

---

---

REPUBLIC OF SOUTH AFRICA.

---

---

**EXPLANATORY MEMORANDUM**

ON THE

**REVENUE LAWS AMENDMENT BILL, 1969.**

---

---

REPUBLIC OF SOUTH AFRICA

---

EXPLANATORY MEMORANDUM ON THE REVENUE  
LAWS AMENDMENT BILL, 1969.

---

GENERAL.

The Bill introduces amendments to the Marketable Securities Tax Act, 1948 (Act No. 32 of 1948), the Transfer Duty Act, 1949 (Act No. 40 of 1949), the Diamond Export Duty Act, 1957 (Act No. 16 of 1957), the Cinematograph Films Tax Act, 1960 (Act No. 56 of 1960), and the Stamp Duties Act, 1968 (Act No. 77 of 1968).

The Marketable Securities Tax Act, 1948, the Transfer Duty Act, 1949, and the Stamp Duties Act, 1968, are in terms of various amendments made applicable in South-West Africa as from 1st October, 1969. A number of other amendments are introduced.

CLAUSE 1.

*Rate of Marketable Securities Tax.*

This clause amends section 2 of the Marketable Securities Tax Act, 1948, so as to increase the rate of the marketable securities tax from one-half of one per cent to one per cent of the consideration for which marketable securities are purchased or sold by a stockbroker on behalf of any other person, the tax being payable by both the selling broker and the buying broker.

The amendment applies in respect of purchases and sales effected on or after 27th March, 1969.

CLAUSES 2 AND 3.

*Period for Payment of Marketable Securities Tax.*

In terms of the amendment introduced by *clause 2* to section 4 (1) of the Marketable Securities Tax Act, 1948, the Secretary for Inland Revenue is empowered to grant extensions of the period allowed for the payment of the marketable securities tax. At present the tax must be paid within 14 days after the end of the month during which the relevant sale or purchase of marketable securities is made. Owing to unavoidable delays experienced by stockbrokers in obtaining the registration of transfer of shares the fixed period of 14 days has sometimes been found to be too short.

The amendment introduced by *clause 3* to section 5 of the Marketable Securities Tax Act, 1948, is consequential upon the amendment introduced by *clause 2* to section 4 (1) of that Act. The penalty provided in section 5 of the Act will not be payable if payment is made by the stockbroker concerned within any extension of the period for payment granted to him under section 4 (1) of the Act.

CLAUSE 4.

*Application of the Marketable Securities Tax Act, 1948, in South-West Africa.*

This clause inserts in the Marketable Securities Tax Act, 1948, a new section, numbered 11, in terms of which the provisions of that Act are to apply in South-West Africa as from 1st October, 1969.

## CLAUSE 5.

*Transfer Duty: Definition of "Republic".*

This clause inserts in section 1 of the Transfer Duty Act, 1949, a definition of "Republic". In terms of that definition the territory of South-West Africa (excluding the Eastern Caprivi Zipfel) will as from 1st October, 1969, be treated as being in the Republic for transfer duty purposes.

## CLAUSE 6.

*Transfer Duty: Revision of Valuations.*

Transfer duty is in terms of section 5 (6) of the Transfer Duty Act, 1949, required to be paid on the consideration payable or the declared value of the property in respect of which duty is payable or the fair value of that property, whichever is the highest. The fair value is required to be determined by the Secretary for Inland Revenue. In practice this is in the first instance done by a receiver of revenue and the receiver's determination is later reviewed by an inspector. In terms of a recent decision of the Appellate Division of the Supreme Court only one determination of the fair value is permissible. The amendment introduced by this clause enables the Secretary to revise an original determination of the fair value or if necessary to make a further determination thereof. Any such revision or further determination must, however, be made not later than two years from the date on which duty was originally paid.

## CLAUSE 7.

*Exemptions from Transfer Duty.*

This clause amends section 9 of the Transfer Duty Act, 1949, in which certain exemptions from duty are provided.

In terms of the amendment introduced by *subclause (1) (a)* to section 9 (1) (a), the Administration of the territory of South-West Africa is exempted from the payment of duty.

