

REPUBLIC OF SOUTH AFRICA

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# **SOUTH AFRICAN REVENUE SERVICE BILL**

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*(As amended by the Portfolio Committee on Finance (National Assembly))*

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(MINISTER OF FINANCE)

**[B 51B—97]**

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REPUBLIEK VAN SUID-AFRIKA

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# **WETSONTWERP OP DIE SUID- AFRIKAANSE INKOMSTEDIENS**

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*(Soos gewysig deur die Portefeuljekomitee oor Finansies (Nasionale Vergadering))*

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(MINISTER VAN FINANSIES)

**[W 51B—97]**

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**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.

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# **BILL**

**To make provision for the efficient and effective administration of the revenue collecting system of the Republic; and, for this purpose, to reorganise the South African Revenue Service and to establish an Advisory Board; and to provide for incidental matters.**

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

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## Definitions

1. In this Act, unless the context indicates otherwise—
- “**Board**” means the Advisory Board established by section 11;
  - “**Commissioner**” means the Commissioner appointed in terms of section 6; 40
  - “**financial year**” means a financial year defined in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975);
  - “**Minister**” means the Minister of Finance;
  - “**Public Service Act**” means the Public Service Act, 1994 (Proclamation No. 103 of 1994); 45
  - “**recognised trade union**” means a trade union registered in terms of the Labour Relations Act, 1995 (Act No. 66 of 1995), and recognised by SARS as a collective bargaining agent of SARS employees;
  - “**revenue**” means income derived from taxes, duties, levies, fees, charges, additional tax and any other moneys imposed in terms of legislation, including 50 penalties and interest in connection with such moneys;
  - “**SARS**” means the South African Revenue Service established by section 2; and
  - “**this Act**” includes any rules made or directives issued in terms of this Act.

## Part 1

### SOUTH AFRICAN REVENUE SERVICE

#### Establishment

2. The South African Revenue Service is hereby established as an organ of state within the public administration, but as an institution outside the public service. 5

#### Objective

3. SARS's objective is the efficient and effective collection of revenue.

#### Functions

4. (1) To achieve its objective SARS must—
- (a) secure the efficient and effective, and widest possible, enforcement of— 10
    - (i) the national legislation listed in Schedule 1; and
    - (ii) any other legislation concerning the collection of revenue that may be assigned to SARS in terms of either legislation or an agreement between SARS and the organ of state or institution entitled to the revenue; and
  - (b) advise the Minister, at the Minister's request, on— 15
    - (i) all matters concerning revenue; and
    - (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).
- (2) SARS must perform its functions in the most cost-efficient and effective manner 20 and in accordance with the values and principles mentioned in section 195 of the Constitution.
- (3) SARS performs its functions—
- (a) under the policy control of the Minister; and
  - (b) subject to any directives and guidelines on policy matters issued by the 25 Minister.

#### Powers

5. (1) SARS may do all that is necessary or expedient to perform its functions properly, including to—
- (a) determine its own staff establishment, appoint employees and determine their 30 terms and conditions of employment in accordance with section 18;
  - (b) bargain collectively with the recognised trade unions representing SARS employees;
  - (c) obtain the services of any person, including any state department, functionary 35 or institution, to perform any specific act or function;
  - (d) acquire or dispose of any right in or to movable or immovable property, which may include ownership;
  - (e) open and operate on its own bank accounts;
  - (f) insure itself against any loss, damage, risk or liability;
  - (g) perform any specific act or function within its competence on behalf of any 40 other person, including any state department, functionary or institution;
  - (h) impose fees or charges when performing an act or function in terms of paragraph (g);
  - (i) perform legal acts, or institute or defend any legal action in its own name;
  - (j) engage in any activity, whether alone or together with other organisations in 45

the Republic or elsewhere, to promote proper, efficient and effective tax administration, including customs and excise duty administration; and

(k) do anything that is incidental to the exercise of any of its powers.

(2) When exercising its powers SARS must comply with any conditions imposed by the Minister in a directive issued under section 4(3). This may include a requirement that any specific power, including the power to borrow money, may be exercised only with the prior approval of the Minister. 5

## Part 2

### COMMISSIONER

#### Appointment 10

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

(2) The Minister must consult both the Cabinet and the Board before appointing a person as the Commissioner.

