

Government Gazette

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THE PRESIDENCY

No. 47

24 January 2005

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

No. 34 of 2004: Second Revenue Laws Amendment Act, 2004.

DIE PRESIDENSIE

No. 47

24 Januarie 2005

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 34 van 2004: Tweede Wysigingswet op Inkomstewette, 2004.

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.

*(English text signed by the President.)
(Assented to 18 January 2005.)*

ACT

To amend the Transfer Duty Act, 1949, so as to prescribe further requirements for the estate agent in respect of the declaration to be furnished; to provide for a penalty where the estate agent fails to comply with the reporting requirements; to introduce provisions to deal with offences in respect of the evasion of duty; and to regulate the provisions relating to the publication of names of offenders and reporting of unprofessional conduct; to amend the Income Tax Act, 1962, so as to further regulate the provision which prescribes the notice to be issued by the Commissioner requiring returns for assessment of tax and the manner of furnishing returns; to make provision that a taxpayer must inform the Commissioner of any change of the taxpayer's address; to make provision for the registration of tax practitioners; to further regulate the duty of certain persons to furnish returns; to provide that it shall be an offence where a taxpayer fails to inform the Commissioner of any change in address or where a tax practitioner fails to register; to make provision for advance tax rulings; to further regulate the provisions relating to additional assessments; to further regulate the provisions relating to objection and appeal; and to make provision that any decision by the Commissioner not to remit certain penalties shall be subject to objection and appeal; to amend the Customs and Excise Act, 1964, so as to further regulate provisions relating to declarations by persons entering or leaving the Republic; to make provision for the storage of goods free of duty in a customs and excise warehouse; to provide for the payment of salvage from the proceeds of sale of uncleared goods; to further regulate provisions relating to international agreements requiring customs administration; to make provision for certain consequential changes arising from the provisions of the International Trade Administration Act, 2002; to amend obsolete references to "department"; to further regulate the limitation on refund and drawback claims; to effect textual amendments to the provisions relating to the institution of legal proceedings; to further regulate the provisions relating to electronic communication; to further regulate the provisions relating to wreck; to amend the Stamp Duties Act, 1968, so as to introduce provisions to deal with offences in respect of duty relating to marketable securities; to amend the Value-Added Tax Act, 1991, so as to make provision for a change in use adjustments; and to provide for advance tax rulings; to amend the Uncertificated Securities Tax Act, 1998, so as to provide for advance tax rulings; and to provide for a short title and commencement date; and to provide for matters relating thereto.

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woerde in vetdruk tussen vierkanthake dui weglatings uit bestaande verordenings aan.
- _____ Woerde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.
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*(Engelse teks deur die President geteken.)
(Goedgekeur op 18 Januarie 2005.)*

WET

Tot wysiging van die Wet op Hereregte, 1949, ten einde verdere vereistes aan eiendomsagente in verband met verklarings wat verskaf moet word, voor te skryf; voorsiening te maak vir 'n boete waar 'n eiendomsagent nalaat om aan die rapporteringsvereistes te voldoen; bepalings in te stel wat handel oor misdrywe met betrekking tot die ontduiking van reg; en die bepalings oor die publisering van die name van ontduikers en die rapportering van onprofessionele gedrag te reël; tot wysiging van die Inkomstebelastingwet, 1962, ten einde die bepaling wat die kennisgewing voorskryf wat deur die Kommissaris uitgereik word, waarin vereis word dat opgawes vir die aanslag van belasting ingedien word en die wyse van die indiening van opgawes, verder te reël; voorsiening te maak dat 'n belastingpligtige die Kommissaris moet inlig van enige verandering in die belastingpligtige se adres; voorsiening te maak vir die registrasie van belastingpraktisyens; die verpligting op sekere persone om opgawes in te dien, verder te reël; 'n misdryf daar te stel waar 'n belastingpligtige nalaat om die Kommissaris van enige verandering in adres in te lig of waar 'n belastingpraktisyen nalaat om te registreer; voorsiening te maak vir vooruit belastingbeslissings; die bepalings met betrekking tot addisionele aanslae verder te reël; die bepalings met betrekking tot beswaar en appèlprosedures verder te reël; en voorsiening te maak dat 'n beslissing deur die Kommissaris om nie sekere boetes kwyt te skeld nie aan beswaar en appèl onderhewig is; tot wysiging van die Doeane- en Aksynswet, 1964, ten einde die bepalings met betrekking tot verklarings deur persone wat die Republiek binnekomb of verlaat verder te reël; voorsiening te maak vir die opslag van goedere vry van reg in 'n doeane- en aksynspakhuis; voorsiening te maak vir die betaling van bergloon uit die opbrengs van verkoping van ongeklaarde goedere; bepalings met betrekking tot internasionale ooreenkoms wat doeane-administrasie vereis, verder te reël; voorsiening te maak vir sekere gevolglike wysigings wat voortvloei uit die bepalings van die Wet op Internasionale Handelsadministrasie, 2002; veranderde verwysings na "department" te wysig; die beperking op terugbetaalings- en teruggawe-eise verder te reël; tekstuele wysigings aan die bepalings met betrekking tot die instelling van 'n regsgeding aan te bring; die bepalings met betrekking tot elektroniese kommunikasie verder te reël; die bepalings met betrekking tot wrak verder te reël; tot wysiging van die Wet op Seëlregte, 1968, ten einde bepalings in te stel wat verband hou met misdrywe ten opsigte van reg met betrekking tot handelseffekte; tot wysiging van die Wet op Belasting op Toegevoegde Waarde, 1991, ten einde voorsiening te maak vir verrekenings ten aansien van 'n verandering in gebruik; en vir vooruit belastingbeslissing voorsiening te maak; tot wysiging van die Wet op Belasting op Sertifikaatlose Aandele, 1998, ten einde vir vooruit belastingbeslissings voorsiening te maak; en vir 'n kort titel en inwerkingtredingsdatum voorsiening te maak; en om vir aangeleenthede wat daarmee in verband staan voorsiening te maak.

Act No. 34, 2004 SECOND REVENUE LAWS AMENDMENT ACT, 2004

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

Amendment of section 14 of Act 40 of 1949, as amended by section 6 of Act 88 of 1974

1. Section 14 of the Transfer Duty Act, 1949, is hereby amended—

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

“(1) Declarations appropriate to the manner of the acquisition of property in any particular case shall, in substance as near as possible to the wording of the forms prescribed by the Commissioner [**by notice in the Gazette**], be completed by the parties to the transaction whereby the property has been acquired and, if the Commissioner so directs, also by the agent, auctioneer, broker or other person who acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.”; and

(b) by the addition of the following subsection after subsection (2):

“(3) An estate agent as contemplated in section 1 of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), who is entitled to any remuneration or other payment in respect of services rendered in connection with a transaction in terms of which a person acquired property contemplated in paragraphs (d), (e) or (f) of the definition of ‘property’, must within six months of the date of acquisition of that property submit details of that transaction to the Commissioner in a form prescribed by the Commissioner.”.

Amendment of section 16 of Act 40 of 1949, as amended by section 6 of Act 45 of 2003

2. Section 16 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any person who has been appointed as an agent [**and has in his or her possession the documents referred to in subsection (1)**], but fails to furnish [these] the documents contemplated in subsection (1) and the name of the person on whose behalf he or she is acting to the seller or his or her agent on the date specified in subsection (1) shall, for the purpose of the payment of the duty payable in respect of the acquisition of the property in question, be presumed, unless the contrary is proved, to have acquired the property for himself or herself.”.

Amendment of section 17 of Act 40 of 1949, as amended by section 5 of Act 77 of 1964 and section 6 of Act 46 of 1996

3. Section 17 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs:

“(c) without good cause, fails to—

- (i) comply with any requirement; or
- (ii) reply to or answer truly and fully any questions put to him, by any person acting under section 11C, 11D or 11E; [**or**]

(d) obstructs or hinders any officer in the carrying out of his duties; or; and

(b) by the addition to subsection (1) of the following paragraph:

“(e) fails to comply with section 14(3).”.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 14 van Wet 40 van 1949, soos gewysig deur artikel 6 van Wet 88 van 1974

1. Artikel 14 van die Wet op Hereregte, 1949, word hierby gewysig— 5
 (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Gepaste verklarings volgens die wyse van verkryging van eiendom in enige besondere geval moet, in wese so na as moontlik aan die bewoording van die formuliere deur die Kommissaris [**by kennisgewing in die Staatskoerant**] voorgeskryf, voltooi word deur die partye by die transaksie waarby die eiendom verkry is, en indien die Kommissaris dit gelas, ook deur die agent, afslaer, makelaar of ander persoon wat namens of ten behoeve van enigeen van die partye by die transaksie opgetree het of, indien die eiendom op 'n ander wyse dan by wyse van 'n transaksie verkry is, deur die persoon wat die eiendom verkry het.”; en 15

(b) deur die volgende subartikel by te voeg:

“(3) 'n Eiendomsagent soos beoog in artikel 1 van die Wet op Eiendomsagentskapstaal, 1976 (Wet No. 112 van 1976), wat geregtig is op enige besoldiging of ander betaling ten opsigte van dienste gelewer in verband met 'n transaksie ingevolge waarvan 'n persoon eiendom verkry het soos beoog in paragrawe (d), (e) of (f) van die omskrywing van 'eiendom', moet binne ses maande vanaf die datum van verkryging van daardie eiendom besonderhede van daardie transaksie aan die Kommissaris verskaf in 'n vorm deur die Kommissaris voorgeskryf.”. 25

Wysiging van artikel 16 van Wet 40 van 1949, soos gewysig deur artikel 6 van Wet 45 van 2003

2. Artikel 16 van die Wet op Hereregte, 1949, word hierby gewysig deur subartikel (2) 30 deur die volgende subartikel te vervang:

“(2) Iemand wat as 'n agent aangestel is [**en die dokumente in subartikel (1) bedoel in sy of haar besit het**], maar versuim om [**hierdie**] die dokumente beoog in subartikel (1) en die naam van die persoon namens wie hy of sy optree aan die verkoper of sy of haar agent te voorsien op die datum in subartikel (1) bedoel, word vir die betaling van die hereregte wat ten opsigte van die verkryging van die betrokke eiendom betaalbaar is, vermoed die eiendom vir homself of haarself te verkry het tensy die teendeel bewys word.”. 35

Wysiging van artikel 17 van Wet 40 van 1949, soos gewysig deur artikel 5 van Wet 77 van 1964 en artikel 6 van Wet 46 van 1996 40

3. Artikel 17 van die Wet op Hereregte, 1949, word hierby gewysig—

(a) deur paragrawe (c) en (d) van subartikel (1) deur die volgende paragrawe te vervang:

“(c) sonder gegrond rede, versuim om te—

- (i) voldoen aan enige vereiste; of
- (ii) antwoord op, of om ware en volledige antwoorde te gee op enige vrae aan hom gestel, deur enige persoon wat kragtens artikel 11C, 11D of 11E optree; [**of**]

(d) 'n amptenaar by die uitvoering van sy pligte dwarsboom of belemmer; **of**; en

(b) deur die volgende paragraaf by subartikel (1) te voeg:

“(e) versuim om aan artikel 14(3) te voldoen;”.

Insertion of section 17B in Act 40 of 1949

4. The following section is hereby inserted in the Transfer Duty Act, 1949, after section 17A:

"Offences and penalties in respect of the evasion of duty

17B. (1) Any person who with intent to evade the payment of any duty levied under this Act or to obtain any refund of duty under this Act to which that person is not entitled or with intent to assist any other person to evade the payment of the duty payable by such other person under this Act or to obtain any refund of duty under this Act to which such other person is not entitled—

- (a) makes or causes or allows to be made any false statement or entry in any declaration prescribed by the Commissioner in terms of this Act, or signs any statement or declaration so rendered without reasonable grounds for believing it to be true; or
 - (b) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Commissioner or any person duly authorised by the Commissioner or any officer contemplated in section 10(2); or
 - (c) makes use of any fraud, art or contrivance whatsoever, or authorises the use of fraud, art or contrivance; or
 - (d) makes any false statement for the purposes of obtaining any refund of or exemption from duty,
- is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 60 months.

(2) A conviction for an offence in terms of this Act shall not exempt the person convicted from the payment of any duty, additional duty or penalty payable in accordance with the provisions of this Act.”.

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Substitution of section 20A of Act 40 of 1949, as inserted by section 12 of Act 30 of 1998

5. The following section is hereby substituted for section 20A of the Transfer Duty Act, 1949:

"Publication of names of offenders

20A. (1) The Commissioner may from time to time publish for general information such particulars as specified in subsection (2), relating to any offence committed by any person, where such person has been convicted of such offence in terms of—

- (a) section 15 or 17;
- (b) the common law, where the criminal conduct corresponds materially with an offence referred to in paragraph (a), after any appeal or review proceedings in relation thereto have been completed or not been instituted within the period allowed therefor.

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(2) Every publication in terms of this section may specify—

- (a) the name and address of such person;
- (b) such particulars of the offence as the Commissioner may think fit;
- (c) the amount or estimated amount of the duty evaded;
- (d) the amount (if any) of the additional duty imposed and the particulars of the fine or sentence imposed.”.

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Invoeging van artikel 17B in Wet 40 van 1949

4. Die volgende artikel word hierby in die Wet op Hereregte, 1949, ingevoeg na artikel 17A:

"Misdrywe en strawwe betreffende hereregte-ontduiking"

17B. (1) Iemand wat met die opset om die betaling van hereregte ingevolge hierdie Wet gehef, te ontduik of om 'n terugbetaling van hereregte ingevolge hierdie Wet te verkry waarop daardie persoon nie geregtig is nie of met die opset om 'n ander persoon behulpsaam te wees om die betaling van hereregte wat deur daardie ander persoon ingevolge hierdie Wet betaalbaar is, te ontduik of om 'n terugbetaling van hereregte ingevolge hierdie Wet waarop daardie ander persoon nie geregtig is nie te verkry—

- (a) 'n valse verklaring of inskrywing doen of laat doen of toelaat dat dit gedoen word in 'n verklaring deur die Kommissaris ingevolge hierdie Wet voorgeskryf, verstrek, of 'n verklaring of aldus verstrekte verklaring onderteken sonder redelike gronde om te glo dat dit waar is; of
- (b) 'n valse antwoord verstrek, hetsoy mondellings of skriftelik, op 'n versoek om inligting ingevolge hierdie Wet gedoen deur die Kommissaris of 'n behoorlik deur die Kommissaris gemagtigde persoon of 'n in artikel 10(2) bedoelde beampie; of
- (c) enige bedrog, lis of versinsel van welke aard ook al aanwend of die aanwending van sodanige bedrog, lis of versinsel magtig; of
- (d) 'n valse verklaring doen om 'n terugbetaling of 'n vrystelling van reg te verkry,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 60 maande.

(2) 'n Skuldigbevinding weens 'n misdryf ingevolge hierdie Wet stel nie die veroordeelde van die betaling van enige reg, addisionele reg of boete betaalbaar ooreenkomsdig die bepalings van hierdie Wet, vry nie.'.

Vervanging van artikel 20A van Wet 40 van 1949, soos ingevoeg deur artikel 12 van Wet 30 van 1998

5. Artikel 20A van die Wet op Hereregte, 1949, word hierby deur die volgende artikel vervang:

"Publikasie van name van oortreders"

20A. (1) Die Kommissaris mag van tyd tot tyd vir algemene inligting daardie besonderhede publiseer soos vermeld in subartikel (2), wat verband hou met enige misdryf wat gepleeg is deur enige persoon waar daardie persoon aan daardie misdryf skuldig bevind is ingevolge—

- (a) artikel 15 of 17;
- (b) die gemene reg, waar die strafbare gedrag wesenlik ooreenstem met 'n misdryf in paragraaf (a) bedoel, na enige appèl- of hersieningsverrigtinge met betrekking daartoe afgehandel is of nie binne die tydperk daarvoor toegelaat, ingestel is nie.

(2) Elke publikasie ingevolge hierdie artikel kan vermeld—

- (a) die naam en adres van so 'n persoon;
- (b) sodanige besonderhede van die misdryf wat die Kommissaris mag goedvind;
- (c) die bedrag of geskatte bedrag hereregte ontduik;
- (d) die bedrag (as daar is) van die addisionele hereregte gehef en die besonderhede van die boete of vonnis opgelê.'.

Insertion of sections 20C and 20D in Act 40 of 1949

6. (1) The following sections are hereby inserted in the Transfer Duty Act, 1949, after section 20B:

"Reporting of unprofessional conduct"

<p>20C. (1) For the purposes of this section 'controlling body' means any professional association, body or board which—</p> <ul style="list-style-type: none"> (a) has been established, whether voluntarily or by or under any law, for the purpose of exercising control over the carrying on of any profession, calling or occupation; and (b) has power to take disciplinary action against any person who in the carrying on of such profession, calling or occupation fails to comply with or contravenes any rules or code of conduct laid down by that association, body or board. <p>(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any other person, done or omitted to do anything which in the opinion of the Commissioner—</p> <ul style="list-style-type: none"> (a) was intended to enable or assist that other person to avoid or unduly postpone the performance of any duty or obligation imposed on that other person by or under this Act, or to obtain any refund of duty under this Act to which that other person is not entitled, or by reason of negligence on the part of that person resulted in the avoidance or undue postponement of the performance of any such duty or obligation or the obtaining of any such refund; and (b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by the body, <p>the Commissioner may lodge a complaint with the said controlling body.</p> <p>(3)(a) The Commissioner may in lodging any complaint under subsection (2) disclose such information relating to the client's affairs as in the opinion of the Commissioner is necessary to lay before the controlling body to which the complaint is made.</p> <p>(b) Before lodging any complaint or disclosing any information, the Commissioner must deliver or send to the client and the person against whom the complaint is to be made, a written notification of his or her intended action setting forth particulars of that information.</p> <p>(c) The client or the said person may within 30 days after the date of the written notification lodge in writing with the Commissioner any objection he or she may have to the lodging of the complaint.</p> <p>(d) If on the expiry of the period of 30 days no objection has been lodged as contemplated in paragraph (c) or, if an objection has been lodged and the Commissioner is not satisfied that the objection should be sustained, the Commissioner may thereupon lodge the complaint as contemplated in subsection (2).</p> <p>(4) The complaint must be considered by the controlling body to which it is made and may be dealt with by it in such manner as the controlling body in terms of its rules sees fit: Provided that any hearing of the matter shall not be public and may only be attended by persons whose attendance, in the opinion of the controlling body, is necessary for the proper consideration of the complaint.</p> <p>(5) The controlling body with which a complaint is lodged and its members shall at all times preserve and aid in preserving secrecy in regard to such information as to the affairs of the client as may be conveyed to them by the Commissioner or as may otherwise come to their notice in the investigation of the Commissioner's complaint and shall not communicate such information to any person whatsoever other than the client concerned or the person against whom the complaint is lodged, unless the disclosure of such information is ordered by a competent court of law.</p>	5 10 15 20 25 30 35 40 45 50 55
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Invoeging van artikels 20C en 20D in Wet 40 van 1949

6. (1) Die volgende artikels word hierby in die Wet op Hereregte, 1949, ingevoeg na artikel 20B:

