REPUBLIC OF SOUTH AFRICA

REVENUE LAWS SECOND AMENDMENT ACT

REPUBLIEK VAN SUID-AFRIKA

TWEEDE WYSIGINGSWET OP INKOMSTEWETTE

No 61, 2008

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.

ACT

To—

- **amend the Estate Duty Act, 1955, so as to amend provisions relating to notices of assessment;**
- **amend the Income Tax Act, 1962, so as to amend provisions; to make new provision for the Minister to prescribe a date and for the collection of taxes; and to effect textual and consequential amendments;**
- **amend the Customs and Excise Act, 1964, so as to—**
  - **amend definitions of goods, manufacture and goods under customs control;**
  - **provide for the stopping of ships by customs patrol boats;**
  - **insert provisions granting officers powers of arrest;**
  - **insert provisions regarding the possession of firearms by officers;**
  - **insert provisions regarding the acquisition of equipment for border control and the operation of patrol boats;**
  - **insert provisions requiring advance passenger information to be furnished by aircraft operators;**
  - **amend certain provisions relating to exports by post;**
  - **further regulate the export of goods by passengers;**
  - **allow a licensee of a customs and excise warehouse to use a computer system for goods manufactured or stored and the movement of goods to and from such warehouse;**
  - **insert a power to make rules regarding simplified procedures for any person or category of persons who manufacture certain excisable goods;**
  - **further regulate the times for entry of imported goods or goods for export;**
  - **insert provisions relating to simplified clearance and release procedures, such procedures for authorised persons and simplified procedures for the immediate release of goods;**
  - **further regulate the amendment and substitution of bills of entry;**
  - **amend the requirements in respect of accredited client status;**
  - **insert a penal provision;**
  - **insert special provisions relating to the processing and protection of personal information;**

- **effect an amendment to a provision regulating the taking of samples;**
- **amend certain powers to make rules; and**
- **effect textual and consequential amendments;**

- **amend the Value-Added Tax Act, 1991, so as to make provision for the Minister to prescribe a date; provide for the supply of information when applying for a ruling; and to amend provisions relating to refunds;**
- **amend the Revenue Laws Second Amendment Act, 2006, so as to delete a provision; repeal certain provisions; amend a commencement date; and effect textual and consequential amendments;**
- **amend the Securities Transfer Tax Administration Act, 2007, so as to amend provisions relating to payment of taxes;**
- **amend the Revenue Laws Amendment Act, 2007, so as to delete a definition,**

and to provide for matters connected therewith.

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

Amendment of section 9 of Act 45 of 1955

1. (1) Section 9 of the Estate Duty Act, 1955, is hereby amended—

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

"(3) A notice of assessment shall be issued in respect of each return submitted in respect of any estate in which liability for duty, other than in respect of additional property contemplated in subsection (4)*(c)*, is disclosed, due regard being had in the calculation of the duty to any duty chargeable on any previous returns submitted in respect of the same estate."; and

(b) by the addition of the following subsection:

"(4) *(a)* Unless a notice of assessment has already been issued, a notice of assessment shall be deemed to have been issued in terms of section 9(3) in respect of the estate of every person—

(i) if the value of the estate does not exceed the amount determined by the Minister by notice in the *Gazette* contemplated in section 18(3) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), on the date on which a death notice is given to a Master in terms of section 7 of that Act; or

(ii) in every other case, on the date on which the estate has become distributable in terms of section 35(12) of the Administration of Estates Act, 1965 (Act No. 66 of 1965).

(b) If additional property is found in respect of an estate within five years from the date contemplated in subparagraph (i) or (ii) and a supplementary liquidation and distribution account is required in terms of section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), paragraph *(a)* shall not apply and a notice of assessment shall be deemed to have been issued in terms of section 9(3) in respect of the estate on the date on which the supplementary liquidation and distribution account has become distributable in terms of section 35(12) of the Administration of Estates Act, 1965.

(c) If additional property is found in respect of an estate more than five years after the date contemplated in subparagraph (i) or (ii) and a liquidation and distribution account is required in terms of section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), the additional property shall be subject to an estate duty as if that property were the sole property of the estate of the deceased and as if the death of the deceased occurred on the date on which the additional property was reflected in the supplementary liquidation and distribution account.".

(2) Subsection (1) comes into operation on 1 January 2009.

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, section 1 of Act 9 of 2007 and section 3 of Act 36 of 2007

2. 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)*, *(i*A*)*, *(j)* and *(n*B*)*, section 11*(e)*, *(f)*, *(g)*, *(g*A*)*, *(j)*, *(l)*, *(t)*, *(u)* and *(w)*, section 12B(6), 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)*(c*A*)*, 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 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004 and amended by section 5 of Act 32 of 2005

3. (1) Section 35A of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (9) of paragraph *(b)*; and

(b) by the deletion of subsection (10).

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of section 66 of Act 58 of 1962

4. (1) Section 66 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

''(3) Any such person failing to furnish such returns shall not be relieved from any administrative penalty by reason only of his or her having received no notice to furnish the same or of the prescribed form not having been delivered to him or her, but the Commissioner may, if he or she deems it advisable, cause forms to be delivered or sent by post to any person.''.

(2) Subsection (1) comes into operation on the date on which section 75B of the Income Tax Act, 1962, comes into operation.

Amendment of section 73B of Act 58 of 1962, as inserted by section 22 of Act 5 of 2001 and amended by section 44 of Act 74 of 2002

5. Section 73B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

''(2) Where a person has disposed of assets in respect of which the capital gain or capital loss is not disregarded or excluded in terms of the Eighth Schedule and all capital gains or capital losses determined in respect of the disposal of those assets exceed **[R10 000]** the amount contemplated in paragraph 5(1) of the Eighth Schedule in respect of the year of assessment, but that person is not required to render a return, that person must retain the records required to determine those capital gains or capital losses for a period of five years from the date of disposal of each of those assets.''.

Amendment of section 74 of Act 58 of 1962, as substituted by section 14 of Act 46 of 1996 and amended by section 27 of Act 28 of 1997, section 51 of Act 60 of 2001 and section 67 of Act 45 of 2003

6. Section 74 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraphs *(a)* and *(b)* of the definition of ''administration of this Act'' of the following paragraphs, respectively:

''*(a)* obtaining of full information in relation to any—

(i) amount received by or accrued to any person;

(ii) property disposed of **[under a donation by any person]** for no consideration; and

(iii) **[dividend declared by any company]** payment made or liability incurred by any person;

(b) ascertaining the correctness of any return, financial statement, document, declaration of facts **[or]**, valuation or other information in the Commissioner's possession;''.

Amendment of section 75B of Act 58 of 1962, as inserted by section 15 of Act 4 of 2008

7. (1) Section 75B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph *(c)* of the following paragraph:

''*(c)* **[the incidence of]** any recurrence or repeat **[thereof]** of the non-compliance.''.

(2) Subsection (1) comes into operation on the date on which section 75B of the Income Tax Act, 1962, comes into operation.

Amendment of section 76G of Act 58 of 1962, as inserted by section 12 of Act 34 of 2004 and amended by section 4 of Act 9 of 2007

8. (1) Section 76G of the Income Tax Act, 1962, is hereby amended—

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

''Notwithstanding any provision to the contrary in this Act, the Commissioner may **[not accept]** reject an application for an advance tax ruling in any of the following circumstances—'';

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

''*(b)* the application relates to the duty of an employer to determine whether a person is an independent contractor, labour broker**[, personal service company or personal service trust]** or a personal service provider;''; and

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

''(3) In addition to the exclusions and refusals set forth in subsections (1) and (2) of this section, the Commissioner may publish lists of issues in respect of which applications **[will not be accepted]** may be rejected.''.

(2) Subsection (1) comes into operation on 1 March 2009 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 76O of Act 58 of 1962, as inserted by section 12 of Act 34 of 2004

9. Section 76O of the Income Tax Act, 1962, is hereby amended by the addition to subsection (2) of the following proviso:

'': Provided that the Commissioner is not required to publish a ruling that is the same as a ruling already published''.

Amendment of section 80R of Act 58 of 1962, as inserted by section 6 of Act 21 of 2006

10. Section 80R of the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

''**Request for [additional] information**''.

Insertion of section 89*sept* in Act 58 of 1962

11. The following section is hereby inserted in the Income Tax Act, 1962, after section 89*sex*:

"**Power of Minister to determine date for submission of returns and payment of tax, interest and penalties**

89*sept.* (1) Notwithstanding any other provision of this Act, where the date for the submission of a return or the payment of tax, penalties or interest is the last day of the financial year of the Government, the Minister may by notice in the *Gazette* prescribe any other date for submission of the return and payment of the tax, penalties and interest, which date may not fall on a day more than two business days prior to the last day of that year.

(2) The notice contemplated in subsection (1) must be published at least 30 days prior to the date so prescribed by the Minister.".