(3) A person appointed as the Commissioner who is not an employee of SARS becomes such an employee. 15

(4) The person appointed as the Commissioner holds office—

(a) for an agreed term not exceeding five years, but which is renewable; and

(b) subject to the rules and determinations applicable to SARS employees.

#### Acting Commissioner 20

7. (1) When the Commissioner is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Commissioner, the Minister may designate another SARS employee to act as Commissioner.

(2) No employee may be designated as acting Commissioner for a period longer than 90 days at a time. 25

#### Proof of appointment

8. If the Minister has given notice in the *Gazette* of any appointment of a person as the Commissioner or as an acting Commissioner, this notice may be presented in a court as proof of the appointment.

#### Responsibilities 30

9. (1) The Commissioner—

(a) is responsible for the performance by SARS of its functions;

(b) takes all decisions in the exercise by SARS of its powers;

(c) performs any function and exercises any power assigned to the Commissioner in terms of any legislation or agreement referred to in section 4(1)(a); and 35

(d) is the chief executive officer and also the accounting officer of SARS.

(2) As chief executive officer the Commissioner is responsible in particular for—

(a) the formation and development of an efficient administration;

(b) the organisation and control of the staff;

(c) the maintenance of discipline; and 40

(d) the effective deployment and utilisation of staff to achieve maximum operational results.

(3) As accounting officer the Commissioner is responsible for—

(a) all income and expenditure of SARS;

(b) all revenue collected by SARS; 45

(c) all assets and the discharge of all liabilities of SARS; and

(d) the proper and diligent implementation of Part 5.

(4) The Commissioner must perform the functions of office as required by this Act.

**Assignment of powers and duties**

- 10.** (1) The Commissioner may—
- (a) assign management or other duties to employees with appropriate skills to assist the Commissioner in the management, and the control over the functioning, of SARS; 5
  - (b) delegate any of the Commissioner's powers in terms of this Act to a SARS employee; or
  - (c) instruct a SARS employee to perform any of the Commissioner's duties in terms of this Act.
- (2) An assignment, delegation or instruction under subsection (1)— 10
- (a) may be issued subject to any conditions the Commissioner may impose; and
  - (b) does not divest the Commissioner of the responsibility concerning the exercise of the power or the performance of the duty.
- (3) This section applies only to the Commissioner's powers and functions contained in this Act. 15

**Part 3****ADVISORY BOARD****Establishment**

- 11.** (1) A board called the SARS Advisory Board is hereby established.
- (2) The Board acts as an advisory and consultative body for the Minister and the Commissioner on matters concerning the administration of the revenue collecting system under this Act. 20

**Constitution**

- 12.** (1) The Board consists of—
- (a) not more than eight persons who are unconnected with SARS and appointed by the Minister; 25
  - (b) the Commissioner; and
  - (c) not more than two senior employees of SARS designated by the Commissioner.
- (2) The Minister must— 30
- (a) consult the Cabinet before appointing a member mentioned in subsection (1)(a); and
  - (b) appoint a chairperson and a deputy chairperson from among the members after having consulted the members.
- (3) A member mentioned in subsection (1)(a) is appointed for a term not exceeding five years, which is renewable, and must— 35
- (a) be a fit and proper person; and
  - (b) have appropriate expertise, skills, knowledge or experience and the ability to perform effectively as a member.

**Powers and functions 40**

- 13.** (1) The Board advises the Minister and the Commissioner on any matter concerning—
- (a) the management of SARS, including operational, financial and administrative policies and practices;
  - (b) the improvement of efficiency and performance in revenue collecting efforts; 45
  - (c) the terms and conditions of employment of SARS employees;
  - (d) collective bargaining in SARS;
  - (e) SARS's budget; and
  - (f) the implementation of this Act.
- (2) For the purposes of subsection (1) the Board— 50
- (a) may examine and comment on any policies, and investigate, evaluate and advise on any practices and decisions, of SARS and the Commissioner under this Act;

- (b) is entitled to all relevant information concerning the administration of the revenue collecting system, excluding any information which is subject to a provision referred to in section 31;
  - (c) may require—
    - (i) the Commissioner to submit a report concerning a matter on which the Board must give advice; or
    - (ii) any SARS employee to appear before it and give explanations concerning such a matter; and
  - (d) must inform the Minister of any advice it gives to the Commissioner.
- (3) The powers and functions of the Board to give advice in terms of this section may not be construed as to interfere with the powers and functions assigned to the Commissioner in terms of any legislation or agreement referred to in section 4(1)(a), in so far as those powers and functions 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. The Board may determine its own procedures.

