
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 1977

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The Bill introduces amendments to—

The Marketable Securities Tax Act, No. 32 of 1948;
The Estate Duty Act, No. 45 of 1955;
The Income Tax Act, No. 58 of 1962;
The Stamp Duties Act, No. 77 of 1968;
The Companies Act, No. 61 of 1973.

CLAUSES 1 TO 6, INCLUSIVE

Marketable Securities Tax: Amendments to sections 2, 3, 4, 7 and 8 of the Marketable Securities Tax Act, 1948, and to the long title to that Act

Clause 1. The marketable securities tax has hitherto been payable in respect of both purchases and sales of marketable securities by stockbrokers on behalf of other persons, at the rate of 1 per cent of the purchase or sale consideration. The tax is paid by the brokers and recovered by them from their clients. The total amount of tax payable by the parties in respect of a transaction where both are represented by brokers has thus been 2 per cent of the consideration. In terms of the amendments introduced by clause 1 the tax in respect of sales is abolished and the tax in respect of purchases is increased to 1½ per cent of the consideration. In terms of the amendments to the Stamp Duties Act, 1968, introduced by clause 20 the stamp duties applicable to acquisitions of marketable securities otherwise than through stockbrokers is also increased from 1 to 1½ per cent of the consideration.

The amendments to the Marketable Securities Tax Act, 1948, introduced by *clauses 2 to 6, inclusive*, are consequential upon the abolition of the tax in respect of sales.

The amendments are to take effect from 1 April 1977. In this connection see clause 24.

CLAUSE 7

Estate Duty: Amendments to section 5 of the Estate Duty Act, 1955

In terms of the Estate Duty Act, 1955, the property to be included in the estate of a deceased person includes *inter alia* any fiduciary, usufructuary or other like interest in property (including a right to an annuity charged upon property) held by the deceased immediately prior to his death and also any other right to an annuity enjoyed by the deceased immediately prior to his death which accrued to some other person on the death of the deceased. Also regarded as property of the estate are amounts paid out under insurance policies upon the deceased person's life and benefits paid by pension, provident, retirement annuity and other funds on or as a result of the death of the deceased: such amounts or benefits may include annuities. The value of any such interest or annuity is in terms of the present provisions of section 5 of the Act arrived at by capitalizing the annual value of such interest or annuity at a rate of 6 per cent. In terms of the amendments introduced by *subclause (1) (a) to (e), inclusive*, the capitalisation rate is increased to 12 per cent.

In the case of a fiduciary, usufructuary or other like interest in property held by the deceased and passing to some other person the annual value of the right of enjoyment of the property is capitalized over the expectation of life of such other person or, if it is to be held for a lesser period, over such lesser period. Where it is not possible to ascertain until some future date the person

or all of the persons who will become entitled to the right of enjoyment the annual value is determined over a period of 50 years or such lesser period as may in appropriate circumstances be agreed upon by the Secretary and the executor. (Section 5 (1) (b), which is amended by *subclause* (1) (a)).

In the case of an annuity charged on property the value of the annuity is, where the right to the annuity accrues to some other person on the death of the deceased, capitalized over the expectation of life of such other person or, if the annuity is to be enjoyed for a lesser period, over such lesser period. Where the right to the annuity does not accrue to some other person the value of the annuity is capitalized over the expectation of life of the person who on the death of the deceased is the owner of the property upon which the annuity is charged. (Section 5 (1) (c), which is amended by *subclause* (1) (b)).

In the case of an annuity which is not charged on property and the right to which passes from the deceased to some other person, the value of the annuity is capitalized over the expectation of life of such person or, if it is to be held for a lesser period, over such lesser period. (Section 5 (1) (d), which is amended by *subclause* (1) (c)).

In the case of an annuity which is payable under an insurance policy or by a pension or other fund, the value of the annuity is capitalized over the expectation of life of the annuitant or, if the annuity is payable for a lesser period, over such lesser period. Where the annuity ceases within 5 years after the death of the deceased because of the death of the annuitant or, where the annuitant is the widow of the deceased, because of her remarriage, and the capitalized value of the annuity exceeds the aggregate of the amounts which accrued to the annuitant in respect of the annuity and any amounts which accrued to the annuitant or his estate as a result of the termination of the annuity, then the value of the annuity is deemed to be an amount equal to the said aggregate. (Section 5 (1) (d) *bis*, which is amended by *subclause* (1) (d)).

