



REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

SECOND REVENUE LAWS AMENDMENT BILL, 2004



**NATIONAL
TREASURY**

[W.P. 4 —'04]

CONTENTS

DESCRIPTION	PAGE
Introduction	4

CLAUSE	SECTION / PARAGRAPH	PAGE
<i>Transfer Duty Act, 1949</i>		
Clause 1	Section 14	4
Clause 2	Section 16	4
Clause 3	Section 17	4
Clause 4	Section 17B	5
Clause 5	Section 20A	5
Clause 6	Sections 20C and 20D	5
<i>Income Tax Act, 1962</i>		
Clause 7	Section 66	5
Clause 8	Section 67	5
Clause 9	Section 67A	6
Clause 10	Section 69	7
Clause 11	Section 75	7
Clause 12	Part IA, Chapter III	7
Clause 13	Section 78	10
Clause 14	Section 79	10
Clause 15	Section 81	10
Clause 16	Section 83	11
Clause 17	Section 89 <i>quat</i>	11
<i>Fourth Schedule to the Income Tax Act, 1962</i>		
Clause 18	Paragraph 6	11
Clause 19	Paragraph 11A	11
<i>Customs and Excise Act, 1964</i>		
Clause 20	Section 15	11
Clause 21	Section 18	11
Clause 22	Section 21	12
Clause 23	Section 43	12
Clause 24	Section 49	13
Clause 25	Section 63	13
Clause 26	Section 72	13
Clause 27	Section 75	13
Clause 28	Section 76	14
Clause 29	Section 76B	14
Clause 30	Section 96	15
Clause 31	Section 99	15
Clause 32	Section 101A	15
Clause 33	Section 107	16
Clause 34	Section 112	16
<i>Stamp Duties Act, 1968</i>		
Clause 35	Section 28C	16

Clause 36	Section 30	16
Clause 37	Section 31	16
Clause 38	Section 32	17
Clause 39	Section 32C	17
<i>Value-Added Tax, 1991</i>		
Clause 40	Section 25	17
Clause 41	Section 31	17
Clause 42	Section 54A	17
Clause 43	Section 58	18
<i>Uncertificated Securities Tax Act, 1998</i>		
Clause 44	Section 17B	18
<i>Short title</i>		
Clause 45		18

**EXPLANATORY MEMORANDUM ON THE
SECOND REVENUE LAWS AMENDMENT BILL, 2004**

INTRODUCTION

The Second Revenue Laws Amendment Bill, 2004, introduces amendments to the Transfer Duty Act, 1949, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991 and the Uncertificated Securities Tax Act, 1998.

CLAUSE 1

Transfer Duty: Amendment of section 14 of the Transfer Duty Act, 1949

Subclause (a): The proposed amendment is intended to delete the requirement that transfer duty forms be published in the Government Gazette in light of administrative efficiency.

Subclause (b): Where a property is sold, a registration of such transaction is recorded by the Registrar or Deeds. The Act provides that such registration may not be effected unless the transfer duty has been paid. No such procedure exists where an interest in a trust, company or close corporation which owns residential property is transferred. As such entities are often used to avoid or evade transfer duty the purpose of the proposed amendment is to compel estate agents involved in such transactions to report them to SARS.

CLAUSE 2

Transfer Duty: Amendment of section 16 of the Transfer Duty Act, 1949

The amendment is of a textual nature.

CLAUSE 3

Transfer Duty: Amendment of section 17 of the Transfer Duty Act, 1949

Subclause (a): The amendment is of a textual nature.

Subclause (b): The proposed amendment is consequential to the proposed amendment in section 14(3). Should the estate agent not notify SARS, he/she may be found guilty of an offence and be liable on conviction to a fine or imprisonment.

CLAUSE 4

Transfer Duty: Insertion of section 17B in the Transfer Duty Act, 1949

The proposed amendment seeks to introduce further penal provisions where a person with intent, evades the payment of duty or obtains any refund of duty to which he is not entitled or where such person assists any other person in the aforementioned instances, such person will be guilty of an offence and liable on conviction to a fine or imprisonment. This is in line with other tax Acts.

CLAUSE 5

Transfer Duty: Substitution of section 20A of the Transfer Duty Act, 1949

The proposed amendment seeks to provide for the publication of the names of offenders. Similar provisions are contained in the other Acts administered by the Commissioner.