Substitution of section 93 of Act 58 of 1962

12. The following section is hereby substituted for section 93 of the Income Tax Act, 1962:

"**Collection of taxes under arrangements made under section 108**

93. (1) If the Commissioner has, in accordance with any arrangements made with the government of any other country by an agreement entered into in accordance with section 108, received a request, in such form as the Commissioner may prescribe, for the collection from any person of an amount alleged to be due by him or her under the tax laws of such other country, the Commissioner may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he or she admits liability for such amount or for any lesser amount.

(2) If such person—

(a) admits liability;

(b) fails to respond to the notice; or

(c) denies liability but the Commissioner, after consultation with the competent authority of such other country, is satisfied that—

(i) the liability for such amount is not disputed in terms of the laws of such other country; or

(ii) although the liability for such amount is disputed in terms of the laws of such other country—

(aa) such dispute has been entered into solely to delay or frustrate collection of the amount alleged to be due; or

(bb) there is a risk of dissipation or concealment of assets by such person,

the Commissioner may, by notice in writing, require such person to pay the amount for which he or she has admitted liability or the amount specified, as the case may be, on a date specified, for transmission to the competent authority in such other country.

(3) If such person fails to comply with the notice under subsection (2) the amount in question may be recovered, for transmission to such competent authority, as if it were a tax payable by such person under this Act.

(4) No steps taken in assistance in collection by any other country under any arrangements referred to in subsection (1), for the collection of an amount alleged to be due by any person under the tax laws of the Republic, and no judgment given against any such person in pursuance of such arrangements in such other country for any such amount, shall affect his or her right to have his or her liability for any such amount determined in the Republic in accordance with the relevant law.".

Amendment of section 101 of Act 58 of 1962, as amended by section 29 of Act 90 of 1962, section 22 of Act 52 of 1970, section 39 of Act 94 of 1983, section 40 of Act 129 of 1991, section 27 of Act 36 of 1996, section 49 of Act 30 of 2000 and section 50 of Act 74 of 2002

13. (1) Section 101 of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (8).

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of paragraph 6 of Fourth Schedule to Act 58 of 1962, as amended by section 83 of Act 45 of 2003 and section 18 of Act 34 of 2004

14. (1) Paragraph 6 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion of subparagraphs (1), (2) and (3); and

(b) by the substitution for subparagraph (4) of the following subparagraph:

"(4) Any decision by the Commissioner **[not to remit any penalty under subparagraph (2) or]** to impose any penalty under subparagraph (2A), shall be subject to objection and appeal.".

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of paragraph 12 of Fourth Schedule to Act 58 of 1962, as inserted by section 43 of Act 53 of 1999

15. Paragraph 12 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Where any employer who is required to deduct or withhold employees' tax in terms of paragraph 2—

(a) has failed to furnish a return as required in terms of paragraph 14(1);

(b) has furnished a return as required in terms of paragraph 14(3) but the Commissioner is not satisfied with the return;

(c) has failed to deduct or withhold employees' tax; or

(d) has failed to pay over any amount of employees' tax deducted or withheld,

and such employer has not been absolved from his or her liabilities in terms of the provisions of this Schedule, the Commissioner may make a reasonable estimate of the amount of employees' tax which is required to be deducted or withheld and issue to the employer a notice of assessment for the unpaid amount.".

Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002 and section 22 of Act 4 of 2008

16. (1) Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (5) of the following subparagraph:

"(5) **[No]** Unless the Commissioner otherwise directs, no employees' tax certificate as contemplated in paragraph 13(2)*(a)* or *(c)* shall be delivered by the employer until such time as the return contemplated in subparagraph (3)*(a)* or *(b)*, as the case may be, has been rendered to the Commissioner."; and

(b) by the deletion of subparagraph (6).

(2) Subsection (1)*(a)* is deemed to have come into operation on 29 August 2008.

(3) Subsection (1)*(b)* comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Amendment of paragraph 16 of Fourth Schedule to Act 58 of 1962, as amended by section 86 of Act 45 of 2003, section 23 of Act 16 of 2004, section 52 of Act 31 of 2005 and section 45 of Act 3 of 2008

17. Paragraph 16 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

''(2) Any liability for employees' tax or interest on employees' tax or any penalty imposed under this Act in respect of non-compliance with this Part of any person who in terms of the definition of 'employer' in paragraph 1 is an employer by virtue of such person having paid or become liable to pay remuneration in a fiduciary capacity or in the person's capacity as a trustee in an insolvent estate, an executor, or an administrator of a benefit fund, pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or any other fund, or as a representative employer, shall be limited to the extent only of any assets belonging to the person, body, trust, estate or fund represented or administered by such person which may be in the possession or under the management, disposal or control of such person.''.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005 and section 46 of Act 3 of 2008

18. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)*(d)* for the words that precede item (i) of the following words:

''The basic amount applicable to any estimate submitted by a provisional taxpayer under this paragraph shall, for the purposes of this paragraph **[and paragraph 20]**, be deemed to be—''.

Amendment of paragraph 20 of Fourth Schedule to Act 58 of 1962, as amended by section 25 of Act 72 of 1963, section 29 of Act 88 of 1965, section 47 of Act 89 of 1969, section 44 of Act 88 of 1971, section 51 of Act 85 of 1974, section 36 of Act 69 of 1975, section 50 of Act 94 of 1983 and section 39 of Act 121 of 1984

19. Paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

''(1) If the final or last estimate of his or her taxable income submitted in terms of paragraph 19(1)*(a)* by a provisional taxpayer other than a company, or the estimate of **[his]** its taxable income in respect of the period contemplated in paragraph 23*(b)* submitted in terms of paragraph 19(1)*(b)* by a company which is a provisional taxpayer, in respect of any year of assessment discloses an estimated amount of taxable income which is less than **[90]** 80 per cent of the amount of the actual taxable income in respect of which the estimate was made, as finally determined for that year under this Act, **[and which is also less than the basic amount applicable to the estimate in question, as contemplated in paragraph 19(1)*(d)*,]** the taxpayer shall, subject to the provisions of subparagraphs (2), (3) and (4), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of his or her taxable income for such year of assessment, an amount by way of additional tax equal to 20 per cent of the difference between the amount of normal tax as calculated in respect of the amount of taxable income as so disclosed and **[the lesser of the following amounts, namely—**

***(a)*]** the amount of normal tax calculated, at the rates applicable in respect of the said year of assessment, in respect of a taxable income equal to **[ninety]** 80 per cent of the said actual taxable income**[; and**

(b) **the amount of normal tax calculated in respect of a taxable income equal to the said basic amount, at the rates applicable in respect of that year]**.''.

Repeal of paragraph 27 of Fourth Schedule to Act 58 of 1962

20. (1) Paragraph 27 of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

Substitution of paragraph 31 of Fourth Schedule to Act 58 of 1962

21. The following paragraph is hereby substituted for paragraph 31 of the Fourth Schedule to the Income Tax Act, 1962:

"**RECOVERY OF EMPLOYEES' TAX, PROVISIONAL TAX, PENALTY, ADDITIONAL TAX AND INTEREST**

31. Any amount of **[employee's]** employees' tax, provisional tax, penalty imposed under this Act in respect of non-compliance with this Schedule or additional tax payable in terms of this Schedule, and any amount of interest payable in terms of section *eighty-nine bis* of this Act shall when it becomes due or is payable be a debt due to the State and may be recovered by the Commissioner in the manner prescribed in section *ninety-one* for the recovery of tax and interest due or payable under this Act.".

