

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN REVENUE SERVICE AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 23686 of 31 July 2002)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B 36—2002]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE SUID-AFRIKAANSE INKOMSTEDIENS

*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende
opsomming van Wetsontwerp in Staatskoerant No 23686 van 31 Julie 2002 gepubliseer)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VAN FINANSIES)

[W 36—2002]

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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.

BILL

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 SARS; to provide that persons employed by SARS 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:
“ ‘financial year’ means a financial year defined in section 1 of the [Exchequer Act, 1975 (Act 66 of 1975)] Public Finance Management Act, 1999;”; and 10
 - (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 1997 15

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—
 (a) collection of revenue; and
 (b) control over the import, export, manufacture, movement, storage or use of certain goods.”. 5

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— 20
 (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); and
 (c) advise the Minister of Trade and Industry on matters concerning the 25
control over the import, export, manufacture, movement, storage or
use of certain goods.”; and
 (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 45
 paragraph:
 “(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— 30
- (a) not more than eight persons who are independent from SARS and are appointed by the Minister; and
- (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— 35
- (a) be a fit and proper person;
- (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— 40
- (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
- (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— 45
- (a) he or she resigns from the specialist committee;
- (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 has 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: 25

“(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** 30

(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. 35

(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.”; 40

(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.”. 45

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
- (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.

(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

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

“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;
- (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

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
- (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.”.

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

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**

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.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN REVENUE SERVICE AMENDMENT BILL, 2002

1. PURPOSE OF BILL

The South African Revenue Service Act, 1997 (“SARS Act”), came into operation on 1 October 1997. This Act established SARS as an organ of state within the broad public administration, but as an institution outside the public service. This Act granted SARS administrative autonomy. Although SARS is no longer subject to the provisions of the Public Service Act, 1994, it remains subject to the basic values and principles governing public administration outlined in section 195 of the Constitution.

Since the promulgation of the SARS Act in 1997, there have been a number of factors that have given rise to the need to review some of the provisions of the Act. One factor is the promulgation of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“the PFM Act”), which regulates the financial management in the national and provincial governments. The PFM Act also regulates the accountability and responsibilities of the accounting authorities, as well as other financial matters of public entities listed in Schedules 2 and 3 to that Act, which includes SARS.

A number of practical problems relating to the current provisions of the SARS Act have also been identified and it is therefore proposed that some of these provisions be reviewed.

2. RATIONALE BEHIND AMENDMENTS

This Bill proposes the following amendments to the SARS Act:

OBJECTIVES AND FUNCTIONS OF SARS

The SARS Act currently provides that the objective of SARS is the efficient and effective collection of revenue. In conjunction with this, the functions of SARS include the following—

- * to secure the efficient and effective and widest possible enforcement of national legislation (as listed in the Act) and any other legislation concerning the collection of revenue that may be assigned to SARS; and
- * to advise the Minister on all matters concerning revenue.

SARS, however, also performs certain other functions which do not necessarily involve the collection of revenue. These functions relate to the control over the import, export, manufacture, movement, storage or use of certain goods which are performed by the customs administration division within SARS. This Bill, therefore, introduces amendments relating to the objectives and functions of SARS to specifically incorporate these customs functions.

Furthermore, although SARS reports to the Minister of Finance and administers revenue laws for which that Minister is responsible, there is from the customs perspective a linkage with the Department of Trade and Industry (DTI), as SARS—

- * implements the tariff amendments requested by DTI; and
- * administers incentive schemes devised by DTI to facilitate trade and stimulate economic growth.

In this regard, SARS also fulfils the function of advising the Minister of Trade and Industry on matters concerning the control over the import, export, movement, storage or use of certain goods. The Bill therefore proposes an amendment to the SARS Act to reflect this function.

APPOINTMENT OF COMMISSIONER

Currently the SARS Act provides that the Minister of Finance must appoint the

Commissioner after consulting Cabinet and the SARS Board. This Bill proposes a change to provide that the Commissioner must be appointed by the President.

PUBLIC FINANCE MANAGEMENT ACT, 1999

In terms of the current provisions of the SARS Act, SARS exercises its powers and performs its functions under the policy control of the Minister of Finance and subject to the directives and guidelines on policy matters issued by that Minister.