CLAUSE 6

Transfer Duty: Insertion of sections 20C and 20D in the Transfer Duty Act, 1949

The proposed amendment seeks to provide for the reporting of unprofessional conduct to the respective controlling body. Similar provisions are contained in the other Acts administered by the Commissioner.

This clause also inserts a section relating to advance tax rulings. The provisions contained in the Income Tax Act, 1962, relating to advance tax rulings apply *mutatis mutandis* for purposes of the Transfer Duty Act, 1949.

CLAUSE 7

Income Tax: Amendment of section 66 of the Income Tax Act, 1962

Section 66 of the Income Tax Act, 1962, provides that the Commissioner must annually give notice that all persons who are liable for income tax or who are required to furnish any returns for the assessment of tax, to submit returns within a specific period. It is proposed that this section be revised to simplify the wording. The Commissioner may in terms of that provision list the persons in the notice who are required to submit returns.

CLAUSE 8

Income Tax: Amendment of section 67 of the Income Tax Act, 1962

As was mentioned in the Budget Review this year, taxpayers are not required to inform SARS of changes in personal details, especially changes in mailing addresses. This failure creates an administrative burden for SARS. It is, therefore, proposed that provision be made in the Act that if a person's address which is normally used by the Commissioner for correspondence with that person changes, that person must inform the Commissioner within 60 days after that change of his or

her new address. Failure to comply with this requirement is an offence which is punishable with a fine or imprisonment for a period not exceeding 24 months.

CLAUSE 9

Income Tax: Insertion of section 67A in the Income Tax Act, 1962

As was announced by the Minister of Finance in the 2002 Budget Review, a proposal for the regulation of tax consultants and advisors in South Africa would be considered with appropriate sanctions in the event of non-compliance with tax legislation. The purpose of this proposal is to promote better compliance and ensure that taxpayers receive advice which is consistent with the tax legislation.

A Discussion Paper entitled *Regulating Tax Practitioners* was released for public comment in 2003 and a number of comments were received on various issues contained therein. These issues are currently being considered and it is envisaged that it would be appropriate to ultimately establish a separate Board distinct from SARS to administer the process of regulating tax practitioners. The creation of this Board and the framework for the regulation function will best be achieved by incorporating it in a separate Bill. It will also require an extended period for comment given the substantial shift in the basis of the regulation of tax practitioners compared to the proposals contained in the original Discussion Paper. Obtaining additional information on the existing tax practitioners with regard to their qualifications, experience, membership of existing professional bodies, etc would also be of critical importance in dealing with some of the concerns raised.

As it will only be practical to introduce such a separate Bill during the course of 2005, it is proposed as an interim measure that a provision be inserted in the Income Tax Act, 1962, to require all tax practitioners to register with SARS. This will enable SARS to obtain valuable information with respect to tax practitioners that are currently in practice and will assist in refining the future regulation process.

The proposed section 67A requires all natural persons who provide tax advice or complete or assist in completing any documents for submission to SARS to register with the Commissioner as a tax practitioner.

It is, however, proposed that the following persons be excluded from the requirement to register—

- persons who provide advice or complete documents for no consideration to themselves or their employers (such persons are not providing assistance for reward);
- advocates and lawyers who provide advice or assist clients during or in anticipation of litigation (it may be argued that without such an exclusion taxpayers cannot freely choose legal representation);
- persons who provide advice which is incidental to the provision of goods or other services (such as insurance brokers who sell retirement annuities to clients and in the course thereof advise on the tax consequences thereof);
- employees who provide advice or complete documents of their employers or a connected person in relation to that employer (such as a group tax manager or a payroll supervisor);
- employees who provide advice or complete documents while under the direct supervision of a tax practitioner (such as trainees or articled clerks of law or accountancy practices); or

- persons who provide advice or complete documents in terms of the Customs and Excise Act, 1964, (such persons are dealt with in terms of a separate provision in that Act).

Section 75 of the Income Tax Act, 1962, is also amended to provide that it is an offence if a person fails to register as a tax practitioner with SARS and that person may be liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.

