

The draft **Small Business Tax Amnesty and Amendment of Taxation Laws Bill, 2006**, is hereby released for public comment.

Comments on the draft legislation must be furnished by **31 May 2006**. Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.

Comments must be submitted to:

Ms. Adele Collins

E-mail: acollins@sars.gov.za

Fax No.: (012) 422-5195

AND

Ms. Pearl Malumane

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

Fax No.: (012) 315-5516

REPUBLIC OF SOUTH AFRICA

**SMALL BUSINESS TAX AMNESTY
AND AMENDMENT OF TAXATION
LAWS BILL**

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

(MINISTER OF FINANCE)

[B - 2006]

DRAFT

GENERAL EXPLANATORY NOTE:

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

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

BILL

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

INDEX

Section

CHAPTER I SMALL BUSINESS TAX AMNESTY

Part I

Purpose and Objective of Tax Amnesty

1. Purpose and Objective

Part II

Interpretation, Application and Administration

2. Definitions
3. Administration of Chapter
4. Exercise of powers of Commissioner
5. Application of Chapter

DRAFT

Part III

Application for tax amnesty

6. Application for tax amnesty and period for application
7. Information required in application

Part IV

Evaluation and approval of application

8. Evaluation of application and approval

Part V

Payment of Tax Amnesty Levy

9. Imposition of tax amnesty levy
10. Payment of tax amnesty levy

Part VI

Relief in terms of Tax Amnesty

11. Relief from payment of tax, contribution or levies
12. Relief from payment of additional tax, penalties and interest
13. No prosecution for related offences
14. Circumstances where tax amnesty relief does not apply
15. Disallowance of deductions, allowances and losses
16. Circumstances where approval is void

Part VII

Review of decision of Commissioner

17. Objection against decision of Commissioner

DRAFT

Part VIII
Reporting

18. Reporting

CHAPTER II
GENERAL AMENDMENTS TO TAXATION LAWS

- 19. – 21. Amendment of Act 40 of 1949
- 22. Amendment of section 4A of Act 45 of 1955
- 23. Fixing of Rates of Normal tax in terms of Act 58 of 1962
- 24 – 41. Amendment of Act 58 of 1962
- 42 – 45. Amendment of Act 91 of 1964
- 46 – 47. Amendment of Act 77 of 1968
- 48. – 66. Amendment of Act 89 of 1991
- 67. Amendment of Act 38 of 1996
- 68. – 70. Amendment of Act 31 of 1998
- 71. Amendment of Act 117 of 1998
- 72. Short title, commencement and savings

CHAPTER I
SMALL BUSINESS TAX AMNESTY

Part I
Purpose and Objective of Tax Amnesty

Purpose and Objective

1. The purpose and objective of the tax amnesty provided for in this Chapter is to—

- (a) broaden the tax base;
- (b) facilitate the normalisation of the tax affairs of small businesses;
- (c) increase and improve the tax compliance culture; and

DRAFT

- (d) facilitate participation in the tax recapitalisation program.

Part II

Interpretation, Application and Administration

Definitions

2. For purposes of this Chapter, unless the context indicates otherwise, any meaning ascribed to a word or expression in the Income Tax Act, 1962, the Value-Added Tax Act, 1991, the Skills Development Levies Act, 1999, and the Unemployment Insurance Contributions Act, 2002, must bear the meaning so ascribed, and—

“2005 year of assessment” means the year of assessment ending during the 12 month period commencing 1 April 2004 and ending 31 March 2005;

“2006 year of assessment” means the year of assessment ending during the 12 month period commencing 1 April 2005 and ending 31 March 2006;

“date of application” means the date on which the application for tax amnesty is submitted to the Commissioner as contemplated in section 6;

“deliver”, in relation to any notice or document, means—

- (a) handing that notice or document to the relevant person;
- (b) sending the notice or document to the relevant person by registered post to that person’s last known address, which may be his or her last known place of residence, office, place of business or postal address;
- (c) transmitting that notice or document to the relevant person by facsimile;
or
- (d) transmitting that notice or document to the relevant person by electronic means:

Provided that in the case of paragraphs (c) and (d), the notice or document must be handed to the relevant person or sent by registered post to that person as contemplated in paragraph (b), within ten days of it being so transmitted by facsimile or electronic means;

“Income Tax Act”, means the Income Tax Act, 1962 (Act No. 58 of 1962);

“Minister”, means the Minister of Finance;

“qualifying period” in relation to tax amnesty in respect of—

DRAFT

(a) any income tax, means any year of assessment preceding the 2005 year of assessment; or

(b) any other tax, levy or contribution means any year of assessment, dividend cycle or tax period which ends before the commencement of the 2005 year of assessment;

“remuneration”, means remuneration as defined in the Fourth Schedule to the Income Tax Act, 1962;

“Skills Development Levies Act”, means the Skills Development Levies Act, 1999 (Act No. 9 of 1999);

“tax amnesty levy” means the levy contemplated in Part V of this Chapter;

“Unemployment Insurance Contributions Act”, means the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002);

“unlisted company”, means any company as defined in section 1 of the Income Tax Act, but excludes a company referred to in paragraph (e) of that definition and any listed company as defined in that Act;

“Value-Added Tax Act”, means the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

Administration of Chapter

3. This Chapter is administered by the Commissioner.

Exercise of powers of Commissioner

4. Any power granted to the Commissioner under this Chapter may be exercised by the Commissioner personally or by any person designated by the Commissioner for this purpose.

DRAFT

Application of Chapter

5. A person may apply for tax amnesty under this Chapter, if—
- (a) that person is a natural person (including the deceased or insolvent estate of a natural person), or a trust or was an unlisted company during the qualifying period;
 - (b) the total gross income of that person for the 2005 year of assessment derived from carrying on business did not exceed R5 million; and
 - (c) in the case of an unlisted company all the shares or members' interests of that company on the last day of the 2005 year of assessment were held directly by individuals (including the deceased or insolvent estate of any individual).

Part III

Application for tax amnesty

Application for tax amnesty and period for application

6. A person (hereinafter referred to as “the applicant”) applying for tax amnesty in terms of this Chapter must submit an application to the Commissioner—
- (a) during the period commencing 1 August 2006 and ending 31 May 2007; and
 - (b) at the address and in the form and manner as may be prescribed by the Commissioner.

Information required in application

7. (1) The applicant must, in the application for tax amnesty, disclose—
- (a) the taxable income in respect of all amounts received by or accrued or deemed to have been received by or accrued to that applicant during the 2005 year of assessment, which were not declared to the

DRAFT

Commissioner, before 15 February 2006, as required by the Income Tax Act;

- (b) any employee's tax which that applicant, as an employer, failed to deduct or withhold from any remuneration paid or payable during the 2005 year of assessment to any employees, and all amounts so deducted or withheld which that applicant failed to declare or pay over to the Commissioner as required by the Income Tax Act;
- (c) any value-added tax in respect of any taxable supply of goods or services or the importation of any goods or the supply of imported services which that applicant failed to declare to the Commissioner as required by the Value-Added Tax Act, for tax periods ending during the 2005 year of assessment;
- (d) any withholding tax on royalties in respect of any amount paid or payable during the 2005 year of assessment to a person who is not a resident which that applicant failed to declare to the Commissioner as required by the Income Tax Act;
- (e) any secondary tax on companies in respect of dividends declared (or deemed to be declared for purposes of Section 64B of the Income Tax Act) during the 2005 year of assessment which that applicant failed to declare as required by that Act;
- (f) any unemployment insurance contributions in respect of remuneration as defined in the Unemployment Insurance Contributions Act paid or payable during the 2005 year of assessment which that applicant, as an employer, failed to declare to the Commissioner as required by that Act;
- (g) any skills development levies in respect of any leviable amount, as defined in section 3(4) of the Skills Development Levies Act, paid or payable during the 2005 year of assessment which the applicant, as an employer, failed to declare to the Commissioner as required by that Act;

(2) The applicant must together with the application for tax amnesty furnish returns in respect of each of the taxes, levies or contributions disclosed in terms of subsection (1) for the 2005 year of assessment or tax periods ending, dividends declared or deemed to be declared, payments

DRAFT

made or payable during that year, as the case may be, together with a statement of all assets at cost and liabilities of the applicant as at the end of that year.