#### **Disclosure of interest** 20

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

#### **Remuneration**

16. SARS must remunerate a member mentioned in section 12(1)(a) and compensate the member for expenses, as determined by the Minister. 25

#### **Vacation of office**

17. A member mentioned in section 12(1)(a) ceases to be a member if—
- (a) that person resigns from the Board; or
  - (b) the Minister terminates that person's membership for a sufficient reason. 30

### **Part 4**

## **EMPLOYEES**

#### **Terms and conditions of employment**

18. (1) SARS employees are employed subject to terms and conditions of employment determined by SARS— 35
- (a) after collective bargaining between SARS and the recognised trade unions; and
  - (b) with the approval of the Minister.
- (2) The collective bargaining referred to in subsection (1) must be conducted in accordance with the procedures agreed on between SARS and the recognised trade unions. 40

#### **Pension rights**

19. (1) 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 (Proclamation No. 21 of 1996); and 45
  - (b) is entitled to pension and retirement benefits as if that person is 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.
- (2) The Commissioner is entitled to the pension and retirement benefits calculated on the same basis as those of a head of department in the public service. 50

**Training and education**

- 20. SARS—**
- (a) must provide for appropriate internal training of its employees; and
  - (b) may grant bursaries and loans to employees and other suitable candidates for educational purposes within its field of operation. 5

**Existing staff**

- 21.** Items 1 to 5 of Schedule 2 apply to all persons in the public service who occupied posts on, or were additional to, the staff establishment of the Department: South African Revenue Service immediately before this Act took effect, and item 6 applies to both those persons and persons appointed by SARS after this Act took effect. 10

**Part 5****FINANCIAL MATTERS****Accountability**

- 22.** As accounting officer the Commissioner must—
- (a) keep full and proper record, in a manner determined by the Minister, of— 15
    - (i) all income and expenditure of SARS;
    - (ii) all its assets, liabilities and financial transactions; and
    - (iii) all revenue collected by it;
  - (b) prepare annual financial statements in accordance with generally accepted accounting practice; and 20
  - (c) ensure that the available resources of SARS are properly safeguarded, and used economically and in the most efficient and effective way.

**Application of Exchequer Act**

- 23.** The Exchequer Act, 1975 (Act No. 66 of 1975), and any regulations or instructions issued in terms of the Act— 25
- (a) apply to all revenue collected by SARS in terms of section 4(1)(a)(i); and
  - (b) apply to the funds and transactions of SARS to the extent that that Act applies to statutory bodies.

**Funds**

- 24.** (1) The funds of SARS consist of— 30
- (a) money to which it is entitled in terms of section 25;
  - (b) any government grants made to it;
  - (c) any fees and charges mentioned in section 5(1)(h); and
  - (d) any other money legally acquired by it.
- (2) (a) SARS may accept donations and bequests, but only with the approval of the 35 Minister.
- (b) Particulars of each donation or bequest accepted by SARS must be given in SARS's annual report.

**Chief source of income**

- 25.** (1) SARS is entitled to money appropriated annually by Parliament for its services 40 mentioned in section 4(1)(a)(i) and (b).
- (2) The amount of the money must be calculated in accordance with the estimates of income and expenditure mentioned in section 26, and once appropriated—
- (a) must be paid to SARS in amounts determined in accordance with an 45 agreement between SARS and the Minister; and
- 45

(b) may be reviewed by the Minister and, if necessary, adjusted accordingly in terms of the Exchequer Act, 1975 (Act No. 66 of 1975).

(3) For services mentioned in section 4(1)(a)(ii) SARS may charge the organ of state or institution concerned at an agreed rate.

## **Estimates of income and expenditure** 5

- 26.** (1) The Commissioner—
- (a) must prepare during each financial year, but before a date set by the Minister, estimates of SARS's income and expenditure for the next financial year; and
  - (b) may prepare at any time during a financial year estimates of SARS's income and of SARS's expenditure for essential purposes supplementary to the estimates mentioned in paragraph (a). 10
- (2) The estimates mentioned in subsection (1)(a) or (b) must —
- (a) be in a format determined by the Minister;
  - (b) make adequate provision for SARS to perform its functions mentioned in section 4(1)(a)(i) and (b); and 15
  - (c) be submitted to the Minister for approval.
- (3) Before approving the estimates the Minister—
- (a) must consult the Board; and
  - (b) may refer the estimates back to the Commissioner for any adjustment suggested by the Minister or the Board. 20
- (4)(a) The Minister must table the approved estimates in the National Assembly for debate and adoption.
- (b) The estimates must be tabled a reasonable period before the commencement of the financial year to which the estimates relate.