CLAUSE 10

Income Tax: Amendment of section 69 of the Income Tax Act, 1962

The Act currently makes provision for the reporting of various forms of taxpayer income to the Commissioner by third parties. This enables the Commissioner to verify the accuracy of information supplied by taxpayers in their returns and may, as the reliability of the information supplied is tested and systems are developed, be used to reduce the amount of information required from taxpayers in their returns. It is proposed that this reporting system be extended to two significant deductions available to individual taxpayers, namely medical scheme and retirement costs.

A reporting requirement is also inserted in terms of which employers must report any amounts received by or accrued to or in favour of any employee or former employee in respect of the disposal of qualifying equity shares in respect of which section 8B applies. See notes on **TAXATION OF AMOUNTS DERIVED FROM BROAD-BASED EMPLOYEE SHARE PLAN** in the Explanatory Memorandum on the Revenue Laws Amendment Bill, 2004.

CLAUSE 11

Income Tax: Amendment of section 75 of the Income Tax Act, 1962

Subclause (a): See notes on amendment to section 67 of the Income Tax Act, 1962.

Subclause (b): See notes on insertion of section 67A of the Income Tax Act, 1962.

CLAUSE 12

Income Tax: Insertion of Part IA in Chapter III of the Income Tax Act, 1962

As was announced in the 2003 Budget Review, the possibility of introducing an advance ruling process would be considered. In November 2003, a detailed Discussion Paper was released for public comment. This document was the product of extensive research regarding the purpose, structure, and function of similar systems in other countries and provided, *inter alia*, a review of the existing position in South Africa, an analysis of the international situation, and a detailed discussion of a proposed South African model.

The proposed provisions in the Bill seek to establish an advance tax ruling system within SARS in basic conformity with the proposed model in the Discussion Paper. The proposed provisions establish the framework for the system and set out basic rules regarding the application process, fees, exclusions and refusals, the effect of

rulings, the impact of subsequent law changes, retrospectivity and the publication of rulings. They also provide specific rules in respect of the three primary types of rulings, i.e. binding general rulings, binding private rulings and binding class rulings.

The proposed provisions are inserted as a new Part IA in Chapter III of the Income Tax Act, 1962, and apply in respect of all taxes imposed by that Act. The provisions of this new Part IA are also made applicable, *mutatis mutandis*, in respect of various other taxes. The Customs and Excise Act, 1964, is, however, excluded at this stage as the Customs and Excise Act already contains extensive provisions with regard to tariff determinations and binding origin determinations.

Types of Rulings

In accordance with the “phased” approach advocated in the discussion document, the proposed provisions provide for three basic types of rulings: binding general rulings; binding private rulings; and binding class rulings. It is anticipated that a fourth type of ruling, binding product rulings, may be added at a later time.

Binding general rulings

These types of rulings would be initiated by the Commissioner on topics of general interest and would be similar to interpretation notes being issued at present. These rulings would be binding upon the Commissioner and both the Commissioner and taxpayers would be entitled to cite them as precedent in proceedings before the Commissioner or the courts. The Commissioner may withdraw or modify these rulings, but such withdrawal or modification generally cannot take effect prior to the publication of the notice of such action. Subsequent changes in law, such as a legislative amendment or court judgment, will generally be effective from the effective date of the change itself and will not require any action by the Commissioner to take effect.

Binding private rulings

These rulings would be issued in response to an application by a taxpayer and would set forth the Commissioner’s opinion regarding the interpretation or application of the tax laws in respect of a proposed transaction or arrangement. These rulings would be binding upon the Commissioner only with respect to the applicant and the proposed transaction identified in the ruling. These rulings may not be relied upon or cited as precedent by any other taxpayer. The Commissioner is generally authorised to withdraw or modify such rulings prospectively. In addition, the Commissioner is also permitted to withdraw or modify such rulings retrospectively only if the rulings are in error **and**—

- the proposed transaction has not yet commenced;
- there are persons other than the persons to whom the ruling was given who will suffer significant disadvantages if the ruling is not withdrawn and the persons to whom the ruling was given will suffer comparatively less if the ruling is withdrawn; or
- the effect of the ruling will materially erode the South African tax base and it is in the public interest to withdraw or modify the ruling retrospectively.

Applicants would be subject to an initial application fee and a cost recovery fee. Rulings would be published by the Commissioner for general information in such form as would not reveal the identity of the applicant.