(3) If it is not possible for the applicant to provide full particulars of the actual amounts contemplated in subsection (1), or of the amounts declared in any return or statement furnished in terms of subsection (2), the applicant may provide reasonable estimates of those amounts and must disclose to the Commissioner that the amounts provided are estimates.

Part IV

Evaluation and approval of application

Evaluation of application and approval

8. (1) The Commissioner must, subject to subsection (2), approve an application for tax amnesty in respect of an applicant, only if that applicant complies with all the provisions of sections 5, 6 and 7;

(2) The Commissioner may not approve an application in terms of subsection (1) if the Commissioner, at any time before the submission of the application, delivered a notice to that applicant or that applicant's representative informing that applicant of an audit, investigation or other enforcement action relating to any failure by that applicant to comply with any Act in respect of which the amnesty application relates, unless that notice was withdrawn by the Commissioner before submission of the application;

(3) The Commissioner must deliver to the applicant a notice of his or her decision to approve or deny the application for tax amnesty and must set out the reasons for that decision.

DRAFT

Part V

Payment of Tax Amnesty Levy

Imposition of tax amnesty levy

9. (1) A person with approval in terms of section 8 is subject to a tax amnesty levy which is paid for the benefit of the National Revenue Fund.

(2) The tax amnesty levy is equal to 10 per cent of the taxable income determined for the 2005 year of assessment, to the extent that the amount of the taxable income was not declared to the Commissioner before 15 February 2006.

(3) In determining the amount of the tax amnesty levy in terms of subsection (2), no regard must be had to the balance of any assessed loss or assessed capital loss carried forward from any preceding year of assessment.

Payment of tax amnesty levy

10. The tax amnesty levy must be paid to the Commissioner within a period of twelve months after the date on which the notice of approval was delivered to the person in terms of section 8(3), or such longer period as the Commissioner may allow subject to such conditions as the Commissioner may impose.

Part VI

Relief in terms of Tax Amnesty

Relief from payment of tax, contribution or levies

11. Subject to section 14, an applicant with approval under this Chapter is not liable for the payment of—

- (a) any income tax under the Income Tax Act, in respect of any amount received by or accrued or deemed to have been received or accrued to

DRAFT

the applicant during the qualifying period, from the carrying on of any business, which was not declared to the Commissioner prior to 15 February 2006 as required by that Act;

- (b) any employees' tax which the applicant failed to deduct or withhold from any remuneration paid to employees during the qualifying period, or which was deducted or withheld during that period but which the applicant failed to declare or pay over to the Commissioner as required by the Income Tax Act;
- (c) any value-added tax in respect of any taxable supply of goods or services or the importation of any goods or the supply of imported services during the qualifying period which the applicant failed to declare to the Commissioner as required by the Value-Added Tax Act;
- (d) any withholding tax on royalties in terms of the Income Tax Act, in respect of any amount paid during the qualifying period to any person who is not a resident, which the applicant failed to declare under that Act;
- (e) any secondary tax on companies payable in terms of the Income Tax Act, in respect of any dividend declared or deemed in terms of section 64B of that Act to be declared during the qualified period, which the applicant failed to declare to the Commissioner as required by that Act;
- (f) any unemployment insurance contributions in respect of any amounts paid during the qualifying period which the applicant as employer failed to declare to the Commissioner as required by the Unemployment Insurance Contributions Act; and
- (g) any skills development levies in respect of any amounts paid during the qualifying period which the applicant as employer failed to declare to the Commissioner as required by the Skills Development Levies Act.

DRAFT

Relief from payment of additional tax, penalties and interest

12. An applicant with approval under this Chapter is not liable for the payment of any additional tax, penalty or interest to the extent that it relates to any amount contemplated in section 11 in respect of which tax amnesty has been granted.

No prosecution for related offences

13. An applicant with approval under this Chapter is deemed not to have committed any offence in terms of any Act to which this Chapter relates, in respect of any non-disclosure by that applicant of any amount, to the extent that tax amnesty has been granted in respect of that non-disclosure.

Circumstances where tax amnesty relief does not apply

14. The tax amnesty relief does not apply in respect of any amount of tax, levy, contribution, interest, penalty or additional tax, to the extent that it—

- (a) had already been paid before the date of application; or
- (b) is payable or becomes payable in consequence of any return, declaration or information which was furnished to the Commissioner by the applicant or representative of the applicant before the date of application.

Disallowance of deductions, allowances and losses

15. An applicant with approval under this Chapter may not—

- (a) claim any deduction, allowance, assessed loss or assessed capital loss arising during the qualifying period, which was not declared or assessed by the Commissioner, before 15 February 2006, for

DRAFT

purposes of determining that applicant's liability for income tax thereafter;

- (b) for purposes of calculating that person's liability for secondary tax on companies, set off any excess of dividends which accrued to the applicant during any dividend cycle ending during the qualifying period against any dividends declared by the applicant during any dividend cycle ending thereafter; or
- (c) claim the deduction of any input tax as defined in section 1 of the Value-Added Tax Act, or any other deduction contemplated in section 16(3) of that Act, which was incurred by the applicant during any tax period ending during the qualifying period for purposes of calculating that persons liability for value-added tax thereafter;

Circumstances where approval is void

16. Any approval granted by the Commissioner is void if—

- (a) the applicant fails to pay the full amount of the tax amnesty levy within the period prescribed in Part V;
- (b) the applicant failed to make full disclosure of all amounts as contemplated in section 7(1) or furnish any return or statement as contemplated in section 7(2);
- (c) any estimate made by the applicant in terms of section 7(3) is materially incorrect; or
- (d) the applicant failed to provide all information required by the Commissioner to enable him or her to properly evaluate the application for amnesty.

DRAFT

Part VII

Review of decision of Commissioner

Objection against decision of Commissioner

17. (1) Any person aggrieved by a decision of the Commissioner under this Chapter to deny approval may object and appeal against that decision.

(2) The provisions of Part III of Chapter III of the Income Tax Act, and the rules relating thereto, apply *mutatis mutandis* to any objection noted and appeal lodged against a decision of the Commissioner under this Chapter.

(3) The tax court contemplated in section 83 of the Income Tax Act has jurisdiction to hear any appeal noted against any decision of the Commissioner under this Chapter.

Part VIII

Reporting

Reporting

18. (1) The Commissioner must provide to the Minister and the Auditor-General information of all applications for tax amnesty under this Chapter and must disclose—

- (a) the number of applications received and the number of applications approved and denied;
- (b) the number of new taxpayers registered with the Commissioner per tax type;
- (c) details per tax type of the amounts of tax declared by applicants under the tax amnesty which were not previously disclosed to the Commissioner
- (d) details per tax type of the amounts of all taxes payable for the 2006 year of assessment by applicants who obtained approval as contemplated in this Chapter;

DRAFT

- (e) the total amount of all tax amnesty levies payable in terms of Part V by all applicants.
 - (2) The list contemplated in subsection (1) must—
 - (a) be in a form that does not disclose the identity of any applicant; and
 - (b) be submitted at such times as may be agreed between the Commissioner and the Minister or Auditor-General, as the case may be.
 - (3) The Minister must report to Parliament on the information contemplated in subsection (1).

