to customs only and that the amended 1964 Act would for the time being continue to apply to excise duties and these other levies. The redrafting of the proposed new Excise Duty Act has not commenced as of yet.

2. OBJECTS OF BILL

The object of the Customs and Excise Amendment Bill (“the Bill”) is therefore to amend the provisions of the Customs and Excise Act, 1964, and to remove from the Act all the provisions that have now been incorporated into either the Customs Control Bill or the Customs Duty Bill. As the 1964 Act will no longer apply to the customs control of imported and exported goods and to the imposition of customs duties, it is proposed to rename the existing Act the Excise Duty Act.

3. SUMMARY OF BILL

- 3.1 As the aim of the Bill is simply to align the 1964 Act with the content of the proposed Customs Control and Customs Duty Bills, the amendments contained in the Bill are mostly of a technical and consequential nature. As such it does not establish new principles in relation to duties and levies on excisable goods, fuel levy goods, Road Accident Fund goods or environmental goods except where it is necessary for reasons of uniformity to align the provisions of the existing Act with changes proposed in the other Bills. For instance, the previous prescription period of two years for refunds is now proposed to be changed to three years for all refunds, whether customs or excise related.
- 3.2 As the proposed Customs Control Act will serve as a platform for all “tax levying Acts” which per definition will include the amended 1964 Act (or “Excise Duty Act” as it will be called in the new dispensation), the Customs Control Bill including all new principles provided for in that Bill will automatically apply to excisable, fuel levy, Road Accident Fund and environmental levy goods whenever those goods are dealt with in a manner that brings them within the scope of the Customs Control Bill. For instance, all the provisions of the Customs Control Act will automatically apply to excisable goods when imported or exported, but as the Customs Control Bill does not deal with manufactured goods, it will not apply to the manufacture or storage of goods in excise warehouses. Here the (*amended*) 1964 Act will continue to apply.
- 3.3 It is also to be noted that certain mechanisms of the Customs Control Bill will fully apply across both the customs and the excise environments irrespective of whether the goods are imported or locally manufactured goods. These mechanisms include delegations, measures to ensure confidentiality, enforcement by customs officers, state warehouses, provision of security, voluntary disclosure relief, internal appeals, and judicial proceedings for recovery of tax.
- 3.4 The classification of imported and locally manufactured goods for purposes of customs and excise duties and the imposition of duties and levies and rebates on such goods, are currently contained in the plethora of Schedules to the 1964 Act. It is proposed to split these Schedules into a “Customs Tariff” applicable to customs duties and an “Excise Tariff” applicable to excise duties and the other relevant levies. The proposed Customs Tariff will be introduced before the Customs Duty Act takes effect, whilst the existing Schedules in the 1964 Act as applicable to excise duties and the relevant levies will continue for the time being to serve as the Excise Tariff.
- 3.5 As it will be unwise to have two different statutory regimes for duties (customs and excise) on imported goods, it is proposed, pending the enactment of the new Excise Duty Act, to apply for the time being some of the provisions of the Customs Duty Act also for purposes of excise duties on imported goods. The Amendment Bill for this reason inserts section 43B in the 1964 Act which provides for the application of the Customs Duty Bill, with any necessary changes as the context may require, excluding Chapters 2, 8 and 9 of that Bill, to any matter regulating or affecting duties or levies on imported excisable, fuel levy, Road Accident Fund levy or environmental levy goods. The effect of this provision is that the Customs Duty Bill will, as a

temporary measure, determine for excise duty purposes matters such as dutiability, liability, assessment procedures, tariff classification, valuation, payment, collection, refunds, interest on arrears, etc. The equivalent provisions in the 1964 Act prescribing these matters in relation to imported goods are deleted.

- 3.6 The transitional provisions relating to the Customs Control Bill, the Customs Duty Bill and the Customs and Excise Amendment Bill are because of their interrelatedness presented in a consolidated form in Part 3 of Chapter 41 of the Customs Control Bill.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

No consultation has taken place in respect of this Bill specifically because the object of the Bill is, as stated above, only to align provisions of the Customs and Excise Act, 1964, with the content of the proposed Customs Control Bill and the proposed Customs Duty Bill, and to remove all the provisions that have been incorporated into either of the two proposed Bills. Extensive consultation has taken place in respect of these Bills.

5. FINANCIAL IMPLICATIONS

Implementation costs may arise from staff training which will be covered from funds in SARS' budget.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and SARS are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 76 of the Constitution applies.
- 6.2 The State Law Advisers are further 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.

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