Binding class rulings

These rulings would also be initiated by taxpayers. These rulings would set forth the Commissioner's opinion regarding the application or interpretation of the tax laws to a specific class of taxpayers in respect of a proposed transaction or arrangement. The purpose of these rulings is to relieve each participant in the transaction from the need to apply for a separate binding private ruling. An example would be a company that applies for a ruling regarding the tax treatment of a share investment scheme for its employees. The provisions for these rulings regarding applications, exclusion and refusals, withdrawal and modifications, retrospectivity, and publication are generally the same as those that apply to binding private rulings.

Withdrawal or Modification

The proposed provisions maintain the approach of the Discussion Paper. In particular, the Commissioner would have the authority to withdraw or modify any advance tax ruling prospectively. In addition, the Commissioner would also be authorised to withdraw or modify binding private rulings or binding class rulings retrospectively in certain narrowly defined circumstances. As discussed above, this authority to withdraw or modify a ruling retrospectively is limited.

This limited authority strikes the appropriate balance between the needs of the taxpaying community for certainty and the Commissioner's obligations to protect the fiscus. In addition, similar authority has been granted to revenue agencies in other countries such as the United States without impairing the underlying goals of certainty, consistency, and clarity.

Exclusions and Refusals

The proposed provisions also maintain the approach of the Discussion Paper regarding the nature and scope of exclusions and refusals with respect to applications for binding private and class rulings. The purpose of the advance ruling system is not to assist tax advisors in developing tax avoidance schemes. It is to assist genuine business operations by providing clarity, consistency and certainty in the application and interpretation of the tax law, for example, by providing guidance to a foreign investor who is considering an investment in South Africa and would like certainty about the tax consequences. Experience in other countries also demonstrates that the advance ruling mechanism is generally ill-suited for fact-intensive questions such as transfer-pricing or valuation. Even independent quasi-judicial ruling authorities in countries such as India have shown a reluctance to accept applications on such matters. These exclusions and refusals are necessary for the proper functioning of the advance tax ruling system and are consistent with the rules in other countries.

Fees

The proposed provisions require the Commissioner to establish appropriate fees for binding private and binding class rulings, including an application fee and cost-recovery fee. Similar fees are imposed by other jurisdictions including Canada, New Zealand, and the United States. A person who requests a ruling, particular in the context of a unique and complex transaction, receives a direct and immediate benefit that may be of little or no value to other taxpayers, but which nonetheless imposes a

significant burden on the limited time and resources of the revenue authority. These fees are necessary to defray the costs of the system and will have the ancillary benefit of discouraging frivolous and other inappropriate requests.

Publication

The proposed provisions require the Commissioner to publish these rulings for general information, in such form as does not reveal the identity of the applicant. In addition, it further provides that the Commissioner may publish a summary if it is determined that the ruling itself could not be published, even in redacted form, without revealing the applicant's identity. These rules are consistent with the rules in other countries such as Australia, Canada, New Zealand, and the United States. These rules are essential to goals of transparency and uniformity and that they strike the appropriate balance between taxpayer confidentiality and the possibility that the advance ruling system might lead to the development of a private body of law which could give some taxpayers an unfair advantage and exclusive knowledge about the interpretation of the tax laws.

CLAUSE 13

Income Tax: Amendment of section 78 of the Income Tax Act, 1962

The proposed amendment is of a textual nature.

CLAUSE 14

Income Tax: Amendment of section 79 of the Income Tax Act, 1962

Section 79 currently provides that additional assessments may not be raised by the Commissioner after a period of three years, unless there was some form of fraud, misrepresentation or non-disclosure of material facts. This section, therefore, does not allow for flexibility where taxpayers and the Commissioner would like to extend the prescription period to facilitate the negotiation process arising from the investigation of certain transactions. It is, therefore, proposed that section 79 be amended accordingly to provide that the Commissioner may issue additional assessments after the three year period if the Commissioner and the taxpayer so agree prior to the expiry of the three year period.

CLAUSE 15

Income Tax: Amendment of section 81 of the Income Tax Act, 1962

It is proposed that subsection (6) be deleted in light of the amendment to section 83(1C).

CLAUSE 16

Income Tax: Amendment of section 83 of the Income Tax Act, 1962

In light of the proposed deletion of section 81(6), it is proposed that subsection (1C) be amended to enable the Commissioner to alter an assessment in the situation where a dispute is resolved in terms of the alternative dispute resolution process.