Where a right of ownership in property which has to be valued for estate duty purposes is subject to a usufructuary or other like interest in favour of any person, the value of such interest is the value of the full ownership of such property less the value of the interest. Where the interest is a usufructuary interest or an annuity charged on the property the value of the interest is capitalized over the expectation of life of the person entitled to the interest or annuity or, if such person's right of enjoyment or the annuity is to be held for a lesser period than the life of such person, over such lesser period. Where the interest is of some other nature, a similar rule applies. (Section 5 (1) (f), which is amended by *subclause* (1) (e)).

If immediately prior to his death the deceased was competent to dispose of any property for his own benefit or the benefit of his estate, the property is deemed for estate duty purposes to be property of his estate and the value thereof has to be determined for those purposes. If the property consists only of profits the value thereof is in terms of section 5 (1) (f) *ter* of the Estate Duty Act determined by capitalizing such amount as the Secretary for Inland Revenue may consider reasonable as representing the annual value of such profits over the expectation of life of the deceased immediately prior to the date of his death. The capitalization rate at present provided for is 6 per cent. In terms of the amendment introduced by *subclause* (1) (f) the capitalization rate is increased to 12 per cent.

The annual value of the right of enjoyment of a property which is subject to a fiduciary, usufructuary or other like interest is for the purposes of section 5 (1) (b) and (f) of the Estate Duty Act deemed to be an amount equal to 6 per cent of the fair market value of the full ownership of the property. The Secretary for Inland Revenue may, however, in appropriate circumstances fix the expected annual yield of the property at a lower amount. In terms of the amendment introduced by *subclause* (1) (g) the rate of 6 per cent is increased to 12 per cent.

The amendments are to apply in respect of the estates of persons dying on or after 1 April 1977.

In addition to the amendments introduced by this clause the amendments introduced by clause 8 (in regard to the value of donations for donations tax purposes) are also relevant for estate duty purposes as, in terms of the Estate Duty Act, property donated by a deceased person during his lifetime is with certain exceptions deemed to be property of the deceased and the value of such property for estate duty purposes is normally the value thereof as determined for donations tax purposes.

CLAUSE 8

Donations Tax: Amendments to section 62 of the Income Tax Act, 1962

Section 62 of the Income Tax Act, No. 58 of 1962, prescribes rules as to the value of property on which donations tax is payable.

Where the property donated consists of a fiduciary, usufructuary or other like interest in property, the value of such interest is determined by capitalizing at 6 per cent the annual value of the right of enjoyment of the property over the expectation of life of the donor or, if the right of enjoyment is to be held for a lesser period than the life of the donor, over such lesser period. In terms of the amendment to section 62 (1) (a) introduced by *paragraph (a)* of this clause, the rate of 6 per cent is increased to 12 per cent.

Where the property donated consists of a right to an annuity the value of the right is determined by capitalizing the annuity at the rate of 6 per cent over the expectation of life of the donor or, if the right is to be held for a lesser period than the life of the donor, over such lesser period. In terms of the amendment to section 62 (1) (b) introduced by *paragraph (b)* of this clause, the rate of 6 per cent is increased to 12 per cent.

Where the property donated consists of a right of ownership in property which is subject to a usufructuary or other like interest in favour of any person, the value of such right is the fair market value of the full ownership of such property less the value of such interest. The value of such interest is determined by capitalizing at 6 per cent the annual value of the right of enjoyment or, in the case of an annuity charged on the property, of the annuity over the expectation of life of the person entitled to the interest or annuity or if the interest or annuity is to be held for a lesser period than such life, over such lesser period. In terms of the amendments to section 62 (1) (c) introduced by *paragraph (c)* of this clause the rate of 6 per cent is increased to 12 per cent.

In terms of section 62 (2) the annual value of the right of enjoyment of property is for the purposes of section 62 (1) (a) and (c) deemed to be an amount equal to 6 per cent of the value of the full ownership of the property subject to any fiduciary, usufructuary or other like interest. The Secretary for Inland Revenue may, however, in appropriate circumstances fix the annual yield of the property at a lower amount. In terms of the amendment to section 62 (2) introduced by *paragraph (d)* of this clause the rate of 6 per cent is increased to 12 per cent.

The amendments introduced by this clause are also of relevance for estate duty purposes. See also clause 7.