“Rapportering van onprofessionele gedrag

20C. (1) By die toepassing van hierdie artikel beteken ‘beheerliggaam’	5
‘n professionele vereniging, liggaam of raad wat—	
(a) ingestel is, het sy vrywillig of by of kragtens ’n wet, met die doel om beheer uit te oefen oor die beoefening van ’n professie, nering of beroep; en	10
(b) wat bevoeg is om tugstappe te doen teen iemand wat by die beoefening van genoemde professie, nering of beroep versum om enige reëls of gedragkode na te kom wat deur daardie vereniging, liggaam of raad bepaal is, of genoemde reëls of gedragkode oortree.	
(2) Waar iemand wat ’n professie, nering of beroep beoefen ten opsigte waarvan ’n beheerliggaam ingestel is, met betrekking tot die sake van enige ander persoon iets doen of versum om iets te doen wat volgens die oordeel van die Kommissaris—	15
(a) bedoel is om daardie ander persoon in staat te stel of te help om die nakoming van ’n plig of verpligting wat by of kragtens hierdie Wet op bedoelde persoon gelê is, te vermy of oormatig uit te stel of om ’n terugbetaling van hereregte ingevolge hierdie Wet te verkry waarop bedoelde persoon nie geregtig is nie, of vanweë die nalatigheid van so ’n persoon tot die vermyding of oormatige uitstel van die verrigting van so ’n plig of verpligting of tot die verkryging van so ’n terugbetaling gelei het; en	20
(b) ’n oortreding uitmaak van ’n reël of gedragkode wat deur die beheerliggaam bepaal is wat kan lei tot die neem van tugstappe deur die beheerliggaam teen bedoelde persoon, kan die Kommissaris by genoemde beheerliggaam ’n klag indien.	25
(3)(a) Die Kommissaris mag by die indiening van ’n klag kragtens subartikel (2) die inligting met betrekking tot die persoon se sake bekend maak wat volgens die oordeel van die Kommissaris voorgelê moet word aan die beheerliggaam by wie die klag ingedien word.	30
(b) Voordat so ’n klag ingedien of enige inligting bekend maak word, moet die Kommissaris skriftelike kennisgewing van sy of haar voorgenome optrede wat besonderhede van genoemde inligting uiteensit, aan die klient en die persoon teen wie die klag ingedien staan te word lewer of stuur.	35
(c) Die kliënt of genoemde persoon kan binne 30 dae na die datum van bedoelde skriftelike kennisgewing enige beswaar wat hy of sy teen die indiening van bedoelde klag het, skriftelik by die Kommissaris indien.	40
(d) Indien, na die verstryking van die tydperk van 30 dae, geen beswaar soos in paragraaf (c) beoog ingedien is nie of, indien ’n beswaar ingedien is en die Kommissaris nie oortuig is dat die beswaar gehandhaaf moet word nie, kan die Kommissaris daarna die klag indien soos in subartikel (2) beoog.	45
(4) Die klag moet deur die beheerliggaam by wie dit ingedien is oorweeg word en kan daardeur afgehandel word op die wyse wat die beheerliggaam ingevolge sy reëls goedvind: Met dien verstande dat enige verhoor van die aangeleentheid nie vir die publiek toeganklik is nie en slegs bygewoon kan word deur persone wie se bywoning na die oordeel van die beheerliggaam noodsaaklik is vir die behoorlike oorweging van die klag.	50
(5) Die beheerliggaam by wie ’n klag ingedien word en sy lede moet te alle tye geheimhouding bewaar en help bewaar met betrekking tot die inligting aangaande die sake van die kliënt wat deur die Kommissaris aan hulle oorgedra word of wat andersins tydens die ondersoek van die Kommissaris se klag onder hulle aandag kom, en mag nie bedoelde inligting aan enigiemand hoegenaamd medeel nie behalwe die kliënt of die persoon teen wie die klag ingedien is, tensy die mededeling van bedoelde inligting deur ’n bevoegde gereghof beveel word.	55

Act No. 34, 2004 SECOND REVENUE LAWS AMENDMENT ACT, 2004

Advance Tax Rulings

- 20D.** (1) The provisions relating to advance tax rulings contained in Part IA of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for purposes of this Act.
- (2) Any procedures and guidelines issued by the Commissioner in terms of section 76S of the Income Tax Act, 1962, for implementation and operation of the advance tax ruling system apply *mutatis mutandis* for purposes of this Act.”.
- (2) Subsection (1) shall—
- (a) to the extent that it inserts section 20C in the Transfer Duty Act, 1949, come into operation on the date of promulgation of this Act; and
 - (b) to the extent it inserts section 20D in the Transfer Duty Act, 1949, come into operation on the date or dates that Part 1A of Chapter III of the Income Tax Act, 1962, comes into operation.

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001, section 26 of Act 30 of 2002, section 38 of Act 74 of 2002, section 61 of Act 45 of 2003 and section 18 of Act 16 of 2004 15
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7. Section 66 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Commissioner [shall] must annually give public notice that all persons who are personally or in a representative capacity liable to taxation under [the provisions of] this Act or who are required to furnish returns for the assessment of tax, [shall within sixty days after the date of such notice, or within such further time as the Commissioner may for good cause allow,] must furnish returns within the period prescribed in that notice, or such longer period as the Commissioner may allow, for the purposes of assessments in respect of the years of assessment specified in [such] that notice.”.

Amendment of section 67 of Act 58 of 1962, as inserted by section 62 of Act 45 of 2003

8. Section 67 of the Income Tax Act, 1962, is hereby amended—
- (a) by the insertion after subsection (1) of the following subsection:
- “(1A) If a person’s address which is normally used by the Commissioner for any correspondence with that taxpayer at any time changes, that person must, within 60 days after that change, inform the Commissioner of the new address for correspondence.”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) [Subsection (1) does] Subsections (1) and (1A) do not apply in respect of any person whose income is derived solely from net remuneration, as defined in paragraph 11B of the Fourth Schedule, and the employees’ tax required to be deducted or withheld from that net remuneration under the Fourth Schedule consists solely of Standard Income Tax on Employees.”.

Vooruit belastingbeslissings

20D. (1) Die bepalings met betrekking tot vooruit belastingbeslissings in Deel IA van Hoofstuk III van die Inkomstebelastingwet, 1962, vervat, is *mutatis mutandis* vir doeleindes van hierdie Wet van toepassing.

(2) Enige procedures en riglyne deur die Kommissaris uitgereik ingevolge artikel 76S van die Inkomstebelastingwet, 1962, vir die implementering en werking van die vooruit belastingbeslissingstelsel is *mutatis mutandis* vir doeleindes van hierdie Wet van toepassing.”.

(2) Subartikel (1) tree in werking—

- (a) in die mate wat dit artikel 20C in die Wet op Hereregte, 1949 invoeg, 10 op die datum van afkondiging van hierdie Wet; en
- (b) in die mate wat dit artikel 20D in die Wet op Hereregte, 1949 invoeg, op die datum of datums waarop Deel 1A van Hoofstuk III van die Inkomstebelastingwet, 1962, in werking tree.

**Wysiging van artikel 66 van Wet 58 van 1962, soos gewysig deur artikel 10 van Wet 15
6 van 1963, artikel 19 van Wet 90 van 1964, artikel 27 van Wet 88 van 1971, artikel
22 van Wet 91 van 1982, artikel 19 van Wet 65 van 1986, artikel 23 van Wet 85 van
1987, artikel 37 van Wet 101 van 1990, artikel 26 van Wet 21 van 1994, artikel 41
van Wet 30 van 2000, artikel 19 van Wet 5 van 2001, artikel 17 van Wet 19 van 2001,
artikel 26 van Wet 30 van 2002, artikel 38 van Wet 74 van 2002, artikel 61 van Wet 20
45 van 2003 en artikel 18 van Wet 16 van 2004**

7. Artikel 66 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Kommissaris gee jaarliks openbare kennis dat alle persone wat persoonlik of in 'n verteenwoordigende hoedanigheid ingevolge [die bepalings van] hierdie Wet belastingpligtig is of wat verplig is om opgawes vir die aanslag van belasting te verstrek, binne [sestig dae na die datum van sodanige kennisgewing] die tydperk in daardie kennisgewing voorgeskryf, of binne die verdere tydperk wat die Kommissaris [om goeie redes] mag toestaan, opgawes moet verstrek vir die doeleindes van aanslae ten opsigte van die jare van aanslag in [bedoelde] daardie kennisgewing vermeld.”.

Wysiging van artikel 67 van Wet 58 van 1962, soos ingevoeg deur artikel 62 van Wet 45 van 2003

8. Artikel 67 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die volgende subartikel na subartikel (1) in te voeg:

“(1A) Indien 'n persoon se adres wat gewoonlik deur die Kommissaris vir enige korrespondensie met daardie belastingpligtige gebruik word op enige tydstip verander, moet daardie persoon binne 60 dae na daardie verandering die Kommissaris van die nuwe adres vir korrespondensie in kennis stel”; en

(b) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) [Subartikel (1)] Subartikels (1) en (1A) is nie van toepassing nie ten opsigte van 'n persoon wie se inkomste uitsluitlik van netto besoldiging, soos in paragraaf 11B van die Vierde Bylae omskryf, verkry word, en die werknehmersbelasting wat vereis word afgetrek of teruggehou te word van daardie netto besoldiging kragtens die Vierde Bylae slegs uit Standaard Inkomstebelasting op Werknemers bestaan.”.

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Insertion of section 67A in Act 58 of 1962

9. The following section is hereby inserted in the Income Tax Act, 1962, after section 67:

"Registration of tax practitioners**67A. (1) Every natural person who—**

- (a) provides advice to any other person with respect to the application of any Act administered by the Commissioner; or
- (b) completes or assists in completing any document to be submitted to the Commissioner by any other person in terms of any such Act, must register with the Commissioner as a tax practitioner, in such form as the Commissioner may determine, at the later of 30 June 2005 or 30 days after the date on which that person for the first time so provides advice or completes or assists in completing any such document.

(2) The provisions of this section do not apply in respect of a person who—

- (a) provides advice or completes or assists in completing any document, as contemplated in subsection (1), solely for no consideration to that person or his or her employer or connected person in relation to that employer;
- (b) provides advice contemplated in subsection (1) solely in anticipation of any litigation to which the Commissioner is a party, or in the course of such litigation;
- (c) provides advice contemplated in subsection (1) solely as an incidental or subordinate part of providing goods or other services to another person;
- (d) provides advice or completes or assists in completing any document, as contemplated in subsection (1) solely—
 - (i) to or in respect of the employer by whom that person is employed on a full-time basis or to or in respect of that employer and connected persons in relation to that employer; or
 - (ii) under the direct supervision of any person who is registered as a tax practitioner in terms of subsection (1); or
- (e) provides advice solely with respect to the application of the Customs and Excise Act, 1964 (Act No. 91 of 1964), or completes or assists in completing any documents for purposes of that Act.”.

Amendment of section 69 of Act 58 of 1962, as amended by section 41 of Act 30 of 1998 and section 39 of Act 74 of 2002

10. Section 69 of the Income Tax Act, 1962, is hereby amended by the addition to subsection (1) of the following paragraphs:

- "(g) all amounts received by or accrued to or in favour of any employee or former employee of that person in respect of the disposal of any qualifying equity share contemplated in section 8B within 5 years from the date of grant of that qualifying equity share;
- (h) in the case where that person is a medical scheme contemplated in paragraph (b) of the definition of 'benefit fund'—
 - (i) the names and addresses of all the members who contribute to that medical scheme;
 - (ii) the amounts of those contributions; and
 - (iii) all amounts paid by that medical scheme on behalf of any member which must be refunded to the medical scheme by the member;
- (i) in the case where that person is a pension fund, a provident fund or a retirement annuity fund—

Invoeging van artikel 67A in Wet 58 van 1962

9. Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, na artikel 67 ingevoeg:

“Registrasie van belastingpraktisyens**67A. (1) Elke natuurlike persoon wat—**

- (a) advies aan enige ander persoon verleen ten opsigte van die toepassing van enige Wet deur die Kommissaris geadministree; of
 - (b) enige dokument voltooi of bystand verleen om dit te voltooi waar daardie dokument deur enige ander persoon ingevolge enige sodanige Wet by die Kommissaris ingedien moet word, moet by die Kommissaris as 'n belastingpraktisyen regstreer, in die vorm as wat die Kommissaris mag bepaal, op die laatste van 30 Junie 2005 of 30 dae na die datum waarop daardie persoon vir die eerste maal aldus advies verleen of enige sodanige dokument voltooi of bystand verleen om te voltooi.
- (2) Die bepalings van hierdie artikel is nie van toepassing nie ten opsigte van 'n persoon wat—
- (a) advies verleen of 'n dokument voltooi of bystand verleen om te voltooi soos in subartikel (1) bedoel, alleenlik vir geen vergoeding aan daardie persoon of sy of haar werkgewer of verbonde persoon met betrekking tot daardie werkgewer;
 - (b) advies verleen soos in subartikel (1) bedoel alleenlik met die vooruitsig van enige regsgeding waartoe die Kommissaris 'n party is, of in die loop van sodanige regsgeding;
 - (c) advies verleen soos in subartikel (1) bedoel alleenlik as 'n toevallige of ondergesikte deel van die verskaffing van goed of ander dienste aan 'n ander persoon;
 - (d) advies verleen of 'n dokument voltooi of bystand verleen om te voltooi soos in subartikel (1) bedoel alleenlik—
 - (i) aan of ten opsigte van die werkgewer by wie daardie persoon op 'n voltydse basis in diens is of aan of ten opsigte van daardie werkgewer en verbonde persone met betrekking tot daardie werkgewer; of
 - (ii) onder die direkte toesig van enige persoon wat ingevolge subartikel (1) as 'n belastingpraktisyen geregistreer is; of
 - (e) advies verleen alleenlik ten opsigte van die toepassing van die Doeane- en Aksynswet, 1964 (Wet No. 91 van 1964), of enige dokument voltooi of bystand verleen om te voltooi vir doeleindes van daardie Wet.”.

Wysiging van artikel 69 van Wet 58 van 1962, soos gewysig deur artikel 41 van Wet 30 van 1998 en artikel 39 van Wet 74 van 2002

10. Artikel 69 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende paragrawe by subartikel (1) te voeg:

- "(g) alle bedrae ontvang deur of toegeval aan of ten gunste van enige werknemer of voormalige werknemer van daardie persoon ten opsigte van die besikking oor enige kwalifiserende ekwiteitsaandeel in artikel 8B bedoel, binne 5 jaar vanaf die datum van toekenning van daardie kwalifiserende ekwiteitsaandeel;
- (h) in die geval waar daardie persoon 'n mediese skema in paragraaf (b) van die omskrywing van 'bystandsfonds' bedoel, is—
 - (i) die name en adresse van al die lede wat tot daardie mediese skema bygedra het;
 - (ii) die bedrae van daardie bydraes; en
 - (iii) alle bedrae deur daardie mediese skema namens enige lid betaal wat deur die lid aan die mediese skema terugbetaal moet word;
- (i) in die geval waar daardie persoon 'n pensioenfonds, 'n voorsorgsfonds of 'n uitredingannuiteitsfonds is—

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- (i) the names and addresses of all the members who contribute to that fund;
and
- (ii) the amounts of those contributions;”.

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996, section 39 of Act 53 of 1999, section 44 of Act 30 of 2000, section 23 of Act 5 of 2001, section 18 of Act 19 of 2001, section 52 of Act 60 of 2001, section 45 of Act 74 of 2002, section 68 of Act 45 of 2003 and section 19 of Act 16 of 2004

11. (1) Section 75 of the Income Tax Act, 1962, is hereby amended—

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

“(aA) any person who fails to register as a taxpayer or to inform the Commissioner of any change in address as contemplated in section 67;”;

(b) by the insertion in subsection (1) after paragraph (aA) of the following paragraph:

“(aB) any person who fails to register as a tax practitioner as contemplated in section 67A;”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any failure on or after that date.

Insertion of Part IA in Chapter III of Act 58 of 1962

12. (1) The following Part is hereby inserted in Chapter III of the Income Tax Act, 1962, after Part I:

“PART IA

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ADVANCE TAX RULINGS

Definitions

76B. For purposes of this Part, unless the context otherwise indicates—
‘advance tax ruling’ means a written statement issued by the Commissioner regarding the interpretation or application of the Act and is limited to a binding general ruling under section 76P, a binding private ruling under section 76Q, or a binding class ruling under section 76R;

‘applicant’ means a person who applies for a binding private ruling under section 76Q or a binding class ruling under section 76R;

‘application’ means an application for a binding private ruling under section 76Q or a binding class ruling under section 76R;

‘binding class ruling’ means an advance tax ruling regarding the application or interpretation of the Act to a specific class of persons in respect of a proposed transaction that is issued in accordance with the requirements of section 76R in response to an application by an applicant;

‘binding general ruling’ means an advance tax ruling, issued in accordance with the requirements of section 76P, regarding—

(a) the interpretation of the Act; or

(b) the application or interpretation of the Act in respect of a particular set of facts and circumstances or transaction;

‘binding private ruling’ means an advance tax ruling regarding the application or interpretation of the Act in respect of a proposed transaction that is issued in accordance with the requirements of section 76Q in response to an application by an applicant;

‘class member’ means a member of the class to which a binding class ruling applies, such as a shareholder in a company or an employee participant in a share investment scheme;

‘entity’ means a person, other than a natural person, which may apply for a binding class ruling on behalf of its shareholders or members in respect of a proposed transaction to which it is a party and includes a company, close

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- (i) die name en adresse van alle lede wat tot daardie fonds bygedra het; en
- (ii) die bedrae van daardie bydraes;

Wysiging van artikel 75 van Wet 58 van 1962, soos gewysig deur artikel 40 van Wet 101 van 1990, artikel 34 van Wet 129 van 1991, artikel 30 van Wet 141 van 1992, artikel 35 van Wet 113 van 1993, artikel 27 van Wet 21 van 1994, artikel 15 van Wet 46 van 1996, artikel 39 van Wet 53 van 1999, artikel 44 van Wet 30 van 2000, artikel 23 van Wet 5 van 2001, artikel 18 van Wet 19 van 2001, artikel 52 van Wet 60 van 2001, artikel 45 van Wet 74 van 2002, artikel 68 van Wet 45 van 2003 en artikel 19 van Wet 16 van 2004

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11. (1) Artikel 75 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur paragraaf (aA) van subartikel (1) deur die volgende paragraaf te vervang:

“(aA)’n persoon wat nalaat om as ’n belastingpligtige te regstreer of om die Kommissaris van enige verandering in adres in kennis te stel soos in artikel 67 bedoel;”;

(b) deur na paragraaf (aA) van subartikel (1) die volgende paragraaf in te voeg:

“(aB)enige persoon wat nalaat om as ’n belastingpraktisyn soos in artikel 67A bedoel, te regstreer;”.

(2) Subartikel (1) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige nalate op of na daardie datum.

