

The **draft Taxation Laws Amendment Bill, 2005**, is hereby released for public comment.

It would be appreciated if comments on the draft legislation could be furnished by **Monday, 4 April 2005**. Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.

Comments must be submitted to either:

Ms. Pearl Malumane

E-mail: pearl.malumane@treasury.gov.za

Fax No.: (012) 323-2917

or

Ms. Christell Brodrick

E-mail: cbrodrick@sars.gov.za

Fax No.: (012) 422-5192

REPUBLIC OF SOUTH AFRICA

**TAXATION LAWS AMENDMENT
BILL**

*(As introduced in the National Assembly as a money Bill)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B - 2005]

DRAFT

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 2 of Act 40 of 1949

1. (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for subparagraphs (i), (ii) and (iii) of paragraph (b) of the following subparagraphs:

- “(i) 0 per cent of so much of the said value or the said amount, as the case may be, as does not exceed **[R150 000]** R190 000;
- (ii) 5 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R150 000]** R190 000 but does not exceed **[R320 000]** R330 000; and
- (iii) 8 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R320 000]** R330 000,”; and

(2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any property acquired or interest or restriction in any property renounced on or after that date.

DRAFT

Fixing of rates of normal tax in terms of Act 58 of 1962

2. The rates of normal tax to be levied in terms of section 5(2) of the Income Tax Act, 1962, in respect of—

- (a) the taxable income of any person (other than a company) for the year of assessment ending on 28 February 2006; and
- (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 2006,

shall be as set out in Schedule 1 to this Act.

Amendment of section 6 of Act 58 of 1962

3. Section 6 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

- “(a) a primary rebate, an amount of **[R5 800]** R6 300; and
- (b) a secondary rebate, if the taxpayer was or, had he or she lived, would have been 65 years of age or older on the last day of the year of assessment, an amount of **[R3 200]** R4 500.”.

Amendment of section 8 of Act 58 of 1962

4. Section 8 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the expression “14 000” wherever it occurs in paragraphs (aa) and (bb) of the proviso to subparagraph (ii) of paragraph (b) of the expression “16 000”; and
- (b) by the addition in subsection (1) of the following paragraph to the proviso to subparagraph (ii) of paragraph (b):

“(dd) where the recipient does not apply the rate per kilometer as prescribed by the Minister by regulation in terms of paragraph

DRAFT

(b)(ii) and furnishes calculations based on accurate data in respect of any vehicle of which the value, as defined by the Minister in those regulations, exceeds R360 000—

(A) the value of that vehicle must, for purposes of determining cost in respect of finance charges or lease payments, be limited to R360 000; and

(B) the provision for wear and tear must be determined on an amount equal to R360 000 and determined over a period of seven years from the date of original acquisition by that recipient.”.

Amendment of section 10 of Act 58 of 1962

5. Section 10 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the words in item (aa) of subparagraph (xv) of paragraph (i) preceding the proviso of the following words:

“(aa) so much of the aggregate of any foreign dividends and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed **[R1 000]** R2 000.”;

(b) by the substitution in subsection (1) for subitems (A) and (B) of item (bb) of subparagraph (xv) of paragraph (i) of the following subitems:

“(A) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of **[R16 000]** R22 000; or

(B) in any other case, the amount of **[R11 000]** R15 000.”.

DRAFT

Amendment of section 11 of Act 58 of 1962

6. Section 11 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in paragraph (e) for the words preceding the proviso of the following words:

“(e) save as provided in paragraph 12(2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, **[or]** 12C or 12E) acquired by the taxpayer and used by **[the taxpayer]** him or her for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment.”;

(b) by the substitution in paragraph (e) for paragraph (viii) of the proviso of the following paragraph:

“(viii) where in respect of any machinery, implement, utensil or article acquired by the taxpayer on or after 21 June 1993, a deduction or allowance was previously granted to a connected person in relation to the taxpayer under this paragraph or section 12B(1), **[or]** 12C(1) or 12E, or under section 27(2)(d) prior to the deletion thereof by section 28(b) of the Income Tax Act, 1991 (Act No. 129 of 1991), the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost of such machinery, implement, utensil or article to such connected person or the market value thereof as determined on the date upon which it was acquired by the taxpayer.”;

