
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 1971.

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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 Estate Duty Act, 1955 (Act No. 45 of 1955), the Diamond Export Duty Act, 1957 (Act No. 16 of 1957), the Licences Act, 1962 (Act No. 44 of 1962), and the Stamp Duties Act, 1968 (Act No. 77 of 1968).

CLAUSE 1.

Marketable Securities Tax: Definition of "Stockbroker".

This clause introduces an amendment to the definition of "stockbroker" in section 1 of the Marketable Securities Tax Act, 1948, in terms of which a merchant bank will be regarded as being a stockbroker for the purposes of that Act. A merchant bank will, in respect of the purchase or sale of marketable securities on behalf of other persons, be liable for the payment of marketable securities tax and will be subject to the provisions of the said Act which are applicable in the case of stockbrokers as defined. This amendment gives effect to a recommendation of the Commission of Inquiry into the Stock Exchanges Control Amendment Bill.

CLAUSE 2.

Transfer Duty: Duties of Registration Officers.

The amendments to section 12 of the Transfer Duty Act, 1949, which are introduced by this clause are consequential upon the passing of the Sale of Land on Instalments Act, 1971. In terms of section 11 (2) of the latter Act, a cessionary upon whom the right of a purchaser to claim transfer of land (as defined in that Act) has devolved may subject to the provisions of section 12 of the Transfer Duty Act, 1949, claim transfer of the land from the original seller direct to himself. In terms of the amendments to section 12 of the Transfer Duty Act, 1949, as proposed by this clause, the registration officer will, before registering transfer, have to be satisfied that transfer duty has been paid not only by the cessionary in respect of his acquisition of the land but also by the cedent from whom the cessionary has acquired his rights and any predecessor of the cedent, including the original purchaser.

CLAUSE 3.

Estate Duty Definitions.

The amendments to section 1 of the Estate Duty Act, 1955, which are introduced by this clause are of a textual nature.

CLAUSE 4.

Estate Duty: Composition of an Estate.

This clause introduces amendments to section 3 of the Estate Duty Act, 1955.

In terms of section 3 (3) (a) of that Act, any amount due and recoverable under a policy of insurance upon the life of the deceased is, except in certain circumstances, deemed to be property of the deceased, and must be included in his estate. The amendment introduced by *subclause (1) (a)* introduces a further exception which will be applicable where (a) the policy was not effected by or at

the instance of the deceased (b) the premiums were not paid or borne by him and (c) the amount due or recoverable under the policy has not been nor will be paid into the estate and has not been nor will be paid to or utilised for the benefit of a relative or dependant of the deceased or a family company in relation to the deceased. (The expressions "relative" and "family company" are defined in section 1 of the Estate Duty Act, 1955).

In terms of section 3 (3) (c) of the said Act property donated by the deceased is in certain circumstances deemed to be his property and must be included in his estate. Section 3 (4) (d) of that Act provides that the consideration paid or given by the deceased for shares in a family company shall, to the extent that such consideration exceeds the nominal value of the shares, be deemed to be property donated by the deceased to that company. The amendment introduced by *subclause* (1) (b) is designed to remove a technical difficulty as to the point of time at which the company in question is to be regarded as a "family company" in relation to the deceased. That point of time will be immediately prior to or at the time of the allotment or issue of the shares or any time thereafter.

The amendments are applicable in respect of estates of persons dying on or after 1st April, 1971.

CLAUSE 5.

Estate Duty: Determination of Net Value of Estate.

Section 4 of the Estate Duty Act, 1955, provides for certain deductions to be made in the determination of the *dutiable amount* of an estate. In terms of *subclause* (1) (a) the expression "*net value*" is substituted for "*dutiable amount*". This amendment is consequential upon the introduction of a system of abatements, which are to be deducted from the net value of an estate and will replace the system of tax rebates hitherto applicable. The abatements are provided for in clause 6.

Subclause (1) (b) introduces an amendment to paragraph (l) of section 4 of the Estate Duty Act, 1955, increasing from R25.000 to R50.000, the maximum exemption allowed under that paragraph in respect of local registered stock, local bonds and Land Bank debentures. Paragraph (l) should be read with paragraph (k) of the said section. The maximum exemption under paragraph (k) in respect of amounts due and recoverable under certain policies of insurance and amounts due and payable under funds remains unchanged at R25.000. Where the actual exemption under paragraph (k) is R25.000 the maximum permissible exemption under paragraph (l) will be R25.000, but if the actual exemption under paragraph (k) is less than R25.000 the maximum permissible exemption under paragraph (l) will be more than R25.000 but not in any case more than R50.000.

