

GENERAL EXPLANATORY NOTE :

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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 21 November 2002.)

ACT

To amend the South African Revenue Service Act, 1997, so as to delete, substitute and insert definitions; to expand the objectives of SARS to include a reference to the function of the customs division of SARS; to delete obsolete provisions; to bring the South African Revenue Service Act in line with the Public Finance Management Act, 1999; to make provision for the appointment of advisory committees to advise the Commissioner and the Minister on issues relating to asset management, information technology and human resources and to advise the Minister on the terms and conditions of employment of certain employees in the management structure of SARS; to change the provisions relating to the terms and conditions of employment of employees of SAPS; to provide that persons employed by SAPS become members of the Government Employees' Pension Fund subject to the rules of the fund relating to membership; to further regulate the determination of the funds of SARS to be appropriated annually by Parliament; to substitute the long title of the South African Revenue Service Act; and to disestablish the SARS Advisory Board; and to provide for matters connected therewith .

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

Amendment of section 1 of Act 34 of 1997

1. Section 1 of the South African Revenue Service Act, 1997 (hereinafter referred to as the principal Act), is hereby amended—5
- (a) by the deletion of the definition of "Board";
- (b) by the substitution for the definition of "financial year" of the following definition:10

""financial year' means a financial year defined in section 1 of the [Exchequer Act, 1975 (Act No. 66 of 1975)] Public Finance Management Act, 1999:"; and
- (c) by the insertion after the definition of "Minister" of the following definition:

'Public Finance Management Act, 1999' means the Public Finance Management Act, 1999 (Act No. 1 of 1999):"

Substitution of section 3 of Act 34 of 199715

2. The following section is hereby substituted for section 3 of the principal Act:

"Objectives

3. SARS's [objective is] objectives are the efficient and effective-collection of revenue; and

- (b) "control over the import export manufacture movement storage or use of certain goods."

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Amendment of section 4 of Act 34 of 1997

3. Section 4 of the principal Act is hereby amended –

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

"(1) To achieve its **[objective]** objectives SARS must–
(a) secure the efficient and effective, and widest possible, enforcement 10
of–

- (i) the national legislation listed in Schedule 1; and
(ii) any other legislation concerning the collection of revenue or the control over the import, export, manufacture, movement, storage or use of certain goods that may be assigned to SARS 15
in terms of either legislation or an agreement between SARS and the organ of state or institution [entitled to the revenue] concerned; [and]

- (b) advise the Minister [,at the Minister's request,] on–
(i) all matters concerning revenue; and 20
(ii) the exercise of any power or the performance of any function assigned to the Minister or any other functionary in the national executive in terms of legislation referred to in paragraph (a); and

- (c) advise the Minister of Trade and Industry on matters concerning the control over the import, export, manufacture, movement, storage or use of certain goods."; and 25

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

Amendment of section 5 of Act 34 of 1997

4. Section 5 of the principal Act is hereby amended by the deletion of subsection (2). 30

Substitution of section 6 of Act 34 of 1997

5. (1) The following section is hereby substituted for section 6 of the principal Act:

"Appointment

6. (1) The President must appoint a person as the Commissioner for the South African Revenue Service. 35

(2) The person appointed as the Commissioner holds office for an agreed term not exceeding five years but which is renewable."

(2) The person appointed as Commissioner immediately before the date this Act comes into operation shall hold *office until* his or her term comes to an end.

Repeal of section 8 of Act 34 of 1997 40

6. Section 8 of the principal Act is hereby repealed.

Amendment of section 9 of Act 34 of 1997

7. Section 9 of the principal Act is hereby amended –

- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph 45

"(d) is the chief executive officer and also the accounting [officer of] authority for SARS.";

- (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
"As accounting [officer] authority, the Commissioner is responsible for-"; and
- (c) by the substitution in subsection (3) for paragraph (d) of the following paragraph:
"(d) the proper and diligent implementation of [Part 5] the Public Finance Management Act 1999."

Substitution of Part 3 of Act 34 of 1997

8. The following Part is hereby substituted for Part 3 of the principal Act: 10

"PART 3

ADVISORY COMMITTEES

Establishment

11 (1) The Minister may appoint one or more specialist committees to
advise the Commissioner and the Minister on any matter concerning the
management of SARS's resources, including asset management, human
resources and information technology, subject to subsection (2). 15

(2) The specialist committee responsible for human resources must
advise-

- (a) the Minister on matters concerning the terms and conditions of
employment of any class of employees in the management structure of
SARS, as agreed between the Minister and the Commissioner; and 20
- (b) the Commissioner on matters concerning the terms and conditions of
employment of all employees of SARS, other than employees
contemplated in paragraph (a) 25

Constitution

12.(1) A specialist committee established under section 11 must perform
its functions impartially and without fear, favour or prejudice.

(2) A specialist committee contemplated in section 11 must consist of-

- (a) not more than eight persons who are independent from SARS and are
appointed by the Minister; and 30
- (b) not more than two senior employees of SARS designated by the
Commissioner.

(3) A person appointed as a member of such a committee must-

- (a) be a fit and proper person; 35
- (b) have appropriate expertise or experience; and
- (c) have the ability to perform effectively as a member of that committee .