DRAFT

Amendment of section 12B of Act 58 of 1962

7. Section 12B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (f) and (g) of the following paragraphs:

- “(f) machinery, implement, utensil or article (other than livestock) which is acquired by the taxpayer on or after 1 July 1988 and brought into use for the first time by any taxpayer on or after that date and used by him in the carrying on of his farming operations, except any motor vehicle the sole or primary function of which is the conveyance of persons or any caravan or any aircraft (other than an aircraft used solely or mainly for the purpose of crop-spraying) or any office furniture or equipment; or
- (g) machinery, plant, implement, utensil or article acquired by the taxpayer and which was or is brought into use for the first time by the taxpayer for the purpose of his or her trade to be used for the production of bio-diesel or bio ethanol.”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of this section the cost to a taxpayer of any asset acquired by that taxpayer shall be deemed to be the cost which a person would, if he or she had acquired the asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of the asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)(e), whether in the current or any previous year of assessment.”;

(c) by the deletion in subsection (4) of the word “and” at the end of paragraph (c) and the addition of the word “or” at the end of paragraph (e);

(d) by the addition to subsection (4) of the following paragraph:

DRAFT

“(f) any asset in respect of which an allowance has been granted to the taxpayer under section 12E.”.

Amendment of section 12C of Act 58 of 1962

8. Section 12C of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) machinery or plant (other than machinery or plant in respect of which an allowance has been granted to the taxpayer under paragraph (b) **[or section 12E]**) which was or is brought into use for the first time by the taxpayer for the purposes of his trade (other than mining or farming) and is used by him directly in a process of manufacture carried on by him or any other process carried on by him which in the opinion of the Commissioner is of a similar nature; or”;

(b) by the substitution in subsection (1) of the words following paragraph (g) but preceding the proviso of the following words:

“a deduction equal to 20 per cent of the cost to that taxpayer of **[such]** that machinery, plant, implement, utensil, article, ship or aircraft (hereinafter referred to as an asset) shall, subject to the provisions of subsection (4), be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment.”;

(c) by the substitution in subsection (1) for the words in paragraph (c) of the proviso following subparagraph (ii) of the following words:

“the deduction under this subsection shall be increased to 40 per cent of the cost to that taxpayer of **[such]** that machinery or plant in respect of the year of assessment during which the plant or machinery was or is so brought into use for the first time and shall be 20 per cent in each of the three subsequent years of assessment.”;

(c) by the substitution for subsection (2) of the following subsection:

DRAFT

“(2) For the purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer to acquire that asset or the cost which a person would, if he had acquired **[the said]** that asset under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition of **[the said]** that asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof or, where the asset has been acquired to replace an asset which has been damaged or destroyed, **[such]** that cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and has been excluded from the taxpayer's income in terms of section 8(4)(e), whether in the current or any previous year of assessment.”;

(d) by the addition in subsection (3) of the word “or” at the end of paragraph (c);

(e) by the addition to subsection (3) of the following paragraph:

“(d) any asset in respect of which an allowance has been granted to the taxpayer under section 12E.”

Amendment of section 12E of Act 58 of 1962

9. Section 12E of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

“(1A) Where any machinery, plant, implement, utensil, article, aircraft or ship (hereinafter referred to as ‘the asset’), other than an asset in respect of which subsection (1) applies, is acquired by a small business corporation under an agreement formally and finally signed by every party to the agreement on or after 1 April 2005 and that asset would, but for the provisions of this section, have qualified for a deduction under section 11(e), 12B or 12C, the deduction allowable must, subject to the requirements of that section be equal to—

DRAFT

- (a) 50 per cent of the cost of that asset, which is allowable in the year of assessment during which that asset is or was so brought into use for the first time;
- (b) 30 per cent of that cost in the immediately succeeding year of assessment; and
- (c) 20 per cent of that cost in the year of assessment immediately succeeding the year of assessment contemplated in subparagraph (ii).”;
- (b) by the substitution for subsection (3) of the following subsection:
“(3) Any expenditure (other than expenditure referred to in section 11(a)) incurred by a taxpayer during any year of assessment in moving an asset in respect of which a deduction was allowed or is allowable under this section from one location to another shall—