CLAUSE 17

Income Tax: Amendment of section 89quat of the Income Tax Act, 1962

This amendment is of a textual nature and deletes a reference to an obsolete provision.

CLAUSE 18

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

For the sake consistency and administrative justice, it is proposed that the recently introduced two hundred percent penalty provision for employers under the PAYE system be subject to objection and appeal where the Commissioner decides not to remit the penalty.

CLAUSE 19

Income Tax: Substitution of paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962

See notes on **TAXATION OF AMOUNTS DERIVED FROM BROAD-BASED EMPLOYEE SHARE PLAN** and notes on **TAXATION OF DIRECTORS AND EMPLOYEES ON VESTING OF EQUITY INSTRUMENTS** in the Explanatory Memorandum on the Revenue Laws Amendment Bill, 2004.

CLAUSE 20

Customs and Excise: Amendment of section 15 of the Customs and Excise Act, 1964

Section 15(1)(a) currently lists the goods that a person must declare upon entering the Republic from abroad. The subsection is amended to also provide for the declaration of goods which were required to be declared before leaving the Republic.

CLAUSE 21

Customs and Excise: Amendment of section 18 of the Customs and Excise Act, 1964

Section 18(8) deals with the removal or delivery of goods in bond from customs control at the place of destination.

The section currently prohibits goods to be released from the control of the department except upon due entry of the goods being made and payment of any duty due.

The proposed amendment is required in order to remove the reference to “department” and to replace it with “Controller”.

CLAUSE 22

Customs and Excise: Amendment of section 21 of the Customs and Excise Act, 1964

Section 21(3) empowers the Commissioner to prescribe by rule the purposes for which special customs and excise warehouses may be established, the goods and activities that may be allowed in such warehouses and the procedures applicable to such warehouses.

Commercial practice also requires the importation, storage and consolidation of goods in South Africa, followed by the subsequent exportation of those goods particularly to destinations in Africa.

Not all such goods attract customs duties and are as a result thereof normally excluded from storage in bonded customs warehouses. In the circumstances entry for home consumption must be made in respect of the goods and the VAT thereon paid.

The proposed amendment now empowers the Commissioner to license special customs and excise storage warehouses for the storage for export of any imported goods free of duty for a period of 6 months prior to the export thereof. The payment of VAT on these goods is therefore deferred while the goods are stored in a special customs and excise storage warehouse.

The section also provides for a further extension of the storage period not exceeding 3 months, creates an offence for failing to export the goods within the prescribed period, as well as for incidental matters relating to the clearance, abandonment or destruction of such goods.

CLAUSE 23

Customs and Excise: Amendment of section 43 of the Customs and Excise Act, 1964

Section 43(3) deals with the distribution of the proceeds realized from the sale of unentered goods and empowers the Commissioner to pay various expenses or charges incurred by certain persons in respect of such goods in a particular order of preference.

In terms of section 16 of the Wreck and Salvage Act, 1996 (Act No. 94 of 1996) the Commissioner is now also required to pay salvage where appropriate.

The proposed amendment to section 43(3) provides the mechanism for payment of salvage from the proceeds of sale and wreck.

The section is amended to insert salvage in the list of prescribed order of charges that may be paid by the Commissioner from the proceeds of a sale.

CLAUSE 24

Customs and Excise: Amendment of section 49 of the Customs and Excise Act, 1964

Section 49 contains provisions relating to agreements in respect of rates of duty lower than general rates of duty, agreements relating to customs co-operation, agreements regulating transit trade and so forth.

The heading to section 49, which currently only refers to agreements in respect of rates of duty lower than general rates of duty, so as to also include other agreements requiring customs administration.

CLAUSE 25

Customs and Excise: Amendment of section 63 of the Customs and Excise Act, 1964

Section 63(3)(a) deals with the voluntary abandonment of a still by any agriculture distiller.

The section currently provides for the abandonment of such a still to the department.

The proposed amendment is required in order to remove the reference to "department" and replace it with "Commissioner".

CLAUSE 26

Customs and Excise: Amendment of section 72 of the Customs and Excise Act, 1964

Section 72(b) provides that the value of any goods exported from the Republic in instances where there is no Free on Board (FOB) price, shall be the value as determined by the Commissioner.

Administrative difficulties experienced in determining such a value led to a comparative study being undertaken as to the manner in which other customs administrations determine export values in the circumstances contemplated.