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 1966, 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, section 7 of Act 21 of 2006 and section 10 of Act 9 of 2007

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

(a) by the substitution for the definition of "goods" of the following definition:

" **'goods'** includes—

(a) anything classifiable within any heading or subheading of Part 1 of Schedule No. 1; and

(b) generally all wares, articles, merchandise, animals, currency, matter or things;";

(b) by the substitution for the definition of "manufacture" of the following definition:

" **'manufacture'**, when used as a noun, includes—

(a) in the discretion of the Commissioner, any process—

[*(a)*](i) in the manufacture or assembly of any excisable goods, **[or]** environmental levy goods, fuel levy goods or Road Accident Fund levy goods;

[*(b)*](ii) in the conversion of any goods into excisable goods, **[or]** environmental levy goods, fuel levy goods or Road Accident Fund levy goods;

[*(c)*](iii) whereby the dutiable quantity or value of any imported goods specified in section B of Part 2 of Schedule No. 1, excisable goods, **[or]** environmental levy goods, fuel levy goods or Road Accident Fund levy goods is increased in any manner;

[*(d)*](iv) in the recovery of excisable goods, **[or]** environmental levy goods, fuel levy goods or Road Accident Fund levy goods from excisable goods or any other goods; **[or]**

[*(e)*](v) in the packing or measuring off of any imported goods specified in section B of Part 2 of Schedule No. 1, excisable

goods, **[or]** environmental levy goods, fuel levy goods**[,]** or Road Accident Fund levy goods; or

(vi) in the generation of electricity liable to environmental levy; or

(b) any process as may be prescribed in any Part of Schedule No. 1 wherein such duty or levy is specified; or

(c) any other process in respect of goods contemplated in paragraph *(a)* that the Commissioner may prescribe by rule,

and, when used as a verb, has a corresponding meaning; and **'manufacturer'** has a corresponding meaning;''; and

(c) by the substitution for subsection (5) of the following subsection:

''(5) The expression 'goods under customs control', 'goods subject to customs control' or 'goods under control of the Commissioner' and any cognate expression shall, unless the context otherwise indicates, be deemed to include, but is not limited to—

(a) any ship, vehicle or container contemplated in section 1(2) that is entering or leaving the Republic;

(b) any goods to which this Act relates that are—

(i) on any ship or vehicle or in any container contemplated in section 1(2) that is entering or leaving the Republic;

(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;

(iv) in transit within or through the Republic or conveyed for transhipment to any place outside the Republic in such manner as may be specified by rule;

(v) in, on or at a State warehouse or any place deemed in terms of section 43(2) to be a State warehouse;

(vi) in, on or at any place where goods are kept after having been detained or seized under the provisions of this Act; or

(vii) deemed in terms of any provision of this Act to be under customs control,

whether or not declared in terms of any provision of this Act or, if so declared, whether or not release thereof has been granted.''.

(2) Paragraphs *(a)* and *(b)* of subsection (1) are deemed to have come into operation on 21 October 2008.

Substitution of section 3A of Act 91 of 1964, as inserted by section 3 of Act 59 of 1990

23. The following section is hereby substituted for section 3A of the Customs and Excise Act, 1964:

''**Duties imposed and powers [of] conferred on Director-General [: Trade and Industry] by this Act**

3A. (1) Any duty imposed or power conferred by this Act on **[the]** a Director-General **[: Trade and Industry]** may be performed or exercised by him or her personally or by an officer under a delegation from or under the control or direction of **[the said]** that Director-General.

(2) Any decision made under subsection (1) by any such officer may be withdrawn or amended by **[the said]** that Director-General or by the officer (with effect from the date of making such decision or the date of withdrawal or amendment thereof) and shall, until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made by that Director-General.''.

Repeal of section 3B of Act 91 of 1964

24. Section 3B of the Customs and Excise Act, 1964, is hereby repealed.

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, section 34 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, section 9 of Act 21 of 2006 and section 5 of Act 36 of 2007

25. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (9) for paragraph *(a)* of the following paragraph:

"*(a)* An officer—

(i) *(aa)* commanding any customs patrol boat referred to in section 4C, may stop any ship within the territorial waters or contiguous zones of the Republic;

(bb) may board that ship or any other ship in the Republic; and

(ii) may stop and board any vehicle in the Republic,

and may search any such ship or vehicle or any person found therein or thereon—

(aa) for goods that should have been entered or otherwise declared, but have not been so entered or declared; or

(bb) for goods on which the duty should have, but has not, been paid;

(cc) in respect of which he or she has reasonable cause to believe that there has been a contravention of any provision of this Act or any provision of any other law relating to the importation or exportation of goods,

and may freely remain on such ship or vehicle in pursuance of his or her duties.".

(2) Subsection (1) comes into operation on 31 March 2009.

Insertion of sections 4A, 4B and 4C in Act 91 of 1964

26. (1) The following sections are hereby inserted in the Customs and Excise Act, 1964, after section 4:

"**Powers of arrest**

4A. (1) Notwithstanding anything to the contrary contained in this Act, the Commissioner—

(a) may determine a category of officers who have the power to carry out an arrest for the purposes of enforcing this Act; and

(b) must furnish each such officer with an appropriate certificate and identification card stating that the officer is authorised to carry out an arrest for the purpose of enforcing this Act.

(2) In exercising the powers of arrest contemplated in subsection (1), an officer shall be deemed to be a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and such officer shall be subject to any relevant provision in Chapter 5 of that Act applicable to a peace officer.

(3) Any person arrested by an officer must as soon as possible be brought to a police station or, in the case of an arrest by warrant, to any other place expressly mentioned in the warrant and further be dealt with in the manner contemplated in section 50 and other provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Possession and use of firearms

4B. (1) *(a)* The Commissioner may determine a category of officers authorised to possess firearms for the purposes of enforcing this Act.

(b) The possession and use of firearms by officers shall be subject to the provisions of sections 95 to 101 of the Firearms Control Act, 2000 (Act No. 60 of 2000), and the regulations made thereunder, to the extent that those provisions relate to an Official Institution.

(2) Any power conferred or duty imposed in the Firearms Control Act, 2000 (Act No. 60 of 2000), on the head of an Official Institution or on an Official Institution shall be deemed to be conferred or imposed on the Commissioner.

(3) *(a)* An officer to whom the Commissioner issues a permit to possess a firearm, must carry such permit on his or her person when he or she is in possession of a firearm.

(b) The permit contemplated in paragraph *(a)* is proof that such an officer is authorised to possess an official firearm.

(c) If, for any reason, an officer is unable to produce such a permit when required to do so, a statement by the Commissioner to the effect that such a permit has been issued is sufficient proof that the officer is authorised to have the firearm in his or her possession.

(4) The Commissioner may authorise the use of non-lethal weapons by officers in such circumstances and in such a manner as may be prescribed by rule.

(5) The Commissioner may make rules to facilitate the administration of this section, including rules—

(a) concerning the acquisition, record-keeping, issuing of permits, carrying, possession, use, safe-keeping, transport, theft, loss and disposal of firearms and ammunition;

(b) concerning the manner of reporting the firing of an official firearm and the procedures to be followed in respect thereof;

(c) concerning the type of non-lethal weapons that may be used by officers, the manner of their use and the safety and control measures that must be complied with in respect of such weapons;

(d) prescribing the manner in which official firearms, ammunition and related equipment must be marked and identified;

(e) regarding the training of officers contemplated in this section, including—

(i) the training and the certification requirements for the safe use of firearms and ammunition;

(ii) the levels of training; and

(iii) the standards required to ensure competency and certification in respect of any particular task; or

(f) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.

Border Patrol

4C. (1) *(a)* Notwithstanding anything to the contrary contained in any other law, the Commissioner may patrol the borders of the Republic and acquire any equipment necessary for patrolling the land and sea borders of the Republic, including any—

(i) patrol boats, aircraft and other vehicles; and

(ii) arms and ammunition required to equip or supply any customs patrol boat, aircraft or other vehicle.

(b) When patrolling the borders of the Republic an officer may arrest any person in accordance with the provisions of section 4A.

(2) *(a)* The customs officer commanding any customs patrol boat having hoisted and carrying or displaying the South African Revenue Service (SARS) customs ensign or flag may pursue any vessel where—

(i) that vessel does not immediately come to a stop when signalled, ordered or required to do so; or

(ii) the operator of the vessel refuses to permit the vessel to be boarded.

(b) The customs officer commanding any customs patrol boat involved in pursuing a vessel as contemplated in paragraph *(a)* may, as a last resort and after having fired a warning, fire at or into the vessel to compel it to come to a stop.

(3) *(a)* Any customs patrol boat may exercise on behalf of the Republic, or on behalf of a foreign state, the right of hot pursuit of any vessel in accordance with Article 111 of the United Nations Convention on the Law of the Sea.

(b) The seizure of such a vessel and the arrest of any person on board such a vessel may be effected by any customs officer on board a customs patrol boat.

(4) Notwithstanding anything to the contrary contained in any other law—

(a) customs patrol boats, aircraft and vehicles are exempted from any—

(i) registration, licensing or other requirement or any related fee normally applicable to the possession or movement of vessels, aircraft or vehicles, if clearly marked and identifiable as a customs patrol boat, aircraft or vehicle; or

(ii) mooring, docking, landing or road toll fee, or any similar charge, whilst used for official duties; and

(b) officers serving on board customs patrol boats are exempted from any provisions in any other law relating to their competency or certification if adequately trained and tested in accordance with the standards prescribed by rule in order to ensure their competency and certification.

(5) The Commissioner may make rules—

(a) as to all matters required or permitted by this section to be prescribed by rule;

(b) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.".

(2) Subsection (1) comes into operation on 31 March 2009.