 - (a) where the taxpayer is or was entitled to a deduction in respect of that asset under subsection (1A) in that year and one or more succeeding years, be allowed to be deducted from his income in equal instalments in that year and each succeeding year in which that deduction is allowable; or
 - (a) in any other case, be allowed to be deducted from that taxpayer's income in that year.”;
- (c) by the deletion of subsection (3A);
- (d) by the substitution in subsection (4) for the expression “R5 million” wherever it occurs in subparagraph (i) of paragraph (a) of the expression “R6 million”;
- (e) by the substitution in subsection (4) for paragraph (d) of the following paragraph:
“(d) 'personal service' means any service in the field of accounting, actuarial science, architecture, auctioneering, auditing, broadcasting, broking, commercial arts, consulting, draftsmanship, education, engineering, entertainment, health, information technology, journalism, law, management, performing arts, real estate, research, secretarial services, sport, surveying, translation, valuation or veterinary science—

DRAFT

- (i) which is performed personally by any person who holds an interest in the company or close corporation; and
- (ii) where that company or close corporation does not throughout the year of assessment employ at least four full-time employees (other than any employee who is a shareholder of the company or member of the close corporation, as the case may be, or who is a connected person in relation to a shareholder or member), who are on a full-time basis engaged in the business of that company or close corporation of rendering that service.”.

(2)(a) Subsection (1)(a) and (b) is deemed to have come into operation on 1 April 2005 and applies in respect of any asset acquired by a small business corporation under an agreement formally and finally signed by every party to the agreement on or after that date.

(b) Subsection (1)(c), (d) and (e) is deemed to have come into operation on 1 April 2005 and applies in respect of any year of assessment which ends on or after that date.

Amendment of section 21 of Act 91 of 1964

10. Section 21 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3) for subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iii) Where the importer fails to export the goods before the period of 6 months or any extended period lapses, the importer shall be guilty of an offence and shall—

[(aa) be guilty of an offence;

(bb)](aa) [except] if the goods are restricted or prohibited under any law, [enter all goods of such class or kind for home consumption and payment of duty or for such other purposes as may be authorised under the rules for this section or any other provision of this Act]

DRAFT

cause such goods to be abandoned or destroyed as provided in this Act; or

[(cc)](bb) **[cause such goods to be abandoned or destroyed as provided in this Act]** in any other case, enter all goods of such class or kind for home consumption and payment of duty or for such other purposes as may be authorised under the rules for this section or any other provision of this Act.”.

Amendment of section 21A of Act 91 of 1964

11. Section 21A of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (1) for the definition of “Industrial Development Zone” of the following definition:

“Industrial Development Zone’ or ‘IDZ’ means an area designated by the Minister of Trade and Industry in terms of any regulation made **[under section 10(1)]** in terms of the Manufacturing Development Act, 1993 (Act 187 of 1993);”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) Any reference in this section, any Schedule or any rule to ‘regulations’ or ‘regulation’ shall, unless otherwise specified, be a reference to the regulations made **[under section 10(1)]** in terms of the Manufacturing Act 1993.”;

(c) by the substitution for subsection (11) of the following subsection:

“(11) Any amendment contemplated in subsection **[(11)]** (10) may be made with retrospective effect from such date as may be specified in such notice.”; and

(d) by the substitution for subsection (13) of the following subsection:

“(13) The provisions of section 48 (6) shall apply mutatis mutandis to any amendment to which subsections (10), (11) and (12) **[and (13)]** relates.”.

DRAFT

Amendment of section 44 of Act 91 of 1964

12. Section 44 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (11) for the words in subparagraph (ii) of paragraph (a) preceding the proviso of the following words:

“(ii) where such underpayment was discovered as a result of, during the course of or following upon an inspection and that underpayment occurred on a date earlier than two years prior to the date on which such inspection commenced:”.

Amendment of section 47 of Act 91 of 1964

13. (1) Section 47 of the Customs and Excise Act, 1964 is hereby amended by the addition to subsection (8) of the following paragraphs:

“(b) The Commissioner shall obtain and keep in his office two copies of such Explanatory Notes and shall effect thereto any amendment of which he is notified by the said Council from time to time and shall record the date of effecting each such amendment and any such amendment shall, for the purposes of this Act, be effected from the date so recorded.