*Subclause (1) (b)*, which amends section 9 (1) (b), introduces an exemption from duty in favour of the Rand Water Board and the Transvaal Board for the Development of Peri-urban Areas.

The amendment to section 9 (5) (b) introduced by *subclause (1) (c)* is of a textual nature.

*Subclause (1) (d)*, which adds a new paragraph (c) to section 9 (5), introduces an exemption from duty in respect of the acquisition from any holder thereof of any right to mine for natural oil granted under the Mines, Works and Minerals Ordinance, No. 20 of 1968, of South-West Africa. This exemption is similar to the exemption at present applicable in the Republic in respect of the cession of an oil mining lease.

*Subclause (1) (e)*: Section 9 (9) provides an exemption from duty where property is, upon the cancellation or variation of an expropriation, re-acquired by the person from whom the property was expropriated. In terms of the amendment the exemption will also apply with reference to property expropriated by the Administration of South-West Africa.

*Subclause (1) (f)* adds a new subsection to section 9, providing an exemption from duty in respect of the acquisition by a member of the Rehoboth Baster community of property situated in the Rehoboth Gebiet. This continues a similar exemption hitherto enjoyed under the transfer duty laws of South-West Africa.

## CLAUSE 8.

*Transfer Duty: Duties of Deeds Registration Officers.*

The provisions of section 12 of the Transfer Duty Act, 1949, are re-worded so as to relieve deeds registration officers of the duty of making meticulous checks of transfer duty receipts. It has been found that very few underpayments of duty are revealed by such checks and such underpayments as do come to light are usually of small amounts due to minor calculation errors.

## CLAUSE 9.

*Application of the Transfer Duty Act, 1949, in South-West Africa.*

This clause inserts in the Transfer Duty Act, 1949, a new section, numbered 21A, in terms of which the provisions of that Act will, as from 1st October, 1969, apply also in the territory of South-West Africa.

## CLAUSES 10, 11 AND 12.

*Textual Changes: Diamond Export Duty Act, 1957.*

The amendments introduced by clauses 10, 11 and 12 to the Diamond Export Duty Act, 1957, are of a textual nature.

## CLAUSE 13.

*Textual Changes: Cinematograph Films Tax Act, 1960.*

The amendments introduced by clause 13 to the Cinematograph Films Tax Act, 1960, are of a textual nature.

## CLAUSE 14.

*Cinematograph Films Tax: Exemption in Respect of Amateur Sporting Activities.*

In terms of the amendment introduced by clause 14 to section 5 of the Cinematograph Films Tax Act, 1960, an exemption from tax is provided for where the Secretary for Inland Revenue is satisfied that the proceeds of an exhibition of a film, less expenses, are to be devoted to amateur sporting activities.

## CLAUSE 15.

*Textual Changes: Cinematograph Films Tax Act, 1960.*

The amendments introduced by clause 15 to the Cinematograph Films Tax Act, 1960, are of a textual nature.

## CLAUSE 16.

*Stamp Duties Act, 1968: Definitions.*

Clause 16 introduces amendments to section 1 of the Stamp Duties Act, 1968. The amendments are as follows:

*Subclause (1) (a)* introduces a new definition of "policy or certificate of marine insurance". A policy which insures a person solely against inland transit risks will not for stamp duty purposes be treated as a policy of marine insurance and the special rate of duty provided for in Item 18 (4) of Schedule 1 to the Act—see clause 26 (1) (b) of the Bill—will not be applicable to such policy, the duty payable being determined under Item 18 (6) of the said Schedule.

*Subclause (1) (b)* inserts in the definition of "public officer" a reference to a person in the employ of the Administration of South-West Africa.

*Subclause (1) (c)* inserts in the definition of "public revenue" a reference to the Administration of South-West Africa.

*Subclause (1) (d)* inserts a definition of "Republic" so as to include the territory of South-West Africa (excluding the Eastern Caprivi Zipfel).

*Subclause (1) (e)* inserts a definition of "territory". In terms of this definition the "territory" means the territory of South-West Africa, excluding the Eastern Caprivi Zipfel.

#### CLAUSE 17.

##### *General Exemptions from Stamp Duties.*

This clause introduces amendments to section 4 of the Stamp Duties Act, 1968.