Insertion of section 7A in Act 91 of 1964

27. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 7:

"**Special provisions relating to Advance Passenger Information**

7A. (1) In this section and the rules thereto, unless the context indicates otherwise—

'Advance Passenger Information' means an electronic message, including any updated or revised version thereof, transmitted to the Commissioner by an operator within the periods and containing the particulars the Commissioner may prescribe by rule;

'airline' means any air transport enterprise offering or operating an international air passenger service to and from the Republic;

'operator' means the person having the management of an aircraft at any time, and includes any airline or the person who owns or hires such aircraft or in whose name the aircraft is registered in terms of the regulations made under the Aviation Act, 1962 (Act No. 74 of 1962);

'operator system information' means any information an operator keeps electronically relating to—

(a) any flights scheduled by the operator (including information about schedules, aircraft arrival and departure terminals and routes);

(b) persons taking, or proposing to take, any flights scheduled by the operator;

(c) baggage, cargo or anything else carried, or proposed to be carried, on any flights scheduled by the operator and the tracking and handling of those things;

'passenger' means a person arriving on an aircraft from a place outside the Republic or departing on an aircraft to a place outside the Republic and includes, unless the context otherwise indicates, a crew member.

(2) The operator of any aircraft referred to in section 7(1) or (3) shall transmit electronically Advance Passenger Information which may be used by the Commissioner for the purposes of—

(a) facilitating the processing of passengers arriving or departing on such aircraft;

(b) preventing, detecting, investigating or punishing any offences committed under this Act or any other law by such passengers;

(c) facilitating any border security measures at an international airport; or

(d) protecting the health and safety of passengers and members of the public.

(3) Any Advance Passenger Information shall be subject to compliance with section 101B.

(4) The operator shall communicate Advance Passenger Information within the periods the Commissioner may prescribe by rule.

(5) *(a)* An operator of an aircraft contemplated in subsection (2), may apply to the Commissioner for an extension regarding the obligation to communicate electronically Advance Passenger Information to the Commissioner if—

(i) such an application is delivered to the Commissioner—

(aa) within a period of one month from the date this section comes into operation; or

(bb) if the first flight to or from the Republic is after that date, within one month from the date of such flight;

(ii) the operator shows good cause as to why the extension is necessary;

(iii) the operator demonstrates when he or she will be able to comply with this section; and

(iv) the operator complies with such conditions and interim measures as the Commissioner may impose.

(b) An operator who has been granted an extension as contemplated in paragraph *(a)*, shall provide officers with ongoing access to that operator's operator system information for the duration of the extension.

(6) Nothing in this section—

(a) affects any existing obligation imposed under this Act on a person to report or declare the arrival or departure of an aircraft (whether scheduled or actual) and any goods carried on, or passengers travelling on, such an aircraft;

(b) limits or alters any of the powers conferred on officers under this Act.

(7) Any person who—

(a) is required by this section to submit and fails to submit Advance Passenger Information in respect of a flight or a passenger on that flight;

(b) dishonestly or fraudulently prepares, transmits or alters any Advance Passenger Information; or

(c) is a passenger and furnishes passenger information which he or she knows is false in a material respect,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

(8) The Commissioner may make rules—

(a) as to all matters required or permitted by this section to be prescribed by rule;

(b) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the efficient and effective administration of the provisions contained in this section.''.

Amendment of section 13 of Act 91 of 1964, as amended by section 3 of Act 57 of 1966, section 5 of Act 105 of 1969, section 2 of Act 112 of 1977, section 3 of Act 101 of 1985, section 3 of Act 52 of 1986, section 11 of Act 59 of 1990 and section 8 of Act 45 of 1995

28. (1) Section 13 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subsection (5) of the following subsection:

''(5) *(a)* Notwithstanding anything contained in subsection (1) or subsection (4)*(a)* or in any other law but subject to the provisions of subsection (3) or subsection (4)*(b)*, any person importing or exporting goods by post shall submit the invoice in respect of such goods to the postmaster concerned**[, and no]**.

(b) No person shall receive, remove, take, deliver or in any manner deal with or in such goods unless the correct duty has been paid to that postmaster.''; and

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

''(6) Any postmaster may at any time detain any **[imported]** postal item under his control and cause such postal item to be removed to the Controller, who may examine such postal item, and if the goods therein are found not to agree in all respects with the particulars relating to the value, description or quantity appearing on the form or label referred to in subsection (1) or the invoice concerned, such goods shall notwithstanding anything to the contrary contained in any other law **[contained]**, be liable to forfeiture.''.

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

Amendment of section 15 of Act 91 of 1964, as amended by section 2 of Act 98 of 1970, section 2 of Act 89 of 1984, section 12 of Act 101 of 1985, section 12 of Act 59 of 1990 and section 20 of Act 34 of 2004

29. Section 15 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (1)*(a)* for the words preceding subparagraph (i) of the following words:

''at the time of such entering, all goods (including goods of another person) upon his person or in his possession **[which he brought with him into the Republic]** which—''; and

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

''*(b)* before leaving, all goods which he or she proposes taking with him or her beyond the borders of the Republic, including goods which are—

(i) carried on behalf of another person;

(ii) intended for remodel, process or repair abroad;

(iii) prohibited, restricted or controlled under any law; or

(iv) goods which a person who temporarily entered the Republic was required to declare upon entering the Republic as contemplated in paragraph *(a)*(iv).''.

Amendment of section 19 of Act 91 of 1964, as amended by section 3 of Act 95 of 1965, section 7 of Act 105 of 1969, section 13 of Act 45 of 1995 and section 39 of Act 19 of 2001

30. (1) Section 19 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the deletion in subsection (9) of paragraph *(b)*; and

(b) by the addition of the following subsection:

"(10) Notwithstanding anything to the contrary contained in this Act, the Commissioner may permit the licensee of a customs and excise storage or manufacturing warehouse to make use of a computer system to record and control the manufacture of goods, goods stored or manufactured in, received into and removed from such warehouse, if the—

(a) licensee of such warehouse is accredited in terms of section 64E; and

(b) Commissioner is satisfied that the licensee's computer system is capable of recording and controlling goods manufactured or stored, received and removed and identifying those goods by clear references to—

(i) relative bills of entry processed in connection therewith;

(ii) a prescribed certificate, invoice or other prescribed or approved document issued in respect thereof as contemplated in section 38(4) or (5); and

(c) licensee is able to comply with any reasonable requirements the Commissioner may prescribe by rule or impose in a specific case to ensure the information contained in such a computer system is secure and is preserved in such a manner that it is readily available to be accessed by an officer for audit purposes.".

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

Amendment of section 19A of Act 91 of 1964, as inserted by section 40 of Act 19 of 2001 and amended by section 64 of Act 30 of 2002

31. (1) Section 19A of the Customs and Excise Act, 1964, is hereby amended by the insertion in subsection (1)*(a)*(iii) of the following item after item *(ee)*:

"*(ee*A*)* simplified procedures for any person or a category of persons in respect of any matter contemplated in items *(aa)* to *(ee)* or *(ff)*, or in any other provision of this Act relating to such goods;".

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

Amendment of section 38 of Act 91 of 1964, as amended by section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 18 of Act 59 of 1990, section 28 of Act 45 of 1995, section 42 of Act 19 of 2001, section 123 of Act 60 of 2001 and section 21 of Act 21 of 2006

32. (1) Section 38 of the Customs and Excise Act, 1964, is hereby amended—

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

"(1) *(a)* Every importer of goods shall, within seven days of the date on which such goods are in terms of section 10 deemed to have been imported, make due entry of the goods as contemplated in section 39: Provided that—

(i) goods in a container depot must be so entered within a period of 28 days from the date the goods were landed as contemplated in section 43(1)*(a)*;

(ii) the Commissioner may, in respect of goods imported by any means of carriage or goods that are under the control of any person after landing, by rule prescribe any other period within which goods must be so entered; or

(iii) the Commissioner may, if an application for extension is received from the importer, importer's agent or the person having control of the goods as contemplated in section 43(1)*(a)* before expiry of such period, on good cause shown, extend such period.

(b) The provisions of paragraph *(a)* shall, subject to the permission of the Controller, not apply to—

(i) containers temporarily imported;

(ii) human remains;

(iii) goods which in the opinion of the Commissioner are of no commercial value;

(iv) goods imported under an international carnet; and

(v) goods of a value for duty purposes not exceeding R500, and on which no duty is payable in terms of Schedule No. 1,

and such goods need not be so entered.

(c) The Commissioner may, in respect of dutiable goods imported by air of a value for duty purposes not exceeding R500 and for which immediate clearance is requested, allow a licensee of any premises licensed under the provisions of this Act to remove such goods for home consumption and to pay the duties due at such time on compliance with such conditions as the Commissioner may specify by rule and impose in each case.

(d) (i) Any importer may, at any place appointed under the provisions of this Act for the entry of goods, make such entry of goods which have been loaded on a ship or delivered to the carrier which conveys the goods by vehicle to the Republic for discharge at that place, notwithstanding the fact that such ship or vehicle has not yet arrived at that place.