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Invoeging van Deel IA in Hoofstuk III van Wet 58 van 1962

12. (1) Die volgende Deel word hierby in Hoofstuk III van die Inkomstebelastingwet, 1962, na Deel I ingeveog:

“DEEL IA

VOORAF BELASTINGBESLISSINGS

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Omskrywings

76B. By die toepassing van hierdie Deel, tensy uit die samehang anders blyk, beteken—

‘aansoek’ ’n aansoek om ’n bindende privaatbeslissing kragtens artikel 76Q of ’n bindende klasbeslissing kragtens artikel 76R;

‘applikant’ ’n persoon wat vir ’n bindende privaatbeslissing kragtens artikel 76Q of ’n bindende klasbeslissing kragtens artikel 76R, aansoek doen;

‘bindende algemene beslissing’ ’n vooraf belastingbeslissing, uitgereik ooreenkomsdig die vereistes van artikel 76P, met betrekking tot—

(a) die uitleg van die Wet; of

(b) die toepassing of uitleg van die Wet ten opsigte van ’n spesifieke stel feite en omstandighede of transaksie;

‘bindende klasbeslissing’ ’n vooraf belastingbeslissing met betrekking tot die toepassing of uitleg van die Wet op ’n spesifieke klas van persone ten opsigte van ’n voorgestelde transaksie wat ooreenkomsdig die vereistes van artikel 76R in antwoord op ’n aansoek deur ’n applikant uitgereik word;

‘bindende privaatbeslissing’ ’n vooraf belastingbeslissing met betrekking tot die toepassing of uitleg van die Wet ten opsigte van ’n voorgestelde transaksie wat ooreenkomsdig die vereistes van artikel 76Q in antwoord op ’n aansoek deur ’n applikant uitgereik is;

‘entiteit’ ’n persoon, behalwe ’n natuurlike persoon, wat namens sy aandeelhouers of lede vir ’n bindende klasbeslissing kan aansoek doen ten opsigte van ’n voorgestelde transaksie waarby die persoon ’n party is en sluit in ’n maatskappy, beslote korporasie of vakvereniging. Met dien verstande dat ’n entiteit nie insluit nie enige professionele firma wat namens ’n klient optree of beweer word op te tree;

‘lid van ’n klas’ ’n lid van die klas waarop ’n bindende klasbeslissing van toepassing is, soos ’n aandeelhouer in ’n maatskappy of ’n deelnemende werkneemster in ’n aandele beleggingskema;

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corporation or trade association: Provided that an entity does not include a professional firm acting or purporting to act on behalf of a client;

'nonbinding private opinion' means a written statement issued by the Commissioner in response to an inquiry by a person in order to provide the person with informal guidance in respect of the tax treatment of a particular set of facts and circumstances or transaction, but which does not have any binding effect within the meaning of section 76H;

'transaction' means any transaction, deal, business, arrangement, operation or scheme (collectively, 'transaction') and includes a series of transactions.

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Purpose

76C. The purpose of the advance tax ruling system is to promote clarity, consistency, and certainty regarding the interpretation and application of the Act.

Scope 15

76D. The Commissioner may make an advance tax ruling on any provision of this Act.

Form and content of applications

76E. (1) Subject to the minimum requirements set forth in subsection (2) of this section, an application must be made in such manner and in such form as the Commissioner may prescribe.

- (2) An application must state the following minimum information—
- (a) the applicant's name, applicable identification or tax registration number, postal address and telephone number;
 - (b) the name, postal address and telephone number of the applicant's representative, if any;
 - (c) a complete description of the proposed transaction in respect of which the ruling is sought;
 - (d) a complete description of the impact the proposed transaction may have upon the tax liability of the applicant or, where relevant, any connected person in relation to the applicant, including any and all relevant information regarding the financial or tax implications of the proposed transaction;
 - (e) a complete description of any transactions entered into by the applicant prior to submitting the application or that may be undertaken after the completion of the proposed transaction which may have a bearing on the tax consequences of the proposed transaction or may be considered to be part of a series of transactions involving the proposed transaction;
 - (f) the proposed ruling being sought;
 - (g) the relevant statutory provisions or issues;
 - (h) the reasons why the applicant believes that the proposed ruling should be granted;
 - (i) a statement of the applicant's interpretation of the relevant statutory provisions or issues, as well as an analysis of any relevant authorities either considered by the applicant or of which the applicant is aware, whether those authorities support or are contrary to the proposed ruling being sought;
 - (j) a statement, to the best of the applicant's knowledge, that the same or substantially similar issue upon which the ruling is sought is not the subject of an audit, examination, investigation, ruling application, objection and appeal, or other proceeding currently before the Commissioner or the courts involving the applicant or a connected person in relation to the applicant;

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'nie-bindende privaatmening' 'n skriftelike verklaring deur die Kommissaris uitgereik in antwoord op 'n navraag deur 'n persoon ten einde die persoon van informele leiding te voorsien ten opsigte van die belastinghantering van 'n spesifieke stel feite en omstandighede of transaksie, maar wat nie enige bindende effek het soos in artikel 76H bedoel nie;

'transaksie' enige transaksie, saak, besigheid, reëling, handeling of skema (gesamentlik 'transaksie') en sluit in 'n reeks van transaksies;

'vooraf belastingbeslissing' 'n skriftelike verklaring deur die Kommissaris uitgereik met betrekking tot die uitleg of toepassing van die Wet en is beperk tot 'n bindende algemene beslissing kragtens artikel 76P, 'n bindende privaatbeslissing kragtens artikel 76Q, of 'n bindende klasbeslissing kragtens artikel 76R.

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Doeleind

76C. Die doel van die vooraf belastingbeslissingstelsel is om duidelikheid, eenvormigheid en sekerheid met betrekking tot die uitleg en toepassing van die Wet te bevorder.

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Omvang

76D. Die Kommissaris kan 'n vooraf belastingbeslissing ten opsigte van enige bepaling van hierdie Wet maak.

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Vorm en inhoud van aansoeke

76E. (1) Behoudens die minimum vereistes in subartikel (2) van hierdie artikel uiteengesit, moet 'n aansoek gedoen word op die wyse en in die vorm as wat die Kommissaris mag voorskryf.

(2) 'n Applikant moet die volgende minimum inligting verskaf—

- (a) die applikant se naam, toepaslike identifikasie of belasting registrasienommer, posadres en telefoonnummer;
- (b) die naam, posadres en telefoonnummer van die applikant se verteenwoordiger, indien enige;
- (c) 'n volledige beskrywing van die voorgestelde transaksie ten opsigte waarvan die beslissing verlang word;
- (d) 'n volledige beskrywing van die impak wat die voorgestelde transaksie op die belastingaanspreeklikeid van die applikant kan hê of, waar van toepassing, enige verbonde persoon met betrekking tot die applikant, ingesluit enige en alle relevante inligting met betrekking tot die finansiële of belastingimplikasies van die voorgestelde transaksie;
- (e) 'n volledige beskrywing van enige transaksies aangegaan deur die applikant voor die aansoek ingedien is of wat onderneem mag word na die voorgestelde transaksie voltooi is wat 'n impak op die belastingimplikasies van die voorgestelde transaksie kan hê of wat geag kan word deel te wees van 'n reeks van transaksies wat die voorgestelde transaksie betrek;
- (f) die voorgestelde beslissing wat verlang word;
- (g) die betrokke statutêre bepalings of aangeleenthede;
- (h) die redes waarom die applikant glo dat die voorgestelde beslissing toegestaan moet word;
- (i) 'n verklaring van die applikant se uitleg van die betrokke statutêre bepalings of aangeleenthede, sowel as 'n ontleding van enige relevante gesag hetsy deur die applikant oorweeg of waarvan die applikant bewus is, en of daardie gesag die voorgestelde beslissing wat versoek word ondersteun of daarmee in stryd is;
- (j) 'n verklaring tot die beste van die applikant se kennis, dat dieselfde of wesenlik soortgelyke aangeleenthed waaraan die beslissing versoek word nie aan 'n audit, ontleding, ondersoek, aansoek om beslissing, beswaar en appèl of ander verrigting huidiglik voor die Kommissaris of die howe waarby die applikant of 'n verbonde persoon met betrekking tot die applikant betrek is, onderworpe is nie;

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- (k) a draft version of the binding private ruling or binding class ruling to be issued;
- (l) a description of the information that the applicant believes should be deleted from the final ruling before publication in order to protect the applicant's confidentiality; and
- (m) the applicant's consent to the publication of the ruling by the Commissioner in accordance with section 76O.
- (3) In addition to the minimum information required by subsection (2) of this section, an application for a binding class ruling must also state the following minimum information—
- (a) a description of the class members; and
- (b) the impact the proposed transaction may have upon the liability of the class members or, where relevant, any connected person in relation to the applicant or to any class member.
- (4) The Commissioner may request additional information from an applicant at any time.
- (5) An application must be accompanied by the application fee prescribed by the Commissioner pursuant to section 76F(1).

Fees

- 76F.** (1) In order to defray the cost of the advance tax ruling system, the Commissioner must prescribe fees for the issuance of binding private rulings and binding class rulings, including—
- (a) an application fee; and
- (b) a cost recovery fee.
- (2) Following the acceptance of an application, the Commissioner must, if requested, provide the applicant with an estimate of the cost recovery fee anticipated in connection with that application and must notify the applicant if it subsequently appears that this estimate may be exceeded.
- (3) The fees imposed by this section constitute fees imposed by SARS within the meaning of section 5(1)(h) the South African Revenue Services Act, 1997, and constitute funds of SARS within the meaning of section 24 of that Act.

Exclusions, refusals and rejections

- 76G.** (1) Notwithstanding any provision to the contrary in this Act, the Commissioner may not accept an application for an advance tax ruling in any of the following circumstances—
- (a) the application requests or requires the rendering of an opinion, conclusion or determination regarding or in respect of any of the following:
- (i) the market value of an asset;
- (ii) the application or interpretation of the laws of a foreign country;
- (iii) the pricing of goods or services supplied by or rendered to a connected person in relation to the applicant (or to a class member in the case of an application for a binding class ruling);
- (iv) the constitutionality of any tax law; or
- (v) a proposed transaction that is hypothetical or not seriously contemplated;
- (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;
- (c) the application is submitted for academic purposes; or
- (d) the application presents, contains, or raises—
- (i) a frivolous or vexatious issue;
- (ii) alternative courses of action by the applicant (or requests or requires the rendering of an opinion, conclusion or determination regarding such alternative courses of action); or
- (iii) an issue that is the same as or substantially similar to an issue that is—

- (k) 'n konsep weergawe van die bindende privaatbeslissing of bindende klasbeslissing wat uitgereik moet word;
- (l) 'n beskrywing van die inligting wat die applikant glo uit die finale beslissing geskrap moet word voor publikasie ten einde die applikant se privaatheid te beskerm; en
- (m) die applikant se toestemming tot die publikasie van die beslissing deur die Kommisaris ooreenkomstig artikel 76O.
- (3) Addisioneel tot die minimum inligting deur subartikel (2) van hierdie artikel vereis, moet 'n aansoek om 'n bindende klasbeslissing ook die volgende minimum inligting bevat—
- (a) 'n beskrywing van die lede van die klas; en
- (b) die impak wat die voorgestelde transaksie op die aanspreeklikheid van die lede van die klas, of waar van toepassing, enige verbonde persoon met betrekking tot die applikant of enige lid van die klas, kan hê.
- (4) Die Kommissaris kan op enige tydstip addisionele inligting van die applikant versoek.
- (5) 'n Aansoek moet vergesel wees van die aansoekfooi deur die Kommissaris ooreenkomstig artikel 76F(1) voorgeskryf.

Fooie

- 76F.** (1) Ten einde die koste van die vooraf belastingbeslissingstelsel te bestry, moet die Kommissaris fooie voorskryf vir die uitreik van bindende privaatbeslissings en bindende klasbeslissings, waarby ingesluit—
- (a) 'n aansoekfooi; en
- (b) 'n koste verhalingsfooi.
- (2) Na aanvaarding van 'n aansoek, moet die Kommissaris, indien versoek, die applikant met 'n beraming van die koste verhalingsfooi met betrekking tot daardie aansoek voorsien en die applikant in kennis stel indien dit daarna blyk dat die beraming oorskry kan word.
- (3) Die fooie deur hierdie artikel opgelê stel fooie daar wat deur SARS opgelê word soos in artikel 5(1)(h) van die Wet op die Suid-Afrikaanse Inkomsbediens, 1997, bedoel en stel fondse van SARS daar soos in artikel 24 van daardie Wet bedoel.

Uitsluitings, weierings en verwerpings

- 76G.** (1) Ondanks enige bepaling tot die teendeel in hierdie Wet vervat, mag die Kommissaris nie 'n aansoek om 'n vooraf belastingbeslissing aanvaar in enige van die volgende omstandighede nie—
- (a) die aansoek versoek of vereis die lewering van 'n mening, afleiding of vasstelling rakende of met betrekking tot enige van die volgende:
- (i) die markwaarde van 'n bate;
 - (ii) die toepassing of uitleg van die reg van 'n ander land;
 - (iii) die prysvasstelling van goed of dienste aan 'n verbonde persoon met betrekking tot die applikant (of aan 'n lid van 'n klas in die geval van 'n aansoek om 'n bindende klasbeslissing) voorsien of gelewer;
 - (iv) die grondwetlikheid van enige belastingbepaling; of
 - (v) 'n voorgestelde transaksie wat hipoteties is of nie ernstig orweeg word nie;
- (b) die aansoek hou verband met die plig van 'n werkewer om te bepaal of 'n persoon 'n onafhanklike kontrakteur, arbeidsmakelaar, persoonlike diensmaatskappy of persoonlike dientrust is;
- (c) die aansoek is vir akademiese redes ingedien; of
- (d) die aansoek bied, vervat of opper—
- (i) 'n beuselagtige of kwelsugtige aangeleentheid;
 - (ii) alternatiewe remedies deur die applikant (of die lewering van 'n mening, gevolgtrekking of vasstelling **met** betrekking tot sodanige alternatiewe remedies word versoek of vereis); of
 - (iii) 'n aangeleentheid wat dieselfde of wesenslik soortgelyk is aan 'n aangeleentheid wat—

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- (aa) currently before the Commissioner in connection with an audit, examination, investigation or other proceeding involving the applicant or any connected person in relation to the applicant (or, in the case of a binding class ruling, in relation to the applicant or any class member);
- (bb) the subject of draft legislation; or
- (cc) pending before the courts.
- (2) In addition to the exclusions and refusals set forth in subsections (1) of this section, the Commissioner may reject any application regarding or in respect of any of the following—
- (a) the application or interpretation of any general or specific anti-avoidance provision, including but not limited to section 103 of this Act, as well as the application or interpretation of any anti-avoidance doctrine, principle or mechanism;
- (b) an issue—
- (i) that is of an inherently or distinctly factual nature;
 - (ii) in respect of which material facts cannot be established at the time of the application;
 - (iii) the resolution of which would depend upon assumptions to be made regarding a future event or other matters which cannot be reasonably determined at the time of the application;
 - (iv) which would be more appropriately dealt with by the competent authorities of the parties to an agreement for the avoidance of double taxation;
 - (v) which is the same as or substantially similar to an issue upon which the applicant has already received a ruling;
 - (vi) in which the tax treatment of the applicant is dependent upon the tax treatment of another party to the proposed transaction and that other party has not applied for a ruling; or
 - (vii) in respect of a transaction that is part of another transaction which has a bearing on that issue and the details of that other transaction have not been disclosed; or
- (c) a matter the resolution of which would be unduly time-consuming or resource intensive.
- (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.
- (4) If the Commissioner requests additional information in respect of or in connection with an application and the applicant fails or refuses to provide that information, the Commissioner may reject that application without any refund or rebate of any applicable fees imposed under section 76F.

Binding effect

76H. (1) Except to the extent otherwise provided in sections 76K, 76L and 76M, if an advance tax ruling applies to a person in accordance with section 76J, then the Commissioner must interpret or apply the Act to that person in accordance with that advance tax ruling (referred to as “binding effect” for purposes of this Part).

(2) An advance tax ruling does not have any binding effect upon the Commissioner unless that advance tax ruling applies to that person in accordance with section 76J.

(3) A binding general ruling may be cited by the Commissioner or any person in any proceeding before the Commissioner or the courts.

- (aa) tans voor die Kommissaris is rakende 'n oudit, ontleding, ondersoek of ander verrigting waarby die applikant of enige verbonde persoon met betrekking tot die applikant betrek is (of in die geval van 'n bindende klasbeslissing, met betrekking tot die applikant of enige lid van die klas);
 (bb) die onderwerp van konsepwetgewing is; of
 (cc) voor die howe hangende is.
- (2) Addisioneel tot die uitsluitings en weierings in subartikel (1) van hierdie artikel uiteengesit, mag die Kommissaris enige aansoek met betrekking tot enige van die volgende verwerp—
- (a) die toepassing of uitleg van enige algemene of spesifieke teenvermydingsbepaling, ingesluit maar nie beperk nie tot artikel 103 van hierdie Wet, sowel as die toepassing of uitleg van enige teenvermydingsleerstuk, beginsel of meganisme;
- (b) 'n aangeleentheid—
- (i) wat inherent of duidelik feitelik van aard is;
 - (ii) ten opsigte waarvan materiële feite nie op die tydstip van die aansoek bepaal kan word nie;
 - (iii) die oplossing waarvan afhang van die veronderstellings wat gemaak word met betrekking tot 'n toekomstige gebeurtenis of ander aangeleenthede wat nie redelikerwys op die tydstip van die aansoek bepaal kan word nie;
 - (iv) wat meer geredelik hanteer kan word deur die bevoegde owerheid van die partye tot 'n ooreenkoms vir die vermyding van dubbele belasting;
 - (v) wat dieselfde of wesenlik soortgelyk is aan 'n aangeleentheid waaroer die applikant alreeds 'n beslissing ontvang het;
 - (vi) waar die belastinghantering van die applikant van die belastinghantering van 'n ander party tot die voorgestelde transaksie afhanglik is en daardie ander party nie vir 'n beslissing aansoek gedoen het nie; of
 - (vii) ten opsigte van 'n transaksie wat deel van 'n ander transaksie wat 'n invloed op daardie aangeleentheid het, vorm en die besonderhede van daardie ander transaksie nie geopenbaar is nie; of
- (c) 'n aangeleentheid waar die oplossing buitengewoon tydsaam of hulpbron intensief sal wees.
- (3) Addisioneel tot die uitsluitings en weierings in subartikels (1) en (2) van hierdie artikel uiteengesit, mag die Kommissaris 'n lys van aangeleenthede publiseer ten opsigte waarvan aansoeke nie aanvaar sal word nie.
- (4) Indien die Kommissaris addisionele inligting ten opsigte van of met betrekking tot 'n aansoek versoek en die applikant laat na of weier om daardie inligting te verskaf, mag die Kommissaris daardie aansoek verworp sonder enige terugbetaling of korting van enige toepaslike fooie kragtens artikel 76F opgelê.

Bindende effek

76H. (1) Behalwe in die mate andersins in artikels 76K, 76L en 76M bepaal, waar 'n vooruit belastingbeslissing op 'n persoon ooreenkomstig artikel 76J van toepassing is, moet die Kommissaris die Wet uitlê of toepas ten opsigte van daardie persoon ooreenkomstig daardie vooruit belastingbeslissing (hierna 'bindende effek' genoem vir doeleindes van hierdie Deel).

(2) 'n Vooruit belastingbeslissing het nie enige bindende effek op die Kommissaris nie tensy daardie vooruit belastingbeslissing op daardie persoon van toepassing is ooreenkomstig artikel 76J.

(3) 'n Bindende algemene beslissing kan deur die Kommissaris of enige persoon in enige verrigting voor die Kommissaris of die howe aangehaal word.