CLAUSE 9

Stamping of instruments filed in public offices: Amendments to section 5 of the Stamp Duties Act, 1968

Paragraph (a) of this clause deletes section 5 (3) (a), (b) and (c) of the Stamp Duties Act, No. 77 of 1968. The deleted provisions relate to the stamping of

notarially executed instruments. Where such instrument is required to be filed in a public office the duty has at present to be denoted on the copy filed and the notarial minute or original has to be endorsed as to the amount of duty so denoted. These requirements are no longer necessary as most documents filed in deeds offices are not notarially executed and in any case in terms of the Deeds Registries Amendment Act, 1977, microfilms or other processed copies may be preserved in deeds offices in lieu of the original documents.

The amendments introduced by *paragraph (b)* of this clause are of a consequential or textual nature.

CLAUSE 10

How instruments shall be written and stamped: Amendment to section 6 of the Stamp Duties Act, 1968

The amendment is consequential upon the amendment introduced by clause 9 (a). In terms of the provisions of section 5 (3) of the Stamp Duties Act, 1968, special rules were provided as to the stamping of copies of notarially executed instruments. Those rules are abolished by clause 9 (a) and duplicate originals of notarially executed instruments will be subject to the same duty as duplicate originals of other instruments. That duty is payable under Item 12 of Schedule 1 to the said Act and is, in terms of the amendment introduced by clause 17, to be increased to 20 cents. The wording of section 6 (3) of the principal Act is, in terms of the amendment introduced by this clause, altered to make it clear that in every case where an instrument is stamped as a duplicate original it must bear an endorsement by any person executing the instrument or by any person who attests it or certifies it to be a copy or duplicate of the original, as to the amount of duty denoted on the original instrument.

CLAUSE 11

Stamp duty on leases: Amendment to section 22 of the Stamp Duties Act, 1968

In terms of the amendments introduced by clause 19 certain leases of movable property are, with effect from 1 April 1977, to be subjected to stamp duty. The provisions of section 22 of the Stamp Duties Act, 1968, apply in relation to the stamping of leases. In terms thereof a lease (other than one tendered for registration) which is renewable in writing only, may when executed be stamped for the original period of the lease and thereafter in respect of each renewal.

When a renewal is stamped the duty is calculated on the rental for the whole period of the original lease plus any periods for which the lease has been renewed and the duty previously paid in respect of the original lease and earlier renewals is deducted from the duty so calculated. In view of the fact that an original lease of movable property executed on or before 31 March 1977 and any renewals thereof executed on or before that date were not subject to duty under Item 14 of Schedule 1 to the said Act, it is provided in the amendment introduced by this clause that the period of the original lease and the periods of such renewals shall not be taken into account when duty is calculated in respect of a renewal of the lease executed after 31 March 1977.

The first renewal of the lease executed after 31 March 1977 will in effect be treated as an original lease.

CLAUSE 12

Stamp duty on insurance policies: Amendment to section 24 of the Stamp Duties Act, 1968

Policies of insurance which are not subject to stamp duty at a special rate are subject to duty at the rate of 1 per cent of the dutiable premiums determined as provided in section 24 of the Stamp Duties Act, No. 77 of 1968. The policies

in question are short-term policies other than certain third-party motor vehicle policies, marine insurance policies and certain contracts of insurance relating to export credit. In terms of section 24 insurers are required at quarterly intervals to deliver to receivers of revenue statements of dutiable premiums, i.e. premiums on policies executed and on renewals falling due during the quarter in question, less certain adjustments. Where the aggregate of the premiums in respect of a policy exceeds R5 000 the excess is disregarded. This provision has the effect of limiting the duty on larger policies to R50. In terms of the amendment introduced by this clause an amount of R10 000 is substituted for the amount of R5 000. This increases the maximum duty to R100. The amendment is to be effective from 1 April 1977. In this connection see clause 24.

CLAUSE 13

Stamp duty on agreement or contract: Amendment to Item 2 of Schedule 1 of the Stamp Duties Act, 1968

In terms of the amendment introduced by this clause the stamp duty on an agreement or contract in respect of which no other stamp duty is specifically provided is increased from 30 cents to 50 cents. The amendment is to be effective from 1 April 1977. In this connection see clause 24.