The amendments are applicable in respect of estates of persons dying on or after 1st April, 1971.

CLAUSE 6.

Estate Duty: Abatements Allowed.

This clause introduces a new section, numbered 4A, into the Estate Duty Act, 1955. That section provides for certain deductions (referred to in this Memorandum as abatements) to be made from the net value of an estate, as determined under section 4 of the said Act. The resulting amount will be the dutiable amount on which duty will be calculated. The abatements are as follows (the figures in parentheses being the equivalent amounts on which rebates on tax are at present calculated and which will no longer be applicable):

Basic amount of every estate	R25.000	(R25.000)
For each child of the deceased surviving the deceased	R25.000	(R12.500)
For each predeceased child of the deceased leaving a descendant by blood surviving the deceased (other than a descendant adopted by the deceased) or leaving a spouse surviving the deceased who had not remarried	R25.000	(R12.500)
If the deceased is survived by his spouse	R25.000	(R25.000)

The amendment applies in respect of estates of persons dying on or after 1st April, 1971.

CLAUSE 7.

Estate Duty: Right of Recovery by Executor.

In terms of section 12 of the Estate Duty Act, 1955, estate duty is payable by and recoverable from the executor of the estate subject to duty. In terms of section 13 of that Act he is in certain circumstances entitled to recover the duty payable from other persons who are liable therefor under section 11 of that Act. This clause inserts in section 13 (1) a reference to the proviso to section 11 (b) (iA). The amendment applies in cases where duty is payable in respect of benefits derived from a pension fund or some other fund and such benefits accrue to a person other than the executor: in such a case the executor may recover the duty from such other person.

The amendment to section 13 (2) is consequential upon the amendments introduced by clauses 5 (1) (a) and 6.

The amendments apply in respect of estates of persons dying on or after 1st April, 1971.

CLAUSE 8.

The amendment introduced by this clause to section 17 of the Estate Duty Act, 1955, is of a textual nature and should be read with the amendments introduced by clause 3 (a) and (d).

CLAUSE 9.

Rates of Estate Duty

This clause substitutes a new Schedule for the First Schedule to the Estate Duty Act, 1955. New rates of estate duty are provided therein and are to apply in respect of estates of persons dying on or after 1st April, 1971.

The duty will be calculated on the dutiable amount of an estate as determined under the new section 4A of the Act introduced by clause 6 of the Bill, i.e. after the deduction of the abatements provided for in that section.

Relief from duty is provided for where the same property is included in the estate of persons dying within 10 years of each other. The relief consists (broadly speaking) of a deduction from the total duty of a varying percentage of the duty attributable to the value of the property, depending on the period elapsing between the deaths. The percentages are as follows:

Where the period between the dates of death is –	Percentage allowed
not more than 2 years	100
more than 2 years but not more than 4 years	80
more than 4 years but not more than 6 years	60
more than 6 years but not more than 8 years	40
more than 8 years but not more than 10 years	20

CLAUSE 10.

Diamond Export Duty: Means by which Diamonds are Exported.

In terms of section 8 (1) (b) of the Diamond Export Duty Act, 1957, no diamond shall be removed or exported except by registered post. This requirement is not always possible to observe strictly and in terms of the amendment introduced by this clause the Commissioner of the South African Police is empowered in exceptional circumstances to authorize the removal or export of diamonds by some other means.

CLAUSES 11 AND 12.

Licences.

The amendments introduced to the Licences Act, 1962, by clauses 11 and 12 are of a textual nature.

CLAUSE 13.

Stamp Duties: Registration of Transfer of Marketable Securities.

The amendments introduced by this clause to section 23 of the Stamp Duties Act, 1968, provide for cases where stamp duty is payable under Item 15 (3) of Schedule 1 to that Act in respect of the registration of transfer of any marketable security where such marketable security is transferred from the estate of a deceased person to a beneficiary. Some difficulty has been experienced in regard to whether the value of the marketable security is to be determined at the date of death or at some other date. In terms of the amendment the value is to be taken at the date of death.

CLAUSE 14.

This clause prescribes the short title.