## **Refunds to state** 25

**27.** SARS must refund to the National Revenue Fund any money paid to SARS in terms of section 25(2) that has not been used at the end of the financial year, unless otherwise agreed with the Minister.

## **Audits**

**28.** The Auditor-General must audit the accounts and financial records of SARS, including those relating to the collection of revenue. 30

## **Annual report**

- 29.** (1) The Commissioner must annually submit to the Minister a report on the activities of SARS during a financial year.
- (2) The report must be submitted within six months, or within a longer period fixed by the Minister, after the end of the relevant financial year, and must include— 35
- (a) a summary of SARS's performance during the year;
  - (b) audited financial statements reflecting SARS's financial affairs during the year, consisting of at least— 40
    - (i) a balance sheet;
    - (ii) an income statement;
    - (iii) a cash flow statement;
    - (iv) a statement showing loans and advances to SARS; and
    - (v) a report of the auditors;
  - (c) audited financial statements of all revenue collected by SARS; and 45
  - (d) any other matters required by the Minister to be dealt with in the report.
- (3) The financial statements forming part of the report must—
- (a) be prepared in accordance with generally accepted accounting practice;
  - (b) fairly reflect the activities and performance of, and the state of affairs in, SARS; and 50

- (c) draw attention to any matters that may or would probably affect the affairs of SARS.
- (4) The Minister must without delay—
- (a) table a copy of the report in the National Assembly; and
- (b) submit a copy of the report to the National Council of Provinces. 5

## Part 6

### MISCELLANEOUS

#### Restrictions on names implying connection with SARS

30. (1) No person may apply to any company, body, firm, business or undertaking a name or description signifying or implying some connection between the company, body, firm, business or undertaking and SARS. 10

(2) Any person who contravenes subsection (1) is guilty of an offence and on conviction liable to a fine or to imprisonment not exceeding 10 years or to a fine and imprisonment.

#### Protection of confidential information 15

31. Nothing in this Act affects provisions in other legislation prohibiting or regulating disclosure of information in the possession of the Commissioner.

#### Exemption from transfer and stamp duty

32. No transfer duty is payable by SARS in respect of the acquisition of any property by SARS, and no stamp duty is payable by SARS in respect of any instrument if the stamp duty thereon would be payable by SARS in terms of the applicable legislation. 20

#### Amendment of Schedule 1

33. The President may amend Schedule 1 by proclamation in the *Gazette*.

#### Amendment of legislation affected by this Act

34. (1) The legislation mentioned in Schedule 3 is hereby amended to the extent set out in the third column of the Schedule. 25

(2) A reference in any other legislation to the Commissioner for Inland Revenue, the Secretary for Customs and Excise or the Commissioner for Customs and Excise must be construed as a reference to the Commissioner in terms of this Act.

#### Short title and commencement 30

35. (1) This Act is called the South African Revenue Service Act, 1997, and takes effect, subject to subsection (2), on a date fixed by the President by proclamation in the *Gazette*.

(2) The amendment to Schedule 1 of the Public Service Act, 1994 (Proclamation 103 of 1994), in terms of Schedule 3 of this Act, takes effect on the date on which the Department: South African Revenue Service is abolished in terms of item 2 of Schedule 2 of this Act. 35