(ii) If any goods referred to in subparagraph (i) have not been so loaded at the time of entry as provided in section 45(2), the importer shall be guilty of an offence and those goods shall be deemed not to have been entered.";

(b) by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

"*(a)* (i) Every exporter of goods shall, unless exempted by rule, before such goods are exported from the Republic, enter the goods at the office of the Controller at the times prescribed by rule: Provided that, subject to the permission of the Controller—

(aa) containers temporarily exported;

(bb) human remains;

(cc) goods which in the opinion of the Commissioner are of no commercial value;

(dd) goods exported under an international carnet; and

(ee) goods of a value not exceeding R500, and on which no duty is payable,

need not be so entered.

(ii) The Commissioner may allow an extension of the period prescribed by rule on good cause shown, provided that application for an extension is received before expiry of such period.";

(c) by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

"*(b)* For the purposes of paragraph *(a)*, in relation to the **[delivery of a bill of entry]** entry of goods, the goods referred to therein shall be deemed to have been exported from the Republic—

(i) in the case of goods to be exported in a ship, at the time when such goods are delivered to **[the port authority]**, a container depot operator, **[the master of the ship concerned or a container operator, as the case may be]** container terminal operator, combination terminal operator, transit shed operator, bulk goods terminal operator or road vehicle terminal operator;

(ii) in the case of goods to be exported in an aircraft, at the time when such goods are delivered to the **[pilot of the aircraft concerned, or are brought within the control area of the airport authority concerned, as the case may be]** transit shed operator or degrouping operator;

(iii) in the case of goods to be exported in a train, at the time when such goods are delivered to the railway authority;

(iv) in the case of goods to be exported overland in a vehicle (excluding an aircraft and a train), subject to the provisions of paragraph *(a)*, at the time when such goods **[are loaded on the vehicle concerned]** arrive at a place of entry appointed under section 6 where such goods may enter or leave the Republic.''; and

(d) by the insertion in subsection (3) of the following paragraph:

''*(c)* If goods, removed in terms of any procedure regulated by this Act, are to be transferred from one mode of transport to another or from a particular mode of transport to a similar mode, the Controller where such procedure was authorised must be informed at the time and in the manner prescribed by rule.''.

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

Amendment of section 39 of Act 91 of 1964, as amended by section 1 of Act 85 of 1968, section 14 of Act 105 of 1969, section 1 of Act 93 of 1978, section 4 of Act 110 of 1979, section 8 of Act 98 of 1980, section 10 of Act 84 of 1987, section 3 of Act 69 of 1988, section 19 of Act 59 of 1990 and section 29 of Act 45 of 1995

33. (1) Section 39 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection *(2*A) for paragraph *(a)* of the following paragraph:

''*(a)* Any person who removes goods from a customs and excise warehouse by means of the issuing of a certificate, invoice or other document referred to in section 38(4) or (5) shall present to the Controller a validating bill of entry in the prescribed form at the time and in the manner specified by rule in respect of any such certificate, invoice or other document, and shall pay at the prescribed time to the Controller the duty due on the goods to which such certificate, invoice or other document relates.''.

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

Insertion of sections 39B, 39C and 39D in Act 91 of 1964

34. (1) The Customs and Excise Act, 1964, is hereby amended—

(a) by the insertion of the following section:

''**Simplified clearance and release procedures**

39B. (1) In this section and for the purposes of sections 39C and 39D, unless the context indicates otherwise—

'incomplete bill of entry' means a bill of entry containing at least the particulars as specified in subsection (5)*(a)* and prescribed by rule or determined in a specific instance;

'periodic bill of entry' means a supplementary bill of entry in respect of a previously delivered provisional or an incomplete bill of entry, which is delivered to the Commissioner periodically within the period prescribed in section 39C;

'provisional bill of entry' means a bill of entry containing all the particulars as set out on the prescribed form, but provisionally declaring certain particulars subject to delivery of a supplementary bill of entry by means of which the provisional particulars are corrected; and

'supplementary bill of entry' means a bill of entry that corrects a provisional bill of entry or completes an incomplete bill of entry and which, as contemplated in subsection (10), together with the provisional or incomplete bill of entry, complies with the requirements of section 39 and any other provision of this Act relating to the entry of the goods concerned.

(2) Notwithstanding anything to the contrary contained in this Act, the Commissioner may, in accordance with the provisions of this section, generally and for a specific period or in a specific instance allow an importer or exporter to deliver a provisional or an incomplete bill of entry where the said person does not have all the information or documents required to make due entry.

(3) An application for a provisional or an incomplete bill of entry may be made in respect of—

(a) any imported goods to be entered for—

(i) home consumption (including entry under any item of Schedule No. 3, 4 or 6);

(ii) removal in bond; or

(iii) placing in a licensed customs and excise warehouse; or

(b) goods intended to be exported from the Republic.

(4) Notwithstanding anything to the contrary contained in this Act, any approval by the Commissioner for the use of a provisional or an incomplete bill of entry in respect of goods to be removed in bond, shall be subject to such special procedures and conditions as the Commissioner may specify by rule or determine in a specific instance.

(5) *(a)* Except where the Commissioner otherwise determines, an incomplete bill of entry shall—

(i) contain at least—

(aa) the purpose for which the goods are being entered according to the prescribed purpose code;

(bb) the name of the consignor, consignee and any applicable clearing agent;

(cc) the value of the goods;

(dd) the origin of the goods;

(ee) the quantity of the goods;

(ff) a sufficiently precise description of the goods to determine the tariff heading and whether the importation or exportation thereof is prohibited or restricted under any law and, if so restricted, shall be accompanied by the required documentation authorising the importation or exportation of the goods concerned;

(gg) applicable marks and numbers;

(hh) container numbers;

(ij) container seal numbers;

(kk) cargo reference or cargo tracking numbers;

(ll) Unique Consignment Reference (UCR) numbers referred to in the rules for section 38; and

(mm) the transport document number and date; and

(ii) contain such other particulars as the Commissioner may prescribe by rule and that are required to—

(aa) calculate the amount of security that may be required to be lodged in respect of such goods;

(bb) identify the consignment and achieve effective customs control over the goods concerned; and

(cc) release the goods.

(b) The Commissioner may, on good cause shown, allow an importer or exporter, who is not able to declare the correct value of the goods, to declare a provisional value considered reasonable by the Commissioner.

(c) The Commissioner may prescribe generally by rule or determine in a specific instance the supporting documentation that must accompany an application for an incomplete bill of entry.

(6) A provisional bill of entry shall set forth the full particulars as indicated on the form and shall—

(a) reflect the purpose for which the goods are being entered according to the prescribed purpose code;

(b) contain a declaration by the importer or exporter stating the particulars that are only provisional;

(c) be supported by the documents referred to in section 39 and, where applicable, by any documentation required under any other law authorising the importation or exportation of the goods.

(7) An importer or exporter must, unless the Commissioner grants an extension under section 38(1)*(a)*(iii) or (3)*(a)*(ii), deliver any application for a provisional or an incomplete bill of entry within the periods contemplated in section 38(1)*(a)* or (3)*(a)*.

(8) *(a)* The Commissioner may require any person applying for a provisional or an incomplete bill of entry to furnish the amount of security that the Commissioner may require in respect of any duties that may be payable, or become payable on such goods, pending the delivery of the supplementary bill of entry.

(b) Notwithstanding anything to the contrary contained in this Act, any goods entered on a provisional or an incomplete bill of entry, shall be subject to—

(i) the duty leviable thereon at the time; and

(ii) the fulfilment of any obligation in terms of this Act in respect of any procedure under which the goods are entered, from the time of entry of those goods.

(c) For the purposes of this section 'time of entry' shall be deemed to be the time when the provisional or incomplete bill of entry is delivered as contemplated in subsection (12), and where the goods concerned are released in terms of that subsection.

(9) *(a)* An importer shall, within seven days from the date of the delivery of a provisional or an incomplete bill of entry, and an exporter before the goods are exported unless exempted as contemplated in section 38(3)*(a)*, deliver a supplementary bill of entry and pay any duty that may be due in respect thereof in compliance with the requirements of section 39(1) and (2), but any document authorising the importation or exportation of goods and presented with the application for a provisional or an incomplete bill of entry need not again be produced unless the Controller so requires.

(b) A supplementary bill of entry shall include a reference to the relevant provisional or incomplete bill of entry.

(c) A supplementary bill of entry shall be delivered to the same office where the provisional or incomplete bill of entry to which it relates was delivered.

(d) The Commissioner may, on application by the importer or exporter before expiry of the period specified in paragraph *(a)*, extend that period by not more than seven days where the Commissioner is satisfied that reasonable grounds exist on which the importer or exporter is not able to obtain the necessary information or documents in order to deliver the supplementary bill of entry.