CLAUSE 14

Stamp duty on cheques: Amendment to Item 5 of Schedule 1 to the Stamp Duties Act, 1968

In terms of the amendment introduced by *subclause (1)* the stamp duty on a cheque is increased from 2 cents to 3 cents, with effect from 1 July 1977. The stamp duty on cheques is in practice not denoted by means of adhesive revenue stamps. The use of such stamps would result in the rejection of cheques by the sorting machines used by the banks. In terms of existing arrangements the duty on cheques issued on forms supplied by the banks is paid by the banks when books containing blank cheque forms are issued to customers and is recovered by the banks from the customers. Where a customer wishes to use his own cheque forms arrangements are made with the printers thereof for the prepayment of duty on all such forms as they are produced. Where blank cheque forms are held by a bank customer on 30 June 1977 and duty at the rate of 2 cents per cheque has been paid in respect of such forms the additional duty of 1 cent per cheque which will be payable if the forms are used on or after 1 July 1977 will be payable in such manner as may be arranged by the Secretary and the bank concerned (*subclause (2)*). The bank will request the customer to furnish a statement as to the stock of unused cheque forms on hand on 30 June 1977 and the additional duty thereon may be paid by the customer to the bank and the bank will thereafter pay the duty to the receiver of revenue (*subclause (3)*). In terms of *subclause (4)* the Secretary for Inland Revenue may notify the bank concerned that small amounts of duty need not be recovered from customers if it appears that the cost of recovery thereof would be uneconomic. Cheque forms in respect of which the 2 cent duty has been paid may be used but where the additional duty is chargeable such forms may not be used on or after 1 October 1977 until the additional duty is paid (*subclause (5)*).

CLAUSE 15

Stamp duty on cessions of bonds: Amendment to Item 7 of Schedule 1 to the principal Act

In terms of the amendment introduced by this clause an exemption from the stamp duty in respect of the cession of a bond is provided where, on the transfer by a foreign company of its branch business undertaking in the Republic to its wholly owned South African subsidiary, any bond is included among the assets of the undertaking so transferred. The exemption may also apply if the holding company is another foreign company which is controlled by or controls the first-mentioned foreign company.

CLAUSE 16

Stamp duty on customs and excise documents: Amendment to Item 11 of Schedule 1 to the Stamp Duties Act, 1968

In terms of the amendment introduced by this clause the stamp duty payable in respect of a customs or excise document is increased from 10 cents to 20 cents. The amendment is to be effective from 1 April 1977. In this connection see clause 24.

CLAUSE 17

Stamp duty on duplicate original: Amendment to Item 12 of Schedule 1 to the Stamp Duties Act, 1968

In terms of the amendment introduced by this clause the stamp duty payable in respect of the duplicate original of any instrument the original whereof is chargeable with stamp duty, is increased from 10 cents to 20 cents. The amendment is to be effective from 1 April 1977. In this connection see clause 24.

CLAUSE 18

Stamp duty on hire-purchase agreements: Amendment to Item 13A of Schedule 1 to the Stamp Duties Act, 1968

In terms of the amendment introduced by this clause the stamp duty payable in respect of a hire-purchase agreement is increased from 30 cents to 50 cents if the amounts payable under the agreement, including interest and finance or other charges do not in the aggregate exceed R1 000, or in any other case to R1. The amendment is to be effective from 1 April 1977. In this connection see clause 24.

CLAUSE 19

Stamp duty on leases: Amendments to Item 14 of Schedule 1 to the Stamp Duties Act, 1968

In terms of the amendments introduced by this clause the stamp duty hitherto payable in respect of leases of immovable property is, with effect from 1 April 1977, to be payable also in respect of leases of movable property. The basis of calculating duty and the rates applicable in respect of leases of immovable property are, subject to certain exceptions and exemptions, to apply in respect of leases of movable property.

The duty in respect of a lease of movable property is to be calculated on the aggregate amount of rent payable in respect of the period for which the lease is required to be stamped as provided in section 22 of the Stamp Duties Act, 1968, plus any other consideration (excluding the duty under Item 14) due or payable in respect or by virtue of the lease. Under the proviso to Item 14 (1) the dutiable amount in respect of a lease of immovable property is limited to the full selling value of the property leased. The said proviso is amended to make it clear that the proviso is not applicable in relation to leases of movable property. Where both immovable and movable property are leased the dutiable amount of rent in respect of the immovable property will be limited as aforesaid and, in addition, duty will be payable on so much of the rent as relates to the movable property.