**Schedule 1****LEGISLATION ADMINISTERED BY COMMISSIONER**

1. Union and Southern Rhodesia Death Duties Act, 1933 (Act No. 22 of 1933)
2. Marketable Securities Tax Act, 1948 (Act No. 32 of 1948)
3. Transfer Duty Act, 1949 (Act No. 40 of 1949)
4. Estate Duty Act, 1955 (Act No. 45 of 1955)
5. Income Tax Act, 1962 (Act No. 58 of 1962)
6. Customs and Excise Act, 1964 (Act No. 91 of 1964)
7. Stamp Duties Act, 1968 (Act No. 77 of 1968)
8. Value-Added Tax Act, 1991 (Act No. 89 of 1991)
9. Section 60 of the Income Tax Act, 1993 (Act No. 113 of 1993)
10. Section 39 of the Taxation Laws Amendment Act, 1994 (Act No. 20 of 1994)
11. Company Tax Amendment Decree, 1994 (Decree No. 2 of 1994), of the former Republic of Ciskei
12. Section 41 of the Income Tax Act, 1994 (Act No. 21 of 1994)
13. Tax Amnesty Act, 1995 (Act No. 19 of 1995)
14. Sections 56 and 57 of the Income Tax Act, 1995 (Act No. 21 of 1995)
15. Tax on Retirement Funds Act, 1996 (Act No. 38 of 1996)
16. Final Relief on Tax, Interest, Penalty and Additional Tax Act, 1996 (Act No. 101 of 1996)
17. The Sales Tax Act, 1978 (Act No. 103 of 1978), to the extent that it remains in force in terms of section 85 of the Value Added Tax Act, 1991 (Act No. 89 of 1991)
18. Any regulation, proclamation, government notice or rule issued in terms of the above-mentioned legislation or any agreement entered into in terms of this legislation or the Constitution.

## Schedule 2

### TRANSITIONAL PROVISIONS

#### Definitions

1. In this Schedule, unless the context indicates otherwise—  
“**Department**” means the Department: South African Revenue Service;  
“**departmental employee**” means a member of the public service who occupied a post on, or was additional to, the staff establishment of the Department immediately before the effective date; and  
“**effective date**” means the date on which this Act took effect.

#### Abolition of Department

2. The Department is abolished on the effective date.

#### Commissioner

3. (1) The person who occupied the post of Commissioner for Inland Revenue and Commissioner for Customs and Excise immediately before this Act took effect, must be regarded as having been appointed as the Commissioner in terms of section 6 for a term of five years.  
(2) The term of the person referred to in subitem (1) runs from the date this Act took effect, and that person may be reappointed when the term expires.

#### Persons in service of Department

4. (1) A departmental employee becomes an employee of SARS on the effective date.  
(2) The transfer of departmental employees to SARS must be effected in accordance with—
  - (a) section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995); and
  - (b) any collective agreement reached between the State and the trade union parties of the Departmental Chamber of the Public Service Bargaining Council: SARS, before the effective date.

#### Persons becoming employees of SARS

5. (1) When a departmental employee becomes an employee of SARS, the Commissioner must appoint that employee in a post on the establishment of SARS.  
(2) A person mentioned in subitem (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the effective date. Any proceedings against such a person which were pending immediately before the effective date, must be disposed of as if this Act had not been enacted.

#### Collective bargaining

6. (1) There is established a collective bargaining forum for SARS employees on the effective date.  
(2) The constitution of the forum is, subject to any changes required by the context, the same as the constitution of the Departmental Chamber of the Public Service Bargaining Council: SARS.  
(3) The trade union parties to the forum are those that were parties to the Departmental Chamber of the Public Service Bargaining Council: SARS. The employer representatives must be appointed by the Commissioner.  
(4) The constitution may be amended only by agreement of all the parties to the forum.  
(5) For the purposes of section 18 of this Act—

- (a) the trade union parties to the forum are regarded as having been recognised by SARS as recognised trade unions; and
- (b) the procedures contained in the constitution of the forum must be applied as if they were the agreed procedures for the negotiations on terms and conditions of employment.

**Assets and liabilities**

7. (1) Immovable property of the state used by the Department immediately before the effective date remains at the disposal of SARS on terms and conditions as may be agreed on between SARS and the responsible Cabinet member.

(2) All movable assets of the state which were used by or which were at the disposal of the Department immediately before the effective date, except those assets excluded by the Minister, become the property of SARS.

(3) As from the effective date all contractual rights, obligations and liabilities of the Department are vested in SARS.

**Financial and administrative records of Department**

8. All financial, administrative and other records of the Department, including all documents in the possession of the Department immediately before the effective date, must be transferred to SARS.

