

## VALUE-ADDED TAX:

*This **draft legislation** is released for public information. The amendments contained in this draft are merely proposals which are **subject to change and final approval by the Minister of Finance**. Early comments on this draft will be considered for possible inclusion in a revised draft Bill.*

*It is the intention to release the revised draft Bill in the first seven days of October, prior to the commencement of the informal Parliamentary process.*

*There will be an opportunity to comment on the revised draft Bill, either directly to the National Treasury and SARS or during the public hearings in the Parliamentary Committees in mid-October 2003.*

*Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.*

*Comments may be submitted to either:*

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### **Amendment of section 1 of Act 89 of 1991**

. Section 1 of the Value Added Tax Act, 1991, is hereby amended—

- (a) by the insertion before the definition of “ancillary transport expenses” of the following definition:

“adjusted cost”, means the cost of any goods or capital goods where tax has been charged or would have been applicable prior to the commencement date, in respect of the supply of goods and services.”;

- (b) by the substitution in the definition of “enterprise” for item (aa) of subparagraph (iii) of the proviso:

“(aa) the rendering of services by an employee to his employer in the course of his employment or the rendering of services by the holder of any office in performing the duties of his office, shall not be deemed to be the carrying on of an enterprise to the

extent that any amount constituting remuneration as contemplated in the definition of “remuneration” in paragraph 1 of the Fourth Schedule to the Income Tax Act **[(disregarding paragraphs (i) and (vii) of that definition)]** is paid or is payable to such employee or office holder, as the case may be;”;

- (c) by the insertion after the definition of “money” of the following definition: “‘month’ means any of the twelve portions into which any calendar year is divided;”.

#### **Amendment of section 8 of Act 89 of 1991**

. Section 8 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (9) of the following subsection:

“(9) For the purposes of this Act, where any vendor in carrying on an enterprise in the Republic **[transfers]** has exported goods or provides any service to or for the purposes of his branch or main business in respect of which the provisions of paragraph (ii) of the proviso to the definition of ‘enterprise’ in section 1 are applicable, the vendor shall be deemed to supply such goods or service in the course or furtherance of his enterprise.”.

#### **Amendment of section 9 of Act 89 of 1991**

. Section 9 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(c) where that supply is a supply to which section 8 (4) refers, at the time at which the goods are **[delivered]** exported to the recipient.”;

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

“(e) where the provisions of section 8(9) are applicable in respect of a **[transfer of]** exported goods or the provision of any service by a vendor to his branch at the time the goods are **[delivered]** exported to such branch or the service is performed, as the case may be.”.

#### **Amendment of section 10 of Act 89 of 1991**

. Section 10 of the Value Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (5) for subparagraph (iii) of paragraph (a) of the following paragraph:

“Any costs (including tax) incurred by the vendor in respect of the transportation or delivery of such goods or the provision of such services in **[connection with the transfer]** respect of such goods that are exported or the provision of such services as contemplated in section 8(9); and”;

(b) by the substitution in subsection (9) for item (aa) of subparagraph (i) of symbol “A” of the formula of the following item:

“(aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply or would in terms of that section have been deemed to be the open market value of the supply were it not for the fact that the recipient would have been entitled under section 16(3) to make a deduction of the full amount of tax in respect of that supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or”.

### **Amendment of section 11 of Act 89 of 1991**

. Section 11 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph (o) of the following paragraph:

“(o) the services are supplied, as contemplated in section 8 (9), by a vendor to or for the purposes of his branch or main business situated in an export country in respect of which the provisions of paragraph (ii) of the proviso to the definition of ‘enterprise’ in section 1 are applicable to the extent that such services are for use outside the Republic; or”.

### **Amendment of section 13 of Act 89 of 1991**

. Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (ii) of the proviso of the following paragraph:

“(ii) where any goods have been imported and entered in a licensed Customs and Excise warehouse but have not been entered for home consumption, any supply of such goods before they are entered for home consumption shall be **[disregarded]** zero-rated for the purposes of this Act;”.

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2002 and shall apply in respect of any supply made on or after that date.

### **Amendment of section 14 of Act 89 of 1991**

. Section 14 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (5) of the following paragraph:

“(c) the supply of educational services by an educational institution established in an export country which is regulated by an educational authority in that export country.”.

### **Amendment of section 16 of Act 89 of 1991**

. Section 16 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) of item (aa) of subparagraph (i) of symbol “B” in paragraph (h) of the following item:

“(aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or”.

### **Amendment of section 17 of Act 89 of 1991**

. Section 17 of the Value-Added Tax Act is hereby amended—

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

“(iii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any conveyance to a passenger and crew members, in such conveyance during a journey, where such meal or refreshment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such transport service is a taxable supply;

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

“(vii) such goods or services (where no consideration relating specifically to such supply is payable or where such supply is

separately invoiced, shall be deemed to constitute a single supply for purposes of this subsection) are acquired by a vendor for an employee or office holder of such vendor, that are incidental to the admission into a medical care facility.”.

#### **Amendment of section 18 of Act 89 of 1991**

. Section 18 of the Value-Added Tax Act is hereby amended—

(a) by the substitution in subsection (4) for subparagraph (i) of symbol “B” of the following subparagraph:

“(i) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or”;

(b) by the substitution in subsection (5) for item (aa) subparagraph (i) of symbol “B” of the following item:

“(aa) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or”.

#### **Amendment of section 20 of Act 89 of 1991**

. (1) Section 20 of the Value Added Tax Act, 1991, is hereby amended by the substitution in subsection (4) for paragraph (c) of the following paragraph:

“(c) the legal or trading name, address and registration number of the recipient.”.