CHAPTER II GENERAL AMENDMENTS TO TAXATION LAWS

Amendment of section 2 of Act 40 of 1949

- 19.** (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended—
- (a) by the substitution in subsection (1) for the expression “10 per cent” in paragraph (a) of the expression “8 per cent”; and
 - (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 - “(b) subject to the provisions of subsection (5), if the person who acquires the property or in whose favour or for whose benefit the said interest or restriction is renounced is a natural person—
 - (i) 0 per cent of so much of the said value or the said amount, as the case may be, as does not exceed **[R190 000]** R500 000;
 - (ii) 5 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R190 000]** R500 000 but does not exceed **[R330 000]** R1 million;
- and

DRAFT

- (iii) 8 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R330 000]**
R1 million

[if the person who acquires the property or in whose favour or for whose benefit the said interest or restriction is renounced is a natural person].”.

(2) Subsection (1)(a) and (b) is deemed to have come into operation on 1 March 2006 and applies in respect of any property acquired or interest or restriction in any property renounced on or after that date.

Amendment of section 5 of Act 40 of 1949

20. Section 5 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (7) for paragraph (b) of the following paragraph:

“(b) the municipal **[or divisional council]** valuation of the property concerned;”.

Amendment of section 9 of Act 40 of 1949

21. Section 9 of the Transfer Duty Act, 1949, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (f); and
(b) by the substitution in subsection (1) for paragraph (i) of the following paragraph:

“(i) a surviving or divorced spouse who acquires the sole ownership in the whole or any portion of property registered in the name of his or her deceased or divorced spouse **[to whom he was married in community of property, in respect of so much of the value of the property in which sole ownership is acquired as represents his share in that property by virtue of the marriage in community of property]** where that property or portion is transferred to that surviving or divorced

DRAFT

spouse as a result of the death of his or her spouse or dissolution of their marriage or union;”.

Amendment of section 4A of Act 45 of 1955

22. (1) Section 4A of the Estate Duty Act, 1955, is hereby amended by the substitution for the expression “R1,5 million” of the expression “R2,5 million”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2006 and applies in respect of the estate of any person who dies on or after that date.

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

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

- (a) the taxable income of any person (other than a company) for the year of assessment ending on 28 February 2007; and
 - (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 2007,
- shall be as set out in Schedule 1 to this Act.

Amendment of section 1 of Act 58 of 1962

24. Section 1 of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “dividend” for paragraph (b) of the following paragraph:

- “(b) in relation to a company that is not being wound up, **[or]** liquidated, or deregistered or where the corporate existence of that company is not finally terminated, any profits distributed, whether in cash or otherwise,

DRAFT

and whether of a capital nature or not, including an amount equal to the nominal value, at the time of issue thereof, of any capitalization shares awarded to shareholders and the nominal value of any bonus debentures or securities awarded to shareholders;”.

Amendment of section 4 of Tax Act 58 of 1962

25. Section 4 of the Income Tax Act, 58 of 1962 is hereby amended by the substitution for paragraph (e) in subsection (1) of the following paragraph:

“(e) The Commissioner shall disclose to the Director-General of the National Treasury information in respect of—

- (i) any taxpayer which is an entity as contemplated in section 3 of the Public Finance Management Act, No. 1 of 1999, and section 3 of the Local Government: Municipal Finance Management Act, No. 56 of 2003, to the extent necessary for the purpose of exercising the functions and powers of the National Treasury as contemplated in those Acts; or
- (ii) any other class of taxpayers **[to the Director-General of the National Treasury]**, to the extent necessary for the purposes of tax policy design or revenue estimation.”.

Amendment of section 6 of Act 58 of 1962

26. Section 6 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the expression “R6 300” in paragraph (a) of the expression “R7 200”.

DRAFT

Amendment of section 8 of Act 58 of 1962

27. Section 8 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the expression “16 000 kilometres” wherever it occurs in paragraphs (aa) and (bb) of the second proviso to subparagraph (ii) of paragraph (b) of the expression “18 000 kilometres”.

Amendment of section 9B of Act 58 of 1962

28. Section 9B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) For the purposes of this section any amount included in the income of any **[company]** taxpayer in terms of the provisions of section 22(8)(b) as a result of the application, disposal or distribution of any affected share as contemplated in that section, **[shall be]** is deemed to be an amount which has accrued to **[such company]** that taxpayer as a result of the disposal of **[such]** that affected share.”.

Amendment of section 10 of Act 58 of 1962

29. Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the expression “R2 000” in item (aa) of subparagraph (xv) of paragraph (i) of the expression “R2 500”;
 - (b) by the substitution in subsection (1) for the expression “R22 000” in subitem (A) of item (bb) of subparagraph (xv) of paragraph (i) of the expression “R24 500”;
 - (c) by the substitution in subsection (1) for the expression “R15 000” in subitem (B) of item (bb) of subparagraph (xv) of paragraph (i) of the expression “R16 500”;
 - (d) by the deletion in subsection (1) of subparagraphs (i) and (ii) of paragraph (zH); and

DRAFT

- (e) by the addition in subsection (1) of the word “and” at the end of subparagraph (i) of paragraph (zl).

Amendment of section 12E of Act 58 of 1962

30. Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the expression “R6 million” wherever it occurs in subparagraph (i) of paragraph (a) of the expression “R14 million”.

Amendment of section 12H of Act 58 of 1962

- 31.** (1) Section 12H 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:

“(1) Notwithstanding section 23B, but subject to subsection (3), there shall be allowed to be deducted from the income derived by any employer during any year of assessment, an allowance determined in accordance with subsection (2) or (2A), where—”;
 - (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) **[For purposes of subsection (1)]** Subject to subsection (2A), the amount of the allowance contemplated in subsection (1) in respect of—”;
 - (c) by the substitution in subsection (2) for the expression “R17 500” in item (bb) of subparagraph (i) of paragraph (a) of the expression “R20 000”;
 - (d) by the substitution in subsection (2) for the expression “R25 000” in item (bb) of subparagraph (ii) of paragraph (a) of the expression “R30 000”;
 - (e) by the substitution in subsection (2) for the expression “R25 000” in subparagraph (ii) of paragraph (b) of the expression “R30 000”; and
 - (f) by the insertion after subsection (2) of the following subsection:

DRAFT

“(2A) If the learner contemplated in subsection (1) is a disabled person at the time of entering into the learnership agreement, the amount of the allowance in respect of—

(a) a registered learnership agreement entered into by that employer with that learner who at the time of entering into that agreement—

(i) was employed by that employer or associated institution in relation to that employer, is an amount equal to the lesser of—

(aa) in the case of a learnership with a duration of—

(A) less than 12 months, 150 per cent of the total amount of the remuneration of that learner for the period of that learnership as stipulated in the agreement of employment between that learner and employer; or

(B) 12 months or more, 150 per cent of the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or

(bb) R40 000; or

(ii) was not employed by that employer or any associated institution in relation to that employer, is an amount equal to the lesser of—

(aa) in the case of a learnership with a duration of—

(A) less than 12 months, 175 per cent of the total amount of the remuneration of that learner for the period of that learnership as stipulated in the agreement of employment between that learner and employer; or

(B) 12 months or more, 175 per cent of the annual equivalent of the remuneration of that learner stipulated in the agreement of

DRAFT

employment between that learner and employer; or

(bb) R50 000; and

(b) the completion of any registered learnership agreement as contemplated in subsection (1)(b), is an amount equal to the lesser of—

(i) in the case of a learnership with a duration of—

(aa) less than 12 months, 175 per cent of the total amount of the remuneration of that learner for the period of that learnership as stipulated in the agreement of employment between that learner and employer; or

(bb) 12 months or more, 175 per cent of the annual equivalent of the remuneration of that learner stipulated in the agreement of employment between that learner and employer; or

(ii) R50 000.”;

(g) by the insertion in subsection (6) after the definition of “associated institution” of the following definition:

“‘disabled person’ means a person who falls within the definition of ‘people with disabilities’ as contained in section 1 of the Employment Equity Act 1998 (Act No. 55 of 1998);”;

(h) by the substitution in subsection (6) for the expression “1 October 2006” in paragraph (b) of the definition of “registered learnership” of the expression “1 October 2011”.