In terms of a further amendment introduced by this clause any lease which is signed by the lessee is deemed to have been executed on the date on which it is signed by the lessee unless the lease is also signed by the lessor within three months after that date. If the lessor signs the lease within the period of three

months the date of his signature is in terms of an existing provision of the Act deemed to be the date of execution of the lease.

Certain exemptions are provided in respect of leases of movable property. The exemptions are as follows:—

Exemption (a) applies in respect of a lease of movable property only or any continuance, renewal or extension thereof if the lease, continuance, renewal or extension, as the case may be, was signed by the lessee on or before 31 March 1977.

Exemption (b) applies in respect of a lease under which the only property let consists of a patent, design, trade mark, copyright, model, plan, formula or process or other similar property, or any motion picture film, or any film or video tape or disc for use, in connection with television, or any advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc, or any sound recording. The exemption also applies in respect of any continuance, renewal or extension of such a lease.

Exemption (c) applies in respect of a lease if the only property let consists of movable property and the property is let by the hour, day or week, or part thereof, without any stipulation as to the period of the lease or, where a period is stipulated, the property is let for a period which, together with any period of continuance, renewal or extension, does not exceed six months. The exemption also applies in respect of any continuance, renewal or extension of any such lease provided the property is not let for more than six months.

The amendments are to apply with effect from 1 April 1977. In this regard see clause 24.

CLAUSE 20

Stamp duties in respect of marketable securities: Amendments to Item 15 of Schedule 1 to the Stamp Duties Act, 1968

Under Item 15 of Schedule 1 to the Stamp Duties Act, 1968, stamp duties are payable in respect of the registration of transfer of a marketable security, the cancellation of company shares (in circumstances amounting to a disposal of such shares) and the acquisition of a marketable security (where registration of transfer is avoided by the use of a nominee). The said duties are in terms of the present provisions of the said Item payable at the rate of 10 cents for every R10 or part thereof of the relevant values or considerations upon which the duties are payable. In terms of the amendments introduced by this clause the rate is increased to 15 cents for every R10 or part thereof of the relevant values or considerations upon which the duties are payable. The increase in the rate of these duties brings that rate into line with the rate of the marketable securities tax. The marketable securities tax is payable in respect of a purchase of marketable securities by a stockbroker on behalf of a client and where such tax is payable an exemption from the stamp duty in respect of the registration of the transfer of the security is granted. Generally speaking the stamp duty may be said to apply in respect of transactions outside a stock exchange. See the amendment to the Marketable Securities Tax Act, 1948, introduced by clause 1.

The amendments are to apply as from 1 April 1977. In this regard see clause 24.

CLAUSES 21 TO 23, INCLUSIVE

The annual duty payable by companies: Amendments to the Companies Act, 1973

The amendment to section 173 of the Companies Act, 1973, introduced by clause 21 is consequential upon the amendments introduced by clause 22.

In terms of the amendments to section 174 of the Companies Act, No. 61 of 1973, which are introduced by clause 22 the rate of the annual duty payable

by companies is increased from R2-50 to R4 for each R10 000 or part thereof of the amount on which such duty is calculated (i.e. issued share capital plus share premium account). With effect from 1 April 1977, such amount is to include any undistributable reserve fund of a company, to the extent that it consists of an amount transferred from its share premium account. The minimum annual duty payable is increased from R50 to R80 per annum.

The amendment to section 175 of the Companies Act, 1973, effected by *clause 23* relates to the fixed annual duty payable by an external company which has established and maintains a place of business in the Republic solely for the purpose of maintaining a share registration office or a share transfer office in the Republic. That duty is increased from R50 to R80.

The amendments are to apply with effect from 1 April 1977. In this connection see *clause 24*.

CLAUSE 24

Late payment of certain taxes or duties

Any tax or additional tax or any duty or additional duty which has in terms of the Bill become payable on a date prior to the date of promulgation of the Bill as an Act, may, in terms of *subclause (1)*, be paid within a period of one month after the date of promulgation, without penalty.

Where duty or additional duty consists of stamp duty the payment of which is in terms of the Stamp Duties Act, 1968, required to be denoted on any instrument, the instrument may in terms of *subclause (2)* be stamped for the amount of duty or additional duty within the said period of one month and the provisions of sections 8, 9 and 10 of the said Act are to be applied as though the periods allowed under those provisions for the stamping of instruments and the defacement of adhesive stamps on instruments were the said period of one month.

CLAUSE 25

This clause prescribes the short title.