(10) Any supplementary bill of entry and any provisional or incomplete bill of entry preceding it and in respect of which it is made, shall be deemed to constitute a single indivisible bill of entry taking effect on the date of delivery of the provisional or incomplete bill of entry and shall on acceptance of the supplementary bill of entry for the purposes of this Act, be deemed to be due entry made of the goods concerned from that date.

(11) *(a)* The Commissioner may refuse an application for a provisional or an incomplete bill of entry in terms of this section where—

(i) the importer or exporter concerned—

(aa) has been convicted of a serious offence or repeated less serious offences under this Act;

(bb) has failed to provide valid reasons for not being in possession of the information or documents contemplated in section 39 and any other provision of this Act;

(cc) is not able to comply with subsection (5);

(dd) is not registered as an importer or exporter as contemplated in section 59A and the rules made thereunder; or

(ee) has failed to lodge the amount of security required by the Commissioner;

(ii) the importation or exportation of the goods concerned is restricted under any other law and the importer or exporter is not in possession of the required documentation authorising the importation or exportation of the goods;

(iii) the importer or exporter has not applied for a provisional or an incomplete bill of entry within the period specified in subsection (7).

(b) Where the Commissioner has refused an application for a provisional or an incomplete bill of entry, the importer or exporter concerned shall, where the relevant period prescribed in section 38(1)*(a)* or (3)*(a)*—

(i) has not yet expired, make due entry of the goods before the expiry of such a period;

(ii) has expired, or will expire within three days from the date of refusal, make due entry of the goods within five days from the date of refusal and such period shall be deemed to be an extension granted by the Commissioner as contemplated in section 38(1)*(a)* or (3)*(a)*.

(12) The delivery of a provisional or an incomplete bill of entry to the Commissioner or a Controller, as appropriate, shall be deemed for the purposes of this section to be a finalised application for a provisional or an incomplete bill of entry by the importer or exporter concerned and the release of the goods entered on such a bill of entry by the Commissioner or a Controller shall be deemed to be the authorisation contemplated in subsection (2).

(13) The Commissioner may by rule—

(a) designate the customs offices authorised to accept applications for provisional or incomplete bills of entry;

(b) limit the application of the provisions of this section to a certain class or kind of goods or exclude certain classes or kinds of goods if such goods—

(i) present an undue risk to revenue;

(ii) are entered for a purpose that will not be facilitated by the subsequent delivery of a supplementary bill of entry;

(iii) are of a nature not suitable for control by a supplementary bill of entry or post-importation audit;

(c) prescribe the manner in which the release of goods entered on a provisional or an incomplete bill of entry may be authorised; and

(d) prescribe any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of this section.";

(b) by the insertion of the following section:

"**Simplified clearance and release procedures for authorised persons**

39C. (1) Notwithstanding anything to the contrary contained in this Act, the Commissioner may, in accordance with this section, allow an importer or exporter accredited in terms of section 64E, or a category of authorised persons specified by rule, to—

(a) obtain release of goods imported or for export on delivery of an incomplete bill of entry as the Commissioner may prescribe generally by rule or determine in a specific instance;

(b) periodically deliver a supplementary bill of entry in respect of a specific preceding incomplete bill of entry as may be specified in such rule.

(2) Unless the context otherwise indicates, the provisions of section 39B(1), (2), (3), (4), (5), (7), (9), (10), (11), (12) and (13) apply *mutatis mutandis* to this section.

(3) An authorised importer or exporter shall, within a period of seven days from the last day of the preceding month, deliver a supplementary bill of entry in respect of each incomplete bill of entry delivered during that month and pay any duties due on such goods in accordance with the requirements of section 39(1) and (2).''; and

(c) by the insertion of the following section:

''**Simplified procedures for immediate release of goods**

39D. (1) Notwithstanding anything to the contrary contained in any provision of this Act, the Commissioner may—

(a) subject to such conditions as the Commissioner may prescribe generally by rule or may determine in a specific instance;

(b) in respect of a class or kind of goods specified in such rule; and

(c) for which immediate clearance and release are requested,

authorise the clearance and release of such goods on the basis of—

(i) the information affixed to documents and parcels contained in a consignment of postal goods not imported through the South African Post Office Limited if the Commissioner records such information, or is satisfied that such information is being recorded for purposes of record and audit;

(ii) a transport document containing the minimum information as specified by the Commissioner and presented electronically by the responsible carrier or cargo reporter referred to in the rules contemplated in section 8, within such a period prior to the arrival or departure of the ship, aircraft or vehicle carrying such goods as may be prescribed by rule; or

(iii) *(aa)* an incomplete bill of entry contemplated in section 39B containing the information required in terms of that section; or

(bb) other information or documents as may be prescribed by the Commissioner by rule,

and, if true and correct, such information or documents shall, subject to payment of any duty due on such goods in such a manner and within such a period as may be specified by rule, be deemed to be a due entry of the goods for the purposes of this Act from the date of delivery of such documents where the Commissioner authorises clearance and release of those goods.

(2) *(a)* The provisions of subsection (1) do not apply to—

(i) goods of which the importation or exportation is prohibited or restricted in terms of any law;

(ii) goods of a customs value exceeding a limit specified by rule;

(iii) dutiable goods liable to duty in excess of a limit specified by rule;

(iv) any class or kind of goods that the Commissioner consider—

(aa) to be a high risk to revenue; or

(bb) not suitable for clearance and release as contemplated in subsection (1).

(b) An importer or exporter of goods contemplated in paragraph *(a)*, must make due entry of such goods as required in terms of sections 38 and 39.

(3) *(a)* Notwithstanding anything to the contrary contained in this Act, an importer who is unable to make due entry of goods imported may apply to the Commissioner for the immediate release of such goods as contemplated in paragraph *(b)*, if the—

(i) importer provides sufficient reasons why immediate release of the goods is required;

(ii) importer applies for such immediate release within the periods contemplated in section 38(1)*(a)*;

(iii) Commissioner is satisfied that the importer will subsequently make due entry of the goods as required by section 39;

(iv) importer satisfies the Commissioner that the importation of the goods concerned is not prohibited or restricted in terms of any other law, or if so restricted, provides the Commissioner with the required documentation authorising the importation thereof;

(v) importer or agent lodges such security as the Commissioner may require in respect of any duties due on such goods pending the delivery of the bill of entry contemplated in subparagraph (iii) and payment of such duties; and

(vi) application for immediate clearance is accompanied by such essential documentation as may be prescribed by rule or determined by the Commissioner in a specific instance; or

(vii) importer complies with such other requirements as may be prescribed by rule.

(b) Application for immediate release in the circumstances contemplated in paragraph *(a)*, shall be made on a bill of entry, in the prescribed form endorsed in a manner prescribed by rule to—

(i) indicate that its purpose is solely to apply to the Commissioner for immediate release of the goods described therein; and

(ii) furnish an undertaking to comply with the provisions of this section and the rules made thereunder.

(c) A bill of entry endorsed in the manner contemplated in paragraph *(b)* shall be deemed not to be due entry.

(d) An importer who has been granted immediate release of goods in terms of the provisions in this subsection must make due entry of such goods within the period contemplated in section 38(1)*(a)* and such bill of entry shall be deemed to be effective from the date that release is granted.

(e) The Commissioner may prescribe by rule the manner of release and conditions in terms of which release of such goods may be authorised.

(f) Where the importer applies to the Commissioner for an extension before expiry of the period contemplated in section 38(1)*(a)*, the Commissioner may extend that period by not more than seven days where the Commissioner is satisfied that reasonable grounds exist on which the importer is not able to obtain the necessary information or documents to make due entry of the goods.

(4) *(a)* The Commissioner may refuse any application for immediate release of goods in a manner contemplated in subsection (3) where the importer has failed to comply with any condition prescribed therein or the rules or any condition imposed by the Commissioner.

(b) Where the Commissioner has refused such an application, the importer concerned shall, within five days of such refusal—

(i) make due entry of the goods as contemplated in section 39; or

(ii) otherwise deal with the goods as the Commissioner may direct,

failing which the goods shall be regarded as uncleared.".

