

REPUBLIC OF SOUTH AFRICA

REVENUE LAWS SECOND AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 30398 of 22 October 2007)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 43—2007]

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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

To amend the—

- **Transfer Duty Act, 1949, so as to regulate the furnishing of declarations to the Commissioner; to effect a consequential amendment; and to create an additional offence;**
- **Income Tax Act, 1962, so as to make a decision of the Commissioner subject to objection and appeal;**
- **Customs and Excise Act, 1964, so as to insert a definition of person and to provide for procedures applicable to the movement of goods for the purposes of the SACU Agreement; to effect textual amendments to the prohibitions in respect of the direct financial interest of an officer; to amend certain references in the exclusions applicable to the disclosure of information; to amend provisions in respect of the detention of goods; to amend provisions relating to a place outside the Republic which is deemed to be a place of entry for goods consigned to the Republic; to effect a textual amendment to the provisions for industrial development zones; to effect amendments to provisions regulating the disposal of goods on failure to make due entry, goods imported in contravention of any law and seized and abandoned goods, consequential to the introduction of provisions for the administration of counterfeit goods in Chapter XB; to amend requirements in respect of declarations of origin in respect of certain imported goods; to insert definitions relating to non-reciprocal preferential tariff treatment of goods exported; to amend provisions relating to tariff determinations; to amend provisions relating to international agreements; to delete obsolete references to provisions in respect of customs union agreements; to effect certain textual and consequential amendments to provisions relating to appeals and other procedures for which Chapter XA provides; to insert a new Chapter XB providing for powers, duties and procedures in connection with counterfeit goods, and to effect consequential amendments; to amend the section specifying serious offences; to amend provisions relating to the registration of vehicles re-imported to the Republic; to delete a section dealing with counterfeit goods; to effect textual and consequential amendments regarding the making of rules; and to effect certain textual and consequential amendments;**
- **Stamp Duties Act, 1968, so as to delete and insert certain definitions;**
- **Value-Added Tax Act, 1991, so as to amend a definition; to further regulate zero-rated supplies; to further regulate the deduction of input**

- tax; to further regulate the payment of tax; and to effect certain textual and consequential amendments;
- Tax on Retirement Funds Act, 1996, so as to further regulate notices of assessment by the Commissioner;
- and to provide for matters connected therewith.

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

Amendment of section 14 of Act 40 of 1949, as amended by section 6 of Act 88 of 1974 and section 1 of Act 34 of 2004

1. Section 14 of the Transfer Duty Act, 1949, is hereby amended— 5
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Declarations appropriate to the manner of the acquisition of property in any particular case shall, in substance as near as possible to the wording of the forms prescribed by the Commissioner, be completed and submitted in such manner (including electronically) and at such place as may be prescribed by the Commissioner, by the parties to the transaction whereby the property has been acquired and, if the Commissioner so directs, also by the agent, auctioneer, broker or other person who acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.”; 10 15
- (b) by the substitution for subsection (1A) of the following subsection:
- “(1A) The Commissioner may direct that any declaration referred to in subsection (1), falling within any category which he may determine, shall be used for the purpose of acknowledging[, by the use of a machine,] the receipt of duty, and in such case he may prescribe the number of copies of such declaration to be completed, the shape, size and lay-out of such declaration or of any copy thereof, and the manner in which such declaration and copies shall be completed.”; and 20
- (c) by the addition of the following subsections: 25
- “(4) Any person required to complete a declaration in terms of this section must sign the declaration and furnish it to the Commissioner, and the person signing the declarations is deemed for all purposes in connection with this Act to know and understand the meaning of all statements made in that declaration. 30
- (5) The Commissioner may, in the case of any declaration furnished in electronic format by the person contemplated in this section, accept an electronic or digital signature as a valid signature for the purposes of subsection (4).
- (6) The Minister may make rules and regulations prescribing the procedures for submitting any declaration in electronic format and the requirements for an electronic or digital signature contemplated in subsection (5). 35
- (7) Where in any proceedings or prosecution under this Act or in any dispute to which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a person affixed to any declaration as contemplated in subsection (6) was used with or without the consent and authority of that person, it shall, in the absence of proof to the contrary, for the purposes of this Act be presumed that such signature was so used with the consent and authority of that person. 40 45
- (8) (a) Notwithstanding anything to the contrary in this Act or in any other law, whenever in any proceedings or prosecution under this Act or in any dispute to which the State, the Minister or the Commissioner is a party it is necessary to prove the authenticity, the veracity, the origin, the contents, an electronic signature or any other aspect of any electronic communication transmitted to and received by the Commissioner under this section, the provisions and conditions of any agreement entered into in accordance with any regulations made by the Minister in terms of 50

subsection (6) shall establish the basis upon which any court of competent jurisdiction shall determine such issues.

(b) Notwithstanding anything to the contrary contained in any other law, nothing in the application of the rules of evidence shall be applied so as to deny the admissibility of any electronic communication under this section for the purposes of this Act in evidence—

- (i) on the sole grounds that it is an electronic data message; or
- (ii) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in original form.

(c) Information in the form of a data message shall be given due evidential weight.

(d) In assessing the evidential weight of a data message as contemplated in paragraph (c) a court shall have regard to any relevant factor, which may include—

- (i) the reliability of the manner in which the data message was generated, stored and communicated;
- (ii) the reliability of the manner in which the integrity of the information was maintained;
- (iii) the manner in which its originator was identified; and
- (iv) whether or not these functions were in compliance with an agreement contemplated in paragraph (a).”.

Amendment of section 17B of Act 40 of 1949, as amended by section 4 of Act 34 of 2004

2. Section 17B of the Transfer Duty Act, 1949, is hereby amended by the insertion of the following subsection after subsection (1):

“(1A) Any person who uses an electronic or digital signature of any other person in any electronic communication to the Commissioner for any purpose without the consent and authority of such person shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 60 months.”.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006 and section 1 of Act 9 of 2007

3. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“(b) section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 10(1)(e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 28(2)(cA), section 30, section 30A, section 31, section 35(2), section 37A, section 38(4), section 44(13)(a), section 47(6)(c)(i), section 57, section 76A, section 80B and section 80S;”.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1996, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001, section 131 of Act 45 of 2003, section 1 of Act 32 of 2004, section 85 of Act 31 of 2005 and section 7 of Act 21 of 2006

4. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended by—

(a) the insertion in subsection (1) after the definition of “package” of the following definition:

“‘person’ includes an insolvent estate, the estate of a deceased person and any trust;” and

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

“(3) For the purposes of the SACU Agreement, the movement between the Republic and a Member State of any goods on which a duty is leviable under Part 3, Part 5A or Part 5B of Schedule No. 1 shall, in addition to any provision generally regulating the movement of goods between the Republic and a Member State, be subject to compliance with the procedures prescribed in any provision of this Act relating to the movement of such goods.”