(2)(a) Subsection (1)(a), (b), (f) and (g) will come into operation on 1 July 2006 and applies in respect of any learnership entered into on or after that date.

(b) Subsection (1)(c), (d) and (e) is deemed to have come into operation on 1 March 2006 and applies in respect of any learnership agreement entered into on or after that date.

DRAFT

Amendment of section 24I of Act 58 of 1962

32. (1) Section 24I of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of “ruling exchange rate” of the following subparagraph:

“(ii) the date it is translated, the market-related forward rate available for the remaining period of such forward exchange contract or in respect of a forward exchange contract which is an affected contract, the forward rate in terms of such forward exchange contract;”;

(b) by the addition to subsection (10) of the following proviso:

“Provided that where that exchange item is realised during any year of assessment, the exchange difference in respect of that exchange item shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the date on which that exchange item is realised and the ruling exchange rate on transaction date, after taking into account any exchange difference included in or deducted from the income of that person in terms of this section in respect of that exchange item.”;

(2)(a) Subsection (1)(a) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2006.

(b) Subsection (1)(b) is deemed to have come into operation on 8 November 2005 and applies in respect of years of assessment ending on or after that date.

Amendment of section 56 of Act 58 of 1962

33. (1) Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the expression “R30 000” in paragraph (b) of the expression “R50 000”.

DRAFT

(2) Subsection (1) is deemed to have come into operation on 1 March 2006 and applies in respect of any donation which takes effect on or after that date.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962

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

(a) by the substitution in the definition of “remuneration” for subparagraph (i) of paragraph (bA) of the following subparagraph:

“(i) an allowance in respect of which paragraph (c) or (cA) applies; or”;

(b) by the substitution in the definition of “remuneration” for paragraph (c) of the following paragraph:

“(c) 50 per cent of[—

(i) **the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section 8(1)(b)(iii); and**

(ii)] the amount of any allowance referred to in section 8(1)(d) granted to the holder of a public office contemplated in section 8(1)(e);”;

(c) by the insertion in the definition of “remuneration” of the following paragraph after paragraph (c):

“(cA) 60 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance traveled

DRAFT

by the recipient, and which is calculated at a rate per kilometer which does not exceed the appropriate rate per kilometer fixed by the Minister of Finance under section 8(1)(b)(iii);”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2006 and applies in respect of any remuneration paid or payable on or after that date.

Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962

35. Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for the expression “R20 000” in subitem (ii) of item (a) of the expression “R40 000”.

Amendment of paragraph 10 of Seventh Schedule to Act 58 of 1962

36. Paragraph 10 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for the words in item (a) preceding the proviso of the following words:

“(a) in the case of any travel facility granted by any employer who is engaged in the business of conveying passengers for reward by sea or by air to enable any employee or any relative of such employee to travel to any destination outside the Republic for his or her private or domestic purposes, **[if the lowest fare payable by a passenger utilizing such facility (had he paid the full fare) at the relevant time in respect of any such journey exceeds R500,]** an amount equal to **[such]** the lowest fare payable by a passenger utilising such facility (had he or she paid the full fare), less the amount of any consideration given by the employee or his or relative in respect of such facility.”;

(b) by the deletion in subparagraph (2) of subitem (ii) of item (a).

DRAFT

Amendment of paragraph 12B of the Seventh Schedule to Act 58 of 1962

37. Paragraph 12B of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for subitem (ii) of item (a) of the following subitem:

“(ii) which does not constitute the carrying on of the business of a medical scheme, if the total cost of any treatment provided in terms of that scheme or programme **[is available only]** to any employees of that employer (and their spouses and children) who are **[not members] beneficiaries** of a medical scheme registered under the provisions of the Medical Schemes Act, 1998 (Act No. 131 of 1998), **[and to the spouses and children of those employees]** is recovered from that medical scheme:”.

Amendment of paragraph 5 of Eighth Schedule to Act 58 of 1962

38. Paragraph 5 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for the expression “R10 000” of the expression “R12 500”; and
- (b) by the substitution in subparagraph (2) for the expression “R50 000” of the expression “R60 000”.

Amendment of paragraph 45 of Eighth Schedule to Act 58 of 1962

39. Paragraph 45 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the expression “R1 million” of the expression “R1,5 million”.

DRAFT

Amendment of paragraph 57 of Eighth Schedule to Act 58 of 1962

40. Paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3) for the expression “R500 000” of the expression “R750 000”.

Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962

41. Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (3)(c)(iii)(aa) for the words preceding subsubitem (A) of the following words:

“(bb) by means of a distribution [***in specie as contemplated in paragraph 75***] by a company, unless the full amount of that distribution—“; and

(b) by the substitution in subparagraph (4) for the words preceding item (a) of the following words:

“(4) Where [**subsection**] subparagraph (3) does not apply due to the fact that any distribution as provided for in subparagraph (3)(c)[**(ii)(aa)**]—”.

Amendment of section 4 of Act 91 of 1964

42. Section 4 of the Customs and Excise Act, 1964, is amended by the substitution for subsection (8A)(a) of the following subsection:

“(8A) (a) (i) For the purpose of this subsection, unless the context otherwise indicates, “goods” includes any ship, vehicle or container contemplated in section 1(2).

(ii) An officer may stop and detain and examine any goods in order to determine whether the provisions of this Act or any other law have been complied

DRAFT

with in respect of such goods as contemplated in section 107(2)(a)."

Amendment of section 107 of Act 91 of 1964

43. Section 107 of the Customs and Excise Act, 1964 is amended by the insertion after subsection (3) of the following subsection:

"(4) For the purpose of subsection (1) and 2(a), unless the context otherwise indicates, "goods" includes any ship, vehicle or container contemplated in section 1(2)."

Amendment of Schedule No. 1 of Act 91 of 1964

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

(2) Subject to the provisions of section 58(1) of the Customs and Excise Act, 1964, subsection (1) shall be deemed to have come into operation on 15 February 2006.

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

45. (1) Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56 or 75(15) of that Act during the calendar year ending on 31 December 2005 shall not lapse by virtue of the provisions of section 48(6), 49, 56(3) or 75(16) of that Act.

(2) The amendment of Parts 1, 2, 3 and 5 of Schedule No. 1, Schedule No. 4, Schedule No. 5 and Schedule No. 6 to the Customs and Excise Act, 1964, made respectively under sections 48 and 75 of that Act by Government Notices R. 291, R292, R293, R295, R296, R297, R298, R299, R300, R301,

DRAFT

R304, R313 of 31 March 2006, in respect of the said Parts 1, 2, 3 and 5 of Schedule No. 1, Schedule No. 4, Schedule No. 5 and Schedule No. 6 shall not lapse by virtue of the provisions of section 48(6) of that Act.