In terms of *subclause (1) (a)* the Administration of South-West Africa is exempted from the duty on an instrument if the duty would be legally payable and borne by the Administration.

In terms of *subclause (1) (b)* a general exemption from duty is provided in favour of the Transvaal Board for the Development of Peri-Urban Areas.

In terms of the amendment introduced by *subclause (1) (c)* the exemption in respect of certain instruments executed in South-West Africa is restricted to instruments executed before 1st October, 1969.

#### CLAUSE 18.

##### *Liability for Stamp Duty in Respect of Cancellation of Shares.*

In terms of the amendment introduced by this clause to section 7 of the Stamp Duties Act, 1968, liability for the stamp duty payable in terms of Item 15 (4) of Schedule 1 to that Act (see clause 25 (1) (b) of the Bill) in respect of a cancellation of company shares, is imposed on the company of which the shares are cancelled.

#### CLAUSE 19.

##### *Stamp Duty: Continuations, Renewals and Extensions of Leases executed in South-West Africa.*

In terms of the amendment introduced by this clause to section 22 (4) (a) of the Stamp Duties Act, 1968, provision is made for the stamping of any continuation, renewal or extension of a lease originally executed in South-West Africa. In determining the duty payable regard will be had to any duty previously paid under the laws of that territory.

#### CLAUSE 20.

##### *Stamp Duty: Marketable Securities.*

This clause introduces amendments to section 23 of the Stamp Duties Act, 1968, in regard to the stamp duty in respect of marketable securities. The amendments are as follows:

*Subclause (1) (a)* amends the definition of "bank" in section 23 (1) so as to include all banking institutions registered under the Banks Act, 1965, to exclude building societies and to make a textual improvement. The definition

is of significance in that a "bank" is permitted to make certain endorsements on an instrument of transfer for the purpose of determining the date of execution of such instrument (as provided in section 23 (3) (iii)) or for the purpose of obtaining an exemption from stamp duty where marketable securities tax has been paid (as provided in section 23 (4) (b), as amended by subclause (1) (b)).

*Subclause (1) (b)* amends section 23 (4) (b) (ii) so as to permit a bank to make an endorsement for the purposes of obtaining an exemption from stamp duty where marketable securities tax has been paid.

*Subclause (1) (d)* adds a new subparagraph (iv) to section 23 (4) (b), in terms of which a certificate by the Secretary for Inland Revenue must be produced for the purposes of an exemption under paragraph (i) of the Exemptions to Item 15 of Schedule 1 to the Stamp Duties Act, 1968. The exemption provided for in the said paragraph (i) may be granted where a South African subsidiary of a foreign company has taken over all the assets, including marketable securities, of the foreign company relating to any industrial, commercial or other business undertaking of the foreign company in the Republic, and the exemption is applicable in respect of the registration of transfer of the marketable securities so taken over. This is a new exemption and is provided for in clause 25 (1) (e).

The amendment introduced by *subclause (1) (e)* to section 23 (5) is of a consequential nature.

*Subclause (1) (f)* introduces into section 23 a new subsection, numbered (7A), which provides that where any marketable security has before 1st October, 1969, been sold or disposed of in South-West Africa, but registration of transfer has not been effected until on or after that date, the stamp duty payable (if any) shall be paid under the stamp duty laws of South-West Africa as though such laws had not been repealed.

The amendments introduced by *subclause (1) (g)* are of a consequential nature.

*Subclause (1) (h)* adds new subsections, numbered (10) to (13), inclusive, to section 23. Provision is made in the said subsections and in Item 15 (4) of Schedule 1 to the Stamp Duties Act, 1968 (introduced by clause 25 (1) (b) of the Bill) for a stamp duty to be levied in respect of the cancellation of company shares where such cancellation is made under a scheme of arrangement or reconstruction of the company or its affairs (including an amalgamation), if such scheme has been sanctioned by an order of court and the holder of the cancelled shares either has shares in another company issued to him without subscription or receives any cash or any other asset from anybody. The person who holds the cancelled shares is, in the circumstances described, deemed to have disposed of those shares for a consideration equal to the market value thereof prior to their cancellation. The stamp duty (the rate of which is the same as the duty payable in respect of the registration of transfer of a marketable security) must be denoted on a copy of the relevant application to court and is payable by the company by which the cancelled shares were issued (see clause 18 of the Bill).

