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## THE PRESIDENCY

No. 15

8 January 2009

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

**No. 61 of 2008: Revenue Laws Second Amendment Act, 2008.**



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

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

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

# ACT

To—

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

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

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 9 of Act 45 of 1955**

1. (1) Section 9 of the Estate Duty Act, 1955, is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection: 5
- “(3) A notice of assessment shall be issued in respect of each return submitted in respect of any estate in which liability for duty, other than in respect of additional property contemplated in subsection (4)(c), is disclosed, due regard being had in the calculation of the duty to any duty chargeable on any previous returns submitted in respect of the same estate.”; and 10
- (b) by the addition of the following subsection:
- “(4) (a) Unless a notice of assessment has already been issued, a notice of assessment shall be deemed to have been issued in terms of section 9(3) in respect of the estate of every person— 15
- (i) if the value of the estate does not exceed the amount determined by the Minister by notice in the *Gazette* contemplated in section 18(3) of the Administration of Estates Act, 1965 (Act No. 66 of 1965), on the date on which a death notice is given to a Master in terms of section 7 of that Act; or 20
- (ii) in every other case, on the date on which the estate has become distributable in terms of section 35(12) of the Administration of Estates Act, 1965 (Act No. 66 of 1965).
- (b) If additional property is found in respect of an estate within five years from the date contemplated in subparagraph (i) or (ii) and a supplementary liquidation and distribution account is required in terms of section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), paragraph (a) shall not apply and a notice of assessment shall be deemed to have been issued in terms of section 9(3) in respect of the estate on the date on which the supplementary liquidation and distribution account has become distributable in terms of section 35(12) of the Administration of Estates Act, 1965. 25
- (c) If additional property is found in respect of an estate more than five years after the date contemplated in subparagraph (i) or (ii) and a liquidation and distribution account is required in terms of section 35 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), the additional property shall be subject to an estate duty as if that property were the sole property of the estate of the deceased and as if the death of the deceased occurred on the date on which the additional property was reflected in the supplementary liquidation and distribution account.”. 35 40

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

**Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007 and section 3 of Act 36 of 2007** 5

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

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

**Amendment of section 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004 and amended by section 5 of Act 32 of 2005**

3. (1) Section 35A of the Income Tax Act, 1962, is hereby amended— 20  
 (a) by the deletion in subsection (9) of paragraph (b); and  
 (b) by the deletion of subsection (10).

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

**Amendment of section 66 of Act 58 of 1962** 25

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

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

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

**Amendment of section 73B of Act 58 of 1962, as inserted by section 22 of Act 5 of 2001 and amended by section 44 of Act 74 of 2002** 35

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

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

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

6. Section 74 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the definition of “administration of this Act” of the following paragraphs, respectively: 50

- “(a) obtaining of full information in relation to any—
- (i) amount received by or accrued to any person;
  - (ii) property disposed of **[under a donation by any person]** for no consideration; and
  - (iii) **[dividend declared by any company]** payment made or liability incurred by any person;
- (b) ascertaining the correctness of any return, financial statement, document, declaration of facts **[or]**, valuation or other information in the Commissioner’s possession.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Request for [additional] information**”.

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

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