“(c) Whenever in any legal proceedings any question arises as to the contents of such Explanatory Notes or as to the date upon which any amendment thereto was effected, a copy of such Explanatory Notes as amended in terms of this subsection shall be accepted as sufficient evidence of the contents thereof and of the effective date of any amendment thereto.”.

(2) Subsection (1) shall be deemed to have come into operation on 12 December 2001.

DRAFT

Amendment of section 47B of Act 91 of 1964

14. (1) Section 47B of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for the words in subparagraph (i) of paragraph (b) preceding the proviso of the following words:

“(i) The tax shall be charged at the rate of **[R110]** R120 on the carriage of each chargeable passenger departing on a flight:”.

(2) Subsection (1) shall come into operation on 1 August 2005, and applies to the carriage of a chargeable passenger on any flight which commences on or after that date and where the ticket of that passenger in respect of that flight was purchased and issued after the date of promulgation of this Act.

Amendment of Schedule No. 1 of Act 91 of 1964

15. (1) Schedule No. 1 to the Customs and Excise Act, 1964, is hereby amended as set out in Schedule 2 to this Act.

(2) Subject to the provisions of section 58(1) of the Customs and Excise Act, 1964, subsection (1) shall be deemed to have come into operation on 23 February 2005.

Continuation of certain amendments of Schedules Nos. 1 to 6 and 10 to Act 91 of 1964

16. (1) Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56 or 75(15) of that Act during the calendar year ending on 31 December 2004 shall not lapse by virtue of the provisions of section 48(6), 49, 56(3) or 75(16) of that Act.

(2) The amendment of Part 2 of Schedule No. 1 and Schedule No. 6 to the Customs and Excise Act, 1964, made respectively under sections 48 and 75 of that Act by Government Notices R., R. and R. of

DRAFT

(date), in respect of the said Part 2 of Schedule No. 1 and Schedule No. 6 shall not lapse by virtue of the provisions of section 48(6) of that Act.

Amendment of section 1 of Act 77 of 1968

17. Section 1 of the Stamp Duties Act, 1968, is hereby amended—

- (a) by the deletion of the definition of “instalment credit agreement”;
- (b) by the substitution for the definition of “instrument” of the following definition:

“**instrument**’ includes any written document or writing [**and for the purposes of the duty contemplated in Item 6 of Schedule 1 in respect of any debit entry in an account, such a debit entry**];”.

Amendment of section 6 of Act 77 of 1968

18. Section 6 of the Stamp Duties Act, 1968, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Every instrument [**other than any debit entry contemplated in Item 6 of Schedule 1**] shall be written in such manner, and shall be so stamped, that the stamp appears on the face of the instrument.”.

Amendment of section 7 of Act 77 of 1968

19. (1) Section 7 of the Stamp Duties Act, 1968, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (iB);
- (b) by the deletion of subsection (2).

(2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any debit entry made in an account on or after that date.

DRAFT

Repeal of section 19 of Act 77 of 1968

20. (1) Section 19 of the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any debit entry made in an account on or after that date.

Repeal of item 6 of Schedule 1 to Act 77 of 1968

21. (1) Item 6 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any debit entry made in an account on or after that date.

Repeal of item 13A of Schedule 1 to Act 77 of 1968

22. (1) Item 13A of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 1 March 2005 and applies in respect of any instalment credit agreement executed on or after that date.

DRAFT

Amendment of section 1 of Act 89 of 1991

23. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the addition to the definition of “**consideration**” of the following proviso:

“Provided that a deposit (other than a deposit on a returnable container), whether refundable or not, given in respect of a supply of goods or services shall not be considered as payment made for the supply unless and until the supplier applies the deposit as consideration for the supply or such deposit is forfeited;”.

(2) Subsection (1) shall be deemed to have come into operation on 24 January 2005.

Amendment of section 11 of Act 89 of 1991

24. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition in subsection (2) of the word “or” at the end of paragraph (t);

(b) by the addition to subsection (2) of the following paragraph:

“(u) the services are deemed to be supplied in terms of section 8(5) by a designated entity in respect of any payment made in terms of section 10(1)(f) of the Skills Development Act, 1998 (Act No. 97 of 1998), to that designated entity.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2005.

Amendment of section 25 of Act 89 of 1991

25. (1) Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after paragraph (d) of the following paragraph:

DRAFT

“(dA) any change whereby the provisions of section 27(4B)(a) cease to apply in respect of that vendor;”.