(4) The members of such a committee must not -

- (a) act in any way that is inconsistent with subsection (3) or expose
themselves to any situation in which the risk of a conflict between their
responsibilities and private interests may arise; or 40
- (b) use their position or any information entrusted to them to enrich
themselves or improperly benefit any other person .

(5) A member ceases to be a member if -

- (a) he or she resigns from the specialist committee ; 45
- (b) the Minister terminates his or her membership because the member no
longer complies with subsection (3) or has contravened subsection (4);
or
- (c) the term for which the member was appointed as expired

Powers

- 13 (1) The Minister may assign specific powers to the members of a specialist committee for the purposes of performing any function contemplated in section 11.
- (2) The powers of a specialist committee to give advice may not be construed as interference with the powers assigned to the Commissioner in terms of any legislation or agreement referred to in section 4(1)(a), in so far as those powers of the Commissioner relate to –
- (a) the interpretation of that legislation or agreement;
 - (b) the exercise of a discretion conferred on the Commissioner by that legislation or agreement; or
 - (c) the determination of the liability of a person for any revenue

Procedures

14 A specialist committee may determine its own procedures

Disclosure of interest

15 A member of a specialist committee who has a personal or financial interest in any matter on which such committee gives advice must disclose that interest and withdraw from the proceedings of the specialist committee when that matter is discussed

Remuneration

16 SARS must remunerate a member mentioned in section 12(2)(a) and compensate the member for expenses as determined by the Minister."

Amendment of section 18 of Act 34 of 1997

9. Section 18 of the principal Act is hereby amended
- (a) by the substitution for subsection (1) of the following subsection:

"(1) SARS employees, other than employees contemplated in subsection (3) are employed subject to terms and conditions of employment determined by SARS[–

 - (a) after collective bargaining between SARS and the recognised trade unions; and
 - (b) with the approval of the Minister].";
 - (b) by the substitution for subsection (2) of the following subsection:

"(2) (a) The terms and conditions of employment of employees contemplated in subsection (1) who are subject to any collective bargaining process in the SARS bargaining unit must be determined after collective bargaining between SARS and the recognised trade unions has taken place.

(b) The collective bargaining referred to in [subsection (1)] paragraph (a) must be conducted in accordance with the procedures agreed on between SARS and the recognised trade unions.";
 - (c) by the addition of the following subsections:

"(3) The Minister must approve the terms and conditions of employment for any class of employees in the management structure of SARS.

(4) The Commissioner must submit a copy of the terms and conditions of employment determined by SARS in terms of subsection (1) to the Minister."

Substitution of section 19 of Act 34 of 1997

10. The following section is hereby substituted for section 19 of the principal Act:

"Pension rights

19.(1) Subject to the Government Employees' Pension Law, 1996
(Proclamation No. 21 of 1996), a person appointed by SARS as an employee—

- (a) becomes a member of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees' Pension Law, 1996; and 5
- (b) is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service mentioned in section 8(1)(a)(i) of the Public Service Act. 10

(2) If the Commissioner becomes a member of the Government Employees' Pension Fund, he or she is entitled to the pension and retirement benefits calculated on the same basis as those of a head of department in the public service."

Substitution of section 22 of Act 34 of 1997 15

11. The following section is hereby substituted for section 22 of the principal Act:

"A ~~accountability~~

22. As accounting authority for SARS the Commissioner must comply with the Public Finance Management Act, 1999, in respect of—

- (a) all income and expenditure of SARS; 20
- (b) all assets, liabilities and financial transactions of SARS; and
- (c) all revenue collected by SARS."

~~Repeal of section 23 of Act 34 of 1997~~

12. Section 23 of the principal Act is hereby repealed.

~~Amendment of section 25 of Act 34 of 1997~~ 25

13. Section 25 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2 (a The amount of the money to be appropriated must

- (i) be calculated in accordance with the estimates of income and expenditure as contemplated in section 53 of the Public Finance Management Act, 1999; or 30
- (ii) be determined in such other manner as may be agreed between the Minister and the Commissioner and approved by Cabinet;

(b) Once appropriated, the money must be paid to SARS in amounts determined in accordance with an agreement between SARS and the Minister, subject to the Public Finance Management Act, 1999." 35

Repeal of section 26 of Act 34 of 1997

14. Section 26 of the principal Act is hereby repealed

~~Repeal of section 27 of Act 34 of 1997~~

15. Section 27 of the principal Act is hereby repealed.

~~Repeal of section 29 of Act 34 of 1997~~ 40

16. Section 29 of the principal Act is hereby repealed.

~~Substitution of long title of Act 34 of 1997~~

17. The following long title is hereby substituted for the long title of the principal Act:

"To make provision for the efficient and effective administration of the revenue-collecting system of the Republic and the control over the import export manufacture movement storage or use of certain goods and, for this purpose, to reorganise the South African Revenue Service and to ~~establish~~ 45

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an Advisory Board] make provision for the establishment of advisory committees and to provide for incidental matters."

Disestablishment of SARS Advisory Board

18. The SARS Advisory Board, established by section 11 of the principal Act, is hereby disestablished.

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Short title

19. This Act is called the South African Revenue Service Amendment Act, 2002.