## Schedule 3

## AMENDMENT OF LEGISLATION AFFECTED BY THIS ACT

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
Act No. 32 of 1948	Marketable Securities Tax Act, 1948	<p>Section 1 is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘Commissioner’ means the Commissioner for <b>[Inland Revenue]</b> the South African Revenue Service;”;</p> <p>and</p> <p>(b) by the insertion after the definition of “member” of the following definition:</p> <p>“ ‘South African Revenue Service’ means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;”.</p>
Act No. 40 of 1949	Transfer Duty Act, 1949	<p>Section 1 is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘Commissioner’ means the Commissioner for <b>[Inland Revenue]</b> the South African Revenue Service;”;</p> <p>and</p> <p>(b) by the insertion after the definition of “registration officer” of the following definition:</p> <p>“ ‘South African Revenue Service’ means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;”.</p>
Act No. 45 of 1955	Estate Duty Act, 1955	<p>Section 1 is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition:</p> <p>“ ‘Commissioner’ means the Commissioner for <b>[Inland Revenue]</b> the South African Revenue Service;”;</p> <p>and</p>

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
		<p>(b) by the insertion after the definition of “relative” of the following definition:  “ ‘<u>South African Revenue Service</u>’ means the <u>South African Revenue Service</u> established by section 2 of the <u>South African Revenue Service Act, 1997</u>;”.</p>
Act No. 58 of 1962	Income Tax Act, 1962	<p>1. Section 1 is hereby amended—  (a) by the deletion of the definition of “Chief Executive Officer”;  (b) by the substitution for the definition of “Commissioner” of the following definition:  “ ‘Commissioner’ means the Commissioner for [<b>Inland Revenue</b>] the <u>South African Revenue Service</u>;” and  (c) by the insertion after the definition of “South African company” of the following definition:  “ ‘<u>South African Revenue Service</u>’ means the <u>South African Revenue Service</u> established by section 2 of the <u>South African Revenue Service Act, 1997</u>;”.</p> <p>2. Section 2 is hereby amended by the deletion of subsection (2).</p> <p>3. Section 4 is hereby amended—  (a) by the substitution for paragraph (a) of the proviso to subsection (1) of the following paragraph:  “(a) any information obtained by the Commissioner in the performance of his duties under the provisions of this Act or any previous Income Tax Act may be used by him for the purposes of the provisions of any other fiscal law administered by him [<b>or he may, if he</b></p>

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
		<p><b>is satisfied that any such information is required for the purpose of preventing or combating evasion of any tax, duty or levy imposed under any fiscal law administered by the Commissioner for Customs and Excise, supply such information to the last-mentioned Commissioner];”;</b></p> <p><i>(b)</i> by the deletion of paragraph <i>(c)</i> of the proviso to subsection (1);</p> <p><i>(c)</i> by the deletion of subsections (1A) and (1B);</p> <p><i>(d)</i> by the substitution for paragraph <i>(a)</i> of subsection (2) of the following paragraph:  “(a) Every person so employed [<b>and the Chief Executive Officer</b>] shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace or [<b>an officer of the South African Revenue Service who is</b>] a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed.”; and</p> <p><i>(e)</i> by the substitution for subsection (3) of the following subsection:  “(3) Any person who contravenes the provisions of subsection (1) [<b>(1A), (1B)</b>] or (2A) shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.</p>

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
Act No. 91 of 1964	Customs and Excise Act, 1964	<p>1. Section 1 is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” in subsection (1) of the following definition:  “ ‘Commissioner’ means the Commissioner for [<b>Customs and Excise mentioned in section 1B</b>] the South African Revenue Service;”; and</p> <p>(b) by the insertion after the definition of “ship” of the following definition:  “ ‘South African Revenue Service’ means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;”.</p> <p>2. Sections 1A and 1B are hereby repealed.</p> <p>3. Section 4 is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:  “(1) [<b>Subject to the laws governing the public service officers employed in the Office</b>] Officers shall act under the control and direction of the Commissioner.”;</p> <p>(b) by the deletion of paragraph (c) of subsection (3); and</p> <p>(c) by the insertion after subsection (3A) of the following subsection:  “(3B) The provisions of subsection (3) shall not be construed as preventing an officer from using any information obtained by him in the exercise of his powers or the performance of his duties under this Act for the purposes of any other law administered by him.”.</p>