(2) Paragraphs *(a)* and *(b)* of subsection (1) come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

(3) Paragraph *(c)* of subsection (1), insofar as it relates to the insertion of section 39D(1) and (2), comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 40 of Act 91 of 1964, as amended by section 9 of Act 95 of 1965, section 6 of Act 71 of 1975, section 5 of Act 105 of 1976, section 2 of Act 93 of 1978, section 4 of Act 86 of 1982, section 3 of Act 89 of 1983, section 11 of Act 84 of 1987, section 4 of Act 68 of 1989 and section 30 of Act 45 of 1995

35. (1) Section 40 of the Customs and Excise Act, 1964, is hereby amended—

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

"*(d)* in the case of goods purchased by or sold, consigned or disposed of to any person in or outside the Republic, a correct and sufficient invoice thereof, as prescribed, has been produced to the Controller;";

(b) by the substitution in subsection (3)*(a)* for subparagraphs (i) and (ii) of the following subparagraphs:

"(i) an importer or exporter or a manufacturer of goods shall on discovering that a bill of entry **[presented]** delivered by him or her—

(aa) does not in every respect comply with section 39; or

(bb) is invalid in terms of subsection (1) of this section **[forthwith adjust that bill of entry by means of a voucher of correction or in such other manner as the Commissioner may prescribe; or]**,

adjust that bill of entry without delay by means of—

(A) a voucher of correction; or

(B) cancellation of such bill of entry and substitution of a fresh bill of entry; or

(C) in such other manner as the Commissioner may prescribe; or

(ii) if—

(aa) a bill of entry has been passed in error by reason of duty having been paid on goods intended for storage or manufacture in a customs and excise warehouse under section 20 or for purposes of use under rebate of duty under section 75; or

(bb) an importer, exporter or manufacturer on good cause shown, requests substitution thereof by another bill of entry in circumstances other than those contemplated in item *(aa)*,

the Commissioner may allow the importer, exporter or manufacturer concerned to adjust that bill of entry by substitution of a fresh bill of entry and cancellation of the original bill of entry, provided such goods, where a rebate of duty is being claimed, qualified at the time the duty was paid in all respects for that rebate"; and

(c) by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

"*(b)* No application for such substitution as is referred to in paragraph *(a)*(ii) or in that paragraph as read with paragraph *(a*A*)* shall be considered by the Commissioner unless it is received by the Controller, supported by the necessary documents and other evidence to prove that such substitution is justified **[within a period of six months]** where the application relates to—

(i) a substitution contemplated in paragraph *(a)*(ii)*(aa)*, within a period of six months—

(aa) from the date of entry for home consumption as provided in section 45(2), of the goods to which the application relates; or

(bb) in the case of any amendment of a determination referred to in item *(aa)* of paragraph *(a*A*)* or of a new determination referred to in item *(bb)* of the said paragraph *(a*A*)*, from the date on which such amendment is effected or such new determination

is made or, if such amendment or new determination is published by notice in the *Gazette*, the date on which such amendment or new determination is so published; or

(cc) in the case of an amendment referred to in item *(cc)* of the said paragraph *(a*A*)*, from the date on which such amendment is published by notice in the *Gazette*; and

(ii) a substitution contemplated in paragraph *(a)*(ii)*(bb)*, within a period of one month from the date the goods were entered on the bill of entry for which substitution is required or within such longer period as the Commissioner may prescribe by rule or determine in a specific instance.''.

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

Amendment of section 64E of Act 91 of 1964, as inserted by section 48 of Act 19 of 2001 and amended by section 50 of Act 30 of 2002

36. (1) Section 64E of the Customs and Excise Act, 1964, is hereby amended—

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

''*(a)* The Commissioner may—

(i) confer accredited client status on any applicant therefor who is licensed or registered under any provision of this Act; and

(ii) determine by rule levels of accredited client status and specific criteria applicable to each level.'';

(b) by the substitution in subsection (1)*(b)* for the words preceding subparagraph (i) of the following words:

''**[Accredited client status may be acquired on conforming with any reasonable requirements]** Every applicant for accredited client status shall apply for a specific level thereof and, in addition to the criteria prescribed for that level by rule or that may be determined by the Commissioner, **[which may include that the applicant proves—]** prove the following:'';

(c) by the substitution in subsection (3) for paragraph *(a)* of the following paragraph:

''*(a)* The Commissioner may refuse any application for accredited client status or any level of accredited client status or cancel or suspend such status.'';

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

''*(c)* Any accredited client status conferred by the Commissioner shall remain valid for a period prescribed by rule.''; and

(e) by the addition of the following subsection:

''(4) *(a)* Where accredited client status was conferred by the Commissioner on any applicant prior to the date the amendment to subsection (1)*(a)* came into effect in respect of the levels of client status, that status shall be deemed to be a first level accredited client status.

(b) Any application for a higher status must be in accordance with the requirements contemplated in subsection (1).''.

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

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, section 29 of Act 21 of 2006 and section 18 of Act 36 of 2007

37. (1) Section 80 of the Customs and Excise Act, 1964, is hereby amended by the addition to subsection (1) of the following paragraph:

''*(s)* contravenes or fails to comply with any provision of section 39B, 39C or 39D,''.

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

Insertion of section 101B in Act 91 of 1964

38. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 101:

''**Special provisions relating to the processing and protection of personal information**

101B. (1) In this section and the rules made thereunder, unless the context otherwise indicates, the following words and phrases, and their grammatical variations where applicable, shall have the following meanings:

'Advance Passenger Information', **'airline'** and **'operator'** shall have the meaning assigned thereto in section 7A;

'personal information' means the personal information of a passenger prescribed by rule for the purposes of the definition of Advance Passenger Information in section 7A(1).

(2) This section—

(a) applies to the Commissioner, an officer, or any person acting under a delegation from or under the control or direction of the Commissioner;

(b) prohibits the unauthorised recording and further processing of personal information;

(c) regulates the manner in which personal information must be processed by the Commissioner.

(3) *(a)* The Commissioner or an officer may, subject to subsection (6), obtain and use personal information only for the purpose specified in section 7A(2).

(b) A person acting under a delegation from or under the control or direction of the Commissioner may only process personal information with the knowledge and consent of the Commissioner and subject to the provisions of this section.

(4) A person to whom this section applies, shall not—

(a) record or deal with personal information other than in the manner prescribed in this section; or

(b) further process any personal information except as authorised by this section.

(5) *(a)* No records containing personal information which allows a passenger to be identified shall be retained for longer than necessary for achieving the purpose of Advance Passenger Information processing, unless—

(i) the passenger authorises such retention;

(ii) the Commissioner, on good cause, for the purposes of this Act, requires the retention of the record for a longer period;

(iii) another law requires or authorises the retention of the record for a longer period;

(iv) the retention is for historical or statistical reasons, if the Commissioner has established appropriate safeguards against the use of such records for other purposes; or

(v) the personal information has been used to make a decision about a passenger and the record must be retained for such a period as may be reasonably required for the passenger to request access to the record.

(b) Personal information that is not retained for any of the longer periods contemplated in paragraph *(a)* shall, as soon as practicable after its retention is no longer authorised under that paragraph, be promptly—

(i) de-identified; or

(ii) deleted or destroyed,

by the Commissioner.

(6) Personal information may not be further processed in a manner that is not compatible with the purpose for which Advance Passenger Information is obtained and used by the Commissioner, unless—

(a) the passenger authorises such further processing;

(b) non-compliance is necessary—

(i) for the prevention, detection, investigation, prosecution and punishment of an offence under this Act or any other law;

(ii) for the protection of the public revenue; or

(iii) to prevent an imminent and serious threat to public safety or the life or health of the passenger; or

(c) the use of the data is only for historical or statistical reasons and the Commissioner has established appropriate safeguards to ensure that any further processing is only carried out for such reasons.

(7) The Commissioner must—

(a) whether at the request of a passenger or on own initiative, ensure that records relating to personal information are complete, not misleading, up to date and accurate;

(b) implement appropriate technical and other measures to—

(i) secure the integrity of personal information by safeguarding against the risk of loss of, or damage to, or destruction of personal information; and

(ii) prevent the unauthorised or unlawful access to, or processing of, personal information;

(c) take measures to identify all readily foreseeable internal and external threats to personal information in the possession of, or under the control of, the Commissioner; and

(d) (i) establish and maintain appropriate safeguards against the risks identified;

(ii) regularly verify that the safeguards are effectively implemented; and

(iii) ensure that the safeguards are continuously updated in response to new risks or deficiencies in previously implemented safeguards.

(8) *(a)* The Commissioner must—

(i) where an information security compromise or suspected compromise of personal information has taken place; and

(ii) if the identity of a person affected by the compromise can be established,

notify that person of such compromise or suspected compromise and provide him or her with such information as may be relevant to allow the person to protect himself or herself against the potential consequences of the compromise.

(b) The Commissioner may delay any notification contemplated in paragraph *(a)*, where the Commissioner determines that such notification will impede or otherwise adversely affect any criminal investigation.

(9) *(a)* Any passenger is entitled to—

(i) obtain from the Commissioner free of charge confirmation of whether the Commissioner holds personal information about him or her;

(ii) request the Commissioner, after having produced adequate proof of identity, to provide the particulars of the personal information held, and information as to the identity of all persons who have had access to his or her personal record—

(aa) within a reasonable time;

(bb) at a charge as may be prescribed by the Commissioner by rule;

(cc) in a reasonable manner;

(dd) in a form that is generally understandable.

(b) Where a passenger makes a request contemplated in paragraph *(a)*, the Commissioner must inform the passenger that he or she may request the correction of any such information.