- (2) Subsection (1)(b) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001, section 43 of Act 30 of 2002, section 39 of Act 12 of 2003, section 133 of Act 45 of 2003, section 10 of Act 10 of 2006 and section 9 of Act 21 of 2006

5. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended by—

- (a) the substitution for subsection (2) of the following subsection:

“(2) No officer shall have a direct financial interest in—

- (a) the importation or exportation of goods;
 (b) the manufacture of excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods; or
 (c) the trade in imported goods, goods for export, excisable goods, environmental levy goods, fuel levy goods or Road Accident Fund levy goods.”;

- (b) the substitution in the proviso to subsection (3) for paragraph (i) of the following paragraph:

“(i) disclosing such information in relation to any person as may be required by the **[Chief of the Central Statistical Services] Statistician General** in connection with the collection of statistics in complying with the provisions of the Statistics Act, **[1976 (Act No. 66 of 1976)] 1999 (Act No. 6 of 1999)**, or any regulation thereunder.”;

- (c) the substitution in paragraph (iii) of the proviso to subsection (3) for the words preceding subparagraph (a) of the following words:

“applying *ex parte* to a judge in chambers for an order allowing the Commissioner to disclose to the National Commissioner of the South African Police Service, contemplated in section 6(1) of the South African Police Service Act, **[1955] 1995 (Act No. 68 of 1995)**, or the National Director of Public Prosecutions, contemplated in section 5(2)(a) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), such information the disclosure of which may reveal evidence—”;

- (d) the substitution for subsection (3A) of the following subsection:

“(3A) The **[Chief of the Central Statistical Services] Statistician General** or the **[Director General] Director-General** of the Department of Trade and Industry or the **National Treasury** as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or any person acting under the direction and control of such **[Chief of the Central Statistical Services] Statistician General** or Director-General of the Department of Trade and Industry or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury, shall not disclose any information supplied under the proviso to subsection (3) to any person or permit any person to have access thereto, except in the exercise of his powers or the carrying out of his duties under any Act from which such powers or duties are derived.”;

and

(e) the addition to subsection (8A) of the following paragraph:

“(e) An officer or a Controller may upon examination of any goods detained under this subsection substitute the detention or part thereof by detaining any or all of such goods in accordance with the provisions of Chapter XB.”

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(2) Subsection (1)(e) comes into operation on the date on which section 17(1) comes into operation.

Amendment of section 10 of Act 91 of 1964, as amended by section 2 of Act 57 of 1966 and section 2 of Act 52 of 1986

6. Section 10 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of subsection (1), a place outside the Republic deemed by the Commissioner under section 6(1A) or 50A to be a place of entry for goods consigned to the Republic, shall be deemed to be a place in the Republic in respect of goods consigned to or entered at such place for removal to the Republic overland.”

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Amendment of section 21A of Act 91 of 1964, as inserted by section 121 of Act 60 of 2001 and amended by section 2 of Act 10 of 2005 and section 18 of Act 21 of 2006

7. Section 21A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the paragraph starting with the expression “**IDZ operator**” of the following paragraph:

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“ ‘**IDZ operator**’, ‘**CCA enterprise**’ [, ‘**Service enterprise**’] or any other expression as may be necessary, relating to any activity inside or outside an IDZ or a CCA shall have the meaning assigned thereto in any Schedule or rule.”

Amendment of section 43 of Act 91 of 1964, as amended by section 6 of Act 105 of 1976, section 7 of Act 112 of 1977, section 6 of Act 86 of 1982, section 32 of Act 45 of 1995, section 34 of Act 34 of 1997, section 124 of Act 60 of 2001, section 45 of Act 30 of 2002 and section 23 of Act 34 of 2004

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8. (1) Section 43 of the Customs and Excise Act, 1964, is hereby amended by—

(a) the substitution in subsection (5)(a) for the words preceding subparagraph (i) of the following words:

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“Where the Commissioner on reasonable grounds determines that any goods to which this section relates or any goods which are detained as contemplated in section 113(8), have been imported or exported in contravention of any law other than this Act, the Commissioner may, except in the case of goods [**detained under section 113A for the purposes of the Counterfeit Goods Act, 1997 (Act No. 87 of 1997)**] contemplated in Chapter XB, request the South African Police Service or the authority administering such law—”;

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(b) the substitution for subsection (6) of the following subsection:

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“(6) (a) Where any goods are [**seized and detained under the Counterfeit Goods Act, 1997, as contemplated in section 113A of this Act and the importer is not known and no criminal or civil proceedings are instituted or no instruction is received for the release of the goods as contemplated in section 9(2) of the Counterfeit Goods Act, 1997,**] deemed to be abandoned as contemplated in section 77V(3), such goods shall, notwithstanding anything to the contrary in this Act or [**the said Counterfeit Goods Act, 1997,**] any other law contained, be subject to this section.

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(b) If no person gives any notice of the intention to claim those goods within 60 days after inclusion in the list referred to in subsection (2)(c), such goods shall be disposed of in terms of this section.”;

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- (c) the substitution in subsection (7) for paragraph (a) of the following paragraph:
 “(a) Any goods appropriated to the State as contemplated in subsection (3)(a), any goods condemned and forfeited as contemplated in **[subsections (5) and (6)]** subsection (5), any goods contemplated in subsection (6)(b), any goods condemned and forfeited as contemplated in sections 89 and 90 and any goods referred to in subsection (10)(a), may be disposed of as provided in paragraph (b) by the Commissioner in consultation with the Directors-General of the National Treasury and of Trade and Industry or, where appropriate, with a Director-General of any other department.”;
- (d) the substitution for subsection (8) of the following subsection:
 “(8) The provisions of subsections (5) **[, (6)]** and (7) shall, subject to the provisions of sections 89 and 90, *mutatis mutandis* apply to any goods detained or seized under this Act that were imported, exported, manufactured or used, or otherwise dealt with in contravention of the provisions of this Act and any other law: Provided that where the Commissioner is satisfied on reasonable grounds that the owner did not know that the goods were imported in contravention of this Act and such other law and the Commissioner is satisfied that the goods do not constitute a danger to public health or the public and complies with any compulsory specification contemplated in the Standards Act, 1993, the Commissioner may, instead of disposing of the goods as contemplated in subsection (7), deliver the goods to the owner in accordance with the provisions of section 93.”; and
- (e) the substitution for subsection (9) of the following subsection:
 “(9) The provisions of subsection (7)(b)(iv) shall apply to any goods donated to the Commissioner by the **[owner of any intellectual property right]** right-holder after an appropriate order of court as contemplated in section **[10 of the Counterfeit Goods Act, 1997]** 77U.”.

(2) Subsection (1) comes into operation on the date on which section 17(1) comes into operation.

Amendment of section 46 of Act 91 of 1964, as amended by section 5 of Act 68 of 1989 and section 2 of Act 61 of 1992, substituted by section 36 of Act 45 of 1995 and amended by section 52 of Act 53 of 1999 and section 137 of Act 45 of 2003

9. Section 46 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (5) of the following subsection:

- “(5) (a) Any person entering any imported goods **[for which a general rate of duty is prescribed in any column of Part 1 of Schedule No. 1 and]** which are—
- (i) liable to any provisional **[payments]** payment as contemplated in section 57A or to anti-dumping duty imposed under section 56 or countervailing duty imposed under section 56A or safeguard **[duty]** measure imposed under section 57; or
- (ii) subject to any restriction in terms of any other law when imported from a specified country or specified countries; and
- (iii) imported from a country or countries other than the country or countries or supplier in respect of which such payment, duty or restriction is prescribed,
- shall produce to the Controller at the time of presenting the bill of entry a declaration of origin in respect of such goods **[in the form prescribed by the Commissioner by rule]**.
- (b) The Commissioner may by rule prescribe for the purposes of this subsection—
- (i) a declaration or other forms; and
- (ii) any other matter which the Commissioner may consider reasonably necessary and useful to achieve the efficient and effective administration of this subsection.”.