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(4) A binding private ruling may not be cited in any proceeding before the Commissioner or the courts other than a proceeding involving the applicant for that ruling.

(5) A binding class ruling may not be cited in any proceeding before the Commissioner or the courts by any person other than a proceeding involving the applicant for that ruling or an affected class member identified in the ruling.

(6) A publication or other written statement issued by the Commissioner does not have any binding effect unless it is a binding general ruling under section 76P, a binding private ruling under section 76Q, or a binding class ruling under section 76R.

Nonbinding private opinions and other written statements

76I. (1) The Commissioner may issue a nonbinding private opinion to a person regarding the tax treatment of a particular set of facts and circumstances or a particular transaction.

(2) A nonbinding private opinion does not have any binding effect upon the Commissioner.

(3) A nonbinding private opinion may not be cited in any proceeding before the Commissioner or the courts other than a proceeding involving the person to whom the nonbinding private opinion was issued.

(4) With respect to any written statement issued by the Commissioner prior to the effective date of this Part, the Commissioner may prescribe, in writing, the extent to which, if any, such statement has binding effect.

(5) Except to the extent the Commissioner prescribes otherwise in accordance with subsection (4) of this section, any written statement issued by the Commissioner prior to the effective date of this Part is to be treated as and have the effect of a nonbinding private opinion.

Applicability of advance tax rulings

76J. (1) For purposes of section 76H, an advance tax ruling applies to a person only if all of the following conditions have been satisfied—

- (a) the provision or provisions of the Act at issue are the subject of the advance tax ruling;
- (b) the set of facts and circumstances or the transaction presented by the person are the same as the particular set of facts and circumstances or the particular transaction specified in the advance tax ruling;
- (c) the person's set of facts and circumstances or transaction fall entirely within the effective period for the effective period of the advance tax ruling; and
- (d) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the advance tax ruling have been satisfied or carried out.

(2) In addition to the requirements set forth in subsection (1) of this section—

- (a) in the case of a binding private ruling, the ruling applies to a person only if that person is the applicant identified in the ruling; and
- (b) in the case of a binding class ruling, the ruling applies to a person only if that person is either the applicant identified in the ruling or a class member identified in the ruling.

(4) 'n Bindende privaatbeslissing mag nie in enige verrigting voor die Kommissaris of die howe aangehaal word nie behalwe in 'n verrigting waarby die applikant vir daardie beslissing betrek is.

(5) 'n Bindende klasbeslissing mag nie deur enige persoon in enige verrigting voor die Kommissaris of die howe aangehaal word nie, behalwe 'n verrigting waarby die applikant vir daardie beslissing of 'n geaffekteerde lid van 'n klas in die beslissing geïdentifiseer betrek is.

(6) 'n Publikasie of ander skriftelike verklaring deur die Kommissaris uitgereik het nie enige bindende effek nie tensy dit 'n bindende algemene beslissing kragtens artikel 76P, 'n bindende privaatbeslissing kragtens artikel 76Q of 'n bindende klasbeslissing kragtens artikel 76R daarstel.

Nie-bindende privaatmenings en ander skriftelike verklarings

76I. (1) Die Kommissaris kan 'n nie-bindende privaatmening aan 'n persoon uitrek met betrekking tot die belastinghantering van 'n spesifieke stel feite en omstandighede of 'n spesifieke transaksie.

(2) 'n Nie-bindende privaatmening het nie enige bindende effek op die Kommissaris nie.

(3) 'n Nie-bindende privaatmening mag nie in enige verrigting voor die Kommissaris of die howe aangehaal word nie behalwe in 'n verrigting waarby die persoon aan wie die nie-bindende privaatmening uitgereik is, betrek is.

(4) Met betrekking tot enige skriftelike verklaring deur die Kommissaris uitgereik voor die inwerkingtredingsdatum van hierdie Deel, kan die Kommissaris skriftelik die mate voorskryf waarin, indien enige, sodanige verklaring bindende effek het.

(5) Behalwe in die mate wat die Kommissaris ingevolge subartikel (4) van hierdie artikel anders voorskryf, word enige skriftelike verklaring deur die Kommissaris voor die inwerkingtredingsdatum van hierdie Deel uitgereik, geag 'n nie-bindende privaatmening te wees en die gevolg daarvan te hê.

Toepassing van vooruit belastingbeslissings

76J. (1) By die toepassing van artikel 76H, is 'n vooruit belastingbeslissing van toepassing op 'n persoon slegs indien al die volgende voorwaarde nagekom is—

- (a) die betrokke bepaling of bepalings van die Wet is die onderwerp van die vooruit belastingbeslissing;
- (b) die stel feite en omstandighede of die transaksie deur die persoon voorgelê is dieselfde as die spesifieke stel feite en omstandighede of spesifieke transaksie wat in die vooruit belastingbeslissing gespesifieer word;
- (c) die persoon se stel feite en omstandighede of transaksie val in geheel binne die effektiewe tydperk vir die effektiewe tydperk van die vooruit belastingbeslissing; en
- (d) enige veronderstellings gemaak of voorwaarde opgelê deur die Kommissaris met betrekking tot die geldigheid van die vooruit belastingbeslissing is nagekom of uitgevoer.

(2) Addisioneel tot die vereistes in subartikel (1) van hierdie artikel uiteengesit—

- (a) in die geval van 'n bindende privaatbeslissing, is die beslissing van toepassing ten opsigte van 'n persoon slegs indien daardie persoon die applikant wat in die beslissing geïdentifiseer word is; en
- (b) in die geval van 'n bindende klasbeslissing, is die beslissing van toepassing op 'n persoon slegs indien daardie persoon óf die applikant is wat in die beslissing geïdentifiseer word óf 'n lid van 'n klas is wat in die beslissing geïdentifiseer word.

Rulings rendered void due to fraud, misrepresentation, etc

76K. (1) Notwithstanding any provision to the contrary in this Act, a binding private ruling or binding class ruling is rendered void *ab initio* under any of the following circumstances—

- (a) the facts stated in the application regarding the proposed transaction are materially different from the transaction actually carried out;
- (b) there is fraud, misrepresentation or nondisclosure of a material fact; or
- (c) any condition or assumption stipulated by the Commissioner is not satisfied or carried out.

(2) For purposes of this section, a fact is considered material if it would have resulted in a different ruling had the Commissioner been aware of it when the original ruling was made.

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Impact of subsequent changes in tax law

76L. (1) Notwithstanding any provision to the contrary contained in this Act, an advance tax ruling ceases to be effective upon the occurrence of any of the following circumstances—

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- (a) if the provision of the Act that was the subject of the advance tax ruling is repealed or amended, the advance tax ruling will cease to be effective from the date that such repeal or amendment is effective;
- (b) if a court overturns or modifies an interpretation of the Act on which the advance tax ruling is based, the advance tax ruling will cease to be effective from the date of judgment unless—
 - (i) the decision is under appeal;
 - (ii) the decision is fact-specific and the general interpretation upon which the advance tax ruling was based was unaffected; or
 - (iii) the reference to the interpretation upon which the advance tax ruling was based was *obiter dicta*.

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(2) An advance tax ruling ceases to be effective immediately upon the occurrence of the circumstances described in subsection (1) of this section, whether or not the Commissioner publishes a notice of withdrawal or modification.

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Withdrawal or modification

76M. (1) The Commissioner may withdraw or modify an advance tax ruling at any time, subject to the requirements of this section.

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(2) Notice of the withdrawal or modification of an advance tax ruling must be published in such manner and media as the Commissioner may deem appropriate.

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(3) The notice of withdrawal or modification may be made in such manner and in such form as the Commissioner may prescribe: Provided that such notice must include the following information—

- (a) the title or number of the advance tax ruling being withdrawn or modified;
- (b) if a modification, a summary of the changes made; and
- (c) the effective date of the withdrawal or modification.

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(4) If the advance tax ruling is either a binding private ruling or a binding class ruling, the Commissioner must first provide the applicant with notice of the proposed withdrawal or modification and a reasonable opportunity to state any proposition of law or fact relevant to the decision to withdraw or modify the ruling.

Nietige beslissings weens bedrog, wanvoorstelling ens.

76K. (1) Ondanks enige bepaling tot die teendeel in hierdie Wet vervaat, is 'n bindende privaatbeslissing of 'n bindende klasbeslissing *ab initio* nietig in die volgende omstandighede—

- (a) die feite in die aansoek met betrekking tot die voorgestelde transaksie vermeld, verskil wesenlik van die transaksie werklik uitgevoer;
- (b) daar is bedrog, wanvoorstelling of nie-openbaring van wesenlike feite; of
- (c) enige voorwaarde of veronderstelling deur die Kommissaris gestipuleer is nie aan voldoen of uitgevoer is nie.

(2) By die toepassing van hierdie artikel word 'n feit geag wesenlik te wees indien dit tot 'n verskillende beslissing sou geleei het indien die Kommissaris daarvan bewus was toe die oorspronklike beslissing gegee is.

Effek van latere wysiging in belastingreg

76L. (1) Ondanks enige bepaling tot die teendeel in hierdie Wet vervaat, is 'n vooruit belastingbeslissing nie langer van krag nie by die teenwoordigheid van enige van die volgende omstandighede—

- (a) indien die bepalings van die Wet wat die onderwerp van die vooruit belastingbeslissing is, herroep of gewysig word, hou die vooruit beslissing op om van krag te wees vanaf die datum wat daardie herroeping of wysiging in werking tree;
- (b) indien 'n hof 'n uitleg van die Wet waarop die vooruit belastingbeslissing gebaseer is, verworp of wysig, hou die vooruit belastingbeslissing op om van krag te wees vanaf die datum van die uitspraak, tensy—
 - (i) die uitspraak aan appèl onderhewig is;
 - (ii) die uitspraak feite spesifiek is en die algemene uitleg waarop die vooruit belastingbeslissing gebaseer is, onaangeraak bly; of
 - (iii) die verwysing na die uitleg waarop die vooruit belastingbeslissing gebaseer is, *obiter dicta* is.

(2) 'n Vooruit belastingbeslissing hou onmiddellik op om van krag te wees by die teenwoordigheid van die omstandighede in subartikel (1) van hierdie artikel bedoel, ongeag of die Kommissaris 'n kennisgiving van terugtrekking of wysiging publiseer aldan nie.

Terugtrekking of wysiging

76M. (1) Die Kommissaris kan 'n vooruit belastingbeslissing op enige tydstip terugtrek of wysig, behoudens die vereistes in hierdie artikel vervaat.

(2) Kennisgiving van die terugtrekking of wysiging van 'n vooruit belastingbeslissing moet op die wyse en media as wat die Kommissaris paslik ag, gepubliseer word.

(3) Die kennisgiving van terugtrekking of wysiging kan op so 'n wyse en in so 'n vorm as wat die Kommissaris mag voorskryf, gemaak word: Met dien verstande dat daardie kennisgiving die volgende inligting moet insluit—

- (a) die titel of nommer van die vooruit belastingbeslissing wat teruggetrek of gewysig word;
- (b) indien 'n wysiging, 'n opsomming van die veranderinge aangebring; en
- (c) die effektiewe datum van die terugtrekking of wysiging.

(4) Indien die vooruit belastingbeslissing óf 'n bindende privaatbeslissing óf 'n bindende klasbeslissing is, moet die Kommissaris eers aan die applikant kennis van die voorgestelde terugtrekking of wysiging gee en 'n redelike geleentheid toestaan om enige voorlegging van reg of feite wat relevant is tot die besluit om die beslissing terug te trek of te wysig, te stel.

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Retrospective Effect

76N. (1) The Commissioner may withdraw or modify an advance tax ruling with retrospective effect, subject to the requirements of this section.

(2) The effective date for the withdrawal or modification of a binding general ruling issued in error may not be earlier than the date of publication of the notice of that withdrawal or modification.

(3) The Commissioner may withdraw or modify a binding private ruling or a binding class ruling retrospectively if that ruling was made in error and any of the following circumstances apply—

- (a) the applicant has not yet commenced the proposed transaction;
- (b) there is any person other than the applicant (or class member, in the case of a binding class ruling) who will suffer significant tax disadvantage if the ruling is not withdrawn or modified and the applicant will suffer comparatively less if the ruling is withdrawn or modified; or
- (c) the effect of the ruling will materially erode the South African tax base and it is in the public interest to withdraw or modify the ruling retrospectively.

(4) A binding general ruling which is interpretative and is limited to providing details, supplementary information, examples, illustrations or elaborations of existing tax law, policy, or practice, applies from the effective date of the provision which is the subject of that ruling unless otherwise stated in that general binding ruling.

Publication and protection of confidentiality

76O. (1) A person applying for an advance tax ruling must consent to the publication of the advance tax ruling in accordance with this section.

(2) Binding private rulings and binding class rulings must be published by the Commissioner for general information in such form as does not reveal the identity of the applicants or class members.

(3) Information that may reveal the identity of an applicant or class member includes the following—

- (a) the name, address, and other identifying details of the applicant, as well as any person identified or referred to in the ruling;
- (b) in the case of a binding class ruling, the name, address, and other identifying details of the applicant for the ruling, as well as of any member of the class to which the ruling applies; and
- (c) any information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(4) Pursuant to section 76Q(7) or section 76R(7), the Commissioner must consider, prior to publication, any comments and proposed edits and deletions submitted by an applicant: Provided that the Commissioner's determination regarding the contents of the published ruling is final.

(5) The application or interpretation of the Act to a transaction does not constitute and may not be treated as information that may reveal the identity of an applicant or class member or constitute an unwarranted invasion of personal privacy within the meaning of subsection (3) of this section.

(6) An applicant for a binding class ruling may consent in writing to the inclusion of information identifying it or the proposed transaction in order to facilitate communication with the class members.

Terugwerkende krag

76N. (1) Die Kommissaris kan 'n vooruit belastingbeslissing met terugwerkende krag terugtrek of wysig, behoudens die vereistes in hierdie artikel vervat.

(2) Die effektiewe datum vir die terugtrekking of wysiging van 'n bindende algemene beslissing wat foutiewelik uitgereik is, mag nie vroeër wees as die datum van publikasie van die kennisgewing van daardie terugtrekking of wysiging nie.

(3) Die Kommissaris kan 'n bindende privaatbeslissing of 'n bindende klasbeslissing terugwerkend terugtrek of wysig, indien daardie beslissing foutiewelik gegee is en enige van die volgende omstandighede teenwoordig is—

- (a) die applikant het nog nie met die voorgestelde transaksie begin nie;
- (b) daar is 'n persoon behalwe die applikant (of lid van die klas in die geval van 'n bindende klasbeslissing), wat 'n wesenlike belastingnadeel sal verduur indien die beslissing nie teruggetrek of gewysig word nie en die applikant sal in verhouding minder benadeel word indien die beslissing teruggetrek of gewysig word; of
- (c) die effek van die beslissing sal die Suid-Afrikaanse belastingbasis wesenlik erodeer en dit is in die openbare belang dat die beslissing terugwerkend teruggetrek of gewysig word.

(4) 'n Bindende algemene beslissing wat uitleggend is en beperk is tot die voorsiening van besonderhede, bykomstige inligting, voorbeeld, illustrasies of verduidelikend is van bestaande belastingreg, beleid of praktyk, is van toepassing vanaf die effektiewe datum van die bepaling wat die onderwerp van daardie beslissing is, tensy anders in daardie algemene bindende beslissing vermeld word.

Publikasie en beskerming van privaatheid

76O. (1) 'n Persoon wat vir 'n vooruit belastingbeslissing aansoek doen moet toestem tot die publikasie van die vooruit belastingbeslissing ooreenkomstig hierdie artikel.

(2) Bindende privaatbeslissings en bindende klasbeslissings moet deur die Kommissaris vir algemende inligting gepubliseer word in sodanige vorm as wat nie die identiteit van die applikante of lede van die klas openbaar nie.

(3) Inligting wat die identiteit van die applikant of lid van die klas kan openbaar sluit die volgende in—

- (a) die naam, adres en ander identifiserende besonderhede van die applikant, sowel as enige persoon in die beslissing geïdentifiseer of na verwys;
- (b) in die geval van 'n bindende klasbeslissing, die naam, adres en ander identifiserende besonderhede van die applikant ten opsigte van die beslissing, sowel as van enige lid van die klas waarop die beslissing van toepassing is; en
- (c) enige inligting waarvan die openbaarmaking duidelik 'n ongeoorloofde inbreuk op persoonlike privaatheid sou daarstel.

(4) Ooreenkomstig artikel 76Q(7) of artikel 76R(7), moet die Kommissaris voor die publikasie enige kommentaar en voorgestelde veranderingen en skrappings deur die applikant voorgelê, oorweeg: Met dien verstaande dat die Kommissaris se besluit rakende die inhoud van die gepubliseerde beslissing finaal is.

(5) Die toepassing of uitleg van die Wet ten opsigte van 'n transaksie stel nie inligting daar of word nie geag inligting daar te stel nie wat die identiteit van 'n applikant of lid van 'n klas kan openbaar nie of stel nie ongeoorloofde inbreuk op persoonlike privaatheid soos in subartikel (3) van hierdie artikel bedoel, daar nie.

(6) 'n Applikant ten opsigte van 'n bindende klasbeslissing kan skriftelik toestem tot die insluiting van inligting wat die applikant of die voorgestelde transaksie identifiseer ten einde kommunikasie met die lede van die klas te bevorder.

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(7) The Commissioner must treat the publication of the withdrawal or modification of a binding private ruling or a binding class in the same manner and subject to the same requirements as the publication of the original ruling.

Binding General Rulings

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76P. (1) The Commissioner may, at any time, make binding general rulings.

(2) A binding general ruling may be effective for either—

- (a) a particular year of assessment or other definite period; or
- (b) an indefinite period.

(3) A binding general ruling must state—

- (a) that it is a binding general ruling made under this section;
- (b) the provisions of the Act which are the subject of the binding general ruling; and

(c) either—

- (i) the year of assessment or other definite period for which it applies; or

- (ii) in the case of a binding general ruling for an indefinite period, that it is for an indefinite period and the date or year of assessment from or beginning with which it applies.

(4) Subject to the minimum requirements set forth in subsection (3) of this section, binding general rulings may be issued in such form and in such manner as the Commissioner may prescribe, including but not limited to interpretation notes and practice notes.

(5) A publication or other written statement does not constitute and may not be considered or treated as a binding general ruling unless it contains the information prescribed by subsection (3) of this section.

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Binding Private Rulings

76Q. (1) The Commissioner may issue binding private rulings regarding the application or interpretation of a provision or provisions of the Act to a proposed transaction upon application by a person in accordance with the requirements of section 76E.

(2) The Commissioner may make a binding private ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding private ruling to be made would differ materially from the proposed ruling sought by the applicant.

(4) The Commissioner must issue the final binding private ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued.

(5) A binding private ruling may be issued in such manner and in such form as the Commissioner may prescribe: Provided that it must state the following—

- (a) a statement identifying it as a binding private ruling made under this section;
- (b) the name, tax number, and postal address of the applicant;
- (c) the relevant statutory provisions or issues;
- (d) a description of the proposed transaction;
- (e) the specific ruling made;
- (f) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling; and
- (g) the period for which the ruling is valid.

(7) Die Kommissaris moet die publikasie van die terugtrekking of wysiging van 'n bindende privaatbeslissing of 'n bindende klasbeslissing op dieselfde wyse en onderhewig aan dieselfde vereistes as die publikasie van die oorspronklike beslissing hanteer.