Amendment of section 1 of Act 77 of 1968

46. (1) Section 1 of the Stamp Duties Act, 1968, is hereby amended by the substitution for paragraph (b) of the definition of “**stamp**” of the following paragraph:

“(b) when used as a verb, means affix a stamp to[, **or impress a stamp on,**] an instrument: Provided that in the case where the payment of duty is not required to be denoted on an instrument **[by means of an adhesive stamp or otherwise]**, “**stamp**”, when used as a verb, means to make payment of that duty.”.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of item 14 of Schedule 1 to Act 77 of 1968

47. (1) Item 14 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in subitem (1) for the words in paragraph (a) of the *Exemption from duty under paragraph (1)* preceding the proviso of the following words:

“(a) For the purposes of this Item, no duty shall be payable in the event that the duty calculated on a lease or agreement of lease does not in aggregate exceed **[R200] R500** over the period of the lease.”;

(b) by the substitution in subitem (1) for paragraph (b) of the *Exemption from duty under paragraph (1)* of the following paragraph:

“(b) For the purposes of this Item, where the total consideration payable in respect of a lease or agreement of lease is not quantifiable

DRAFT

at the time of execution of that lease, no duty shall be payable in the event that the duty calculated on a lease or agreement of lease on the amount of consideration that has become quantifiable—

- (i) during any 'year of assessment' as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), of any lessor who is a 'taxpayer' as defined in that Act; or
- (ii) in the 12 months ending on the last day of February each year in the case of any other lessor,

if that amount does not in aggregate exceed **[R200]** R500 during such year of assessment, or 12 month period, whichever is applicable.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2006 and applies in respect of any lease agreement executed on or after that date.

Amendment of item 15 of Schedule 1 to Act 77 of 1968

48. Item 15 of Schedule 1 to Stamp Duties Act, 1968, is hereby amended—

(a) by the insertion in the *Exemptions from the duty under paragraph (3)* of the following paragraph after paragraph (b):

“(c) Any registration of transfer of marketable securities which are participatory interests in a collective investment scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).”;

(b) by the insertion in the *Exemptions from the duty under paragraph (4)* of the following paragraph after paragraph (c):

“(d) Where the marketable securities are participatory interests in a collective investment scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).”; and

(c) by the insertion in the *Exemptions from the duty under paragraph (5)* of the following paragraph after paragraph (d):

“(e) The acquisition by the transferee from the transferor of marketable securities which are participatory interests in a collective investment

DRAFT

scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).”.

Amendment of section 1 of Act 89 of 1991

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

- (a) by the addition of the word “or” at the end of paragraph (iv) of the definition of “**designated entity**”;
- (b) by the addition of the following paragraph to the definition of “**designated entity**”:

“(v) which is a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000): Provided that where the Minister having regard to the circumstances of the case, is satisfied that the activities of the municipal entity is of a regulatory nature and has notified such municipal entity that the supply of goods or services is not made in the course or furtherance of an enterprise;”;

- (c) by the substitution for the definition of “**donation**” of the following definition:

“**donation**’ means a payment whether in money or otherwise voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment or in the form of a supply of goods or services to any other person who is a connected person in relation to the person making the payment, but does not include any payment made by a public authority or a [**local authority**] municipality;”;

- (d) by the substitution for paragraph (a) of the definition of “**enterprise**” of the following paragraph:

“(a) in the case of any vendor [**other than a local authority**], any enterprise or activity which is carried on continuously or regularly by any person in the Republic or partly in the Republic and in the

DRAFT

course or furtherance of which goods or services are supplied to any other person for a consideration, whether or not for profit, including any enterprise or activity carried on in the form of a commercial, financial, industrial, mining, farming, fishing, municipal or professional concern or any other concern of a continuing nature or in the form of an association or club;”;

(e) by the deletion of paragraph (c) of the definition of “**enterprise**”;

(f) by the substitution for the definition of “**grant**” of the following definition:

“**grant**’ means any appropriation, grant in aid, subsidy or contribution transferred, granted or paid to a vendor by a public authority, **[local authority]** municipality or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), but does not include—

(a) a payment made for the supply of any goods or services to that public authority or **[local authority]** municipality, including all goods or services supplied to a public authority, **[local authority]** municipality or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) in accordance with a procurement process prescribed—

(i) in terms of the Regulations issued under section 76(4)(c) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or

(ii) in terms of Chapter 11 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), or any other similar process; or

(b) a payment contemplated in section 8(23);”;

(g) by the deletion of the definition of “**local authority**”;

(h) by the insertion of the following definitions after the definition of “**motor car**”:

“**municipality**’ means a municipality which—

(a) is an organ of state within the local sphere of government exercising legislative and executive authority within an area

DRAFT

- determined in terms of the Local Government: Municipal Demarcation Act, 1998; and
- (b) which has the power in terms of section 2 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004) to levy municipal rates,
- but does not include any institution or entity listed in the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999):
- ‘municipal rate’ means the amount levied in terms of section 2 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004) by a municipality on ‘rateable property’ as defined in section 1 of that Act, but does not include an amount levied by the municipality which comprises a single charge for the supply of a municipal rate, electricity, gas, water, drainage, removal or disposal of sewage or garbage or goods or services that are incidental to or necessary for the supply of such goods or services;”; and
- (i) by the substitution for the definition of “**person**” of the following definition:
- “**person**’ includes any public authority, any [**local authority**] municipality, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund and any foreign donor funded project;”.
- (2) Subsections (1)(a), (b), (c),(d),(e), (f), (g), (h) and (i) shall come into operation on 1 July 2006.

Amendment of section 2 of Act 89 of 1991

- 50.** Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (k) of the following paragraph:
- “(k) the buying or selling of any derivative or the granting of an option: Provided that where a supply of the underlying goods or services takes place, that supply shall be deemed to be a separate supply of goods or services at the open market value thereof: Provided further that the open market value of those goods or services shall not be deemed to

DRAFT

be consideration for a financial service as contemplated in this paragraph.”.

Amendment of section 6 of Act 89 of 1991

51. Section 6 of the Value-Added Tax Act, 1991 is hereby amended by the substitution in the proviso to subsection (1) for paragraph (ii) of the following paragraph:

“(ii) the Commissioner shall disclose to the Director-General of the National Treasury information in respect of—

(aa) any person which is an entity as contemplated in section 3 of the Public Finance Management Act, No. 1 of 1999, and section 3 of the Local Government: Municipal Finance Management Act, No. 56 of 2003, to the extent necessary for the purpose of exercising the functions and powers of the National Treasury as contemplated in those Acts; or

(bb) any class of persons [to the Director-General of the National Treasury], to the extent necessary for the purposes of tax policy design or revenue estimation.”.