Amendment of section 46A of Act 91 of 1964, as inserted by section 61 of Act 59 of 2000 and amended by section 15 of Act 32 of 2005

10. Section 46A of the Customs and Excise Act, 1964, is hereby amended by—
- (a) the insertion in subsection (1) after the definition of “enactment” of the following definition: 5
- “**‘obtained’, ‘produced’ or ‘manufactured’,** and any cognate expression in respect of any goods, includes those goods supplied by a supplier;” and
- (b) the insertion in subsection (1) after the definition of “preferential tariff treatment” of the following definitions: 10
- “**‘producer’ or ‘manufacturer’** of goods includes a supplier of those goods; 15
- ‘supplier’** means a supplier of goods as prescribed in the rules and includes, where any such rule so provides, a producer or manufacturer of goods;”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1096, section 17 of Act 105 of 1069, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, sections 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1998, section 6 of Act 68 of 1989, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002, section 138 of Act 45 of 2003, section 68 of Act 32 of 2004, section 3 of Act 10 of 2005 and section 90 of Act 31 of 2005 25

11. Section 47 of the Customs and Excise Act, 1964, is hereby amended by—
- (a) the substitution in subsection (9)(b) for subparagraph (i) of the following subparagraph: 30
- “(i) Whenever any determination is made under paragraph (a) or any determination is amended or withdrawn and a new determination is made under paragraph (d), any amount due in terms thereof shall, notwithstanding that **[an internal administrative appeal has been lodged as contemplated in Part A of]** such determination is being dealt with in terms of any procedure contemplated in Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.”; 35
- (b) the substitution in subsection (9)(b)(ii) for item (cc) of the following item: 40
- “(cc) any amendment of a determination or new determination is made effective under paragraph (d) or **[as contemplated in section 77F]** as a result of the finalisation of any procedure contemplated in Chapter XA.”; 45
- (c) the substitution in subsection (9) for paragraph (c) of the following paragraph: 45
- “(c) Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9)(a) or (d) or any determination is amended or a new determination is made under paragraph (d) or **[section 77E or 77F]** as a result of the finalisation of any procedure contemplated in Chapter XA, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph (b)(i) for any period during which such determination remained in force.”; and 50
- (d) the substitution in subsection (9)(d)(i) for item (bb) of the following item: 55
- “(bb) except **[when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged, before it has been considered]** where a determination is being dealt with in terms of any procedure contemplated in Chapter XA, amend any determination or withdraw it and make a new determination if it was made in error or any condition or 60

obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”.

Amendment of section 49 of Act 91 of 1964, as substituted by section 55 of Act 53 of 1999 and amended by section 60 of Act 30 of 2000, section 127 of Act 60 of 2001, section 46 of Act 30 of 2002, section 24 of Act 34 of 2004 and section 12 of Act 9 of 2007 5

12. Section 49 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph: 10

“(ii) concerning customs co-operation, including for the exchange of information and the rendering of mutual and technical assistance in respect of customs co-operation [between the Republic and such other country or countries or group of countries];”.

Amendment of section 52 of Act 91 of 1964, as inserted by section 24 of Act 59 of 1990 and amended by section 41 of Act 45 of 1995 15

13. Section 52 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) Notwithstanding anything to the contrary in this Act contained, any fuel levy goods which are removed to the territory of a party to any customs union agreement concluded in terms of section [51] 49 or brought into the Republic from any such territory, shall, if a fuel levy has not been imposed by such party, be deemed to be goods exported from and goods imported into the Republic, respectively, and the provisions of this Act relating to the exportation from and importation of goods into the Republic shall, subject to such arrangements as the Commissioner may determine, apply to those goods until such time as such fuel levy is imposed by that party as provided in this Act.”. 20 25

Amendment of section 54B of Act 91 of 1964, as inserted by section 139 of Act 45 of 2003 and amended by section 32 of Act 16 of 2004

14. Section 54B of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection: 30

“(2) Notwithstanding anything to the contrary contained in this Act, the environmental levy shall, subject to the provisions of this Chapter and except for the purposes of any customs union agreement contemplated in section [51] 49 or any other law, be deemed to be a duty leviable under this Act.”. 35

Amendment of section 77C of Act 91 of 1964, as inserted by section 147 of Act 45 of 2003 and amended by section 21 of Act 32 of 2005

15. Section 77C of the Customs and Excise Act, 1964, is hereby amended by—

(a) the substitution for subsection (1) of the following subsection:

“(1) Any person who submits an appeal provided for in this Part must submit such appeal in accordance with the requirements prescribed by rule.”; and 40

(b) the deletion of subsection (3).

Substitution of section 77G of Act 91 of 1964, as inserted by section 147 of Act 45 of 2003 45

16. The following section is hereby substituted for section 77G of the Customs and Excise Act, 1964:

“Obligation to pay amount demanded

77G. Notwithstanding anything to the contrary contained in this Act, the obligation to pay to the Commissioner and right of the Commissioner to receive and recover any amount demanded in terms of any provision of this 50

Act, shall not, unless the Commissioner so directs, be suspended [by an appeal in terms of this section] pending finalisation of any procedure contemplated in this Chapter or pending a decision by court.”.

Insertion of Chapter XB in Act 91 of 1964

17. (1) The following Chapter is hereby inserted in the Customs and Excise Act, 1964, after Chapter XA and before Chapter XI: 5

“CHAPTER XB

POWERS, DUTIES AND PROCEDURES IN CONNECTION WITH COUNTERFEIT GOODS

Definitions

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77Q. (1) In this Chapter and the rules made thereunder, unless otherwise specified in this section or those rules or the context otherwise indicates, the following words and phrases, and their grammatical variations, where applicable, shall have the following meanings:

- (a) ‘counterfeiting’, ‘counterfeit goods’, ‘counterfeit goods depot’, ‘intellectual property right’ and ‘protected goods’ shall have the meaning assigned thereto in the Counterfeit Goods Act, 1997 (Act No. 37 of 1997), except that any reference to ‘owner’ in the definition of ‘counterfeiting’ and ‘protected goods’ shall be deemed to refer to a right-holder as defined in this section; 15
- (b) ‘affected party’ includes the consignee, the consignor, the importer, the exporter, the owner, manufacturer or the person having control of the goods suspected of infringing an intellectual property right and any person who acts on his or her behalf; 20
- (c) ‘goods for transhipment’ and any cognate expression means goods which are transferred, or should have been transferred, under customs control in terms of any procedure regulated by this Act from the importing ship or vehicle to the exporting ship or vehicle within the area of one customs office which is the office of both importation and exportation; 25
- (d) ‘goods under customs control’ and any cognate expression shall be deemed to include any goods to which this Act relates that are imported goods, locally manufactured goods, goods for export, goods under customs transit or goods for transhipment if such goods are— 30
- (i) on any ship or vehicle or in any container contemplated in section 1(2) that is entering or leaving the Republic; 35
- (ii) in, on or at any premises licensed, registered or approved, or which should have been so licensed, registered or approved, for any purpose in terms of this Act;
- (iii) in, on or at any premises or at any place appointed, prescribed or designated in terms of section 6; 40
- (iv) in, on or at the premises of a State warehouse or any place deemed in terms of section 43(2) to be a State warehouse;
- (v) in, on or at any place where those goods are kept after having been detained or seized under the provisions of this Act; 45
- (vi) in transit within or through the Republic or conveyed for transhipment to any place outside the Republic as may be specified by rule; or
- (vii) deemed in terms of any provision of this Act to be under customs control, 50
- whether or not declared in terms of any provision of this Act or, if so declared, whether or not release thereof has been granted;
- (e) ‘goods under customs transit’ and any cognate expression means goods which are or should have been transported under any procedure regulated by this Act within or through the Republic; 55

- (f) 'imported goods', 'goods for export', 'goods under customs transit' or 'goods for transshipment' includes goods removed from or to any other country in the common customs area;
- (g) 'right-holder' means a person who is the holder of the intellectual property right, a successor in title or duly authorised exclusive licensee of the right-holder or any person authorised by such right-holder, successor or licensee to protect such right. 5
- (2) (a) Where any notice or other documents must be delivered to the Commissioner such notice or document must be in such form and shall be delivered in such manner at such places and to such persons as may be prescribed by rule. 10
- (b) No such notice or other document shall be valid unless it complies with the requirements prescribed in this Chapter and such rules.