Bindende algemene beslissings

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76P. (1) Die Kommissaris kan, op enige tydstip, bindende algemene beslissings uitreik.

(2) 'n Bindende algemene beslissing kan geld 6f—
(a) vir 'n spesifieke jaar van aanslag of ander vasgestelde tydperk; óf
(b) vir 'n onbeperkte tydperk.

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(3) 'n Bindende algemene beslissing moet uiteensit—
(a) dat dit 'n bindende algemene beslissing is wat kragtens hierdie artikel uitgereik is;
(b) die bepalings van die Wet wat die onderwerp van die bindende algemene beslissing is; en
(c) óf—

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(i) die jaar van aanslag of ander vasgestelde tydperk ten opsigte waarvan dit van toepassing is; óf
(ii) in die geval van 'n bindende algemene beslissing vir 'n onbeperkte tydperk, dat dit vir 'n onbeperkte tydperk geld en die datum of jaar van aanslag van wanneer af of ten opsigte van die aanvang waarvan dit van toepassing is.

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(4) Behoudens die minimum vereistes in subartikel (3) van hierdie artikel uiteengesit, mag bindende algemene beslissings uitgereik word in sodanige vorm en op so 'n wyse as wat die Kommissaris mag voorskryf, ingesluit maar nie beperk nie tot interpretasie notas en praktyknotas.

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(5) 'n Publikasie of ander skriftelike verklaring stel nie 'n bindende algemene beslissing daar nie en word nie geag 'n bindende algemene beslissing te wees nie, tensy dit die inligting in subartikel (3) van hierdie artikel voorgeskryf, bevat.

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Bindende privaatbeslissings

76Q. (1) Die Kommissaris kan bindende privaatbeslissings uitreik met betrekking tot die toepassing of uitleg van 'n bepaling of bepalings van die Wet ten opsigte van 'n voorgestelde transaksie op aansoek deur 'n persoon ooreenkomsdig die vereistes van artikel 76E.

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(2) Die Kommissaris mag 'n bindende privaatbeslissing uitreik behoudens die voorwaardes en veronderstellings as wat in die beslissing voorgeskryf word.

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(3) Die Kommissaris moet 'n applikant 'n redelike geleenthed gee om te konsuleer indien dit uit die aansoek en enige addisionele inligting ontvang blyk dat die inhoud van die bindende privaatbeslissing wat gemaak moet word wesenlik van die voorgestelde beslissing deur die applikant versoek, verskil.

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(4) Die Kommissaris moet die finale bindende privaatbeslissing aan die applikant uitreik na die adres in die aansoek verskaf, tensy die applikant ander instruksies in skrif gee voor die beslissing uitgereik word.

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(5) 'n Bindende privaatbeslissing mag op so 'n wyse en in so 'n vorm uitgereik word as wat die Kommissaris mag voorskryf: Met dien verstande dat dit die volgende moet uiteensit—

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- (a) 'n verklaring wat dit as 'n bindende privaatbeslissing kragtens hierdie artikel identifiseer;
- (b) die naam, belastingnommer en posadres van die applikant;
- (c) die betrokke statutêre bepalings of aangeleenthede;
- (d) 'n beskrywing van die voorgestelde transaksie;
- (e) die spesifieke beslissing gegee;
- (f) enige veronderstellings gemaak of voorwaardes deur die Kommissaris opgelê met betrekking tot die geldigheid van die beslissing; en
- (g) die tydperk waarvoor die beslissing geldig is.

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(6) Subject to the requirements of section 76O, binding private rulings must be published in such manner and in such form as the Commissioner may prescribe.

(7) Prior to final publication, the Commissioner must provide the applicant with a draft copy of the edited ruling for review and comment. 5

Binding Class Rulings

76R. (1) The Commissioner may issue binding class rulings regarding the application or interpretation of a provisions or provisions of the Act to a proposed transaction upon application by a person in accordance with the requirements of section 76E. 10

(2) The Commissioner may make a binding class ruling subject to such conditions and assumptions as may be prescribed in the ruling.

(3) The Commissioner must provide an applicant with a reasonable opportunity to consult if, based upon the application and any additional information received, it appears that the content of the binding class ruling to be made would differ materially from the proposed ruling sought by the applicant. 15

(4) The Commissioner must issue the final binding class ruling to the applicant at the address shown in the application unless the applicant provides other instructions, in writing, before the ruling is issued. 20

(5) A binding class ruling may be issued in such manner and in such form as the Commissioner may prescribe: Provided that it must state the following—

- (a) a statement identifying it as a binding class ruling made under this section;
- (b) the name, tax number, and postal address of the applicant;
- (c) a list or a description of the affected class members;
- (d) the relevant statutory provisions or issues;
- (e) a description of the proposed transaction;
- (f) the specific ruling made;
- (g) any assumptions made or conditions imposed by the Commissioner in connection with the validity of the ruling; and
- (h) the period for which the ruling is valid.

(6) Subject to the requirements of section 76O, binding class rulings must be published in such manner and in such form as the Commissioner may prescribe. 30

(7) Prior to final publication, the Commissioner must provide the applicant with a draft copy of the edited ruling for review and comment. 35

(8) It is the sole and exclusive responsibility of the applicant to communicate with the affected class members regarding the application for the binding class ruling, the issuance, withdrawal or modification of such ruling, or any other information or matters pertaining to such ruling. 40

Procedures and Guidelines

76S. The Commissioner may issue procedures and guidelines, in the form of binding general rulings, for implementation and operation of the advance tax ruling system established by this Part.” 45

(2) Subsection (1) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette* and the President may fix different dates for different provisions of Part IA of Chapter III of the Income Tax Act, 1962.

(6) Behoudens die vereistes van artikel 76O, moet 'n bindende privaatbeslissing gepubliseer word op die wyse en in die vorm as wat die Kommissaris mag voorskryf.

(7) Voor finale publikasie, moet die Kommissaris die applikant van 'n konsepafskrif van die gewysigde beslissing voorsien vir oorweging en kommentaar.
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Bindende klasbeslissings

76R. (1) Die Kommissaris kan 'n bindende klasbeslissing uitreik met betrekking tot die toepassing of uitleg van 'n bepaling of bepalings van die Wet ten opsigte van 'n voorgestelde transaksie op aansoek deur 'n persoon ooreenkomsdig die vereistes van artikel 76E.
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(2) Die Kommissaris mag 'n bindende klasbeslissing uitreik behoudens die voorwaardes en veronderstelings as wat in die beslissing voorgeskryf word.
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(3) Die Kommissaris moet die applikant 'n redelike geleentheid gee om te konsulteer indien dit uit die aansoek en enige addisionele inligting ontvang blyk dat die inhoud van die bindende klasbeslissing wat gemaak moet word wesenlik van die voorgestelde beslissing deur die applikant versoeke, verskil.
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(4) Die Kommissaris moet die finale bindende klasbeslissing aan die applikant uitreik na die adres in die aansoek aangedui, tensy die applikant ander instruksies op skrif gee voor die beslissing uitgereik word.
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(5) 'n Bindende klasbeslissing mag op so 'n wyse en in so 'n vorm uitgereik word as wat die Kommissaris mag voorskryf: Met dien verstande dat dit die volgende moet uiteensit—
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- (a) 'n verklaring wat dit as 'n bindende klasbeslissing kragtens hierdie artikel identifiseer;
- (b) die naam, belastingnommer en posadres van die applikant;
- (c) 'n lys of beskrywing van die geaffekteerde lede van die klas;
- (d) die betrokke statutêre bepalings of aangeleenthede;
- (e) 'n beskrywing van die voorgestelde transaksie;
- (f) die spesifieke beslissing gegee;
- (g) enige veronderstelings gemaak of voorwaardes opgelê deur die Kommissaris met betrekking tot die geldigheid van die beslissing; en
- (h) die tydperk waarvoor die beslissing geldig is.
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(6) Behoudens die vereistes van artikel 76O, moet bindende klasbeslissings gepubliseer word op die wyse en in die vorm as wat die Kommissaris mag voorskryf.
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(7) Voor finale publikasie, moet die Kommissaris die applikant van 'n konsepafskrif van die gewysigde beslissing voorsien vir oorweging en kommentaar.
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(8) Dit is die alleen en uitsluitlike verantwoordelikheid van die applikant om met die geaffekteerde lede van die klas te kommunikeer rakende die aansoek vir 'n bindende klasbeslissing, die uitreik, terugtrekking of wysiging van so 'n beslissing, of enige ander inligting of aangeleenthede wat met so 'n beslissing verband hou.
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Prosedures en riglyne

76S. Die Kommissaris kan prosedures en riglyne in die vorm van bindende algemene beslissings uitreik vir die implementering en werking van die vooruit belastingbeslissingstelsel deur hierdie Deel ingestel.".
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(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die Staatskoerant bepaal en die President kan verskillende datums vir verskillende bepalings van Deel IA van Hoofstuk III van die Inkomstebelastingwet, 1962, bepaal.

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Amendment of section 78 of Act 58 of 1962, as amended by section 25 of Act 5 of 2001, section 27 of Act 30 of 2002 and section 47 of Act 74 of 2002

13. Section 78 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1A) for item (ii) of paragraph (a) of the following item:

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“(ii) any funds in foreign currency or assets outside the Republic from which any income or capital gain would be attributable to that resident during the relevant year of assessment in terms of section 7 or Part X of the Eighth Schedule.”.

Amendment of section 79 of Act 58 of 1962, as amended by section 26 of Act 69 of 1975, section 23 of Act 91 of 1982, section 32 of Act 21 of 1995, section 23 of Act 36 of 1996 and section 26 of Act 5 of 2001 10

14. (1) Section 79 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (i) and (ii) of the proviso of the following paragraphs:

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“(i) after the expiration of three years from the date of the assessment (if any) in terms of which any amount which should have been assessed to tax under such assessment was not so assessed or in terms of which the amount of tax assessed was less than the amount of such tax which was properly chargeable, unless—

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“(aa) the Commissioner is satisfied that the fact that the amount which should have been assessed to tax was not so assessed or the fact that the full amount of tax chargeable was not assessed, was due to fraud or misrepresentation or non-disclosure of material facts; or

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“(bb) the Commissioner and the taxpayer agree otherwise prior to the expiry of that three year period; or

(ii) in respect of any tax referred to in paragraph (c), after the expiration of three years from the date of payment of any amount paid in respect of such tax unless—

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“(aa) the Commissioner is satisfied that the fact that such tax was not paid in full was due to fraud or misrepresentation or non-disclosure of material facts; or

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“(bb) the Commissioner and the taxpayer agree otherwise prior to the expiry of that three year period; or”; and

(b) by the substitution in subsection (1) for the second proviso of the following proviso:

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“Provided further that where the Commissioner has in respect of any year of assessment made an assessment upon any company for normal tax purposes, he or she shall not after the expiration of three years from the date of the said assessment (or, where more than one such assessment has been made, from the date of the latest of such assessments), or such longer period as the company and the Commissioner may agree prior to the expiry of that three year period, make any assessment in respect of any amount of [undistributed profits tax or] secondary tax on companies payable by the company in respect of [the said] any dividend declared during that year, unless the Commissioner is satisfied that the fact that an assessment in respect of the said amount was not previously made was due to fraud or misrepresentation or non-disclosure of material facts.”.

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(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any agreement entered into on or after that date.

Wysiging van artikel 78 van Wet 58 van 1962, soos gewysig deur artikel 25 van Wet 5 van 2001, artikel 27 van Wet 30 van 2002 en artikel 47 van Wet 74 van 2002

13. Artikel 78 van die Inkomstebelastingwet, 1962, word hierby gewysig deur item (ii) van paragraaf (a) van subartikel (1A) deur die volgende item te vervang:

- (ii) enige fondse in buitelandse valuta of bates buite die Republiek waarvan enige inkomste of [wins] kapitaalwins aan daardie inwoner gedurende die betrokke jaar van aanslag ingevolge artikel 7 of Deel X van die Agtste Bylae toegerekend kan word.”.

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Wysiging van artikel 79 van Wet 58 van 1962, soos gewysig deur artikel 26 van Wet 69 van 1975, artikel 23 van Wet 91 van 1982, artikel 32 van Wet 21 van 1995, artikel 23 van Wet 36 van 1996 en artikel 26 van Wet 5 van 2001

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14. (1) Artikel 79 van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur paragrawe (i) en (ii) van die voorbehoudsbepaling by subartikel (1) deur die volgende paragrawe te vervang:

(i) na verstryking van drie jaar vanaf die datum van die aanslag (indien daar een is) ingevolge waarvan 'n bedrag onder so 'n aanslag vir belasting aangeslaan behoort te gewees het maar nie aldus aangeslaan is nie of ingevolge waarvan die aangeslane bedrag van belasting minder was as die bedrag van daardie belasting wat na regte hefbaar was, tensy—

(aa) die Kommissaris oortuig is dat die feit dat die bedrag wat vir belasting aangeslaan moet gewees het nie aldus aangeslaan is nie of die feit dat die volle bedrag van die hefbare belasting nie aangeslaan is nie, te wyte is aan bedrog of wanvoorstelling of verswyging van ter sake dienende feite: of

(bb) die Kommissaris en die belastingpligtige anders ooreenkom voor die verstryking van daardie drie jaar tydperk; of

(ii) ten opsigte van 'n in paragraaf (c) bedoelde belasting, na verstryking van drie jaar vanaf die datum van betaling van enige bedrag ten opsigte van daardie belasting, tensy—

(aa) die Kommissaris oortuig is dat die feit dat bedoelde belasting nie ten volle betaal is nie, te wyte is aan bedrog of wanvoorstelling of verswyging van ter sake dienende feite; of

(bb) die Kommissaris en die belastingpligtige anders ooreenkom voor die verstryking van daardie drie jaar tydperk; of”; en

- (b) deur die tweede voorbehoudsbepaling in subartikel (1) deur die volgende voorbehoudsbepaling te vervang:

“Met dien verstande voorts dat waar die Kommissaris ten opsigte van 'n jaar van aanslag 'n aanslag vir 'n maatskappy vir normale belastingdoeleindes gedoen het, hy of sy nie na verstryking van drie jaar vanaf die datum van bedoelde aanslag (of, waar meer as een so 'n aanslag gedoen is, vanaf die datum van die jongste van bedoelde aanslae) of so 'n langer tydperk as wat die maatskappy en die Kommissaris kan ooreenkom voor die drie jaar tydperk verstryk, 'n aanslag doen nie ten opsigte van 'n bedrag aan [belasting op onuitgekeerde winste of sekondêre belasting op maatskappye wat deur die maatskappy ten opsigte van [bedoelde] enige dividend verklaar gedurende daardie jaar betaalbaar is, tensy die Kommissaris oortuig is dat die feit dat 'n aanslag ten opsigte van bedoelde bedrag nie voorheen gedoen is nie, te wyte is aan bedrog of wanvoorstelling of verswyging van ter sake dienende feite.”.

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(2) Subartikel (1) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige ooreenkoms op of na daardie datum aangegaan.

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Amendment of section 81 of Act 58 of 1962, as amended by section 27 of Act 69 of 1975, section 15 of Act 70 of 1989, section 53 of Act 60 of 2001 and section 71 of Act 45 of 2003

15. Section 81 of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (6). 5

Amendment of section 83 of Act 58 of 1962, as amended by section 21 of Act 90 of 1964, section 22 of Act 103 of 1976, section 15 of Act 104 of 1979, section 19 of Act 96 of 1985, section 16 of Act 70 of 1989, section 36 of Act 129 of 1991, section 36 of Act 113 of 1993, section 30 of Act 28 of 1997, section 45 of Act 30 of 2000, section 54 of Act 60 of 2001, section 29 of Act 30 of 2002 and section 72 of Act 45 of 2003

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16. Section 83 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1C) for the words preceding paragraph (a) of the following words:

“(1C) The Commissioner may alter any assessment against which an appeal has been noted, as contemplated in subsection (1), where the Commissioner has conceded that appeal or resolved a dispute in terms of the alternative dispute resolution procedures prescribed in the rules contemplated in section 107A(2), in whole or in part, at any stage before—”. 15

Amendment of section 89~~quat~~ of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984, substituted by section 22 of Act 65 of 1986 and amended by section 18 of Act 70 of 1989, section 42 of Act 113 of 1993, section 15 of Act 140 of 1993, section 33 of Act 21 of 1995, section 24 of Act 36 of 1996, section 50 of Act 59 of 2000, section 29 of Act 5 of 2001 and section 49 of Act 74 of 2002

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17. Section 89~~quat~~ of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “credit amount” of the following paragraph:

“(a) the provisional tax paid by the taxpayer under the provisions of paragraph 21 [22] or 23 of the Fourth Schedule in respect of such year;”. 25

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

18. (1) Paragraph 6 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph: 30

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

(2) Subsection (1) shall be deemed to have come into operation on 22 December 2003. 35

Substitution of paragraph 11A of Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969 and amended by section 47 of Act 28 of 1997

19. The following paragraph hereby substitutes paragraph 11A of the Fourth Schedule to the Income Tax Act, 1962: 40

“11A. (1) Where by virtue of the provisions of paragraph (b), (d) or (e) of the definition of ‘remuneration’ in paragraph 1, the remuneration of an employee includes—

- (a) any gain made by the exercise, cession, or release of any right to acquire any marketable security as contemplated in section 8A [of this Act];
- (b) the market value of any qualifying equity share as defined in section 8B; or
- (c) any gain made are a result of the vesting of any equity instrument as contemplated in section 8C,

the amount of [such] that gain [shall] or that market value must for the purposes of this Schedule be deemed to be an amount of remuneration which is payable to 45 50

Wysiging van artikel 81 van Wet 58 van 1962, soos gewysig deur artikel 27 van Wet 69 van 1975, artikel 15 van Wet 70 van 1989, artikel 53 van Wet 60 van 2001 en artikel 71 van Wet 45 van 2003

15. Artikel 81 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (6) te skrap. 5

Wysiging van artikel 83 van Wet 58 van 1962, soos gewysig deur artikel 21 van Wet 90 van 1964, artikel 22 van Wet 103 van 1976, artikel 15 van Wet 104 van 1979, artikel 19 van Wet 96 van 1985, artikel 16 van Wet 70 van 1989, artikel 36 van Wet 129 van 1991, artikel 36 van Wet 113 van 1993, artikel 30 van Wet 28 van 1997, artikel 45 van Wet 30 van 2000, artikel 54 van Wet 60 van 2001, artikel 29 van Wet 30 van 2002 en artikel 72 van Wet 45 van 2003 10

16. Artikel 83 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde in subartikel (1C) wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“(1C) Die Kommissaris kan 'n aanslag waarteen appèl aangeteken is, soos in subartikel (1) bedoel, wysig waar die Kommissaris daardie appèl, in geheel of gedeeltelik, toegee of 'n geskil in geheel of gedeeltelik ingevolge die alternatiewe geskilbeslegtingsprosedures voorgeskryf in die reëls in artikel 107A(2) bedoel, besleg het op enige stadium voor—”. 15

Wysiging van artikel 89^{quat} van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 121 van 1984, vervang deur artikel 22 van Wet 65 van 1986 en gewysig deur artikel 18 van Wet 70 van 1989, artikel 42 van Wet 113 van 1993, artikel 15 van Wet 140 van 1993, artikel 33 van Wet 21 van 1995, artikel 24 van Wet 36 van 1996, artikel 50 van Wet 59 van 2000, artikel 29 van Wet 5 van 2001 en artikel 49 van Wet 74 van 2002 20

17. Artikel 89^{quat} van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (a) van die omskrywing van "kredietbedrag" in subartikel (1) deur die volgende paragraaf te vervang:

“(a) die voorlopige belasting wat ingevolge die bepalings van paragraaf 21 [22] of 23 van die Vierde Bylae ten opsigte van bedoelde jaar deur die belastingpligtige betaal is;”.