The copy of the application to court must be stamped in accordance with the provisions of the Stamp Duties Act, 1968, as though it were an instrument executed on the date of the relevant court order or, in special circumstances, on such later date as the Secretary may approve. The period allowed for stamping is 21 days after the date mentioned, failing which penalties become payable.

Where new shares are issued out of any capital reserve created by the cancellation of shares, the duty in respect of the cancellation is reduced by the duty payable in respect of the issue of the new shares.

#### CLAUSE 21.

##### *Stamp Duty: Insurance Policies.*

*Subclause (1) (a)*: The stamp duty payable under Item 18 (6) of Schedule 1 to the Stamp Duties Act, 1968, is in terms of section 24 (4) (a) of that Act payable by each insurer on the total amount of premiums on policies, certificates of insurance and endorsements executed by the insurer during

each quarter ending 31st March, 30th June, 30th September and 31st December and the premiums on renewals *falling due* during each such quarter. In terms of the amendment introduced by subclause (1) (a) an insurer may be permitted to account for premiums received during each quarter, regardless of when such policies, certificates or endorsements were executed or when such renewals fell due.

*Subclause (1) (b)* introduces into section 24 of the Stamp Duties Act, 1968, a new subsection, numbered (8A), in terms of which a renewal of any policy or certificate of insurance referred to in Item 18 (6) of Schedule 1 to the principal Act which relates to any property or insurable interest in South-West Africa and fell due before 1st October, 1969, shall, if the renewal is executed in that territory, be chargeable with the stamp duty (if any) payable under the laws of that territory and not under the Item referred to.

#### CLAUSE 22.

*Application of the Stamp Duties Act, 1968, in South-West Africa.*

This clause inserts in the Stamp Duties Act, 1968, a new section, numbered 37A, in terms of which the provisions of that Act will, as from 1st October, 1969, apply also in the territory of South-West Africa.

#### CLAUSE 23.

*Stamp Duty: Affidavit or Declaration.*

This clause introduces an amendment to Item 1 of Schedule 1 to the Stamp Duties Act, 1968, in terms of which an exemption is provided in respect of an affidavit or declaration required to be furnished to an officer in the service of the Administration of South-West Africa.

#### CLAUSE 24.

*Stamp Duty: Cheques.*

In terms of the amendment introduced by this clause to Item 5 of Schedule 1 to the Stamp Duties Act, 1968, the exemption in respect of cheques drawn on a bank in South-West Africa will be restricted to cheques in respect of which duty has before 1st October, 1969, been paid under the stamp duty laws of that territory.

#### CLAUSE 25.

*Stamp Duty: Marketable Securities.*

This clause introduces amendments to Item 15 of Schedule 1 to the Stamp Duties Act, 1968, in regard to the stamp duty payable in respect of marketable securities.

*Subclause (1) (a)* increases the duty payable in respect of the registration of transfer of any marketable security sold or disposed of after 26th March, 1969, from 50 cents per R100 or part thereof of the amount or value of the consideration given or, where no consideration is given, of the value of the security, to R1 per R100 or part thereof of such amount or value. If transfer is registered after the expiry of six months from the date of execution of the relevant instrument of transfer, the duty is trebled.

*Subclause (1) (b)* introduces a new paragraph (4) into the said Item 15, imposing a duty in respect of the cancellation of company shares in certain circumstances. This amendment should be read with the amendment introduced by clauses 18 and 20 (1) (h) of the Bill and is described in the portions of this Memorandum dealing with those clauses.

*Subclause (1) (c)* amends paragraph (a) of the exemptions to the said Item 15, with effect from 1st October, 1969. The exemption from duty in respect of the issue of shares in any company incorporated in South-West Africa is withdrawn. The exemption from duty in respect of the registration of transfer of shares of any company incorporated in the territory is extended to the registration of transfer of shares of a company which is managed and controlled in South-West Africa, but in both cases the exemption is applicable only if the sale or disposal of the shares was made in that territory before 1st October, 1969, and stamp duty has been paid in respect of the registration of transfer under the stamp duty laws of the said territory. This amendment should be read with the amendment introduced by clause 20 (1) (f).