Application by right-holder to Commissioner to detain goods and granting of application by Commissioner 15

- 77R.** (1) (a) A right-holder may apply to the Commissioner to detain under customs control goods suspected of infringing the holder's intellectual property right.
- (b) Every application shall be made in the form prescribed by rule and shall— 20
- (i) contain full particulars of the matters specified therein; and
- (ii) be supported by such further particulars as may be prescribed by rule or required by the Commissioner.
- (c) In every case the right-holder must furnish with the application— 25
- (i) an indemnity indemnifying the Commissioner against any liability arising from all actions, proceedings, claims and demands whatsoever which may be made or taken against the Commissioner;
- (ii) an undertaking to pay any costs, expenses incurred and charges due, to the Commissioner; and
- (iii) payment of an administration fee, 30
as the Commissioner may prescribe by rule.
- (2) (a) The Commissioner must consider and deal with the application without delay, and must grant the application if satisfied on reasonable grounds that— 35
- (i) the goods claimed to be protected goods are *prima facie* protected goods;
- (ii) the intellectual property right, the subject matter of which relates to the protected goods, *prima facie* subsists; and
- (iii) the applicant *prima facie* is the holder of that intellectual property right. 40
- (b) When granting the application, the Commissioner shall specify the period during which the application shall remain valid and such a period shall not extend beyond the last day of the period for which the intellectual property right subsists.
- (c) The right-holder shall notify the Commissioner when the intellectual property right concerned ceases to be validly registered or expires. 45

Examination and detention of goods

- 77S.** (1) (a) An officer may stop and examine any goods under customs control to determine for the purposes of the procedures contemplated in this section whether the goods are counterfeit goods. 50
- (b) Where an officer upon examination of any goods under customs control has reasonable cause to believe that the goods are *prima facie* counterfeit goods, an officer must—
- (i) where an application has been granted as contemplated in section 77R, detain the goods, for the purposes of this Chapter; and 55
- (ii) inform the right-holder and any of the affected parties whose address details are available by electronic message or facsimile transmission of the detention of the goods.

(2) (a) Where an officer has examined goods in respect of which no application has been granted as contemplated in section 77R and has reasonable cause to believe that the goods are *prima facie* counterfeit goods, the officer must inform the right-holder and affected party by electronic communication or facsimile transmission. 5

(b) The right-holder must, if requiring the goods to be detained, for the purposes of this Chapter deliver an application and an indemnity as contemplated in section 77R within a period of three days after the date he or she was so informed by such officer.

(c) The Commissioner must consider and deal with the application without delay as contemplated in section 77R. 10

(d) If the application is granted, the goods must be detained for the purposes of this Chapter.

(3) (a) Notwithstanding anything to the contrary contained in this Act, an officer must, for the purposes of this section, furnish the right-holder with samples of the goods detained and with the name and address of any affected party according to the information available to such officer. 15

(b) The right-holder—

(i) (aa) shall be responsible for arranging collection and return of the samples; 20

(bb) must acknowledge receipt of the samples;

(ii) must undertake to—

(aa) return the samples before detention is ended;

(bb) use the samples and name and address only for the purposes of this section; and 25

(cc) comply with such other requirements as may be determined by the Commissioner or may be prescribed by rule.

(c) Any handling of or dealing with samples by the right-holder shall be at his or her risk and expense.

(d) The right-holder may not be present at the examination of the goods. 30

(e) An officer must make an inventory of the goods examined as may be prescribed by rule.

(4) A detention under this section is not subject to section 93.

Action by right-holder and Commissioner where right-holder is of opinion that goods infringe or do not infringe an intellectual property right 35

77T. (1) Where the right-holder wishes to institute criminal proceedings in respect of goods detained as contemplated in section 77S, he or she may lay a charge with the South African Police Service and request that a criminal investigation be undertaken for an offence as contemplated in section 2(2) the Counterfeit Goods Act, 1997. 40

(2) (a) Notwithstanding subsection (1), if the right-holder wishes to institute civil proceedings, he or she must—

(i) within a period of 10 days after he or she was informed of the detention of the goods or within the extended period contemplated in paragraph (b), deliver to the Commissioner and to the affected party a written notice that he or she intends— 45

(aa) applying to court for a determination that the goods detained are counterfeit goods;

(bb) not applying to court for such a determination or order; 50

(ii) within a period of 10 days after delivery of such notice apply to court for a determination and order as contemplated in section 77U(1).

(b) The Commissioner may on good cause shown extend a period specified in paragraph (a)(i) for a further period not exceeding 10 days.

(3) Where the right-holder— 55

(a) does not deliver a notice as contemplated in subsection (2)(a); or

(b) delivers a notice stating that an application to court will not be made, the goods must be released to the affected party if the goods otherwise comply with the requirements of this Act.

(4) (a) The goods detained must be removed to a counterfeit goods depot by arrangement and at the risk and expense of the right-holder not later than the day following the date of a notice contemplated in subsection (2)(a)(i).

(b) The goods must be removed under supervision of an officer who must obtain an acknowledgement of receipt thereof on the inventory made in terms of section 77S(3)(e) from the person in charge of the counterfeit goods depot.

(c) If the right-holder fails to remove the goods to a counterfeit goods depot within the time specified in paragraph (a), an officer may arrange for the removal of the goods at the risk and expense of the right-holder.

(5) Notwithstanding anything to the contrary contained in any other law, where the right-holder fails to apply to court within a period contemplated in subsection (2)(a)(ii), the person in charge of the counterfeit goods depot may not release the goods to the affected party, unless release is authorised by an officer.

Orders of court

77U. (1) Notwithstanding the provisions of any other law relating to counterfeit goods, a court may order—

(a) where it is determined that the goods are counterfeit, that the goods must, subject to compliance with the provisions of this Act and any conditions the Commissioner may impose, be released from the counterfeit goods depot to the right-holder; or

(b) where it is determined that the goods are not counterfeit, that the goods must, subject to compliance with the provisions of this Act or any other law, be released to the affected party.

(2) The court may also order—

(a) the right-holder to pay the affected party damages in an amount determined by the court;

(b) the affected party to disclose the source from which those goods, if found to be counterfeit, have been obtained, as well as the identity of the persons involved or ostensibly involved in the importation, exportation, manufacture, production or making and the distribution of the counterfeit goods and in the channels of distribution of those goods.

Application to court by affected party and abandonment of goods to Commissioner

77V. (1) Any affected party prejudiced by a detention of goods in terms of section 77S may apply to court for a determination that the detained goods are not counterfeit goods and for an order that they be returned to him or her.

(2) No process by which legal proceedings are instituted may be served by the affected party before expiry of a period of 10 days after delivery of a notice as required in terms of section 96 and the rules made thereunder.

(3) (a) Where goods have been detained in terms of this section and—

(i) the affected party—

(aa) has provided false information;

(bb) is not known; or

(cc) cannot be found; and

(ii) the right-holder has not obtained a declaration by court that the goods are counterfeit,

the goods shall be deemed to be abandoned to the Commissioner and may be disposed of in terms of section 43.

(b) The provisions of section 43(2)(c) shall apply *mutatis mutandis* to goods contemplated in this section.

(c) Such goods must be removed to the State warehouse at such time and in such circumstances as the Commissioner may determine.