(c) Where the Commissioner receives a request for the correction of personal information from a passenger, the Commissioner must—

(i) correct the information concerned;

(ii) in instances where the Commissioner decides on good cause not to correct the information, attach at the request of the passenger a statement to the information concerning the correction sought but not made in such a manner that it will always be read together with the information;

(iii) *(aa)* where the information was further processed as contemplated in subsection (6)*(b)*, advise, if reasonable practicable, each person to whom the information was disclosed as a result of the further processing of the steps taken in terms of subparagraphs (i) and (ii); and

(bb) inform the passenger of the actions taken as a result of the request for correction.

(10) The Commissioner may not—

(a) process personal information concerning a person's religion or philosophy of life, race, political persuasion or health or sexual life, except where the passenger has given his or her explicit consent to the processing of the information;

(b) transfer any personal information about a passenger to a foreign government other than in the manner contemplated in section 50: Provided that the Commissioner is satisfied that the recipient of that information is subject to a law which effectively upholds principles for fair handling of personal information that are substantially similar to the information protection principles set out in this section.

(11) If any person of whom personal information is held in terms of this section is dissatisfied with any decision by the Commissioner or an officer in respect thereof that person may, before instituting any judicial proceedings, make use of any of the procedures contemplated in Chapter XA.

(12) Any person who—

(a) causes any personal information to be compromised as contemplated in subsection (8); or

(b) without authority gains access to personal information or interferes with the protection of personal information,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.''.

Amendment of section 106 of Act 91 of 1964, as amended by section 30 of Act 105 of 1969, section 35 of Act 59 of 1990 and section 66 of Act 45 of 1995

39. Section 106 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) An officer may on entry of any imported goods or goods for export or during the manufacture of any excisable goods, or at any time after such entry or manufacture, take, without payment, from any person in possession of such imported goods or goods for export or of any manufactured or partly manufactured excisable goods samples of such imported, manufactured or partly manufactured goods or of materials intended for the manufacture of excisable goods or of goods used under the provisions of Chapter X, for examination or for ascertaining the duties payable thereon or for such other purpose as the Commissioner may prescribe by rule, and those samples shall be dealt with and accounted for in such manner as the Commissioner may direct.''.

Amendment of section 120 of Act 91 of 1964, as amended by section 36 of Act 105 of 1969, 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, section 35 of Act 21 of 2006 and section 24 of Act 36 of 2007

40. Section 120 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for paragraph *(c)* of the following paragraph:

''*(c)* as to the reporting inwards and outwards of ships and aircraft (including such reporting of ships or aircraft calling or landing at places not appointed as places of entry or customs and excise airports under this Act), the entry or departure of vehicles overland, the landing, loading, removal, detention, release, examination, conveyance and handling of cargo (including transit and coastwise and transhipment cargo), goods under customs control, customs controlled areas, the control of persons (including their baggage and goods) entering or leaving the Republic, the placing into or removal from any State warehouse of goods and the removal in bond of goods;''.

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, section 37 of Act 32 of 2005 and section 32 of Act 36 of 2007

41. Section 28 of the Value-Added Tax Act, 1991, is hereby amended—

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

''**[Every]** Subject to subsection (4), every vendor shall, within the period ending on the twenty-fifth day of the first month commencing after the end of a tax period relating to such vendor or, where such tax period ends on or after the first day and before the twenty-fifth day of a month, within the period ending on such twenty-fifth day—''; and

(b) by the insertion of the following subsection after subsection (3):

''(4) *(a)* The Minister may, by notice in the *Gazette*, prescribe a date for the submission of returns and the making of payments which date may not fall on a day more than two business days prior to the date referred to in subsection (1).

(b) The notice contemplated in paragraph *(a)* must be published at least 30 days prior to the date so prescribed by the Minister.''.

Amendment of section 41B of Act 89 of 1991

42. Section 41B of the Value-Added Tax Act, 1991, is hereby amended—

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

''(i) the provisions of **[sections]** subsections (2)*(k)*, (2)*(l)* and (5) of section 76E **[(other than subsection 76E(2)*(m)*)]** and section 76F of the Income Tax Act shall not apply to any VAT class ruling or VAT ruling;''; and

(b) by the deletion of subsection (3).

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, section 88 of Act 20 of 2006 and section 36 of Act 36 of 2007

43. (1) Section 44 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3)*(d)* for the proviso of the following proviso:

'': Provided that where the vendor which is—

(i) a company that is not a resident of the Republic requests that a refund or other amount be transferred to a bank account or an account with a similar institution in the Republic other than that account of the vendor; or

(ii) *(aa)* a subsidiary company, as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973), of a holding company, as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973), requests that a refund or

other amount be transferred to the bank account or the account with a similar institution in the Republic of that holding company;

(bb) a subsidiary company, as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973), requests that a refund or other amount be transferred to the bank account or the account with a similar institution in the Republic of another subsidiary company of its holding company, as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973); or

(cc) a holding company, as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973), requests that a refund or other amount be transferred to the bank account or the account with a similar institution in the Republic of its subsidiary company, as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973),

the vendor must notify the Commissioner in writing and must indemnify the Commissioner against any loss by the vendor or the State as a result of such instruction.''.

(2) Subsection (1) comes into operation on 1 April 2009.

Amendment of section 45 of Act 89 of 1991, as amended by section 33 of Act 136 of 1992, section 4 of Act 61 of 1993, section 5 of Act 61 of 1993, section 19 of Act 140 of 1993, section 24 of Act 20 of 1994, section 33 of Act 37 of 1996, section 43 of Act 27 of 1997, section 101 of Act 30 of 1998 and section 169 of Act 60 of 2001

44. (1) Section 45 of the Value-Added Tax Act, 1991, is hereby amended by the insertion in the proviso to subsection (1) of the following paragraph:

''(iiA) where the vendor—

(aa) has not furnished the Commissioner with the particulars of the banking account of the enterprise; or

(bb) has not notified the Commissioner that a refund or other amount be transferred to a bank account or an account with a similar institution other than that of the vendor as contemplated in the proviso to section 44(3)*(d)*,

the said period of 21 days shall be reckoned from the date the vendor furnishes the Commissioner with the particulars of the bank account or account with a similar institution of the enterprise or from the date the vendor has notified the Commissioner that a refund or other amount be transferred to a bank account or an account with a similar institution other than that of the vendor;''.

(2) Subsection (1) comes into operation on 1 April 2009.

Amendment of section 7 of Act 21 of 2006

45. Section 7 of the Revenue Laws Second Amendment Act, 2006, is hereby amended—

(a) by the deletion of paragraph *(l)* of subsection (1); and

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

''*(b)* Paragraphs *(b)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)*, *(i)*, *(j)*, *(k)* and *(m)* of subsection (1) come into operation on a date to be fixed by the President by proclamation in the *Gazette*.''.

Repeal of section 21 of Act 21 of 2006

46. Section 21 of the Revenue Laws Second Amendment Act, 2006, is hereby repealed.

Amendment of section 29 of Act 21 of 2006

47. Section 29 of the Revenue Laws Second Amendment Act, 2006, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

''*(a)* by the insertion in subsection (1) after paragraph **[*(r)*]** *(s)* of the following paragraph:

'**[*(s)*]** *(t)* fails to deal with goods as contemplated in section 11(1),'; and''.

Repeal of section 35 of Act 21 of 2006

48. Section 35 of the Revenue Laws Second Amendment Act, 2006, is hereby repealed.

Amendment of section 3 of Act 26 of 2007, as amended by section 27 of Act 4 of 2008

49. (1) Section 3 of the Securities Transfer Tax Administration Act, 2007, is hereby amended—

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

''*(b)* section 5 of the Securities Transfer Tax Act, 2007, which becomes payable during a month in respect of any transfer, must be paid by the member or participant holding that security in custody or, in the case where the listed security is not held in custody by either a member or participant, through the company that issued the listed security to the Commissioner by the 14th day of the following month; and''; and

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

''(2) **[The member or participant]** Any person who has the obligation in terms of section 3 of the Securities Transfer Tax Act, 2007, to pay the tax must by the date referred to in subsection (1)**[*(a)* and *(b)*]** submit a declaration electronically, in the form and manner as the Commissioner may determine and containing the information prescribed by the Commissioner, stating the amount of tax (if any) payable by that **[member or participant]** person.''.

(2) Subsection (1) is deemed to have come into operation on 1 July 2008 and applies in respect of the transfer of any security on or after that date.

Amendment of section 90 of Act 35 of 2007

50. Section 90 of the Revenue Laws Amendment Act, 2007, is hereby amended by the deletion in subsection (1) of paragraph *(d)*.

Short title and commencement

51. (1) This Act is called the Revenue Laws Second Amendment Act, 2008.

(2) The amendments effected to the Income Tax Act, 1962, by this Act are, save insofar as is otherwise provided for in this Act or the context indicates otherwise, deemed for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009.