(2) Subsection (1) shall come into operation on 1 August 2005.

Amendment of section 27 of Act 89 of 1991

26. (1) Section 27 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition to subsection (1) after **“Category E”** of the following Category:

“**Category F**’ means the category of vendors whose tax periods are periods of four months ending on the last day of April, August and December of the calendar year.”;

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) Every vendor, not being a vendor who falls within category C, D, **[or] E or F** as contemplated in subsection (3), (4), **[or] (4A) or (4B)**, shall fall within Category A or Category B.”;

(c) by the substitution in subsection (3) for the proviso of the following proviso:

“Provided that a vendor falling within Category C shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if the vendor has applied in writing to be placed within Category A, B, D, **[or] E or F** and the Commissioner is satisfied that by reason of a change in the vendor’s circumstances he satisfies the requirements of this section for placing within Category A, B, D, **[or] E or F**.”;

(d) by the substitution in subsection (4) for the proviso of the following proviso:

“Provided that a vendor falling within Category D shall cease to fall within that Category with effect from the commencement of a future period notified by the Commissioner, if written application is made by the person who made the application referred to in

DRAFT

paragraph (e) for the vendor to be placed within Category A, B, C, **[or]** E or F or the Commissioner is satisfied that by reason of a change in circumstances that vendor should be placed within Category A, B, C, **[or]** E or F.”;

(e) by the substitution in subsection (4A) for paragraph (ii) of the proviso of the following paragraph:

“(ii) the Commissioner is satisfied that by reason of a change in circumstances, that vendor should be placed in Category A, B, C, **[or]** D or F; or”;

(f) by the insertion after subsection (4A) of the following subsection:

“(4B) A vendor (other than a vendor registered under section 50), shall fall within Category F if—

(a) the total value of the taxable supplies of the vendor—

(i) has in the period of 12 months ending on the last day of any month of the calendar year not exceeded R1 million; and

(ii) is not likely to exceed that amount in the period of 12 months commencing at the end of the period referred to in subparagraph (i); and

(b) the vendor has made written application to the Commissioner in such form as the Commissioner may prescribe, to be placed in Category F:

Provided that a vendor falling within Category F shall cease to fall within that Category with effect from a date notified by the Commissioner if—

(i) written application is made by the vendor to be placed in a different Category;

(ii) the Commissioner is satisfied that by reason of a change in circumstances that vendor should be placed within Category A, B, C, D or E; or

(iii) the vendor has repeatedly made default in performing any of his obligations in terms of this Act.”.

(2) Subsection (1) shall come into operation on 1 August 2005.

DRAFT

Amendment of section 39 of Act 89 of 1991

27. (1) Section 39 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Where any person who is liable for the payment of tax fails to pay any amount of such tax on the date on which in terms of the Customs and Excise Act, liability arises for the payment of the excise duty or environmental levy referred to in section 7(3)(a), that person shall, in addition to such amount of tax, pay—

- (a) a penalty equal to 10 per cent of the said amount of tax; and
- (b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on that amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day.”.

(2) Subsection (1) shall come into operation on the date of promulgation.

Insertion of section 40A of Act 89 of 1991

28. (1) The following section is hereby inserted in the Value-Added Tax Act, 1991, after section 40:

“Recovery and write-off of tax due to payments made by public authorities

40A. The Commissioner may, on written application, write-off any outstanding tax, penalty and interest which is payable by a public authority, or any public entity listed in Schedule 1 or Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), which is a registered vendor on 31 March 2005, where, as a result of the incorrect treatment of the taxable supply of goods and services in terms of section 7(1)(a), an assessment has been issued.”.

DRAFT

(2) Subsection (1) is deemed to have come into operation on 1 April 2005.

Renumbering of section 54A of Act 89 of 1991

29. (1) Section 54A of the Value-Added Tax Act, 1991, is hereby renumbered as section 41A.

(2) Subsection (1) shall come into operation on the date that Part 1A of Chapter III of the Income Tax Act, 1962, comes into operation.