Wysiging van paragraaf 6 van Vierde Bylae by die Inkomstebelastingwet, 1962, soos gewysig deur artikel 83 van Wet 45 van 2003

18. (1) Paragraaf 6 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subparagraaf by te voeg: 35

“(4) Enige beslissing deur die Kommissaris om nie enige boete kragtens subparagraaf (2) kwyt te skeld nie of om enige boete kragtens subparagraaf (2A) op te lê, is aan beswaar en appèl onderhewig.”.

(2) Subartikel (1) word geag op 22 Desember 2003 in werking te getree het.

Vervanging van paragraaf 11A van Vierde Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 45 van Wet 89 van 1969 en gewysig deur artikel 47 van Wet 28 van 1997 40

19. Paragraaf 11A van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby deur die volgende paragraaf vervang:

“11A. (1) Waar, uit hoofde van die bepalings van paragraaf (b), (d) of (e) van die omskrywing van 'besoldiging' in paragraaf 1— 45

(a) 'n wins gemaak by die uitoefening, sessie of afstanddoening van 'n reg om handelseffekte te verkry soos in artikel 8A [van hierdie Wet] beoog;

(b) die markwaarde van enige kwalifiserende ekwiteitsaandeel soos in artikel 8B omskryf; of

(c) enige wins gemaak weens die vestiging van 'n ekwiteitsinstrument soos in artikel 8C bedoel,

by 'n werkneemer se besoldiging ingesluit word, word, by die toepassing van hierdie Bylae, die bedrag van [bedoelde] daardie wins of daardie markwaarde

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[such] that employee by the employer by whom [such] that right was granted or from whom that equity instrument or qualifying equity share was acquired, as the case may be.

(2) [Employees] Employees' tax in respect of the [said] amount of remuneration [shall] contemplated in subparagraph (1) must, unless the Commissioner has granted authority to the contrary, be deducted or withheld by [the said] that employer from any consideration paid or payable by him or her to [the said] that employee in respect of the cession, or release of [the said] that right or the disposal of that equity instrument or qualifying equity share, as the case may be, or from any cash remuneration paid or payable by [the said] that employer to [the said] that employee after [the said] that right has to the knowledge of [the said] that employer been exercised, ceded, or released or that equity instrument has to the knowledge of that employer vested or that qualifying equity share has to the knowledge of that employer been disposed of.

(3) The provisions of this Schedule [shall] apply in relation to the amount of [employees] employees' tax deducted or withheld under subparagraph (2) as though [such] that amount had been deducted or withheld from the amount of the gain or in respect of the market value, as the case may be, referred to in subparagraph (1).

(4) Before deducting or withholding employees tax under subparagraph (2) in respect of remuneration contemplated in subparagraph (1)(a) or (c), the [said] employer [shall] must ascertain from the Commissioner the amount to be so deducted or withheld.

(5) If [the said] that employer is, by reason of the fact that the amount to be deducted or withheld by way of [employees] employees' tax exceeds the amount from which the deduction or withholding is to be made, unable to deduct or withhold the full amount of [employees] employees' tax during the year of assessment during which the gain arises or the qualifying equity share is disposed of, as the case may be, he [shall] or she must immediately notify the Commissioner of the fact.

(6) Where an employee has under any transaction to which the employer is not a party made any gain [referred to] or an employee has disposed of any qualifying equity share as contemplated in subparagraph (1), [such] that employee [shall forthwith] must immediately inform the employer thereof and of the [fact that such gain has been made and of the] amount of [such] that gain or the market value of that qualifying equity share, as the case may be.

(7) Any employee who without just cause shown by him or her fails to comply with the provisions of subparagraph (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000.”.

Amendment of section 15 of Act 91 of 1964, as amended by section 2 of Act 98 of 1970, section 2 of Act 89 of 1984, section 4 of Act 101 of 1985 and section 12 of Act 59 of 1990

20. Section 15 of the Customs and Excise Act, 1964, is hereby amended by the deletion in subsection (1)(a) of the word “or” at the end of subparagraph (ii) and the insertion in that subsection of the word “or” at the end of subparagraph (iii), and the addition to that subsection of the following subparagraph:

“(iv) were required to be declared before leaving the Republic as contemplated in paragraph (b).”.

geag 'n bedrag van besoldiging te wees wat aan [bedoelde] daardie werknemer betaalbaar is deur die werkewer deur wie [bedoelde] daardie reg verleen is of van wie daardie ekwiteitsinstrument of kwalifiserende ekwiteitsaandeel, na gelang van die geval, verkry is.

(2) Werknemersbelasting ten opsigte van die bedrag van besoldiging in subparagraaf (1) bedoel moet, tensy die Kommissaris andersins gemagtig het, deur [bedoelde] daardie werkewer afgetrek of teruggehou word van vergoeding wat deur hom of haar aan [bedoelde] daardie werknemer betaal of betaalbaar is ten opsigte van die sessie of afstanddoening van [bedoelde] daardie reg of die beskikking oor daardie ekwiteitsinstrument of kwalifiserende ekwiteitsaandeel, na gelang van die geval, of van kontantbesoldiging wat deur [bedoelde] daardie werkewer aan [bedoelde] daardie werknemer betaal of betaalbaar word nadat, na die wete van daardie werkewer, [bedoelde] daardie reg uitgeoefen of gesedeer is of daarvan afstand gedoen is of daardie ekwiteitsinstrument na die wete van daardie werkewer gevvestig het of daardie kwalifiserende ekwiteitsaandeel na die wete van daardie werkewer oor beskik is.

(3) Die bepalings van hierdie bylae is van toepassing met betrekking tot die bedrag van werknemersbelasting wat ingevolge subparagraaf (2) afgetrek of teruggehou is, asof dié bedrag afgetrek of teruggehou was van die bedrag van die [in subparagraaf (1) bedoelde] wins of ten opsigte van die markwaarde, na gelang van die geval, in subparagraaf (1) bedoel.

(4) Voordat hy werknemersbelasting ingevolge subparagraaf (2) aftrek of terughou ten opsigte van besoldiging in subparagraaf (1)(a) of (c) bedoel, moet [bedoelde] daardie werkewer by die Kommissaris vasstel watter bedrag aldus afgetrek of teruggehou moet word.

(5) Indien [bedoelde] daardie werkewer, uit hoofde van die feit dat die bedrag wat by wyse van werknemersbelasting afgetrek of teruggehou staan te word meer is as die bedrag waarvan die werknemersbelasting afgetrek of teruggehou moet word, nie in staat is om die volle bedrag van die werknemersbelasting af te trek of terug te hou gedurende die jaar van aanslag waarin die wins ontstaan of die kwalifiserende ekwiteitsaandeel oor beskik is, na gelang van die geval, nie, moet hy of sy die Kommissaris onmiddellik daarvan in kennis stel.

(6) Waar 'n werknemer 'n [in subparagraaf (1) bedoelde] wins gemaak het of 'n werknemer het oor 'n kwalifiserende ekwiteitsaandeel beskik soos in subparagraaf (1) bedoel, ingevolge 'n transaksie waarby die werkewer nie 'n party is nie, moet daardie werknemer die werkewer onmiddellik daarvan in kennis stel en van die [feit dat daardie] bedrag van daardie wins gemaak [is en van die bedrag van daardie wins] of die markwaarde van daardie kwalifiserende ekwiteitsaandeel, na gelang van die geval.

(7) 'n Werknemer wat, sonder om goeie redes daartoe aan te voer, versuim om aan die bepalings van subparagraaf (6) te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R2 000.”.

Wysiging van artikel 15 van Wet 91 van 1964, soos gewysig deur artikel 2 van Wet 98 van 1970, artikel 2 van Wet 89 van 1984, artikel 4 van Wet 101 van 1985 en artikel 12 van Wet 59 van 1990

20. Artikel 15 van die Doeane- en Aksynswet, 1964, word hereby gewysig deur in subartikel (1)(a) die word "of" aan die einde van subparagraaf (ii) te skrap en in daardie subartikel die word "of" aan die einde van subparagraaf (iii) in te voeg en by daardie subartikel die volgende subparagraaf in te voeg:

"(iv) wat voor vertrek uit die Republiek soos in paragraaf (b) bedoel, verlaat moes word.”.

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Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, section 11 of Act 45 of 1995, section 48 of Act 53 of 1999, section 37 of Act 19 of 2001, section 119 of Act 60 of 2001 and section 102 of Act 74 of 2002

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21. Section 18 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) Goods removed in bond shall not be delivered or removed from the control of the [department] Controller at the place of destination in the Republic except upon due entry according to the first account taken of such goods on landing or on entry for removal in bond thereof or according to the contents of the packages containing such goods as reflected on the invoice issued by the supplier in respect of such goods, and payment of any duty due, including, subject to the provisions of [subsection (18) of section seventy five] section 75(18) any duty due on any deficiency.”.

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Amendment of section 21 of Act 91 of 1964, as amended by section 9 of Act 105 of 1969 and section 44 of Act 30 of 2002

22. Section 21 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) (a) Notwithstanding anything to the contrary contained in this Act, the Commissioner may, subject to such exception or adaptation prescribed in this subsection or as the Commissioner may prescribe by rule, licence a special customs and excise storage warehouse in terms of the provisions of this Act for the storage—

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(i) for export of any imported goods which are free of duty; or
(ii) of any other goods for such purposes as may be prescribed by rule.

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(b) Notwithstanding anything to the contrary contained in any other provision of this Act, imported goods free of duty stored in such warehouse shall, for the purposes of the application of any provision of this Act, be deemed to be goods liable to duty.

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(c) For the purposes of paragraph (a) only importers accredited in terms of section 64E may store goods which are free of duty in such warehouse.

(d) (i) Notwithstanding the provisions of section 19(9)(a), no goods to which this subsection relates shall be stored in such warehouse for a period of longer than 6 months from the time the goods were first entered for storage.

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(ii) The Commissioner may, on application by the importer before the period of 6 months expires, on good cause shown extend such period for not longer than 3 months.

(iii) Where the importer fails to export the goods before the period of 6 months or any extended period lapses, the importer shall—

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(aa) be guilty of an offence;

(bb) except if the goods are restricted or prohibited under any law, enter all goods of such class or kind for home consumption and payment of duty or for such other purposes as may be authorised under the rules for this section or any other provision of this Act;

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(cc) cause such goods to be abandoned or destroyed as provided in this Act.

(e) The Commissioner may prescribe by rule—

(i) the goods and activities that are allowed in such warehouse;

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(ii) the person, other than the importer of duty free goods, who may store the goods specified in these rules in such warehouse;

(iii) the requirements to be complied with by applicants and licensees;

(iv) the procedures applicable to the operation of and removal of goods from such warehouse;

Wysiging van artikel 18 van Wet 91 van 1964, soos gewysig deur artikel 2 van Wet 95 van 1965, artikel 6 van Wet 105 van 1969, artikel 4 van Wet 71 van 1975, artikel 3 van Wet 105 van 1976, artikel 3 van Wet 112 van 1977, artikel 4 van Wet 84 van 1987, artikel 13 van Wet 59 van 1990, artikel 11 van Wet 45 van 1995, artikel 48 van Wet 53 van 1999, artikel 37 van Wet 19 van 2001, artikel 119 van Wet 60 van 2001 en artikel 102 van Wet 74 van 2002

21. Artikel 18 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur subartikel (8) deur die volgende subartikel te vervang:

“(8) Goedere wat onder waarborg vervoer is, word nie by die plek van bestemming in die Republiek afgelewer of uit die beheer van die [departement] Kontroleur verwyder nie, behalwe na behoorlike klaring, ooreenkomsdig die eerste opname van sodanige goedere by landing of by klaring vir vervoer onder waarborg daarvan geneem, of ooreenkomsdig die inhoud van die houers wat sodanige goedere bevat soos aangegee op die faktuur wat deur die leveransier ten opsigte van sodanige goedere uitgereik is, en betaling van enige verskuldigde reg met inbegrip, behoudens die bepalings van [subartikel (18) van artikel vyf en sewentig,] van artikel 75(18) enige reg verskuldig op enige tekort.”.

Wysiging van artikel 21 van Wet 91 van 1964, soos gewysig deur artikel 9 van Wet 105 van 1969 en artikel 44 van Wet 30 van 2002

22. Artikel 21 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) (a) Ondanks andersluidende bepalings van hierdie Wet, kan die Kommissaris, behoudens sodanige uitsondering of aanpassing wat in hierdie subartikel voorgeskryf word, of soos deur die Kommissaris by reël voorgeskryf word, 'n spesiale doeane- en aksynsopslagpakhuis ingevolge die bepalings van hierdie Wet lisensieer vir die opslag van —

- (i) enige ingevoerde goedere wat vry van reg is vir uitvoer; of
- (ii) enige ander goedere vir sodanige doeleindes soos by reël voorgeskryf word.

(b) Ondanks andersluidende bepalings in enige ander bepaling van hierdie Wet, word ingevoerde goedere vry van reg wat in sodanige pakhuis opgeslaan word, vir die doeleindes om enige bepaling van hierdie Wet toe te pas, geag goedere onderhewig aan reg te wees.

(c) Vir die doeleindes van paragraaf (a) mag slegs invoerders wat ingevolge artikel 64E geakkrediteer is goedere wat vry van reg is in sodanige pakhuis opslaan.

(d)(i) Ondanks die bepalings van artikel 19(9)(a), mag geen goedere waarop hierdie subartikel betrekking het in sodanige pakhuis vir 'n tydperk van langer as 6 maande vanaf die tydstip toe die goedere vir die eerste keer vir opslag geklaar is, opgeslaan word nie.

(ii) Die Kommissaris kan, by aansoek van die invoerder voor die tydperk van 6 maande verstryk, op goeie gronde aangetoon sodanige tydperk vir nie langer nie as 3 maande verleng.

(iii) Waar die invoerder versuim om die goedere uit te voer voordat die tydperk van 6 maande of enige verlengde tydperk verstryk —

(aa) is die invoerder skuldig aan 'n oortreding;

(bb) behalwe wanneer die goedere verbode of beperk kragtens enige ander wet is, moet die invoerder alle goedere van sodanige klas of soort klaar vir binnelandse verbruik en betaling van reg of vir sodanige ander doeleindes wat kragtens die reëls vir hierdie artikel of enige ander bepaling van hierdie Wet toegelaat word;

(cc) moet die invoerder bewerkstellig dat sodanige goedere geabandoneer of vernietig word soos in hierdie Wet bepaal.

(e) Die Kommissaris kan by reël voorskryf —

(i) die goedere en aktiwiteit wat in sodanige pakhuis toegelaat word;

(ii) die persoon, behalwe die invoerder van goedere vry van reg, wat die goedere in hierdie reëls gespesifiseer, in sodanige pakhuis mag opslaan;

(iii) die vereistes waaraan deur die aansoekers en gelisensieerde voldoen moet word;

(iv) die procedures van toepassing op die werking van, en verwydering van goedere vanaf sodanige pakhuis;

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- (v) the rules of conduct to be observed by the licensee;
- (vi) all matters which are required or permitted in terms of this subsection to be prescribed by rule; and
- (vii) any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this subsection.”.

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Amendment of section 43 of Act 91 of 1964, as amended by section 124 of Act 60 of 2001 and section 45 of Act 30 of 2002

23. Section 43 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words:

“If after the expiration of 60 days from the date of removal to the State warehouse or other place indicated by the Controller or, where no such removal has taken place, from the date of expiry of the period prescribed in section 38 (1), any goods remain unentered the Commissioner may cause them, except if they have been imported in contravention of any law, to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the Commissioner, charges due to the Commissioner (including any State warehouse rent referred to in subsection (2)), a port or railway authority, the Department of Transport, a container operator or a depot operator, [and] freight and salvage as provided for in section 16 of the Wreck and Salvage Act, 1996 (Act No. 94 of 1996), in that order, and the surplus if any, shall, upon application be paid to the owner of the said goods.”.

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Amendment of section 49 of Act 19 of 1964, as substituted by section 55 of Act 53 of 1999 and amended by section 60 of Act 30 of 2000, section 127 of Act 60 of 2001 and section 46 of Act 30 of 2002

24. Section 49 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Agreements in respect of rates of duty lower than general rates of duty and other agreements providing for matters requiring customs administration”; and
- (b) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
“(a) in separate parts of such Schedule, any such agreement or any protocol or other part or provision of such agreement, including any annexure or appendix thereto for the purposes of subsection (1)(a);”.

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Amendment of section 63 of Act 91 of 1964, as amended by section 4 of Act 98 of 1970, section 9 of Act 57 of 1966 and section 45 of Act 45 of 1995

25. Section 63 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) If any agricultural distiller to whom a licence in respect of a still has been issued under this Act voluntarily abandons such still to the [department] Commissioner, the Commissioner may, out of moneys appropriated by Parliament for the purpose, pay to [him] that distiller, as compensation[, such an amount as the Commissioner considers to be] the current market value of such still.”.

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Amendment of section 72 of Act 91 of 1964, as amended by section 11 of Act 105 of 1976 and section 11 of Act 98 of 1980

26. Section 72 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (b) of the following paragraph:

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“(b) If there is no such free on board price, the export value shall be the value as if the goods would have been sold at a free on board price.”.

- (v) die gedragsreëls wat die gelisensieerde moet nakom;
 (vi) alle aangeleenthede wat ingevolge hierdie subartikel by reël voorgeskryf moet of kan word;
 (vii) enige ander aangeleenthed wat die Kommissaris redelikerwys nodig en nuttig ag om doeltreffende en effektiewe administrasie van die bepalings van hierdie subartikel te bewerkstellig.”.

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Wysiging van artikel 43 van Wet 91 van 1964, soos gewysig deur artikel 124 van Wet 60 van 2001 en artikel 45 van Wet 30 van 2002

23. Artikel 43 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur in subartikel (3) die woorde wat die voorbehoudsbepaling voorafgaan, deur die volgende 10 woorde te vervang:

“(3) Indien enige goedere na die verloop van 60 dae vanaf die datum van verwydering na die Staatspakhuis of 'n ander deur die Kontroleur aangewese plek, of waar geen sodanige verwydering plaasgevind het nie, vanaf die datum van verloop van die in artikel 38(1) voorgeskrewe tydperk, nog ongeklaar is, kan die 15 Kommissaris dit laat verkoop behalwe as ditstrydig met enige wet ingevoer is, en indien aldus verkoop moet die opbrengs daarvan vir die betaling van enige reg, onkostes deur die Kommissaris aangegaan, gelde aan die Kommissaris (met inbegrip van enige Staatspakhuishuur in subartikel (2) bedoel), 'n hawe- of spoorwegowerheid, die Departement van Vervoer, 'n houerbediener of 'n depotbediener, verskuldig [en] vraggeld en bergloon soos in artikel 16 van die Wet 20 op Wrakke en Berging, 1996 (Wet No. 94 van 1996) bepaal, in daardie orde, aangewend word en moet die oorskot, indien daar is, op aansoek aan die eienaar van die gemelde goed betaal word.”.

