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REPUBLIC OF SOUTH AFRICA.

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**EXPLANATORY MEMORANDUM**

ON THE

**REVENUE LAWS AMENDMENT BILL, 1970.**

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[W.P. 10—'70.]

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**EXPLANATORY MEMORANDUM ON THE REVENUE LAWS  
AMENDMENT BILL, 1970.**

GENERAL.

The Bill introduces amendments to the Transfer Duty Act, 1949 (Act No. 40 of 1949), the Cinematograph Films Tax Act, 1960 (Act No. 56 of 1960), the Stamp Duties Act, 1968 (Act No. 77 of 1968), and the Revenue Laws Amendment Act, 1969 (Act No. 103 of 1969).

CLAUSE 1.

*Calculation of Penalty on Late Payments of Transfer Duty.*

In terms of section 4 (1) of the Transfer Duty Act, 1949, a penalty of  $7\frac{1}{2}$  per cent per annum is payable in respect of late payments of transfer duty. The penalty is calculated in respect of each day in the period from the end of the six months allowed for payment of duty to the date of payment. In terms of the amendment introduced by this clause a simplified method of calculation is proposed whereby the penalty will be calculated in respect of each completed month in the period in respect of which the  $7\frac{1}{2}$  per cent penalty is incurred, any portion of a month being ignored.

The new basis of calculation of the penalty will apply in respect of late payments of transfer duty made on or after the date of promulgation of the Revenue Laws Amendment Act, 1970.

CLAUSE 2.

*Transfer Duty: Duties of Registration Officers.*

In terms of the amendment introduced by this clause to section 12 (3) of the Transfer Duty Act, 1949, a deeds registration officer will not be required to refer any dispute as to the amount of transfer duty payable, to the Secretary for Inland Revenue. Registration officers are not required to make a meticulous check of the amount of duty payable and the provision in regard to a dispute as to the amount of duty is superfluous.

CLAUSE 3.

*Calculation of Interest on Late Payments of Transfer Duty.*

The amendment introduced by this clause to section 21 of the Transfer Duty Act, 1949, is similar to the amendment introduced by clause 1 to section 4 (1) of that Act. The basis of calculation of interest on arrear transfer duty still payable under various repealed laws is brought into line with the basis of calculation of penalty on transfer duty payable under the present Transfer Duty Act.

CLAUSE 4.

*Cinematograph Films Tax.*

In terms of section 6 (2) of the Cinematograph Films Tax Act, 1960, the payments of the tax under that Act must be accompanied by declarations prescribed by the Secretary for Inland Revenue. The requirement as to a notice in the *Gazette* is deleted.

## CLAUSE 5.

*Stamp Duty Exemption.*

This clause, which amends section 4 (1) (b) of the Stamp Duties Act, 1968, introduces an exemption from stamp duty in respect of any instrument the duty whereon would be legally payable and borne by the Rand Water Board.

## CLAUSE 6.

*Stamp Duty: Liability of Persons Making Use of Instruments.*

This clause introduces into the Stamp Duties Act, 1968, a new section, numbered 12A, in terms of which any person who for any business purpose keeps or retains or who in any manner makes use of an instrument that has not been duly stamped, will be liable to pay any unpaid duty thereon or any unpaid penalty incurred in respect thereof under section 9 (1) of that Act, i.e. the penalty for the late stamping of an instrument.

## CLAUSE 7.

*Stamp Duty: Inspection of Instruments.*

In terms of the existing provisions of section 31 of the Stamp Duties Act, 1968, if the Secretary for Inland Revenue has reason to believe that any person has in his possession any instruments chargeable with stamp duty which have not been duly stamped, he may by notice in writing call upon such person to produce the instruments. The section also provides that an officer may enter and search premises for instruments if he is authorized to do so by the Secretary in writing or by telegram. These provisions are acted upon only in exceptional circumstances, usually where there is reason to suspect that there has been evasion of duty.

The amendments introduced by this clause are by and large of a textual nature and clarify the law as regards the carrying out of inspections by officers of the Department acting under a general or special authority of the Secretary in matters relating to unstamped instruments.

## CLAUSE 8.

*Stamp Duty: Agreement or Contract.*

The amendment introduced by this clause to Item 2 of Schedule 1 to the Stamp Duties Act, 1968, is consequential upon the amendment introduced by clause 9.

## CLAUSE 9.

*Stamp Duty: Hire-purchase agreements.*

This clause inserts a new Item, numbered 13A, in Schedule 1 to the Stamp Duties Act, 1968, imposing a specific duty of 30 cents on hire-purchase agreements or contract in respect of goods, wares or merchandise (other than livestock and agricultural produce). A similar duty has hitherto been imposed in respect of such agreements under Item 2 of the Schedule, i.e. as agreements or contracts in respect of which no other duty is specifically provided.

Inspections have revealed that hire-purchase agreements are often not properly completed or have blank spaces, leading to assertions that the agreements are not "legal" and therefore not subject to the existing duty. The new Item contains a provision whereby such agreements will, notwithstanding any technical defects, nevertheless require to be stamped.

## CLAUSE 10.

*Stamp Duty: Registration of Transfer of Marketable Securities.*

In terms of the amendment introduced by this clause to Item 15 (3) of Schedule 1 to the Stamp Duties Act, 1968, the rate of stamp duty payable in respect of the registration of transfer of a marketable security is modified so as to reduce the duty payable in cases where the amount or value upon which the duty is calculated is small. The minimum duty is at present R1, and in terms of the amendment this is reduced to 10 cents. The new rate of duty will not apply where the marketable security was sold or disposed of on or before 26th March, 1969, and in other cases will be applicable in respect of registrations of transfer effected on or after the date of promulgation of the Revenue Laws Amendment Act, 1970.

A similar amendment is introduced to Item 15 (4) in respect of the duty in respect of the cancellation of company shares.

## CLAUSE 11.

*Transfer Duty: Property Sold under the Land Settlement Laws of South-West Africa.*

This clause adds a further proviso to section 29 of the Revenue Laws Amendment Act, 1969. It is provided therein that transfer duty in respect of the acquisition of property under a sale effected before 1st October, 1969, under the land settlement laws of South-West Africa, shall be payable under the Transfer Duty Ordinance, 1951, of South-West Africa, and not under the Transfer Duty Act, 1949. Where the purchaser under such a sale has, before a State grant has been issued, ceded his rights under the sale agreement, the duty payable by the cessionary in respect of his acquisition of the property, is also payable under the Ordinance, even if the cession has been effected on or after 1st October, 1969.

Where the original sale under the said laws is effected on or after 1st October, 1969, duty in respect of the acquisition of the property concerned by the purchaser or by a cessionary of the purchaser's rights remains chargeable under the Transfer Duty Act, 1949.

## CLAUSE 12.

This clause prescribes the short title.