*Subclause (1) (d)* extends the exemption applicable to negotiable certificates in respect of deposits made with commercial banks to negotiable certificates of deposits made with banking institutions registered under the Banks Act, 1965, where such certificates are subject to the duty on fixed deposit receipts under Item 13 of Schedule 1 to the principal Act.

*Subclause (1) (e)* introduces an exemption in respect of the registration of transfer of a marketable security from a foreign company (as described in the amendment) to a subsidiary company (as described in the amendment), where such marketable security is transferred by the foreign company to the subsidiary company as part of the assets relating to an industrial or commercial or other business undertaking of the foreign company taken over by the subsidiary company. This amendment should be read with the amendment introduced by clause 20 (1) (d).

#### CLAUSE 26.

##### *Stamp Duty: Policies of Insurance.*

This clause introduces amendments to Item 18 of Schedule 1 to the Stamp Duties Act, 1968, in regard to the stamp duty payable on insurance policies.

*Subclause (1) (a)* introduces a new paragraph, numbered (2A), imposing additional duty on a policy of life insurance where such policy provides additional benefits in respect of accident, bodily injury, incapacity, sickness or the like. Such a policy will be required to be stamped under paragraph (1) or (2) of Item 18 as a policy of life insurance and also under paragraph (2A) in respect of the additional benefits. At present the duty in respect of the additional benefits is payable under paragraph (6) of Item 18, but difficulties of an administrative nature have been experienced owing to the fact that the duty under paragraph (6) is payable on declaration and not by means of stamps. The duty on policies of this nature will, as from 1st July, 1969, be required to be denoted by means of stamps.

The additional duty under the new paragraph (2A) is 20 cents where the policy is a funeral or industrial policy and 50 cents in any other case.

*Subclause (1) (b)* introduces an amendment to paragraph (4) of Item 18, in terms of which the stamp duty on a policy or certificate of marine insurance is increased to 15 cents if third-party cover is included therein. "Policy or certificate of marine insurance" is now defined—see clause 16 (1) (a).

*Subclause (1) (c)* introduces an amendment to paragraph (7) of Item 18, whereby the duty on cessions of policies of life insurance will also be payable on cessions of policies of any other nature. Policies are frequently ceded as security for a debt and in such cases (except in the case of life policies) a higher duty under Item 20 has hitherto been attracted. The imposition of the lower duty under Item 18 (7) will have the effect of exempting cessions of all policies of insurance from the duty under Item 20.



## CLAUSE 27.

*Stamp Duty: Security or Suretyship.*

This clause introduces amendments to Item 20 of Schedule 1 to the Stamp Duties Act, 1968, in regard to the stamp duty on indemnities.

*Subclause (1) (a)* widens the scope of the exemption from duty under paragraph (c) of the Exemptions to Item 20. This exemption has hitherto been applicable in respect of an indemnity solely against personal injury. In terms of the amendment the exemption will apply in respect of loss or damage caused by or suffered in consequence of personal injury and also death.

*Subclause (1) (b)* introduces exemptions in respect of—

- (a) indemnities given by passengers of Government vehicles, and
- (b) indemnities given to the State in connection with lost or missing stock certificates, Treasury bonds, tax bonds, tax redemption certificates, loan levy certificates, warrant vouchers, interest vouchers and similar certificates, vouchers or documents.

## CLAUSE 28.

*Stamp Duty: Transfer Deeds.*

This clause introduces an amendment to Item 21 of Schedule 1 to the Stamp Duties Act, 1968, in regard to the determination of stamp duty on transfer deeds. The duty is imposed on the "value or consideration". In terms of the amendment, where the value of the property exceeds the consideration given or *vice versa*, the duty is payable on the higher amount.

## CLAUSE 29.

*Repeal of Laws.*

This clause repeals the stamp duty and transfer duty proclamations and ordinances of South-West Africa, with effect from 1st October, 1969.

## CLAUSE 30.

This clause prescribes the short title.