(2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date.

#### **Amendment of section 21 of Act 89 of 1991**

. (1) Section 21 of the Value Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (3) for subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iii) the legal or trading name, address and registration number of the recipient;”;

(b) by the substitution in subsection (3) for subparagraph (iii) of paragraph (b) of the following subparagraph:

“(iii) the legal or trading name, address and registration number of the recipient.”.

(2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date.

#### **Amendment of section 22 of Act 89 of 1991**

. Section 22 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (5).

#### **Amendment of section 23 of Act 89 of 1991**

. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (8).

#### **Amendment of section 28 of Act 89 of 1991**

. Section 28 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (4).

#### **Amendment of section 31 of Act 89 of 1991**

. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (1) of the following paragraph:

“(f) any person who produces, furnishes, authorises, or makes use of any false tax invoice or debit note in obtaining any undue tax benefit or refund under the provisions of an export incentive scheme referred to in paragraph (d) of the definition of ‘exported’ in section 1, to which such person is not entitled.”

#### **Insertion of sections 31A and 31B in Act 89 of 1991**

. The following sections are hereby inserted in the Value-Added Tax Act, 1991, after section 31:

##### **“Reduced assessments**

**31A.** (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal noted in terms of the provisions of Part V of this Act, reduce an assessment—

(a) to rectify any processing error made in issuing that assessment; or



(b) where it is proved to the satisfaction of the Commissioner that in issuing that assessment any amount which—

(i) was taken into account by the Commissioner in determining the liability for tax, should not have been taken into account; or

(ii) should have been taken into account in determining the liability for tax, was not taken into account by the Commissioner:

Provided that such assessment, wherein the amount was so taken into account or not taken into account, as contemplated in subparagraph (i) or (ii), as the case may be, was issued by the Commissioner based on information provided in the vendor's return for the current or any previous year of assessment.

(2) The Commissioner shall not reduce an assessment under subsection (1)—

(a) after the expiration of three years from the date of that assessment; or

(b) if the amount was assessed in terms of an assessment accepted by the taxpayer and which was made in accordance with the practice generally prevailing at the date of that assessment.

### **Withdrawal of assessments**

**31B.** (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal has been noted in terms of Part V, withdraw an assessment, which—

(a) was issued to the incorrect person; or

(b) was issued in respect of the incorrect tax period.

(2) Any assessment withdrawn by the Commissioner in terms of this section shall for all purposes of this Act be deemed not to have been issued.”

### **Amendment of section 32 of Act 89 of 1991**

. Section 32 of the Value-Added Tax Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The provisions of sections 107A and 107B of the Income Tax Act, 1962 (Act No 58 of 1962) and any regulations under that Act relating to any objection or to the settlements of disputes shall *mutatis mutandis* apply with reference to any objection under this section.”.

### **Amendment of section 39 of Act 89 of 1991**

. Section 39 of the Value-Added Tax Act is hereby amended—

(a) by the insertion of the following subsection:

“(4) Where any importer of goods which are required to be entered under the Customs and Excise Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later, that importer shall, in addition to such amount of tax pay—

(a) a penalty equal to 10 per cent of the said amount of tax; and

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

(b) the deletion of subsection (8).

### **Amendment of section 46 of Act 89 of 1991**

. Section 46 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The natural person who is a resident of the Republic responsible for the duties imposed by this Act—”.

#### **Amendment of section 57 of Act 89 of 1991**

. Section 57 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the definitions of “documents” and “information” of the following definitions:

“documents’ include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any [**computer print-out as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)**] printout of information generated, sent, received, stored, displayed or processed by electronic means;

‘information’ includes any [**data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983**] electronic representations of information in any form;”.

#### **Amendment of section 74 of Act 89 of 1991**

. Section 74 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the heading of the following heading:

**“Schedules and Regulations”**

(b) by the addition of the following subsections:

“(3) The Minister may from time to time by notice in the *Gazette* amend the Notes to Schedule No. 1 and the said Schedule—

(a) in order to give effect to any agreement amending any agreement approved by section 2 of the Geneva General

- Agreement on Tariffs and Trade Act, 1949 (Act No. 29 of 1948), or to any agreement or amendment of any agreement contemplated in section 49 of the Customs and Excise Act and for the purposes of subsection 1(a) or (b) of the said section 49;
- (b) in order to give effect to any request by the Minister of Trade and Industry and for Economic Co-ordination;
- (c) in order to give effect to any amendment to the Explanatory Notes to the Harmonized system and to the Customs Co-operation Council Nomenclature referred to in section 47(8) of the Customs and Excise Act or to the Nomenclature set out in the annex to the Convention of Nomenclature for the Classification of Goods in Customs Tariffs signed in Brussels in 1950;
- (d) by deleting any reference therein to any territory the government of which has cancelled without the consent of the Government of the Republic any preferential customs tariff rate applicable at the commencement of the Customs and Excise Act to any goods produced or manufactured in the Republic, on their importation into such territory; or
- (e) whenever the Commissioner deems it expedient in the public interest otherwise to do so.”.

#### **Amendment of Schedule 1 to Act 89 of 1991**

. Schedule 1 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for Item No. 490.40 of paragraph 8 of the following Item:

“490.40/00.00/01.00 Machinery or plant (excluding tower cranes) for use on contract in civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner **[on the recommendation of the Board of Trade and Industry,]** may allow by specific permit.”.