Amendment of section 8 of Act 89 of 1991

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

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

“(5) For the purposes of this Act a designated entity shall be deemed to supply services to any public authority or **[local authority]** municipality to the extent of any payment made by the authority or municipality concerned to or on behalf of that designated entity in respect of the taxable supply of goods or services by that designated entity.”;

DRAFT

- (b) by the substitution for subsection (5A) of the following subsection:
- “(5A) For the purposes of section 11(2)(t), a vendor (excluding a designated entity) shall be deemed to supply services to any public authority, **[local authority]** municipality or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) to the extent of any grant paid to or on behalf of that vendor in respect of the taxable supply of goods or services by that vendor.”;
- (c) by the substitution for subsection (6) of the following subsection:
- “(6) For the purposes of this Act~~—~~
- “(a) where a local authority makes any supply to any person of goods or services contemplated in paragraph (c)(i), (ii) or (iii) of the definition of ‘enterprise’ in section 1 and no consideration relating specifically to such supply is payable to such local authority by such person, the local authority shall be deemed to make such supply to that person where any amount of rates on the value of fixed property is payable by that person to such local authority;**
- (b) a regional services council, joint services board or transitional metropolitan council shall be deemed to supply services to a person in respect of the other activities of that council or board referred to in paragraph (c) of the said definition where any amount of any levy is payable by that person to such council or board in terms of the Regional Services Councils Act, 1985 (Act No. 109 of 1985), or the KwaZulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), as the case may be, or where any amount of such levy may in terms of the Local Government Transition Act, 1993, be levied and claimed by a transitional metropolitan council; and**
- (c)]** the transfer of all its assets and liabilities by an administrative unit of a **[local authority]** municipality that is separately registered under subsection (2) of section 50, to the vendor intended in subsection (1) of that section, shall be deemed not to be a supply.”;
- (d) by the substitution for subsection (23) of the following subsection:

DRAFT

“(23) For the purposes of this Act a vendor shall be deemed to supply services to any public authority or **[local authority] municipality** to the extent of any payment in terms of the Housing Subsidy Scheme referred to in section 3(5)(a) of the Housing Act, 1997 (Act No. 107 of 1997), made to or on behalf of that vendor in respect of the taxable supply of goods and services by the vendor.”; and

(e) by the insertion of the following subsection after subsection (26):

“(27) For the purposes of this Act a municipality shall be deemed to supply services to any ‘owner’ as defined in section 1 of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004), to the extent of any municipal rate levied by that municipality on that owner.”.

(2) Subsections (1)(a), (b), (c), (d) and (e) shall come into operation on 1 July 2006.

Amendment of section 10 of Act 89 of 1991

53. (1) Section 10 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for subsection (14) of the following subsection:

“(14) Where services are or are deemed by section 8(5) to be supplied to any public authority or **[local authority] municipality** by any vendor the consideration in money for such supply shall be deemed to be the amount of any payment made from time to time by the authority or municipality concerned to or on behalf of the vendor as contemplated in the said section.”; and

(b) by the deletion of subsection (15).

(2) Subsections (1)(a) and (b) shall come into operation on 1 July 2006.

DRAFT

Amendment of section 11 of Act 89 of 1991

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

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

“(h) the goods consist of fuel levy goods referred to in Fuel Item Levy numbers 195.10.03, **[195.10.05, 195.10.06, 195.10.07 and]** 195.10.17, 195.20.01 and 195.20.03 in Part 5A of Schedule No. 1 to the Customs and Excise Act; or”;

(b) by the deletion of paragraph (hB) in subsection (1); and

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

“(l) the goods consist of illuminating kerosene (marked) intended for use as fuel for illuminating or heating, referred to in Fuel Item Levy number 195.10.13 in Part 5A of Schedule No. 1 to the Customs and Excise Act and are not mixed or blended with another substance;”;

(d) by the substitution for paragraph (n) of subsection (2) of the following paragraph:

“(n) the services comprise the carrying on by a welfare **[organization]** organisation of the activities referred to in the definition of “welfare **[organization]** organisation” in section 1 and those services are in terms of section 8(5) deemed to be supplied by that **[organization]** organisation to a public authority or **[local authority]** municipality; or”;

(e) by the substitution for paragraph (s) of subsection (2) of the following paragraph:

“(s) the services are deemed to be supplied to a public authority or **[local authority]** municipality in terms of section 8(23); or”;

(f) by the insertion at the end of paragraph (v) of subsection (2) of the word “or”; and

(g) by the insertion after paragraph (v) of subsection (2) of the following paragraph:

DRAFT

“(w) the services are deemed to be supplied in terms of section 8(27); or”.

(2)(a) Subsection (1) (a) and (b) are deemed to have come into operation on 1 April 2006;

(b) Subsections (1)(d), (e), (f) and (g) shall come into operation on 1 July 2006.

Amendment of section 12 of Act 89 of 1991

55. Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the deletion of item (cc) of subparagraph (ii) of paragraph (c);
- (b) by the substitution in paragraph (h) for the words in item (cc) of subparagraph (i) preceding subitem (A) of the following words:

“(cc) by an institution in the Republic which is exempt from income tax in terms of section **[30]** 10(1)(cN) of the Income Tax Act and which has been formed for the—”.

(2) Subsection (1)(a) shall come into operation on 1 July 2006.

Amendment to section 15 of Act 89 of 1991

56. (1) Section 15 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(a) the vendor is a public authority, **[local authority]** municipality or association not for gain; or”; and

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

“(2A) Any vendor (other than a public authority or **[local authority]** municipality) who in terms of subsection (2) accounts for tax payable on a payments basis shall, in respect of any supply made on or after 5 June 1997 of goods (other than fixed property) or services in

DRAFT

respect of which the consideration in money is R100 000 or more, account for the tax payable on an invoice basis.”.

(2) Subsections (1)(a) and (b) shall come into operation on 1 July 2006.

Amendment to section 16 of Act 89 of 1991

57. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended by the insertion for the proviso to paragraph (h) in subsection (3) of the following proviso:

“(iii) this subsection does not apply where such goods or services were acquired by a municipality before 1 July 2006, or an input tax deduction in respect of that acquisition was denied under proviso (v) to section 18(4).”.

(2) Subsection (1) shall come into operation on 1 July 2006.

Amendment to section 17 of Act 89 of 1991

58. (1) Section 17 of the Value-Added Tax Act, 1991, is hereby amended by the substitution of subparagraph (v) of paragraph (a) in subsection (2):

“(v) such goods or services are acquired by a **[local authority]** municipality for the purpose of providing sporting or recreational facilities or public amenities to the public **[in the circumstances referred to in section 8(6)(a) or for the purposes of the provision of the goods or services referred to in paragraph (c)(iv) of the definition of “enterprise” in section 1];**”.

(2) Subsection (1) shall come into operation on 1 July 2006.

DRAFT

Amendment to section 18 of Act 89 of 1991

59. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the deletion in subsection (2) of the word “or” at the end of paragraph (i) of the proviso and the addition of the word “or” at the end of paragraph (ii);

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

“(iii) capital goods or services acquired by a municipality, if the goods or services were acquired prior to 1 July 2006 or if an input tax deduction in respect thereof was denied under proviso (v) to section 18(4).”;

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

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

“(v) this subsection shall not apply where a municipality applies goods or services acquired before 1 July 2006 for the purposes of consumption, use or supply in the course of making taxable supplies on or after 1 July 2006.”;

(e) by the deletion in subsection (5) of the word “or” at the end of subparagraph (aa) of paragraph (i) of the proviso and the addition of the word “or” at the end of subparagraph (bb); and

(f) by the addition in subsection (5) after subparagraph (bb) of paragraph (i) of the proviso of the following subparagraph:

“(cc) capital goods or services acquired by a municipality prior to 1 July 2006, or if an input tax deduction in respect thereof was denied under proviso (v) to section 18(4).”;

(2) Subsections (1)(a), (b), (c), (d), (e) and (f) shall come into operation on 1 July 2006.