Amendment of section 4 of Act 9 of 1999

30. (1) Section 4 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for paragraph (b) of the following paragraph:

- “(b) any employer where section 3(1)(a) or (b) applies and~~—~~
- (i) during any month, there are reasonable grounds for believing that the total amount of remuneration, as determined in accordance with section 3(4), paid or payable by that employer to all its employees during the following 12 month period will not exceed **[R250 000]** R500 000, **[or such other amount as the Minister may determine by notice in the Gazette; and**
 - (ii) **that employer is not required to apply for registration as an employer in terms of paragraph 15(1) of the Fourth Schedule to the Income Tax Act];”**.

(2) Subsection (1) shall come into operation on 1 August 2005.

Substitution of paragraph 3 of Schedule 3 to Act 16 of 2004

31. (1) The following paragraph hereby substitutes paragraph 3 of Schedule 3 to the Taxation Laws Amendment Act, 2004:

DRAFT

“3. (1) The Commissioner for the South African Revenue Service has the authority and responsibility to collect the payments referred to in paragraph 2.

(2) The provisions of the Income Tax Act, 1962, contemplated in subsection (3) apply *mutatis mutandis* in respect of—

- (a) the administration of this Schedule as regards the exercise of powers and performance of duties and the preservation of secrecy;
- (b) statements, the production of information, documents or things, enquiries, searches and seizures and evidence on oath for purposes of obtaining full information in respect of the calculation of the payments required in terms of this Schedule;
- (c) any assessment, objection and appeal relating to the payment in required in terms of this Schedule;
- (d) the payment, recovery or refund of any amount, interest or penalty required in terms of this Schedule;
- (e) any representative of a holder of a mining right, production right or mining permit or any prospecting right with a permission to remove and dispose of minerals or petroleum;
- (f) any transaction, operation or scheme entered into or carried out for the purposes of avoiding or postponing any liability for the payment required in terms of this Schedule or of reducing the amount of that payment;
- (g) reporting of unprofessional conduct; and
- (h) the jurisdiction of the courts.

(3) The provisions of the Income Tax, 1962, which apply to this Schedule are those relating to—

- (a) the administration of the Act as contained in Chapter 1 of that Act;
- (b) returns, the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
- (c) assessments, objections and appeals;
- (d) the payment, recovery and refund of tax, interest and penalties;
- (e) representative taxpayers and representative employers;

DRAFT

(f) transactions, operations or schemes for purposes of avoiding or postponing liability for taxes on income or reducing the amount of taxes on income;

(g) the reporting of unprofessional conduct; and

(h) the jurisdiction of the courts.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2005.

Short title and commencement

32. (1) This Act is called the Taxation Laws Amendment Act, 2005.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2006.

DRAFT

SCHEDULE 1

RATES OF NORMAL TAX PAYABLE BY PERSONS (OTHER THAN COMPANIES) IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 2006, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 2006

(Section 2)

1. The rates of normal tax referred to in section 2 of this Act in respect of persons (other than companies) are as follows:—

(a) in respect of the taxable income of any person (other than a person in respect of which subparagraph (b) applies), an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax
Where the taxable income—	
Does not exceed R80 000.....	18 per cent of each R1 of the taxable income;
Exceeds R80 000 but does not exceed R130 000	R14 400 plus 25 per cent of the amount by which the taxable income exceeds R80 000;
“ R130 000 “ “ “ “ R180 000	R26 900 plus 30 per cent of the amount by which the taxable income exceeds R130 000;
“ R180 000 “ “ “ “ R230 000	R41 900 plus 35 per cent of the amount by which the taxable income exceeds R180 000;
“ R230 000 “ “ “ “ R300 000	R59 400 plus 38 per cent of the amount by which the taxable income exceeds R230 000;
“ R300 000	R86 000 plus 40 per cent of the amount by which the taxable income exceeds R300 000.

(b) in respect of the taxable income of any trust (other than a special trust), an amount of 40 cents on each rand of taxable income.

2. The rates of normal tax referred to in section 2 of this Act in respect of companies are, subject to the provisions of paragraph 4, as follows:—

DRAFT

- (a) on each rand of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f), (g) and (h)), 29 cents, or, in the case of such a company which mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 37 cents;
- (b) in respect of the taxable income of any company which qualifies as a small business corporation as defined in section 12E of the Income Tax Act, 1962, an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax
Where the taxable income—	
Does not exceed R35 000.....	0 per cent of the taxable income;
Exceeds R35 000 but does not exceed R250 000	10 per cent of the amount by which the taxable income exceeds R35 000;
Exceeds R250 000.....	R21 500 plus 29 per cent of the amount by which the taxable income exceeds R250 000.