Actions by officers regarding detention of goods, indemnity and release of goods from counterfeit goods depot

77W. (1) An officer—

- (a) may refuse to detain any goods in the circumstances where the Commissioner has not received and granted an application as contemplated in section 77R. 5
- (b) shall not detain any goods for the purposes of this Chapter where the Commissioner is not indemnified by the right-holder as contemplated in section 77R(1)(c) or 77S(2)(b). 10
- (2) Notwithstanding anything to the contrary contained in any other law, an officer acting in good faith shall not be liable for—
- (a) any failure to detect counterfeit goods;
- (b) the inadvertent release of such goods; or
- (c) any other action in respect of such goods. 15
- (3) Notwithstanding anything to the contrary contained in this Act or any other law, the person in charge of a counterfeit goods depot—
- (a) may not release any imported goods from that depot, unless authorised by an officer; or
- (b) is, where release is not authorised by an officer, liable for the duty and value-added tax leviable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), on any goods removed from that depot. 20

Rules

77X. The Commissioner may make rules—

- (a) prescribing the procedures to be followed by an officer when exercising any power or performing any duty in connection with the detention of goods; 25
- (b) prescribing such forms as may be required to be completed for the purposes of this Chapter;
- (c) prescribing the class or kind of goods not subject to the provisions of this Chapter; 30
- (d) prescribing any indemnity or undertaking to be furnished by a right-holder and any condition or procedure relating to the detention or release of goods;
- (e) regarding all matters which are required or permitted in terms of this Chapter to be prescribed by rule; and 35
- (f) concerning any other matter which the Commissioner may consider reasonably necessary and useful for the purpose of administering the provisions of this Chapter.

Implementation of Chapter in respect of goods detained

77Y. This Chapter and any amendment to any section of this Act relating to this Chapter apply to goods detained for ascertaining whether they are counterfeit goods on or after the date on which this Chapter comes into operation.”. 40

- (2) Subsection (1) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*. 45

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986, section 27 of Act 84 of 1987, section 32 of Act 59 of 1990, section 8 of Act 105 of 1992, section 8 of Act 98 of 1993, section 68 of Act 30 of 1998, section 63 of Act 53 of 1999, section 62 of Act 59 of 2000, section 148 of Act 45 of 2003 and section 29 of Act 21 of 2006 50

18. Section 80 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph (o) of the following paragraph:

“(o) contravenes the provisions of section 4(12A)(b), 18(13), 18A(9), 20(4)bis, 21(3)(d), 35A(2), (3) and (4), 37(9), 37A(1)(c), 37A(4)(a), 48(1A)(b), 54(2), (3) and (4), 60(1), 63(1), 75(7A), 75(19), 88(1)(bA), 99A, 113(2), 113(8)(c), 114(2A) or 114(2B);” 55

Amendment of section 95 of Act 91 of 1964 as amended by section 16 of Act 85 of 1968, section 10 of Act 93 of 1978 and section 18 of Act 52 of 1986

19. Section 95 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1A) of the following subsection:

“(1A) Any person who at any place deemed under section 6(1A) or 50A to be a place of entry for the Republic or in any territory with the government of which an agreement has been concluded under section 51, performs any act which constitutes an offence under this Act, shall be guilty of such offence, which shall, for purposes in relation to jurisdiction of a court to try the offence, be deemed to have been committed at any place where the accused happens to be.”.

Amendment of section 111 of Act 91 of 1964, as amended by section 11 of Act 71 of 1975 and section 19 of Act 52 of 1986

20. Section 111 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of subsection (1) the expression ‘**imported motor vehicle**’ [does not include] includes any motor vehicle manufactured in the Republic which [enters the Republic from any territory with the government of which an agreement has been concluded under section 51] is re-imported into the Republic.”.

Repeal of section 113A of Act 91 of 1964

21. (1) Section 113A of the Customs and Excise Act, 1964, is hereby repealed.

(2) Subsection (1) comes into operation on the date on which section 17(1) comes into operation.

Amendment of section 114A of Act 91 of 1964, as inserted by section 154 of Act 45 of 2003

22. Section 114A of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of duty, interest, [fine,] penalty or forfeiture payable by such other person under this Act, and”.

Substitution of section 114B of Act 91 of 1964, as inserted by section 154 of Act 45 of 2003

23. The following section is hereby substituted for section 114B of the Customs and Excise Act, 1964:

“Remedies of Commissioner against agent or trustee

114B. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as the Commissioner would have against the property of any person liable to pay any duty, interest, [fine,] penalty or forfeiture payable under this Act and in as full and ample a manner.”.

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, section 15 of Act 98 of 1980, section 35 of Act 84 of 1987, section 39 of Act 59 of 1990, section 11 of Act 19 of 1994, section 73 of Act 45 of 1995, section 74 of Act 30 of 1998 and section 35 of Act 21 of 2006

24. Section 120 of the Customs and Excise Act, 1964, is hereby amended by—

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

“(e) as to the importation, exportation, transit or coastwise carriage of goods, the entry of goods, the payment of duties and other charges and fees, the costs which shall, for the purposes of section

[~~forty-six~~] 46 be included in or excluded from the production cost of goods in general or of goods of any class or kind, and the movement of goods to and from any territory with the government of which an agreement has been concluded under section [~~fifty-one~~] 49 or 51,”; and

- (b) the insertion in subsection (1) after paragraph (mA) of the following paragraph:

“(mB) as to matters relating to electronic payment of any amount required to be paid in terms of this Act;”.

Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 16 of Act 27 of 1997, section 34 of Act 34 of 1997, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001, section 54 of Act 19 of 2001, section 141 of Act 60 of 2001, section 42 of Act 12 of 2003, section 37 of Act 16 of 2004, section 73 of Act 32 of 2004, section 4 of Act 10 of 2005, section 29 of Act 32 of 2005 and section 12 of Act 10 of 2006

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

- (a) by the deletion of the definitions of “**banker**”, “**marketable security**”, “**material**”, “**public officer**” and “**public revenue**”; and
(b) by the insertion of the following definition after the definition of “**regulation**”:

“**‘Republic’** means the ‘Republic’ as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);”.

(2) Subsection (1)(a) comes into operation on 1 July 2008.

Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998, section 66 of Act 19 of 2001, section 150 of Act 60 of 2001, section 116 of Act 74 of 2002, section 48 of Act 12 of 2003, section 45 of Act 16 of 2004, section 13 of Act 10 of 2006 and section 36 of Act 21 of 2006

26. Section 6 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) disclosing to the [**Chief of the Central Statistical Services**] Statistician-General such information in relation to any person as may be required by [**such Chief**] the Statistician-General in connection with the collection of statistics in carrying out the provisions of the Statistics Act, 1999 (Act No. 6 of 1999), or any regulation thereunder;”.

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 42 of Act 9 of 2006 and section 79 of Act 20 of 2006

27. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of this Act, a credit agreement to which section 121 of the National Credit Act, 2005 (Act No. 34 of 2005), applies, will shall be deemed not to be a supply of goods or services if the consumer has exercised the right to rescind that agreement in the manner and within the time permitted by that section.”; and

- (b) by the substitution for subsection (27) of the following subsection:

“(27) For the purposes of this Act, where any amount received in respect of a taxable supply of goods or services at the rate of 14 per cent exceeds the consideration charged for that supply, and such excess amount has not been refunded within four months of receipt thereof, that

excess amount shall be deemed to be consideration for a supply of services performed by the vendor in the course or furtherance of that vendor's enterprise on the last day of the tax period during which that four month period ends."

- (2) Subsection (1)(a) is deemed to have come into operation on 1 June 2007. 5
 (3) Subsection (1)(b) is deemed to have come into operation on 7 February 2007.