DRAFT

Amendment to section 23 of Act 89 of 1991

60. (1) Section 23 of the Value-Added Tax Act, 1991 is hereby amended by the substitution of paragraphs (a) and (b) in subsection (3) of the following paragraphs:

“(3) Notwithstanding the provisions of subsections (1) and (2), every person who satisfies the Commissioner that, on or after the commencement date—

- (a) that person is a ‘municipality’ as defined in section 1 or is carrying on any enterprise as contemplated in paragraph (b)(ii), (iii) or (v) [or (c)] of the definition of ‘enterprise’ in section 1; or
 - (b) that person is carrying on any enterprise, other than—
 - (i) as contemplated in paragraph (b)(ii), or (iii) [or (c)] of the definition of “enterprise” in section 1; or
 - (ii) as a ‘municipality’ as defined in section 1,and the total value of taxable supplies made by that person in the course of carrying on all enterprises in the preceding period of 12 months has exceeded R20 000; or”.
- (2) Subsections (1) shall come into operation on 1 July 2006.

Amendment of section 27 of Act 89 of 1991

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

- (a) by the substitution in subsection (4) for the expression “R1 million” in subparagraph (i) of paragraph (c) of the expression “R1,2 million”; and
- (b) by the substitution in subsection (4B) for the expression “R1 million” in subparagraph (i) of paragraph (a) of the expression “R1,2 million”;
- (c) by the substitution in subsection (5) for the expression “R1 million” in paragraph (b) of the expression “R1,2 million”.

DRAFT

(2) Subsection (1) is deemed to have come into operation on 1 July 2006 and applies in respect of any tax period commencing on or after that date.

Insertion of section 40B of Act 89 of 1991

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

“Liability of municipalities for tax and limitation of refunds

40B. (1) This section applies in respect of the supply of goods or services on or before 31 March 2005 by any entity which at the time of that supply qualified as a ‘local authority’ as defined prior to the repeal of that definition by the Small Business Amnesty and Amendment of Taxation Laws Act, 2006.

(2) Where the Commissioner on or before 31 March 2005 issued an assessment for an amount of tax or additional tax in respect of any supply of goods or services contemplated in subsection (1)(a), to correct a prior incorrect application of the zero rate of tax in terms of section 11(2)(p) in respect of that supply, the Commissioner must, on written application, reduce that assessment to the extent that the amount of tax, additional tax, penalty or interest arose as a result of that correction and was not yet paid on that date: Provided that the reduced assessment will not result in a refund to that entity.

(3) The Commissioner may not after 31 March 2005 make any assessment to correct a prior incorrect application of the zero per cent rate of tax in terms of section 11(2)(p) in respect of any supply of goods or services contemplated in subsection (1)(a).

(4) If a local authority incorrectly charged tax at the rate referred to in section 7(1) instead of the zero per cent rate of tax in terms of section 11(2)(p) in respect of any supply contemplated in subsection (1)(a), the Commissioner may not refund any such tax or any penalty or

DRAFT

interest that arose as a result of the late payment of such tax, paid by that local authority to the Commissioner.”.

(2) Subsection (1) shall come into operation on 1 July 2006.

Amendment to section 46 of Act 89 of 1991

63. (1) Section 46 of the Value-Added Tax Act, 1991 is hereby amended—

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

“(c) on a **[local authority]** municipality shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such **[local authority]** municipality.”; and

(b) by the substitution for the proviso of the following proviso:

“Provided that nothing herein contained shall be construed as relieving any such company, public authority, **[local authority]** municipality, body or person or any member of a partnership referred to in section 51(3) from having to perform any duties imposed by this Act upon such company, public authority, **[local authority]** municipality, body or person which the first-mentioned person has failed to perform.”.

(2) Subsections (1)(a) and (b) shall come into operation on 1 July 2006.

Amendment to section 48 of Act 89 of 1991

64. (1) Section 48 of the Value-Added Tax Act, 1991 is hereby amended—

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

“(a) in relation to any company, public authority, **[local authority]** municipality, body, trust fund or person referred to in section 46, the person who is in terms of that section responsible for performing the

DRAFT

duties imposed under this Act on such company, public authority, **[local authority]** municipality, body, trust fund or person; and”;

- (b) by the substitution for subsection (7) of the following subsection:

“(7) Every person who becomes a representative vendor (other than a person representing a company, public authority or **[local authority]** municipality as contemplated in section 46(a), (b) or (c) or a person appointed as an agent under the provisions of section 47) shall within 21 days after becoming responsible for performing duties under this Act on behalf of any other person notify the Commissioner in such form as the Commissioner may prescribe, of the fact that he has become a representative vendor of that other person.”.

(2) Subsection (1)(a) and (b) shall come into operation on 1 July 2006.

Amendment of section 55 of Act 89 of 1991

65. Section 55 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(a) required to be kept in terms of subsection (1) and section **[75(1)(f)] 73A** of the Income Tax Act, shall be retained and carefully preserved by the vendor for the period referred to in the said section **[75(1)(f)] 73A**; and”;

- (b) by the substitution in subsection (3) for the words in paragraph (b) preceding subparagraph (i) of the following words:

“(b) required to be kept in terms of subsection (1), but in respect of which a return referred to in the said section **[75(1)(f)] 73A** need not be submitted, shall—”.

DRAFT

Amendment of paragraph 5 of Schedule 1 to Act 89 of 1991

66. (1) Paragraph 5 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

“(a) a public authority or a **[local authority] municipality**; or”.

(2) Subsection (1) shall come into operation on 1 July 2006.

Amendment of paragraph 7 of Schedule 1 to Act 89 of 1991

67. (1) Paragraph 7 of Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution of item (i) of subparagraph (c) of the following item:

“(c)(i) fuel levy goods referred to in fuel levy item no.—

(aa) 195.10.03: **[195.10.05:]** Petrol[, **unleaded,**] as defined in Additional Note 1(b) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act[, **put up as 93 octane**];

[(bb) 195.10.06: Petrol, unleaded, as defined in Additional Note 1(b) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, excluding that put up as 93 octane;

(cc) 195.10.07: Petrol, leaded, as defined in Additional Note 1(c) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act; and]

(dd) 195.10.17: Distillate fuel, as defined in Additional Note 1(g) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act[.];

(ee) 195.20.01: Biodiesel as defined in Additional Note 1(a) to Chapter 38 in Part 1 of Schedule No. 1 to the Customs and Excise Act; and

(ff) 195.20.03: Other biodiesel, in Part 5A of Schedule No. 1 to the Customs and Excise Act; or”;

DRAFT

- (b) by the deletion of item (iii) of subparagraph (c); and
 - (c) by the substitution for item (iv) of subparagraph (c) of the following item:
 - “(iv) illuminating kerosene (marked) as defined in Additional Note 1(f) to Chapter 27 in Part 1 of Schedule No. 1 to the Customs and Excise Act, referred to in fuel levy item no. 195.10.13 in Part 5A of Schedule No. 1 to the Customs and Excise Act and which are not mixed or blended with another substance.”.
- (2) Subsection (1)(a) and (b) are deemed to have come into operation on 1 April 2006.

Amendment of section 2 of Act 38 of 1996

68. (1) Section 2 of the Tax on Retirement Funds Act, 1996, is hereby amended by the substitution for the expression “18 per cent” of the expression “9 per cent”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2006 and applies in respect of any tax period commencing on or after that date.

Amendment of section 1 of Act 31 of 1998

69. (1) Section 1 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

- (a) by the addition to the definition of “**beneficial ownership**” of the following proviso:
 - “Provided that where a company cancels or redeems its own securities, that company is deemed to have acquired the beneficial ownership in those securities.”.