As a result thereof section 72(b) is now amended to provide that the export value of goods in instances where there is no FOB price shall be the value as if the goods would have been sold at a free on board price.

CLAUSE 27

Customs and Excise: Amendment of section 75 of the Customs and Excise Act, 1964

Section 75(14) determines the periods within which the Commissioner may receive and consider specific refund or drawback applications depending on factors relating either to the date of export of the goods, the date of purchase of the goods or the date on which the refund first became due.

The section further contains a proviso that empowers the Commissioner to extend the prescribed periods for the payment of a refund or drawback claim in instances where exceptional circumstances are present.

The administration surrounding exceptional circumstances, including the grounds on which a late claim will qualify as being subject to exceptional circumstances, has proven to be problematic in practice resulting in the inconsistent application of the proviso.

The proposed amendment to section 75(14) serves to, in line with similar provisions already contained in the Income Tax Act, 1962, remove the discretionary power of the Commissioner to pay refunds or drawbacks after the expiry of the relevant statutory periods in circumstances considered to be exceptional, and to provide for specified non-discretionary limitations in respect of the payment of such refunds or drawbacks as contemplated in section 76B of the Customs and Excise Act.

CLAUSE 28

Customs and Excise: Amendment of section 76 of the Customs and Excise Act, 1964

Section 76(4) determines the periods within which the Commissioner may receive and consider general refund or drawback claims depending on factors relating either to the date of entry for home consumption, the date on which a charge was paid, the date on which a determination is made, or the date on which a retrospective Schedule amendment is published.

The section further contains a proviso that empowers the Commissioner to extend the prescribed periods for the payment of a refund or drawback claim in instances where exceptional circumstances are present.

The administration surrounding exceptional circumstances, including the grounds on which a late claim will qualify as being subject to exceptional circumstances, has proven to be problematic in practice resulting in the inconsistent application of the proviso.

The proposed amendment is consequential to the amendment of section 75(14) as it provides for the submission period of a refund application relating to any charge paid and limits the period within which the Commissioner will consider any other application for a refund or payment to the circumstances as contemplated in section 76B.

CLAUSE 29

Customs and Excise: Amendment of section 76B of the Customs and Excise Act, 1964

Section 76B imposes limitation periods on the payment of refund claims, but is currently restricted to dealing with refund claims as a result of a determination made in terms of the Customs and Excise Act.

The provisions relating to refund claims in the Customs and Excise Act are not currently aligned with similar provisions contained in other revenue Acts also

administered by SARS, such as the Income Tax Act, 1962 and Value Added Tax Act, 1991, where the payment of refunds is limited to specific non-discretionary periods.

The payment of refund or drawback claims in terms of the current provisions of the Customs and Excise Act can date back a number of years resulting in an unexpected strain on the fiscus which can not be properly anticipated or planned for from an administrative point of view.

The Customs and Excise Act, furthermore, provides for specific periods for the keeping of records in respect of imported, exported or manufactured goods. It is therefore also important to align the submission periods applicable to refund and drawback claims to the corresponding statutory periods for record keeping to ensure that the necessary documentation to prove a claim is at hand.

The proposed amendment now separates refunds and drawbacks claims into specific categories and imposes specific and non-discretionary limitation periods on the payment of refund and drawback claims, as well as on the period within which such claims must be received by the Commissioner, in respect of each of these categories.

CLAUSE 30

Customs and Excise: Amendment of section 96 of the Customs and Excise Act, 1964

This is a consequential amendment to the insertion of Chapter XA in the Revenue Laws Amendment Act, 2003 which provides for Internal Administrative Appeal, Alternative Dispute Resolution and Dispute Settlement. Section 95A was repealed.

CLAUSE 31

Customs and Excise: Amendment of section 99 of the Customs and Excise Act, 1964

Section 99(3) imposes an obligation on certain persons specified by rule to give security to the Commissioner before transacting any business with the department.

The proposed amendment is required in order to remove the reference to "department" and to replace it with "Commissioner".

CLAUSE 32

Customs and Excise: Amendment of section 101A of the Customs and Excise Act, 1964

Section 101A provides for electronic communication for the purposes of customs and excise procedures. This is a consequential amendment to provide for all forms of electronic communication using the Internet.