Wysiging van artikel 49 van Wet 19 van 1964, soos vervang deur artikel 55 van Wet 53 van 1999 en gewysig deur artikel 60 van Wet 30 van 2000, artikel 127 van Wet 60 van 2001 en artikel 46 van Wet 30 van 2002 25

24. Artikel 49 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

“**Ooreenkomsste ten opsigte van skale van reg laer as die algemene skale van reg en ander ooreenkomsste wat vir sake wat doeane-administrasie vereis, voorsiening maak**”; en

(b) deur in subartikel (5) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) in afsonderlike dele van sodanige Bylae, enige sodanige ooreenkoms of enige protokol of ander deel of bepaling van sodanige ooreenkoms, met inbegrip van enige anneks of appendiks daarby vir die doeleinades van subartikel (1)(a);”.

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Wysiging van artikel 63 van Wet 91 van 1964, soos gewysig deur artikel 4 van Wet 98 van 1970, artikel 9 van Wet 57 van 1966 en artikel 45 van Wet 45 van 1995

25. Artikel 63 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur in 40 subartikel (3) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) Indien 'n landboudistilleerde aan wie 'n lisensie ten opsigte van 'n distilleerketel kragtens hierdie Wet uitgereik is vrywilliglik sodanige distilleerketel aan die [departement] Kommissaris prysgee, kan die Kommissaris, uit gelde deur die Parlement vir die doel bewillig, [aan hom betaal as wat na die mening van die Kommissaris] die heersende markwaarde van sodanige distilleerketel [so 'n bedrag as vergoeding] aan daardie distilleerde as vergoeding betaal.”.

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Wysiging van artikel 72 van Wet 91 van 1964, soos gewysig deur artikel 11 van Wet 105 van 1976 en artikel 11 van Wet 98 of 1980

26. Artikel 72 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur 50 paragraaf (b) deur die volgende paragraaf te vervang:

“(b) Indien daar geen sodanige vry aan bord prys is nie, is die uitvoerwaarde die waarde asof die goedere teen 'n vry aan bord prys verkoop sou gewees het.”.

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Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001, section 130 of Act 60 of 2001, section 109 of Act 74 of 2002 and section 146 of Act 45 of 2003

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27. Section 75 of the Customs and Excise Act, 1964, is hereby amended—

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

“(14) No refund or drawback of duty shall be paid by the Commissioner under the provisions of this section unless an application therefor, duly completed and supported by the necessary documents and other evidence to prove that such refund or drawback is due under this section is received by the [department] Controller—

(a) in the case of goods exported—

(i) where the goods were exported by post, within a period of six months from the date on which such goods were posted; or

(ii) where the goods were exported in any other manner, within a period of six months from the date of entry of such goods for export; and

(b) (i) in respect of any refund referred to in subsection (1A) within the period contemplated in subsection (4A)(b)(ii);
(ii) in all other cases, within a period of six months from the date on which such refund first becomes due:

Provided that [the Commissioner may, in such circumstances as he may consider exceptional, pay a] any refund or drawback [after expiration of the relevant period] shall be limited as contemplated in section 76B.”;

(b) by the addition to subsection (14B) of the following paragraph:

“(d) Notwithstanding paragraphs (a), (b) and (c), any such refund or drawback shall be limited as contemplated in section 76B.”.

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Amendment of section 76 of Act 91 of 1964, as substituted by section 30 of Act 59 of 1990 and amended by section 5 of Act 105 of 1992, section 54 of Act 45 of 1995 and section 62 of Act 30 of 2000

28. Section 76 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) No application for a refund or payment in terms of this section shall be considered by the Commissioner unless it is received by the Controller, duly completed and in the form as may be prescribed by rule and supported by the necessary documents and other evidence to prove that such refund or payment is due under this section—

(a) within a period of two years from the date on which the charge to which the application relates was paid; or

(b) in any other case within the relevant period specified in section 76B.”.

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Wysiging van artikel 75 van Wet 91 van 1964, soos gewysig deur artikel 13 van Wet 95 van 1965, artikel 10 van Wet 57 van 1966, artikel 8 van Wet 85 van 1968, artikel 25 van Wet 105 van 1969, artikel 8 van Wet 103 van 1972, artikel 2 van Wet 68 van 1973, artikel 9 van Wet 71 van 1975, artikel 27 van Wet 112 van 1977, artikel 28 van Wet 93 van 1978, artikel 10 van Wet 110 van 1979, artikel 19 van Wet 86 van 1982, artikel 6 van Wet 89 van 1984, artikel 11 van Wet 101 van 1985, artikel 9 van Wet 52 van 1986, artikel 23 van Wet 84 van 1987, artikel 8 van Wet 69 van 1988, artikel 13 van Wet 68 van 1989, artikel 29 van Wet 59 van 1990, artikel 13 van Wet 61 van 1992, artikel 7 van Wet 98 van 1993, artikel 10 van Wet 19 van 1994, artikel 53 van Wet 45 van 1995, artikel 61 van Wet 30 van 2000, artikel 50 van Wet 19 van 2001, artikel 130 van Wet 60 van 2001, artikel 109 van Wet 74 van 2002 en artikel 146 van Wet 45 van 2003

27. Artikel 75 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur subartikel (14) deur die volgende subartikel te vervang:

“(14) Geen terugbetaling of teruggawe van reg word ingevolge die bepalings van hierdie artikel deur die Kommissaris betaal nie, tensy 'n aansoek daarom behoorlik ingevul en gestaaf deur die nodige dokumente en ander bewyse om te bewys dat sodanige terugbetaling of teruggawe ingevolge hierdie artikel verskuldig is, deur die [departement] Kontroleur ontvang word—

(a) in die geval van uitgevoerde goedere —

- (i) waar die goedere per pos uitgevoer is, binne 'n tydperk van ses maande vanaf die datum waarop sodanige goedere gepos is; of
- (ii) waar die goedere op enige ander wyse uitgevoer is, binne 'n tydperk van ses maande vanaf die datum van klaring van sodanige goedere vir uitvoer: en

(b)(i) ten opsigte van enige terugbetaling in subartikel (1A) bedoel binne die tydperk in subartikel (4A)(b)(ii) beoog;

- (ii) in alle ander gevalle, binne 'n tydperk van ses maande vanaf die datum waarop sodanige terugbetaling die eerste keer betaalbaar word:

Met dien verstande dat [die Kommissaris, in omstandighede soos wat hy buitengewoon beskou, 'n] enige terugbetaling of teruggawe [kan betaal na verstryking van die relevante tydperk] soos in artikel 76B beoog, beperk word.”;

(b) deur subartikel (14B) die volgende paragraaf by te voeg:

“(d) Ondanks paragrawe (a), (b) en (c), word enige sodanige terugbetaling of teruggawe beperk soos in artikel 76B beoog.”.

Wysiging van artikel 76 van Wet 91 van 1964, soos vervang deur artikel 30 van Wet 59 van 1990 en gewysig deur artikel 5 van Wet 105 van 1992, artikel 54 van Wet 45 van 1995 en artikel 62 van Wet 30 van 2000

28. Artikel 76 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Geen aansoek om 'n terugbetaling of betaling kragtens hierdie artikel word deur die Kommissaris oorweeg nie, tensy dit deur die Kontroleur ontvang word, behoorlik ingevul en in die vorm soos by reël voorgeskryf en gestaaf deur die nodige dokumente en ander getuienis om te bewys dat sodanige terugbetaling of betaling ingevolge hierdie artikel verskuldig is—

(a) binne 'n tydperk van twee jaar vanaf die datum waarop die vordering waarop die aansoek betrekking het, betaal is; of

(b) in enige ander geval, binne die relevante tydperk soos in artikel 76B bepaal.”.

Substitution of section 76B of Act 91 of 1964, as inserted by section 67 of Act 30 of 1998

29. The following section is hereby substituted for section 76B of the Customs and Excise Act, 1964:

**“Limitation on refund and drawback claims and the period within 5
which such claims must be received by the Commissioner”**

76B. (1) Notwithstanding any other provision of this Act, but subject to any provision for a set-off of duty in any Schedule in respect of goods to which section 19A relates or any refund as contemplated in section 75(4A), where any person becomes entitled to any refund or drawback of duty—

- (a) in the case of any determination, new determination or amendment of any such determination in terms of section 47(9), 65 or 69, such refund shall be limited to—
 - (i) a refund in respect of goods entered for home consumption during a period of two years immediately preceding the date of such determination, new determination or amendment, whichever date occurs last: Provided that where any such determination, new determination or amendment has been appealed against, such two year period shall be calculated from such last date, notwithstanding the fact that a court may amend any determination of the Commissioner, or the Commissioner may, as a result of the finding of such court, amend such determination; and
 - (ii) any application for such refund which is received by the Controller within a period of 12 months from the date of such determination, new determination or amendment of a determination; or
- (b) in the case of any internal appeal to the Commissioner or a finding of court which is not in respect of a determination contemplated in section 47(9), 65 or 69, any refund or drawback shall be limited to—
 - (i) goods entered for home consumption during a period of two years prior to the date of—
 - (aa) any final decision by the Commissioner; or
 - (bb) any decision of the Commissioner to the extent that it is amended by or as a result of a finding of court; and
 - (ii) any application for such refund or drawback which is received by the Controller within a period of 12 months from the date of such decision or amended decision; or
- (c) in the case where any Schedule to the Act is amended with retrospective effect, any such refund or drawback shall be limited to an application therefor received by the Controller within a period of 12 months from the date on which such amendment is published by notice in the *Gazette*; or
- (d) in the case of a permit or certificate issued with retrospective effect as contemplated in section 75(14B), any such refund or drawback shall, notwithstanding the effective date of such permit or certificate, be limited to—
 - (i) goods entered for home consumption during a period of two years prior to the date of issue of such permit or certificate; and
 - (ii) any application received by the Controller within a period of 12 months from the date of issue of such permit or certificate; or
- (e) other than a refund or drawback referred to in paragraphs (a), (b), (c) and (d), shall be limited to an application received by the Controller

Vervanging van artikel 76B van Wet 91 van 1964, soos ingevoeg deur artikel 67 van Wet 30 van 1998

29. Artikel 76B van die Doeane- en Aksynswet, 1964, word hierby deur die volgende artikel vervang:

“Beperking op terugbetaling- en teruggawe-eise en die tydperk waarbinne sodanige eise deur die Kommissaris ontvang moet word 5

76B. (1) Ondanks enige ander bepaling van hierdie Wet, maar behoudens enige bepaling vir 'n verrekening van reg in enige Bylae ten opsigte van goedere waarop artikel 19A betrekking het of enige terugbetaling soos in artikel 75(4A) beoog, waar enige persoon geregtig word op enige terugbetaling of teruggawe van reg— 10

(a) in die geval van enige bepaling, nuwe bepaling of wysiging van enige sodanige bepaling ingevolge artikel 47(9), 65 of 69, is sodanige terugbetaling beperk tot— 15

(i) 'n terugbetaling ten opsigte van goedere wat vir binnelandse verbruik geklaar is gedurende 'n tydperk van twee jaar, wat die datum van sodanige bepaling, nuwe bepaling of wysiging onmiddellik voorafgaan, watter datum ookal laaste voorkom: Met dien verstande dat waar daar teen enige sodanige bepaling, nuwe bepaling of wysiging geappelleer is, sodanige twee jaar tydperk bereken word vanaf sodanige laaste datum, ondanks die feit dat 'n hof enige bepaling van die Kommissaris mag wysig, of dat die Kommissaris, as 'n gevolg van die bevinding van sodanige hof, sodanige bepaling mag wysig; en 20

(ii) 'n aansoek om sodanige terugbetaling wat deur die Kontroleur binne 'n tydperk van 12 maande vanaf die datum van sodanige bepaling, nuwe bepaling of wysiging van 'n bepaling, ontvang word; of 25

(b) in die geval van enige interne appèl na die Kommissaris of 'n bevinding van 'n hof wat nie is ten opsigte van 'n bepaling soos in artikel 47(9), 65 of 69 beoog word nie, word enige terugbetaling of teruggawe beperk tot— 30

(i) goedere wat vir binnelandse verbruik geklaar is gedurende 'n tydperk van twee jaar voor die datum van— 35

(aa) enige finale besluit deur die Kommissaris; of

(bb) enige besluit van die Kommissaris in die mate dat dit gewysig is deur of as gevolg van die bevinding van 'n hof; en 40

(ii) 'n aansoek om sodanige terugbetaling of teruggawe wat deur die Kontroleur binne 'n tydperk van 12 maande vanaf die datum van sodanige besluit of gewysigde besluit, ontvang is: of 45

(c) in die geval waar enige Bylae by die Wet met terugwerkende krag gewysig word, word enige sodanige terugbetaling of teruggawe beperk tot 'n aansoek daarvoor wat deur die Kontroleur binne 'n tydperk van 12 maande vanaf die datum waarop sodanige wysiging by kennisgewing in die Staatskoerant gepubliseer is, ontvang is: of 50

(d) in die geval van 'n permit of sertifikaat wat met terugwerkende krag soos in artikel 75(14B) beoog, uitgereik is, word enige sodanige terugbetaling of teruggawe, ondanks die effektiewe datum van sodanige permit of sertifikaat, beperk tot—

(i) goedere wat vir binnelandse verbruik geklaar is gedurende 'n tydperk van twee jaar voor die datum van uitreiking van sodanige permit of sertifikaat; en 55

(ii) 'n aansoek wat deur die Kontroleur binne 'n tydperk van 12 maande vanaf die datum van uitreiking van sodanige permit of sertifikaat, ontvang is: of

(e) behalwe 'n terugbetaling of teruggawe in paragrawe (a), (b), (c) en (d) vermeld, word dit beperk tot 'n aansoek wat deur die Kontroleur binne 'n tydperk van twee jaar vanaf die datum van klaring vir binnelandse 60

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within a period of two years from the date of entry for home consumption of the goods to which the application relates.

(2) For the purpose of subsection (1)—

- (a) any application received must comply in all respects with the requirements of section 76(4); and
- (b) ‘finding of court’ means a final judgment by the High Court or a judgement by the Supreme Court of Appeal or the Constitutional Court.”.

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Amendment of section 96 of Act 91 of 1964, as amended by section 136 of Act 60 of 2001

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30. (1) Section 96 of the Customs and Excise Act, 1964, is hereby amended by—

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

“(b) Subject to the provisions of section 89, the period of extinguitive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall[, **subject to the provisions of section 95A(7),**] begin to run on the date when the right of action first arose.”; and

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

“(b) Subject to the provisions of section 89, the period of extinguitive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall, **subject to the provisions of section 77F(2),** begin to run on the date when the right of action first arose.”.

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(2) (a) Subsection (1)(a) shall come into operation on the date of promulgation of this Act.

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(b) Subsection (1)(b) shall come into operation on the date Part A of Chapter XA comes into operation.

Amendment of section 99 of Act 91 of 1964, as amended by section 15 of Act 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 of 1977, section 12 of Act 110 of 1979, section 24 of Act 86 of 1982, section 62 of Act 45 of 1995, section 71 of Act 30 of 1998, section 68 of Act 53 of 1999, section 138 of Act 60 of 2001 and section 110 of Act 74 of 2002

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31. Section 99 of the Customs and Excise Act, 1964 is hereby amended by the substitution in subsection (3) for the words preceding the proviso of the following words:

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“Every shipping and forwarding agent and every agent acting for the master of a ship or the pilot of an aircraft and any other class of agent which the Commissioner may by rule specify shall, before transacting any business with the [department] Commissioner, and any class of carrier of goods to which this Act relates which the Commissioner may by rule specify shall, before conveying any such goods, give such security as the Commissioner may from time to time require for the due observance of the provisions of this Act:”.

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Amendment of section 101A of Act 91 of 1964, as inserted by section 51 of Act 19 of 2001 and amended by section 153 of Act 45 of 2003

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32. Section 101A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (10)(d) for subparagraphs (i) and (ii) of the following subparagraphs, respectively:

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“(i) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit, as prescribed by rule, any person who is registered as a user and has entered into a user agreement as contemplated in subsection (3), to submit electronically any [report] communication referred to in paragraph (a), by using the Internet.

verbruik van die goedere waarop die aansoek betrekking het, ontvang is.

(2) Vir doeleindest van subartikel (1)—

- (a) moet enige aansoek wat ontvang word in alle opsigte aan die vereistes van subartikel 76(4) voldoen: en
- (b) (i) beteken 'bevinding van hof' 'n finale uitspraak deur die Hoë Hof of 'n uitspraak deur die Hoogste Hof van Appèl of die Konstitusionele Hof;".

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Wysiging van artikel 96 van Wet 91 van 1964, soos gewysig deur artikel 136 van 10 Wet 60 van 2001

30. (1) Artikel 96 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur—

- (a) in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) Behoudens die bepalings van artikel 89, is die termyn vir bevrydende verjaring ten opsigte van 'n regsgeding teen die Staat, die Minister, die Kommissaris of 'n beampete weens 'n eisoorsaak gegrond op die bepalings van hierdie Wet, een jaar wat [**behoudens die bepalings van artikel 95A(7)**,] begin loop op die datum waarop die vorderingsreg vir die eerste maal ontstaan het.”; en

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- (b) deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) Behoudens die bepalings van artikel 89, is die termyn vir bevrydende verjaring ten opsigte van 'n regsgeding teen die Staat, die Minister, die Kommissaris of 'n beampete weens 'n eisoorsaak gegrond op die bepalings van hierdie Wet, een jaar wat behoudens die bepalings van artikel 77F(2), begin loop op die datum waarop die vorderingsreg vir die eerste maal ontstaan het.”.

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(2) (a) Subartikel (1)(a) tree in werking op die datum van afkondiging van hierdie Wet.

(b) Subartikel (1)(b) tree in werking op die datum waarop Deel A van Hoofstuk XA in werking tree.

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Wysiging van artikel 99 van Wet 91 van 1964, soos gewysig deur artikel 15 van Wet 95 van 1965, artikel 17 van Wet 85 van 1968, artikel 7 van Wet 98 van 1970, artikel 34 van Wet 112 van 1977, artikel 12 van Wet 110 van 1979, artikel 24 van Wet 86 van 1982, artikel 62 van Wet 45 van 1995, artikel 71 van Wet 30 van 1998, artikel 68 van Wet 53 van 1999, artikel 138 van Wet 60 van 2001 en artikel 110 van Wet 74 van 2002

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31. Artikel 99 van die Doeane- en Aksynswet, 1964 word hierby gewysig deur in subartikel (3) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

“Elke verskepings- en versendingsagent en elke agent wat vir die gesagvoerder van 'n skip of dieloods van 'n vliegtuig optree en enige ander klas agent wat die Kommissaris by reël voorskryf moet, voordat sake met die [**departement**] Kommissaris gedoen word, en enige klas karweier van goedere waarop hierdie Wet betrekking het wat die Kommissaris by reël voorskryf, moet, voordat enige sodanige goedere vervoer word, die sekerheid stel wat die Kommissaris van tyd tot tyd vir behoorlike nakoming van die bepalings van hierdie Wet vereis [**verskaf**]:”.