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
		<p>4. Section 43 is hereby amended by the substitution for the word “Office” wherever it occurs in subsection (3) of the word “Commissioner”.</p> <p>5. Section 82 is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: “(a) which is used [<b>in the Office</b>] under the authority of the Commissioner;”.</p> <p>6. Section 114 is hereby amended by the substitution for the word “Office” wherever it occurs in subsection (1) of the word “Commissioner”.</p>
Act No. 77 of 1968	Stamp Duties Act, 1968	<p>Section 1 is hereby amended—</p> <p>(a) by the substitution for the definition of “Commissioner” of the following definition: “ ‘Commissioner’ means the Commissioner for [<b>Inland Revenue</b>] the South African Revenue Service;”; and</p> <p>(b) by the insertion after the definition of “regulation” of the following definition: “ ‘South African Revenue Service’ means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;”.</p>
Act No. 89 of 1991	Value-Added Tax Act, 1991	<p>1. Section 1 is hereby amended—</p> <p>(a) by the deletion of the definition of “Chief Executive Officer”;</p> <p>(b) by the substitution for the definition of “Commissioner” of the following definition: “ ‘Commissioner’ means the Commissioner for [<b>Inland Revenue</b>] the South African Revenue Service;”; and</p>

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
		<p>(c) by the insertion after the definition of “Share Blocks Control Act” of the following definition:  “ ‘<u>South African Revenue Service</u>’ means the <u>South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;</u>”.</p> <p>2. Section 4 is hereby amended by the deletion of subsection (2).</p> <p>3. Section 6 is hereby amended—</p> <p>(a) by the substitution for subsection (1) of the following subsection:  “(1) [<b>The Chief Executive Officer or</b>] A person employed in carrying out the provisions of this Act shall not—</p> <p>(a) disclose to any person or his representative any matter in respect of any other person that may [<b>in the case of the Chief Executive Officer, in the performance of his duties as Chief Executive Officer, or in any other case</b>] in the exercise of his powers or the performance of his duties under the said provisions come to his knowledge;  or</p> <p>(b) permit any person to have access to any records in the possession or custody of the Commissioner,  except [<b>in the case of the Chief Executive Officer, in the performance of his duties as Chief Executive Officer, or in any other case</b>] in the exercise of his powers or the performance of his</p>

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
		<p>duties in terms of this Act or by order of a competent court: Provided that [<b>the Chief Executive Officer, in the performance of his duties as Chief Executive Officer, or</b>] the Auditor-General in the performance of his duties in terms of section 3 of the Auditor-General Act, 1995 (Act No. 12 of 1995), shall have access to all records and documents in the possession or custody of the Commissioner for the purposes of this Act.”;</p> <p>(b) by the deletion of paragraph (b) of subsection (2);</p> <p>(c) by the substitution in subsection (3) for the words preceding the proviso of the following words:</p> <p>“No person shall in any manner publish or make known to any other person (not being an officer performing his duties under the control, direction or supervision of the Commissioner [<b>or the Commissioner for Customs and Excise</b>] or the Postmaster-General) the contents or tenor of any instruction or communication given or made by the Commissioner [<b>or the Commissioner for Customs and Excise</b>] or the Postmaster-General or any such officer in the performance of his or their duties in terms of this Act for or concerning the examination or investigation of the affairs of any person or class of persons or the fact that such instruction or communication has been given or made, or any information concerning the tax matters of a person or class of persons.”;</p>

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
		<p>(d) by the substitution for paragraphs (b) and (c) of the proviso to subsection (3) of the following paragraphs:  “(b) subject to the provisions of subsections (1) and (4), as in any way limiting the duties or powers of the Commissioner [<b>or the Commissioner for Customs and Excise</b>] or the Postmaster-General or any such officer; or</p> <p>(c) as preventing any person from publishing or making known anything which has been published or made known by that person or his representative as contemplated in paragraph (a) or by the Commissioner [<b>or the Commissioner of Customs and Excise</b>] or the Postmaster-General or any such officer in the exercise of his duties or powers.”; and</p> <p>(e) by the deletion of subsection (4).</p> <p>4. Section 7 is hereby amended by the deletion of paragraph (c) of subsection (3).</p> <p>5. Section 13 is hereby amended by the substitution in subsection (5) for the words preceding paragraph (b) of the following words: “Except as contemplated in subsection (4), the Commissioner [<b>the Commissioner for Customs and Excise</b>] and the Postmaster-General may make such arrangements as they may deem necessary—</p>

NUMBER AND YEAR OF LAW	SHORT TITLE	EXTENT OF REPEAL OR AMENDMENT
		<p>(a) for the collection (in such manner as they may determine) by the [<b>Commissioner for Customs and Excise and the</b>] Postmaster-General on behalf of the Commissioner of the value-added tax payable in terms of this Act in respect of the importation of any goods into the Republic; and”.</p>
Proclamation No. 103 of 1994	Public Service Act, 1994	<p>Schedule 1 is hereby amended—</p> <p>(a) by the deletion of the expression “South African Revenue Service” in Column I; and</p> <p>(b) by the deletion of the expression “Director-General: South African Revenue Service” in Column II.</p>

## MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN REVENUE SERVICE BILL, 1997

Cabinet approved in principle that the South African Revenue Service (SARS) may become an administratively autonomous revenue service with its own Act and a certain level of control over its own resources.