DRAFT

Amendment of Section 5 of Act 31 of 1998

70. (1) Section 5A of the Uncertificated Securities Tax Act, 1998, is hereby replaced with the following section —

“5A. Other transactions.—

(1) The taxable amount in respect of every change in beneficial ownership in securities, shall be—

(a) where the full beneficial ownership in securities is acquired—

(i) the amount of the consideration for those securities declared by the person who acquires beneficial ownership of those securities; or

(ii) if no amount of consideration referred to in paragraph (i) is declared, or if the amount so declared is less than the lowest price of the securities on the date of the relevant transaction or other manner of acquisition, the closing price of those securities on the date of the relevant transaction or other manner of acquisition; or

(b) where any of the rights or entitlements in the beneficial ownership of securities, as contemplated in paragraphs (a) or (b) of the definition of “beneficial ownership”, is acquired, the greater of—

(i) the amount of the consideration declared by the person who acquires beneficial ownership of those rights or entitlements; or

(ii) the fair market value of those rights or entitlements on the date of acquisition:

Provided that this section shall not apply in respect of any change in beneficial ownership in securities in respect of which section 4 or 5 applies:

(2) The person who acquires the beneficial ownership of the securities or who acquires any of the rights or entitlements contemplated in

DRAFT

subsection (1)(b) shall be liable for the tax payable in respect of the change in beneficial ownership of securities as contemplated in this section.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

Amendment of section 6 of Act 31 of 1998

71. Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the addition in subsection (1) to paragraph (b) of the following subparagraph:

“(xi) to the extent that the securities are participatory interests in a collective investment scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);”.

Amendment of section 93 of Act 117 of 1998

72. (1) Section 93 of the Local Government: Municipal Structures Act, 1998, is hereby amended by the deletion of subsection (6).

(2) Despite subsection (1), any regional establishment levy or regional services levy that became due and payable in terms of the Regional Services Council Act, 1985 (Act No. 109 of 1985), or the Kwazulu and Natal Joint Services Act, 1990 (Act No. 84 of 1990), before or on 30 June 2006 may be collected by a municipal council in accordance with the provisions of those Acts.

(3) Any regional establishment levy or regional services levy referred to in subsection (2) in respect of which a summons for the collection thereof has not been issued before or on 30 June 2008 lapses on that date.

(4) Any regional establishment levy or regional services levy imposed in terms of the Regional Services Council Act, 1985, or the Kwazulu and Natal

DRAFT

Joint Services Act, 1990, after 30 June 2006 lapses on the commencement of this section.

(5) Subsection (1), (2), (3) and (4) shall be deemed to have come into operation on 1 July 2006 upon promulgation of the Municipal Fiscal Powers and Functions Act.

Short title, commencement and savings

73. (1) This Act is called the Small Business Tax Amnesty and Amendment of Taxation Laws Act, 2006.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2007.

DRAFT

SCHEDULE 1

RATES OF NORMAL TAX PAYABLE BY PERSONS (OTHER THAN COMPANIES) IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 2007, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 2007

(Section 23)

1. The rates of normal tax referred to in section 23 of this Act in respect of persons (other than companies) are as follows:—

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

Taxable Income	Rates of Tax
Where the taxable income—	
Does not exceed R100 000.....	18 per cent of each R1 of the taxable income;
Exceeds R100 000 but does not exceed R160 000	R18 000 plus 25 per cent of the amount by which the taxable income exceeds R100 000;
“ R160 000 “ “ “ “ R220 000	R33 000 plus 30 per cent of the amount by which the taxable income exceeds R160 000;
“ R220 000 “ “ “ “ R300 000	R51 000 plus 35 per cent of the amount by which the taxable income exceeds R220 000;
“ R300 000 “ “ “ “ R400 000	R79 000 plus 38 per cent of the amount by which the taxable income exceeds R300 000;
“ R400 000	R117 000 plus 40 per cent of the amount by which the taxable income exceeds R400 000.

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

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

DRAFT

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

Taxable Income	Rates of Tax
Where the taxable income—	
Does not exceed R40 000.....	0 per cent of the taxable income;
Exceeds R40 000 but does not exceed R300 000	10 per cent of the amount by which the taxable income exceeds R40 000;
Exceeds R300 000.....	R26 000 plus 29 per cent of the amount by which the taxable income exceeds R300 000.

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

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

DRAFT

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

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

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

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

DRAFT

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

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

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

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

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

DRAFT

SCHEDULE 2

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

(Section 44)

Tariff item	Tariff heading	Description	Rate of duty	
			Excise	Customs
104.00		Prepared foodstuffs; beverages, spirits and vinegar; tobacco		
104.01	19.01	Malt extract; food preparations of flour, groats, meal starch or malt extract, not containing cocoa or containing less than 40 per cent by mass of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 04.01 to 04.04, not containing cocoa or containing less than 5 per cent by mass of cocoa calculated on a totally defatted basis not elsewhere specified or included:		
.10		Traditional African beer powder as defined in Additional Note 1 to Chapter 19	34.7 c/kg	34.7 c/kg
104.10	22.03	Beer made from malt		
.10		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82 c/l	7.82 c/l
.20		Other	3 667.82 c/l of absolute alcohol	3 667.82 c/l of absolute alcohol
104.15	22.04	Wine of fresh grapes, including fortified wines; grape must, other than that of heading no. 20.09		
	22.05	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances		
.02		Sparkling wine	465.58 c/l	465.58 c/l
.04		Unfortified wine	158.09 c/l	158.09 c/l
.06		Fortified wine	287.88 c/l	287.88 c/l
104.17	22.06	Other fermented beverages, (for example, cider, perry and mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not elsewhere specified or included:		
.05		Traditional African beer as defined in Additional Note 1 to Chapter 22	7.82 c/l	7.82 c/l
.15		Other fermented beverages, unfortified	183.38 c/l	183.38 c/l
.17		Other fermented beverages, fortified	365.35 c/l	365.35 c/l
.22		Mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages	183.38 c/l	183.38 c/l
.90		Other	365.35 c/l	365.35 c/l
104.20	22.07	Undenatured ethyl alcohol of an alcoholic strength by volume of 80 per cent volume or higher; ethyl alcohol and other spirits, denatured, of any strength		
	22.08	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80 per cent volume; spirits, liqueurs and other spirituous beverages:		
.10		Wine spirits, manufactured by the distillation of wine	5 521.00 c/l of absolute alcohol	5 521.00 c/l of absolute alcohol
.15		Spirits, manufactured by the distillation of any sugar cane product	5 521.00 c/l of absolute alcohol	5 521.00 c/l of absolute alcohol

DRAFT

.25		Spirits, manufactured by the distillation of any grain product	5 521.00 c/l of absolute alcohol	5 521.00 c/l of absolute alcohol
.29		Other spirits	5 521.00 c/l of absolute alcohol	5 521.00 c/l of absolute alcohol
.40		Liqueurs and other spirituous beverages	5 521.00 c/l of absolute alcohol	5 521.00 c/l of absolute alcohol
104.30	24.02	Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes		
.10		Cigars, cheroots, and cigarillos, of tobacco or of tobacco substitutes	148 515.70 c/kg net	148 515.70 c/kg net
.20		Cigarettes, of tobacco or of tobacco substitutes	278.04 c/10 cigarettes	278.04 c/10 cigarettes
104.35	24.03	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences:		
.10		Cigarette tobacco and substitutes thereof	15 649.41 c/kg net	15 649.41 c/kg net
.20		Pipe tobacco and substitutes thereof	8 261.93 c/kg net	8 261.93 c/kg net