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Wysiging van artikel 101A van Wet 91 van 1964, soos ingevoeg deur artikel 51 van Wet 19 van 2001 en gewysig deur artikel 153 van Wet 45 van 2003

32. Artikel 101A van die Doeane- en Aksynswet, 1964, word hierby gewysig deur in subartikel (10)(d) subparagrawe (i) en (ii) respektiewelik deur die volgende 50 subparagrawe te vervang:

“(i) Die Kommissaris kan, ondanks andersluidende bepalings van hierdie artikel, soos by reël voorgeskryf, enige persoon wat as 'n gebruiker geregistreer is en 'n gebruikersooreenkoms soos beoog in subartikel (3) aangegaan het, toelaat om enige [**verslag**] kommunikasie in paragraaf (a) bedoel, elektronies voor te lê deur 55 van die Internet gebruik te maak.

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(ii) Subject to such exceptions, adaptations or additional requirements as the Commissioner may prescribe by rule, the provisions of this section shall apply to the submission of such [report] communication.”.

Amendment of section 107 of Act 91 of 1964, as amended by section 20 of Act 85 of 1968, section 31 of Act 105 of 1969, section 11 of Act 93 of 1978, section 6 of Act 89 of 1983 and section 67 of Act 45 of 1995

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33. Section 107 of the Customs and Excise Act, 1964 is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) Any goods remaining in the custody or under the control of the [department] Commissioner after expiry of a period of 28 days from the date of due entry thereof, may be removed by the Controller to the State warehouse or other place indicated by the Controller, and may thereupon be disposed of in terms of section 43(3).”.

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Amendment of section 112 of Act 91 of 1964, as amended by section 21 of Act 85 of 1986 and section 70 of Act 45 of 1995

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34. Section 112 of the Customs and Excise Act, 1964, is hereby amended—

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

“(1) For the purposes of this section ‘wreck’ includes any—

- (a) flotsam, jetsam, lagan or derelict;
- (b) portion of a ship or aircraft lost, abandoned, stranded or in distress;
- (c) portion of the cargo, stores or equipment of any such ship or aircraft; and
- (d) portion of the personal property on board such ship or aircraft when it was lost, abandoned, stranded or in distress.”; and

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

“(3) Wreck found in or brought into the Republic may, at any time 25 after it has come under the control of the Controller, be disposed of by him in the manner set forth in section 43(3), but shall otherwise be subject to the provisions of this Act.”.

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Insertion of section 28C in Act 77 of 1968

35. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after 30 section 28B:

“Offences in respect of duty relating to marketable securities

28C. Any—

- (a) person who transfers a marketable security in contravention of section 23(4); or
- (b) public officer as defined in section 1 of the Income Tax Act, 1962, in relation to a company or corporate body who fails to comply with the provisions of section 23(6) or (11), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.”.

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(2) Subsection (1) shall come into operation on 1 January 2005.

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Amendment of section 30 of Act 77 of 1968, as amended by section 15 of Act 97 of 1993, section 20 of Act 27 of 1997 and section 77 of Act 53 of 1999

36. (1) Section 30 of the Stamp Duties Act, 1968, is hereby amended—

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

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“Recovery of duty, [and] interest, penalties and additional duty by action”;

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

(ii) Behoudens sodanige uitsonderings, aanpassings of bykomende vereistes wat die Kommissaris by reël voorskryf, is die bepalings van bierdie artikel van toepassing op die voorlegging van sodanige [verslag] kommunikasie.”.

Wysiging van artikel 107 van Wet 91 van 1964, soos gewysig deur artikel 20 van Wet 85 van 1968, artikel 31 van Wet 105 van 1969, artikel 11 van Wet 93 van 1978, artikel 6 van Wet 89 van 1983 en artikel 67 van Wet 45 van 1995

33. Artikel 107 van die Doeane- en Aksynswet, 1964 word hierby gewysig deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) Enige goedere wat na verloop van 'n tydperk van 28 dae vanaf die datum van behoorlike klaring daarvan nog in die bewaring of onder beheer van die [departement] Kommissaris is, kan deur die Kontroleur na die Staatspakhuis of ander plek deur die Kontroleur bepaal, verwyder word, en daarna kan daaroor ingevolge artikel 43(3) beskik word.”.

Wysiging van artikel 112 van Wet 91 van 1964, soos gewysig deur artikel 21 van Wet 85 van 1986 en artikel 70 van Wet 45 van 1995

34. Artikel 112 van die Doeane- en Aksynswet, 1964, word bierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) By die toepassing van hierdie artikel, beteken ‘wrak’ ook enige—

- (a) dryfgoed, uitwerp, lagan of verlate goedere;
- (b) gedeelte van 'n skip of vliegtuig wat verlore gegaan het, abandoneer is, gestrand het of in nood is;
- (c) gedeelte van die vrag, voorrade of toerusting van enige sodanige skip of vliegtuig; en
- (d) gedeelte van die persoonlike eiendom aan boord sodanige skip of vliegtuig toe dit verlore gegaan het, abandoneer is, gestrand het of in nood was.”; en

(b) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Wrak in die Republiek gevind of daarin gebring kan, nadat dit onder die beheer van die Kontroleur gekom het ter enige tyd, deur hom oor beskik word soos in artikel 43(3) uiteengesit, maar is andersins onderworpe aan die bepalings van hierdie Wet.”.

Invoeging van artikel 28C in Wet 77 van 1968

35. (1) Die volgende artikel word hierby ingevoeg in die Wet op Seëlregte, 1968, na artikel 28B:

“Misdrywe met betrekking tot seëlreg op handelseffekte

28C. Enige—

- (a) persoon wat die oordrag van 'n handelseffek bewerkstellig teenstrydig met artikel 23(4); of
- (b) openbare amptenaar soos omskryf in artikel 1 van die Inkomstebelastingwet, 1962, met betrekking tot 'n maatskappy of regspersoon wat versuim om aan die vereistes van artikel 23(6) of (11) te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens een jaar.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking.

Wysiging van artikel 30 van Wet 77 van 1968, soos gewysig deur artikel 15 van Wet 97 van 1993, artikel 20 van Wet 27 van 1997 en artikel 77 van Wet 53 van 1999

36. (1) Artikel 30 van die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

“Verhaal van seëlreg, rente, [en] boete en addisionele seëlreg by aksie”;

(b) deur subartikel (1) deur die volgende subartikel te vervang:

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“(1) Any duty [or], interest, penalty or additional duty payable under this Act shall be a debt due to the State.”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) Nothing contained in this section [contained] shall be construed as depriving the Commissioner or any other officer of any other remedy for the recovery of duty [or], interest, penalty or additional duty mentioned in this Act, or as exempting from prosecution or punishment any person who is liable therefor under any other provision of this Act.”;

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

“(5) Where, in addition to any amount of duty which is payable by any person in terms of this Act, an amount of interest, penalty or additional duty is payable by him or her in terms of the provisions of this Act, any payment made by that person on or after 1 April 1994 in respect of [such] that duty, [or] interest, penalty or additional duty which is less than the total amount due by him or her in respect of [such] that duty, [and] interest, penalty and additional duty shall for the purposes of this Act be deemed to be made—

(a) in respect of [such] that penalty; and

(b) to the extent that [such] the payment exceeds the amount of [such] that penalty, in respect of [such duty] that interest; and

(c) to the extent that the payment exceeds the amount of that penalty and that interest, in respect of that duty and additional duty.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of section 31 of Act 77 of 1968, as substituted by section 18 of Act 46 of 1996 and amended by section 81 of Act 30 of 1998, section 144 of Act 60 of 2001 and section 159 of Act 45 of 2003 25

37. (1) Section 31 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for paragraph (c) of the definition of “**administration of this Act**” of the following paragraph:

“(c) determination of the liability of any person for any duty or any interest, penalty or any additional duty in relation thereto leviable under this Act;”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of section 32 of Act 77 of 1968, as amended by section 83 of Act 30 of 1998 and section 9 of Act 32 of 1999 35

38. (1) Section 32 of the Stamp Duties Act, 1968, is hereby amended—

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

“(a) the amount of any overpayment of the duty or any interest, penalty or additional duty properly chargeable in respect of any instrument, if application for the refund is made within two years after the date of [such] that overpayment;”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date. 45

“(1) ’n Seëlreg, rente, [of] boete of addisionele seëlreg wat ingevolge hierdie Wet betaalbaar is, maak ’n skuld verskuldig aan die Staat uit.”;

(c) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Die bepalings van hierdie artikel word nie so uitgelê dat dit die Kommissaris of ’n ander amptenaar ’n ander regsmiddel vir die vordering van seëlreg, rente, [of] boete of addisionele seëlreg in hierdie Wet genoem, ontnem nie of dat dit ’n persoon teen vervolging of straf waaraan hy of sy ingevolge ’n ander bepaling van hierdie Wet blootstaan, vrywaar nie.”;

(d) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) Waar, benewens ’n bedrag seëlreg wat ingevolge hierdie Wet betaalbaar is deur ’n persoon, ’n bedrag aan rente, boete of addisionele seëlreg ingevolge die bepalings van hierdie Wet deur hom of haar betaalbaar is, word enige betaling deur daardie persoon gedoen op of na 1 April 1994 ten opsigte van daardie seëlreg, rente, [of] boete of addisionele seëlreg wat minder is as die totale bedrag deur hom of haar betaalbaar ten opsigte van daardie seëlreg, rente, [en] boete en addisionele seëlreg, geag by die toepassing van hierdie Wet gedoen te wees—

(a) ten opsigte van daardie boete: en

(b) vir sover [daardie] die betaling die bedrag van [bedoelde] daardie boete oorskry, ten opsigte van [bedoelde seëlreg.] daardie rente; en

(c) tot die mate waarin die betaling die bedrag van daardie boete en daardie rente oorskry, ten opsigte van daardie seëlreg en addisionele seëlreg.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Wysiging van artikel 31 van Wet 77 van 1968, soos vervang deur artikel 18 van Wet 46 van 1996 en gewysig deur artikel 81 van Wet 30 van 1998, artikel 144 van Wet 60 van 2001 en artikel 159 van Wet 45 van 2003

37. (1) Artikel 31 van die Wet op Seëlregte, 1968, word hierby gewysig deur paragraaf (c) van die omskrywing van “**administrasie van hierdie Wet**” in subartikel (1) deur die volgende paragraaf te vervang:

“(c) vasstelling van die aanspreklikheid van ’n persoon vir enige seëlreg en enige rente, boete of enige addisionele seëlreg met betrekking daartoe, hefbaar kragtens hierdie Wet;”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente wat op of na daardie datum verly word.

Wysiging van artikel 32 van Wet 77 van 1968, soos gewysig deur artikel 83 van Wet 30 van 1998 en artikel 9 van Wet 32 van 1999

38. (1) Artikel 32 van die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur paragraaf (a) in subartikel (1) deur die volgende paragraaf te vervang: “(a) die bedrag van ’n oorbetaling van die seëlreg of enige rente, [’n] boete, of addisionele seëlreg wat na behore ten opsigte van ’n stuk betaalbaar is, indien aansoek om die terugbetaling binne twee jaar na die datum van [die] daardie oorbetaling gedoen word;”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Act No. 34, 2004 SECOND REVENUE LAWS AMENDMENT ACT, 2004

Insertion of section 32C in Act 77 of 1968

39. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 32B:

“Advance Tax Rulings

32C. (1) The provisions relating to advance tax rulings contained in Part IA of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for purposes of this Act. 5

(2) Any procedures and guidelines issued by the Commissioner in terms of section 76S of the Income Tax Act, 1962, for implementation and operation of the advance tax ruling system apply *mutatis mutandis* for purposes of this Act.”. 10

(2) Subsection (1) shall come into operation on the date or dates on which Part 1A of Chapter III of the Income Tax Act, 1962, comes into operation.

Amendment of section 25 of Act 89 of 1991, as amended by section 96 of Act 30 of 1998 and section 94 of Act 53 of 1999 15

40. Section 25 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after paragraph (f) of the following paragraph:

“(g) any change whereby the provisions of section 27(4)(c) are no longer applicable in the case of that vendor:”.

Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 2000 and section 180 of Act 45 of 2003 20

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

“(f) any person who holds himself out as a person entitled to a refund or who produces, furnishes, authorises, or makes use of any [false] tax invoice or document or debit note and has obtained any undue tax benefit or refund under the provisions of an export incentive scheme referred to in paragraph (d) of the definition of ‘exported’ in section 1, to which such person is not entitled,”. 25

Insertion of section 54A in Act 89 of 1991

42. (1) The following section is hereby inserted in the Value-Added Tax Act, 1991, after section 54: 30

“Advance Tax Rulings

54A. (1) The provisions relating to advance tax rulings contained in Part IA of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for purposes of this Act. 35

(2) Any procedures and guidelines issued by the Commissioner in terms of section 76S of the Income Tax Act, 1962, for implementation and operation of the advance tax ruling system apply *mutatis mutandis* for purposes of this Act.”.

(2) Subsection (1) shall come into operation on the date on which Part 1A of Chapter III of the Income Tax Act, 1962, comes into operation. 40

Invoeging van artikel 32C in Wet 77 van 1968

39. (1) Die volgende artikel word hierby in die Wet op Seëlregte, 1968, na artikel 32B ingevoeg:

“Vooruit belastingbeslissings

32C. (1) Die bepalings met betrekking tot vooruit belastingbeslissings in Deel IA van Hoofstuk III van die Inkomstebelastingwet, 1962, vervat is *mutatis mutandis* van toepassing vir doeleindes van hierdie Wet.

(2) Enige prosedures en riglyne deur die Kommissaris uitgereik ingevolge artikel 76S van die Inkomstebelastingwet, 1962, vir die implementering en werking van die vooruit belastingbeslissingstelsel is *mutatis mutandis* vir doeleindes van hierdie Wet van toepassing.”.

(2) Subartikel (1) tree in werking op die datum of datums waarop Deel 1A van Hoofstuk III van die Inkomstebelastingwet, 1962, in werking tree.

Wysiging van artikel 25 van Wet 89 van 1991, soos gewysig deur artikel 96 van Wet 30 van 1998 en artikel 94 van Wet 53 van 1999

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40. Artikel 25 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die volgende paragraaf na paragraaf (f) in te voeg:

“(g) enige verandering waarby die bepalings van artikel 27(4)(c) nie langer op die ondernemer van toepassing is nie:”.

Wysiging van artikel 31 van Wet 89 van 1991, soos gewysig deur artikel 80 van Wet 30 van 2000 en artikel 180 van Wet 45 van 2003

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41. Artikel 31 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur paragraaf (f) van subartikel (1) deur die volgende paragraaf te vervang:

“(f) enige persoon wat homself as 'n persoon voordoen wat geregtig is op 'n terugbetaling of wat 'n [vals] belastingfaktuur of dokument of debetnota produseer, uitreik, goedkeur, of van gebruik maak ten einde 'n onbehoorlike belastingvoordeel kragtens die bepalings van die uitvoeraansporingskema bedoel in paragraaf (d) van die omskrywing van 'uitgevoer' in artikel 1 te verkry, waarop sodanige persoon nie geregtig is nie.”.

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Invoeging van artikel 54A in Wet 89 van 1991

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42. (1) Die volgende artikel word hierby in die Wet op Belasting op Toegevoegde Waarde, 1991, ingevoeg na artikel 54:

“Vooruit belastingbeslissings

54A. (1) Die bepalings met betrekking tot vooruit belastingbeslissings vervat in Deel IA van Hoofstuk III van die Inkomstebelastingwet, 1962, is *mutatis mutandis* vir doeleindes van hierdie Wet van toepassing.

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(2) Enige prosedures en riglyne deur die Kommissaris uitgereik ingevolge artikel 76S van die Inkomstebelastingwet, 1962, vir die implementering en werking van die vooruit belastingbeslissingstelsel is *mutatis mutandis* vir doeleindes van hierdie Wet van toepassing.”.

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(2) Subartikel (1) tree in werking op die datum waarop Deel 1A van Hoofstuk III van die Inkomstebelastingwet, 1962, in werking tree.

Act No. 34, 2004 SECOND REVENUE LAWS AMENDMENT ACT, 2004

Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999, section 72 of Act 19 of 2001, section 173 of Act 60 of 2001 and section 119 of Act 74 of 2002

43. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (i) of the following paragraph: 5

“(i) fails to notify the Commissioner of anything of which he is required by section 24(3), 25 or 48(7) to notify the Commissioner; or”.

Insertion of section 17B in Act 31 of 1998

44.(1) The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 17A: 10

“Advance Tax Rulings

17B. (1) The provisions relating to advance tax rulings contained in Part IA of Chapter III of the Income Tax Act, 1962, apply *mutatis mutandis* for purposes of this Act. 15

(2) Any procedures and guidelines issued by the Commissioner in terms of section 76S of the Income Tax Act, 1962, for implementation and operation of the advance tax ruling system apply *mutatis mutandis* for purposes of this Act.”.

(2) Subsection (1) shall come into operation on the date on which Part 1A of Chapter III of the Income Tax Act, 1962, comes into operation. 20

Short title and commencement

45.(1) This Act shall be called the Second Revenue Laws Amendment Act, 2004.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act to the Income Tax Act, 1962, shall for 25 purposes of assessment 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 2005.

Wysiging van artikel 58 van Wet 89 van 1991, soos gewysig deur artikel 41 van Wet 136 van 1991, artikel 39 van Wet 97 van 1993, artikel 25 van Wet 46 van 1996, artikel 102 van Wet 53 van 1999, artikel 72 van Wet 19 van 2001, artikel 173 van Wet 60 van 2001 en artikel 119 van Wet 74 van 2002

43. Artikel 58 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur paragraaf (i) deur die volgende paragraaf te vervang:

“(i) versuim om die Kommissaris van enigiets in kennis te stel waarvan ingevolge artikel 24(3), 25 of 48(7) van hom vereis word om die Kommissaris in kennis te stel; of”.

Invoeging van artikel 17B in Wet 31 van 1998 10

44. (1) Die volgende artikel word hierby in die Wet op Belasting op Sertifikaatlose Aandele, 1998, na artikel 17A ingevoeg:

“Vooruit belastingbeslissings

54A. (1) Die bepalings met betrekking tot vooruit belastingbeslissings in Deel IA van Hoofstuk III van die Inkomstebelastingwet, 1962, vervat is *mutatis mutandis* vir doeleindes van hierdie Wet van toepassing. 15

(2) Enige prosedures en riglyne deur die Kommissaris uitgereik ingevolge artikel 76S van die Inkomstebelastingwet, 1962, vir die implementering en werking van die vooruit belastingbeslissingstelsel is *mutatis mutandis* vir doeleindes van hierdie Wet van toepassing.”. 20

(2) Subartikel (1) tree in werking op die datum waarop Deel 1A van Hoofstuk III van die Inkomstebelastingwet, 1962, in werking tree.

Kort titel en inwerkingtreding

45. (1) Hierdie Wet heet die Tweede Wysigingswet op Inkomstewette, 2004.

(2) Behalwe vir sover hierdie Wet anders bepaal of uit die samehang anders blyk, 25 word die wysigings aan die Inkomstebelastingwet, 1962, by hierdie Wet aangebring, vir die doeleindes van aanslae ten opsigte van normale belasting ingevolge die Inkomstebelastingwet, 1962, geag in werking te getree het met ingang van die begin van jare van aanslag wat op of na 1 Januarie 2005 eindig.