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991, section 167 of Act 45 of 2003, section 96 of Act 32 of 2004, 103 of 31 of 2005 and 172 of 34 of 2005

28. (1) Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph: 10

"(b) where that supply is a supply to which section 8(3) refers, on the day after the last day of the period during which the recipient may exercise the right under section 121 of the National Credit Act, 2005 (Act No. 34 of 2005), to rescind the agreement;" 15

- (2) Subsection (1) is deemed to have come into operation on 1 June 2007.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006 and section 81 of Act 20 of 2006

29. Section 11 of the Value-Added Tax Act, 1991, is hereby amended— 25

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

"(q) the services are deemed to be supplied in terms of section 8(5B) [to the extent that the Minister after consultation with the Minister of Foreign Affairs announces that that funding is zero-rated by notice in the Gazette];" 30

- (b) by the addition in subsection (2) at the end of paragraph (w) of the word "or" and by the addition to that subsection of the following paragraph:

"(x) the services are supplied by a vendor, being the owner of a horse, to the operator of a horse-racing event to the extent of any consideration paid as a result of the successful participation of that horse in that event." 35

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006 and section 83 of Act 20 of 2006

30. Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 45

"No deduction of input tax [shall be made in terms of this Act] in respect of a supply or the importation of any goods into the Republic, or any other deduction, shall be made in terms of this Act, unless—";

- (b) by the substitution in subsection (2) for paragraph (e) of the following paragraph: 50

"(e) a tax invoice or debit or credit note has been provided as contemplated in section 54(2), and a statement as contemplated in section 54(3)(a) is held by the vendor at the time a return in respect of the supply to the vendor is furnished[.]; or"; 55

- (c) by the addition to subsection (2) of the following paragraph:
 “(f) the vendor, in any other case, is in possession of documentary proof, as is acceptable to the Commissioner, substantiating the vendor’s entitlement to the deduction at the time a return in respect of the deduction is furnished.”; 5
- (d) by the deletion of the second proviso to subsection (2); and
- (e) by the substitution in subsection (3) for paragraph (g) of the following paragraph:
 “(g) any amount of input tax in relation to any supply or other deduction in respect of which [paragraph (a) of, or the proviso to,] subsection (2) of this section has operated to deny a deduction [of input tax] and the vendor has obtained, during the tax period, [a tax invoice] the prescribed documents or records in relation to that supply;”.

Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994, section 33 of Act 27 of 1997, section 92 of Act 30 of 1998, section 88 of Act 53 of 1999, section 173 of Act 45 of 2003, section 102 of Act 32 of 2004, section 108 of Act 31 of 2005 and section 48 of Act 9 of 2006 20

31. Section 17 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (2A) of the following subsection:

- “(2A) Subsection (2) shall not apply to input tax in respect of goods or services that are applied in the course or furtherance of a foreign donor funded project **[to the extent that the Minister announces that the funding of that foreign donor funded project is zero-rated in terms of section 11(2)(g) by notice in the Gazette]**.”. 25

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001, section 158 of Act 60 of 2001, section 118 of Act 74 of 2002, section 179 of Act 45 of 2003 30

32. Section 28 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subparagraphs (ii) and (iii) of the proviso to subsection (1) of the following subparagraphs, respectively:

- “(ii) where payment of the full amount of the tax is effected by means of **[an electronic transfer] a debit order** and the requirements for the transfer of the tax have been met by the vendor, such **[electronic transfer] debit order** shall not be effected prior to the last business day of the month during which the said twenty-fifth day falls and the period within which the tax is required to be paid shall be deemed to end on the last business day of such month; 35
- (iii) a vendor registered with the Commissioner to submit returns and payments electronically **(other than by means of a debit order)**, must furnish the return and **make full payment of the amount of tax** within the period ending on the last business day of the month during which that twenty-fifth day falls;”.

Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 2000, section 180 of Act 45 of 2003, section 41 of Act 34 of 2004, section 38 of Act 32 of 2005 and section 87 of Act 20 of 2006 45

33. (1) Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (f) of the following paragraph:

- “(f) any person who holds himself out as a person entitled to a refund or who produces, furnishes, authorises, or makes use of any tax invoice or document or debit note and has obtained any undue tax benefit or refund under the provisions of **[an export incentive scheme] the regulation** referred to in **[paragraph (d) of]** the definition of ‘exported’ in section 1, to which such person is not entitled.”. 50

(2) Subsection (1) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*. 55

Amendment of section 33 of Act 89 of 1991, as amended by section 35 of Act 136 of 1991 and section 160 of Act 60 of 2001

34. Section 33 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(1) Subject to the provisions of section 33A, an appeal against any decision, direction, supplementary direction or assessment of the Commissioner, as notified in terms of section 32(4), shall lie to the tax court constituted under the provisions of section 83 of the Income Tax Act within the period prescribed and the rules issued in terms of section 107A of the Income Tax Act for the area in which the appellant resides or carries on business or, if the appellant and the Commissioner agree, for any other area.”; and

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

“(3) At the hearing by the tax court of any appeal to that court, the tax court may inquire into and consider the matter before it and may confirm, cancel or vary any decision, direction or supplementary direction of the Commissioner under appeal or make any other decision, direction or supplementary direction which the Commissioner was empowered to make at the time the Commissioner made the decision, direction or supplementary direction under appeal or, in the case of any assessment order that assessment to be altered or confirm the assessment or, if it thinks fit, refer such matter back to the Commissioner for further investigation and reconsideration in the light of principles laid down by the court.”.

Amendment of section 33A of Act 89 of 1991, as inserted by section 36 of Act 136 of 1991 and amended by section 96 of Act 53 of 1999, section 65 of Act 59 of 2000 and section 161 of Act 60 of 2001

35. Section 33A of the Value-Added Tax Act, 1991, is hereby amended—

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

“(b) the appeal is lodged against the Commissioner’s disallowance of an objection against a decision, direction or supplementary direction of the Commissioner referred to in section 32(1)(a), (b) or (c) of this Act; or”; and

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

“(b) the reference in section 83A(10)(e) to an assessment in respect of which an appeal has been lodged shall be construed as including a reference to a decision, direction or supplementary direction of the Commissioner in respect of which an appeal has been lodged under this Act.”.

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997, section 100 of Act 30 of 1998, section 98 of Act 53 of 1999, section 168 of Act 60 of 2001 and section 88 of Act 20 of 2006

36. (1) Section 44 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (9) of the following subsection:

“(9) The Commissioner may make or authorise a refund of any amount of tax which has become refundable to any person under the provisions of [an export incentive scheme] the regulation referred to in [paragraph (d) of] the definition of ‘exported’ in section 1.”.

(2) Subsection (1) comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 55 of Act 89 of 1991, as amended by section 35 of Act 136 of 1992, section 38 of Act 97 of 1993, section 102 of Act 30 of 1998, section 17 of Act 10 of 2006 and section 18 of Act 9 of 2007

37. Section 55 of the Value-Added Tax Act, 1991, is hereby amended by the insertion in subsection (1) after paragraph (aA) of the following paragraph: 5
“(aB) any documentary proof required to be obtained and retained in accordance with section 16(2)(f);”.

Amendment of section 13 of Act 38 of 1996

38. Section 13 of the Tax on Retirement Funds Act, 1996, is hereby amended by the addition of the following provisos: 10
: Provided that the Commissioner may not issue an assessment after 31 August 2008 unless the Commissioner is satisfied that the fact that such tax was not paid or was not paid in full was due to fraud, misrepresentation or non-disclosure of material facts: Provided further that the Commissioner may not issue an assessment under any circumstances after 28 February 2010”. 15

Short title and commencement

39. (1) This Act is called the Revenue Laws Second Amendment Act, 2007.
(2) Except in so far as is otherwise provided for in this Act or the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, shall for the purposes of assessments 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 2008. 20

MEMORANDUM ON THE OBJECTS OF THE REVENUE LAWS SECOND AMENDMENT BILL, 2007

1. PURPOSE OF BILL

The Bill seeks to amend administrative provisions of the Transfer Duty Act, 1949 (Act No. 14 of 1949), the Income Tax Act, 1962 (Act No. 58 of 1962), the Customs and Excise Act, 1964 (Act No. 91 of 1964), the Stamp Duties Act, 1968 (Act No. 77 of 1968), the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and the Tax on Retirement Funds Act, 1996 (Act No. 38 of 1996).