When the SARS Act came into operation in 1997, the PFM Act had not yet been promulgated. The purpose of the PFM Act is to prescribe a system of financial management in the national and provincial spheres of government and to regulate the accountability of the public sector. Chapter 6 of this Act specifically deals with public entities and outlines the fiduciary and other responsibilities of the accounting authorities of these entities. SARS is included in Schedule 3 to the PFM Act, which covers public entities with lesser degrees of autonomy.

As the PFM Act already ensures an effective financial accountability system with regard to public entities, the necessity that SARS still be accountable to the Minister of Finance in terms of the SARS Act has to a large extent fallen away. The Bill therefore proposes an amendment to the Act to delete the reference to the specific powers of the Minister of Finance in the SARS Act where they are dealt with in terms of the PFM Act.

DISESTABLISHMENT OF SARS ADVISORY BOARD AND APPOINTMENT OF SPECIALIST COMMITTEES

The SARS Advisory Board was established by section 11 of the SARS Act. The function of this Board is to act as an advisory and consultative body for the Minister of Finance and the Commissioner on matters concerning the administration of the revenue-collecting system of SARS. This Board is somewhat unique in nature, as it has mainly an advisory function and is not really involved in policy and decision making.

SARS as an organisation has changed in the past few years since administrative autonomy was granted to it. The role and functioning of the Board has been debated in several forums and at the Board meetings, because the members of the Board felt that the role of the Board was not clearly defined. Taking into account the nature of the SARS Act in relation to other legislation governing the functioning of SARS, including the PFM Act and the reporting relationship between the Minister, the Commissioner and the Advisory Board, it is proposed that the existing Board be dissolved. The Bill provides that a number of specialist committees be appointed by the Minister to advise him or her and the Commissioner on technical matters such as Human Resources, Information Technology and Asset Management.

HUMAN RESOURCES

Currently the SARS Act provides that the terms and conditions of employment of SARS employees must be determined—

- * after collective bargaining between SARS and the recognised trade unions;
- and

- * with the approval of the Minister.

SARS must obtain the approval of the Minister of Finance before determining the terms and conditions of employment of employees of SARS.

This Bill proposes that the Commissioner, as chief executive officer of SARS, may approve the terms and conditions of employment of SARS employees (other than certain employees in the management structure of SARS mentioned below). The specialist committee will have the function of advising the Commissioner on human resource issues and the ultimate responsibility in this regard will lie with the Commissioner. A provision is also inserted in the SARS Act that requires adequate reporting by the Commissioner to the Minister with regard to the terms and conditions of employment for these employees.

The Bill proposes that the Minister of Finance must, on the advice of the specialist committee, approve the terms and conditions of employment of any class of employees in the management structure of SARS, to be agreed between the Minister and the Commissioner.

MEMBERSHIP OF GOVERNMENT EMPLOYEES' PENSION FUND

In terms of section 19 of the SARS Act, any person appointed by SARS as an employee becomes a member of the Government Employees' Pension Fund (hereinafter referred to as "the GEPF"). Although section 19 of the SARS Act obliges employees to become members of the GEPF, section 19 cannot override the provisions of the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996, hereinafter referred to as "the GEP Law"), which incorporates the rules governing the GEPF in Schedule 1 thereto.

Although a contract employee must in terms of section 19 of the SARS Act become a member of the GEPF, such employee may be excluded from the Fund in terms of section 5 of the GEP Law. The need has therefore arisen to amend the SARS Act to bring it in line with the provisions of the rules and laws of the GEPF.

METHOD OF DETERMINING FUNDS OF SARS

Section 25 of the SARS Act deals with the chief source of income of SARS, i.e. the money appropriated annually by Parliament. This amount is calculated in accordance with the estimates of income and expenditure prepared by SARS, which are prescribed in the SARS Act, but which are also regulated in terms of the PFM Act.

The Bill proposes an amendment to provide that a method of determining SARS's funds may be agreed between the Minister and the Commissioner, subject to the approval of Cabinet.

3. FINANCIAL IMPLICATIONS FOR STATE

None.

4. OTHER DEPARTMENTS/BODIES CONSULTED

All Cabinet members (Cabinet Memorandum)
SARS Board members.

5. PARLIAMENTARY PROCEDURE

The South African Revenue Service and State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.