The Bill therefore proposes the reorganisation of the South African Revenue Service. SARS is established as an organ of state within the broad public administration, but as an institution outside the public service. Although SARS will not be subject to the provisions of the Public Service Act, 1994, it remains subject to the basic values and principles governing public administration as outlined in section 195 of the Constitution.

The basic functions of SARS are—

- \* to collect—
  - \* all national taxes, duties and levies;
  - \* revenue that may be collected under any other legislation, as is agreed upon between SARS and the organ of state or institution entitled to the revenue; and
- \* to advise the Minister on all revenue-related matters.

The functions of SARS are performed under the policy control of, and subject to the directives and guidelines issued by, the Minister of Finance.

SARS may exercise a wide range of powers to enable it to perform these functions, such as the appointment of employees and the acquisition of property within the guidelines set by the Minister of Finance. These powers will enable SARS to exercise better and a greater degree of control over its financial, human and other resources.

The Bill makes provision for the appointment of a Commissioner for SARS for a period of five years, which period is renewable. The Commissioner is responsible—

- \* for the performance and exercise of SARS's functions and powers;
- \* as the chief executive officer, for the management of SARS; and
- \* as the accounting officer, for all income and expenditure of, and revenue collected by, SARS.

The Bill establishes a SARS Advisory Board which consists of the Commissioner, not more than two senior employees of SARS and not more than eight persons appointed by the Minister after consultation with the Cabinet. The Board acts as an advisory and consultative body for the Minister and the Commissioner on various issues, including—

- \* the management of SARS;
- \* the improvement of efficiency and performance in revenue collecting efforts;
- \* the terms and conditions of employment of employees of SARS;
- \* collective bargaining;
- \* the budget of SARS; and
- \* the implementation of the proposed Act.

The terms and conditions of service of employees are determined by SARS after consultation with trade union parties and with the approval of the Minister. Certain transitional arrangements apply to the transfer of staff from the Department: South African Revenue Service to the new SARS. Employees will, however, remain members of the Government Employees' Pension Fund. The transitional arrangements provide that the transfer of employees to SARS will be effected in accordance with the provisions of section 197 of the Labour Relations Act, 1995, and the collective agreement reached between the Department: SARS and the relevant trade union parties. All rights and obligations of employees, pertaining to the terms and conditions of their employment, will therefore be retained until amended after collective bargaining in the collective bargaining forum.

The chief source of income of SARS will be money appropriated by Parliament. Such income will be determined in accordance with estimates of income and expenditure, which estimates must make adequate provision for SARS to perform its functions. Once considered by the Board, approved by the Minister and adopted by Parliament, the funds

will be made available to SARS in accordance with an agreement between SARS and the Minister. SARS may also collect revenue on behalf of other levels of government and, for such service, may charge the organ of state or institution concerned a rate as may be agreed upon. Unless otherwise agreed with the Minister, SARS will refund any unused appropriated funds to the state at the end of each financial year.

The accounts of SARS must be audited annually by the Auditor-General. The Commissioner must also submit a comprehensive annual report to the Minister on the activities of SARS, and such report must be tabled in the National Assembly and submitted to the National Council of Provinces.

In the opinion of the State Law Adviser, the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution.

The following Government Departments have been consulted:

Department of Finance

Department of State Expenditure

Department of Public Service and Administration

Department of Justice

Various other parties were also consulted, such as:

Financial Services Board

The Office of the Auditor-General

The Katz Commission

Trade Union parties to the Departmental Chamber of the Public Service Bargaining Council: SARS

The South African Institute of Chartered Accountants

The South African Chamber of Business

National African Federated Chamber of Commerce and Industry

Congress of South African Trade Unions

Afrikaanse Handelsinstituut

Association for the Advancement of Black Accountants of South Africa

Institute of Commercial and Financial Accountants of Southern Africa