2. OBJECTS OF BILL

2.1 Amendment of section 14 of Transfer Duty Act, 1949

Subclause (a): The proposed amendment serves to expand the current wording of section 14 so as to include the electronic submission of transfer duty declarations through the South African Revenue Service (SARS) e-Filing system.

Subclause (b): As payments are now also received electronically, the reference to acknowledgement of payment “by the use of a machine” is no longer relevant. The proposed amendment deletes this phrase.

Subclause (c): The proposed amendment intends to align the Transfer Duty Act, 1949, with the provisions of the Value-Added Tax (VAT) Act, 1991, and Income Tax Act, 1962, regarding the Commissioner’s acceptance of the electronic signature on declarations as being valid and introduces provisions relating to the use of electronic signatures on documents.

2.2 Amendment of section 17B of Transfer Duty Act, 1949

The proposed amendment to section 17B introduces an offence for the misuse of electronic communications.

2.3 Amendment of section 3 of Income Tax Act, 1962

It is proposed in the Revenue Laws Amendment Act, 2007, that short-term insurers will be allowed to deduct liabilities contemplated in section 32(1)(a), (b) and (d) of the Short-Term Insurance Act, 1998. This deduction is subject to adjustment by the Commissioner of SARS. The proposed amendment will subject any such adjustment to objection and appeal by the insurer.

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

Subclause (1)(a): The definition of “person” is proposed to be amended to accord with the definition in the Income Tax Act, 1962.

Subclause (1)(b): The proposed amendment to section 1(3) is consequential to the amendments proposed to the definitions of “customs duty” and to clarify that all the provisions of the Act relating to the movement of goods also apply to movements of goods between the Republic and SACU Member States. This will come into operation on a date fixed by the President by proclamation in the *Gazette*.

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

Subclause (1)(a): This section prohibits an officer from having a financial interest in certain activities in respect of goods to which the Act relates. The proposed amendment is essentially a technical correction which includes exportation, environmental levy goods and Road Accident Fund levy goods in the activities and goods mentioned in the section. The section is also restructured.

Subclauses (1)(b) to (d): The various amendments of section 4(3) and section 4(3A) correct the references to the Statistician General and the Statistics Act, 1999 (Act No. 6 of 1999), and the reference to the South African Police Service Act, 1995 (Act No. 68 of 1995). The amendments contained in sub-clauses (1)(a) to (d) will come into operation on the date of promulgation of this Act.

Subclause (1)(e): This paragraph empowers the Controller or an officer to substitute the detention or a part thereof by the detention of any or all of the goods in accordance with the counterfeit legislation provided for in Chapter XB. This will come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

2.6 Amendment of section 10 of Customs and Excise Act, 1964

The commercial cargo clearing facility at the proposed Lebombo-Ressano Garcia one stop border will be situated within the territory of Mozambique. The amendment of section 10(2) by inclusion of a reference to section 50A will allow goods to be deemed imported into the Republic although still in the territory of Mozambique.

2.7 Amendment of section 21A of Customs and Excise Act, 1964

The expression “Service enterprise” is deleted as it is not referred to elsewhere in the section.

2.8 Amendment of section 43 of Customs and Excise Act, 1964

The amendment proposed in sub-clause 1 is consequential to the insertion of Chapter XB in respect of counterfeit goods so as to adapt the provisions of section 43 in so far as it relates to the disposal of counterfeit goods. This will come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

2.9 Amendment of section 46 of Customs and Excise Act, 1964

Amendment of subsection (5) is proposed so as to require a person entering any imported goods to produce a declaration of origin if the imported goods are liable to a provisional payment in terms of section 57A or an anti-dumping duty imposed under section 56 or a countervailing duty as imposed under section 56A or a safeguard measure imposed under section 57, and further, where imported goods are subject to any restriction in terms of any other law when imported from a specified country or specified countries. Such a declaration is required in terms of the proposed amendment where the goods are imported from a country or countries other than the country or countries or a supplier in respect of which such a payment, duty or restriction is prescribed. This amendment is necessary for the control of imports in respect of which such duties or restrictions are prescribed.

The Commissioner is enabled to make rules prescribing forms and other matters for the purposes of the subsection.

2.10 Amendment of section 46A of Customs and Excise Act, 1964

Section 46A relates to non-reciprocal preferential tariff treatment of goods exported from the Republic. The proposed amendments to the definitions to include a supplier of goods, who may be a producer or manufacturer of goods produced or manufactured for export. The provision is inserted for the purpose of making provision in certain rules for a supplier and a supplier’s declaration where it is required as proof of the originating status of the goods.

2.11 Amendment of section 47 of Customs and Excise Act, 1964

The present provisions regarding determination disputes only relate to the appeal procedure in Part A of Chapter XA, but the procedures in Part B and Part C may also apply. The amendments to section 47(9) are accordingly proposed so as to include a reference to any procedure contemplated in Chapter XA.

2.12 Amendment of section 49 of Customs and Excise Act, 1964

This amendment proposes a textual amendment to a provision in section 49 relating to international agreements concerning customs co-operation, the exchange of information and the rendering of mutual and technical assistance in respect of customs co-operation.

2.13 Amendment of section 52 of Customs and Excise Act, 1964

Section 52(a) is amended as customs union agreements are now provided for in section 49 and are published in Schedule No. 10 (as was done with the SACU Agreement).

2.14 Amendment of section 54B of Customs and Excise Act, 1964

Section 54B(2) is amended as customs union agreements are now provided for in section 49 and are published in Schedule No. 10 (as was done with the SACU Agreement).

2.15 Amendment of section 77C of Customs and Excise Act, 1964

Section 77C(1) is amended to combine existing provisions of subsections (1) and (3) as all the requirements for submission of an appeal are prescribed fully by rule.

2.16 Amendment of section 77G of Customs and Excise Act, 1964

Section 77G is amended as a decision may be appealed against and may also be dealt with in terms of any other procedure to which Chapter XA relates.

2.17 Insertion of Chapter XB into Customs and Excise Act, 1964

These proposals are intended to provide legal certainty and address the confusion relating to conflicting provisions in the Counterfeit Goods Act and Customs and Excise Act.

SARS will act as a filter for all counterfeit goods while such goods are under customs control. Customs officers will be responsible for the detention and control of possible counterfeit goods. Once this detention has interrupted the movement of the goods, the intellectual property right holder will be required to apply to court for an order declaring the detained goods to be counterfeit goods.

The proposals are in line with the World Customs Organisation's (WCO) model provisions for national legislation to implement effective border measures by Customs authorities, consistent with the TRIPS agreement. The proposed amendment is further in line with the provisions of section 113(8) of the Customs and Excise Act, 1964, where goods suspected of being imported in contravention with any other law in South Africa are detained and then handed over to another authority for further action. In the proposed legislation, the goods are handed over for safe-keeping to the Counterfeit Goods Depot Operator as contemplated in the Counterfeit Goods Act, 1997, and further steps must be taken by the holder of the intellectual property right to ensure that the goods are not subsequently released into home consumption.