- (c) on each rand of the taxable income of any employment company as defined in section 12E of the Income Tax Act, 1962, 34 cents;
- (d) on each rand of the taxable income derived by any company from mining for gold on any gold mine with the exclusion of so much of the taxable income as the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:

$$y = \frac{35 - 175}{x}$$

DRAFT

or, in the case of a company which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, in accordance with the formula:

$$y = \frac{45 - 225}{x}$$

in which formulae y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived (with the said exclusion, but before the set-off of any assessed loss or deduction which is not attributable to the mining for gold from the said mine) bears to the income so derived (with the said exclusion);

- (e) on each rand of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 29 cents, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from mining for gold on any gold mine for the period from which that company commenced its gold mining operations on that gold mine to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (f) on each rand of the taxable income derived by any company from carrying on long-term insurance business in respect of—
- (i) its individual policyholder fund, 30 cents; and
 - (ii) its company policyholder fund and corporate fund, 29 cents;

DRAFT

- (g) on each rand of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f) and (h)) derived by a company which is not a resident and which carries on a trade through a branch or agency within the Republic, 34 cents;
- (h) on each rand of the taxable income derived by a qualifying company as contemplated in section 37H of the Income Tax Act, 1962, subject to the provisions of the said section, zero cents:

Provided that the tax determined in accordance with any of subparagraphs (a) to (h), inclusive, shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs.

3. The rates set forth in paragraphs 1 and 2 shall be the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the Income Tax Act, 1962.

4. For the purposes of paragraph 2, income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any other income which results directly from mining for gold.

5. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned.

DRAFT

SCHEDULE 2

**AMENDMENTS TO SCHEDULE NO. 1 TO THE CUSTOMS AND EXCISE
ACT, 1964**

(Section 15)

Tariff item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco		
104.01	19.01	Malt extract; food preparations of flour, groats, meal starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included not elsewhere specified or included:		
.10		Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34.7 c/kg	34.7 c/kg
104.10	22.03	Beer made from malt		
.10		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82 c/l	7.82 c/l
.20		Other	3 364.98 c/l of absolute alcohol	3 364.98 c/l of absolute alcohol
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must, other than that of heading no. 20.09		
	22.05	Vermouths and other wine of fresh grapes flavoured with plants or aromatic substances		
.02		Sparkling wine	387.99 c/l	387.99 c/l
.04		Unfortified wine	140.52 c/l	140.52 c/l
.06		Fortified wine	263.14 c/l	263.14 c/l
104.17	22.06	Other fermented beverages, (for example, cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:		
.05		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82 c/l	7.82 c/l
.15		Other fermented beverages, unfortified	168.24 c/l	168.24 c/l
.17		Other fermented beverages, fortified	333.65 c/l	333.65 c/l
.22		Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	168.24 c/l	168.24 c/l
.90		Other	333.65 c/l	333.65 c/l
104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength		
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:		

DRAFT

.10		Wine spirits, manufactured by the distillation of wine	5 042.01 c/l of absolute alcohol	4 945.88 c/l of absolute alcohol
.15		Spirits, manufactured by the distillation of any sugar cane product	5 042.01 c/l of absolute alcohol	5 028.11 c/l of absolute alcohol
.25		Spirits, manufactured by the distillation of any grain product	5 042.01 c/l of absolute alcohol	4 996.01 c/l of absolute alcohol
.29		Other spirits	5 042.01 c/l of absolute alcohol	5 042.01 c/l of absolute alcohol
.40		Liqueurs and other spirituous beverages	5 042.01 c/l of absolute alcohol	5 042.01 c/l of absolute alcohol
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes		
.10		Cigars, cheroots, and cigarillos, of tobacco or of tobacco substitutes	141 676.55 c/kg net	141 676.55 c/kg net
.20		Cigarettes, of tobacco or of tobacco substitutes	252.43 c/10 cigarettes	252.43 c/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences:		
.10		Cigarette tobacco and substitutes thereof	14 946.05 c/kg	14 946.05 c/kg
.20		Pipe tobacco and substitutes thereof	7 624.01 c/kg net	7 624.01 c/kg net