CLAUSE 33

Customs and Excise: Amendment of section 107 of the Customs and Excise Act, 1964

Section 107(1)(b) provides that goods remaining in the custody or under the control of the department after expiry of a period of 28 days from the date of due entry may be removed to the State warehouse.

The proposed amendment is required in order to remove the reference to “department” and to replace it with “Commissioner”.

CLAUSE 34

Customs and Excise: Amendment of section 112 of the Customs and Excise Act, 1964

Section 112 deals with bringing any wreck under the control of a Controller and provides for the disposal thereof as contemplated in section 43.

The Wreck and Salvage Act 94 of 1996 requires the Commissioner to pay salvage to the person salvaging a wreck if the wreck is disposed of in terms of the Customs and Excise Act.

The proposed amendment now amends the definition of “wreck” to accord with the definition in the Wreck and Salvage Act. The subsection is further textually amended to refer specifically to section 43(3).

Section 43(3) has been amended as stated in Clause 89 to empower the Commissioner to pay salvage from the proceeds of the sale of any wreck.

CLAUSE 35

Stamp Duties: Insertion of section 28C of the Stamp Duties Act, 1968

The proposed amendment is to make it an offence when any company or corporate body or any officer thereof fails to pay stamp duty before the transaction is registered in the company register.

CLAUSE 36

Stamp Duties: Amendment of section 30 of the Stamp Duties Act, 1968

Subclauses (a), (b), (c) and (d): See notes on **STAMP DUTIES INTEREST, PENALTIES AND ADDITIONAL DUTY** in the Explanatory Memorandum on the Revenue Laws Amendment Bill, 2004.

CLAUSE 37

Stamp Duties: Amendment of section 31 of the Stamp Duties Act, 1968

See notes on **STAMP DUTIES INTEREST, PENALTIES AND ADDITIONAL DUTY** in the Explanatory Memorandum on the Revenue Laws Amendment Bill, 2004.

CLAUSE 38

Stamp Duties: Amendment of section 32 of the Stamp Duties Act, 1968

Subclause (a): See notes on **STAMP DUTIES INTEREST, PENALTIES AND ADDITIONAL DUTY** in the Explanatory Memorandum on the Revenue Laws Amendment Bill, 2004.

CLAUSE 39

Stamp Duties: Insertion of section 32C in the Stamp Duties Act, 1968

This amendment inserts a section relating to advance tax rulings. The provisions contained in the Income Tax Act, 1962, relating to advance tax rulings apply *mutatis mutandis* for purposes of the Stamp Duties Act, 1968.

CLAUSE 40

Value-Added Tax: Amendment of section 25 of the Value-Added Tax Act, 1991

The proposed amendment requires a farmer (the vendor) to notify SARS once his/her total value of the taxable supplies exceeds R1 million in the period of twelve months.

CLAUSE 41

Value-Added Tax: Amendment of section 31 of the Value-Added Tax Act, 1991

It is proposed that the word “false” preceding the words “tax invoice or debit note” in section 31(1)(f) be deleted as a tax invoice need not necessarily be false in order to obtain an undue tax benefit or VAT refund in terms of the Export Incentive Scheme. It is also proposed to include any person who holds himself out as a person entitled to a refund (i.e. a person who is a resident of the Republic and therefore not a “qualifying purchaser”), and who fraudulently receives a refund of VAT from the VAT Refund Administrator, such person may now be issued with an assessment.

CLAUSE 42

Value-Added Tax: Insertion of section 54A in the Value-Added Tax Act, 1991

This amendment inserts a section relating to advance tax rulings. The provisions contained in the Income Tax Act, 1962, relating to advance tax rulings apply *mutatis mutandis* for purposes of the VAT Act.

CLAUSE 43

Value-Added Tax: Amendment of section 58 of the Value-Added Tax Act, 1991

The proposed amendment intends to include the provisions of section 24(3) in section 58(i). The vendor's failure to notify the Commissioner of his/her cancellation of registration will accordingly be an offence.

CLAUSE 44

Uncertificated Securities Tax: Insertion of section 17B of the Uncertificated Securities Tax Act, 1998

This amendment inserts a section relating to advance tax rulings. The provisions contained in the Income Tax Act, 1962, relating to advance tax rulings apply *mutatis mutandis* for purposes of the Uncertificated Securities Tax Act, 1998.

CLAUSE 45

Short title and commencement date

This clause provides for the short title of the Bill.