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

The proposed amendment inserts a reference to sections 35A(2), (3) and (4) and 54(2), (3) and (4) in section 80(1)(o) which provides for serious offences and their punishment. Section 35A relates to special provisions regarding cigarettes and cigarette tobacco manufactured in the Republic. The effect of the provision is that provision is now made for serious offences under the same section in respect of both imported and locally-produced cigarettes, which is considered necessary for the purposes of law enforcement.

2.19 Amendment of section 95 of Customs and Excise Act, 1964

The commercial cargo clearing facility at the proposed Lebombo-Ressano Garcia one stop border will be situated within the territory of Mozambique. The amendment of section 95(1A) by inclusion of a reference to section 50A will deem an offence committed at the commercial cargo facility as having been committed at any place in the Republic where the accused happened to be.

2.20 Amendment of section 111 of Customs and Excise Act, 1964

Section 111 is amended to clarify that where a vehicle manufactured in South Africa is re-imported after exportation also requires a certificate issued by an officer as contemplated in subsection (1) as it must be verified whether the duty and VAT due have been paid.

2.21 Repeal of section 113A of Customs and Excise Act, 1964

Section 113A is repealed as a consequence of the insertion of the counterfeit goods legislation in Chapter XB. This shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

2.22 Amendment of section 114A of Customs and Excise Act, 1964

Section 114A is amended to achieve uniformity with sections 105 and 114. In the past, fines were collected by the Department of Justice and paid over to the Controller, but this practice is no longer followed and the reference to “fine” is therefore deleted as fines are not recovered under the provisions of the Customs and Excise Act, 1964.

2.23 Amendment of section 114B of Customs and Excise Act, 1964

Section 114B is amended to achieve uniformity with sections 105, 114 and 114A. In the past, fines were collected by the Department of Justice and paid over to the Controller, but this practice is no longer followed and the reference to “fine” is therefore deleted as fines are not recovered under the provisions of the Customs and Excise Act, 1964.

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

Section 120 is amended to add section 49 as customs union agreements and other international agreements which require to be administered under customs legislation are now provided for under that section. This amendment will come into operation on the date of promulgation of this Act.

2.25 Amendment of section 1 of Stamp Duties Act, 1968

Subclause (a): The proposed amendment seeks to delete all provisions relating to marketable securities as those provisions will be catered for in the Securities Transfer Tax Act, which will come into effect on 1 July 2008.

Subclause (b): The proposed amendment seeks to insert a definition of “Republic” into the Stamp Duties Act. It is necessary to define the Republic as there are references to “Republic” in the Stamp Duties Act.

2.26 Amendment of section 6 of Value-Added Tax Act, 1991

The proposed amendment is of a textual nature as the head of Statistics South Africa is now referred to as the Statistician-General.

2.27 Amendment of section 8 of Value-Added Tax Act, 1991

Subclause (a): The proposed amendment is of a textual nature and inserts the number of the National Credit Act, 2005. The proposed amendment is effective from 1 June 2007.

Subclause (b): The proposed amendment seeks to clarify that the deemed amount in respect of which this section applies must be a standard rated supply and not a zero-rated supply.

2.28 Amendment of section 9 of Value-Added Tax Act, 1991

The proposed amendment is of a textual nature and inserts the number of the National Credit Act, 2005. The proposed amendment is effective from 1 June 2007.

2.29 Amendment of section 11 of Value-Added Tax Act, 1991

Subclause (a): The amendment is consequential upon the amendment to the definition of “foreign donor funded project” in section 1 of the VAT Act.

Subclause (b): The winnings paid by racing operators to horse owners are currently zero-rated in terms of section 72 of the VAT Act. The proposed amendment is to provide a zero-rating provision for the payment of winnings by racing operators to horse owners.

2.30 Amendment of section 16 of Value-Added Tax Act, 1991

Subclauses (a) to (c): A vendor is entitled to certain deductions in terms of section 16(3) of the VAT Act which are not subject to the documentary requirements contemplated in section 16(2) of the VAT Act. The proposed amendment is to provide the Commissioner with discretionary powers in order to prescribe acceptable documentary proof that a vendor must be in possession of before making such deductions. This amendment will not affect deductions of “input tax” as section 16(2) set out the documentary requirements.

Subclause (d): The proposed deletion of the proviso in section 16(2) of the VAT Act is to eliminate the duplication of the proviso which is provided for in section 16(3) of the VAT Act.

Subclause (e): Where goods or services were supplied to a vendor during a tax period and the vendor was not in possession of e.g. a tax invoice, the vendor is not entitled to claim the input tax during that tax period. If the tax invoice is obtained in a subsequent tax period, the vendor can claim input tax in terms of section 16(3)(g). The proposed amendment to section 16(3)(g) is intended to allow a vendor to claim input tax or a deduction where the documentary requirements of section 16(2) are subsequently met.

2.31 Amendment of section 17 of Value-Added Tax Act, 1991

The proposed amendment is consequential upon the amendment to the definition of “foreign donor funded project” in section 1 of the VAT Act.

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

The proposed amendment to subparagraph (ii) is to clarify that where the payment of the tax is effected by means a debit order, such payment will only be effected on the last business day of the month. However, the VAT 201 return must be submitted by the twenty-fifth day of the month.

Payment method	Returns	Payment
Cash	25th	25th
Cheque	25th	25th
Postal Order	25th	25th
Payment at any of the 4 major banks	25th	25th
VAT 201 (a) debit order	25th	Last business day
E-filing of return <u>and</u> payment via SARS e-filing	Last business day	Last business day
Electronic transfers (including Internet banking)	25th	25th

It is important to note that the return and/or payment must be received on or before the abovementioned dates for the particular payment method selected. In the event that such day falls on a Saturday, Sunday or public holiday (i.e. not a business day), the return and/or the payment must be received on the last business day before that date.

2.33 Amendment of section 31 of Value-Added Tax Act, 1991

The proposed amendment is consequential upon the amendment to the definition of “exported” in the Revenue Laws Amendment Bill, 2007. The proposed amendment will come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

2.34 Amendment of section 33 of Value-Added Tax Act, 1991

Subclause (a) and (b): The proposed amendment is consequential upon the amendment to section 32 of the VAT Act, which was included in clause 15 of the Taxation Laws Second Amendment Act, No. 9 of 2007.

2.35 Amendment of section 33A of Value-Added Tax Act, 1991

Subclause (a) and (b): The proposed amendment is consequential upon the amendment to section 32 of the VAT Act, which was included in clause 15 of the Taxation Laws Second Amendment Act, No. 9 of 2007.

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

The proposed amendment is consequential upon the amendment to the definition of “exported” in the Revenue Laws Amendment Bill, 2007. The proposed amendment will come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

2.37 Amendment of section 55 of Value-Added Tax Act, 1991

The proposed amendment is consequential upon the amendment proposed to section 16(2)(f) (see clause 30). In terms of section 55(1) of the VAT Act, a vendor must keep, *inter alia*, such books of account and documentary proof that may enable the vendor to observe the requirements of the VAT Act and satisfy the Commissioner that the vendor has met such requirements. The result of the proposed amendment is that a vendor is required to keep the documents prescribed by the Commissioner in terms of section 16(2)(f) of the VAT Act, for the prescribed period.

2.38 Amendment of section 13 of Tax on Retirement Funds Act, 1996

The proposed amendment provides that the Commissioner may not issue an assessment in respect of unpaid taxes under the Tax on Retirement Funds Act after 31 August 2008 unless he or she is satisfied that the non-payment is due to fraud, misrepresentation or non-disclosure of material facts. The proposed amendment provides further that an assessment may not be issued under any circumstances after 28 February 2010.

3. CONSULTATION

The amendments proposed by this Bill were published on the National Treasury and SARS websites for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions at large were consulted in preparing the Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

An account of the financial implications to the State was given in the 2007 Budget Review.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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

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