
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

**SALES TAX AMENDMENT BILL, 1981
AND THE
REVENUE LAWS AMENDMENT BILL, 1981**

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**EXPLANATORY MEMORANDUM ON THE SALES
TAX AMENDMENT BILL, 1981 AND THE REVENUE
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(NOTE: PART A of the Memorandum relates to the Sales Tax Amendment Bill, 1981 and PART B to the Revenue Laws Amendment Bill, 1981)

PART A: SALES TAX AMENDMENT BILL, 1981

INTRODUCTION

This Bill introduces amendments to the Sales Tax Act, 1978 (Act No. 103 of 1978), hereinafter referred to as the principal Act.

CLAUSE 1

Definitions

This clause introduces amendments to some of the definitions in section 1 of the principal Act.

Clause 1 (1) (a): In terms of the amended definition of "charitable institution" proposed in this clause, the necessity for any institution or organisation having to be registered as a welfare organisation under the National Welfare Act, 1978 (Act No. 100 of 1978) is dispensed with. With the passing of the National Welfare Act, 1978, which came into operation on 1 September 1979, any organisation previously registered as a welfare organisation under the National Welfare Act, 1965 (Act No. 70 of 1965) was deemed to have been registered under the 1978 Act for a period of two years (i.e. until 31 August 1981). At the same time the Fund-raising Act, 1978 (Act No. 107 of 1978), provided that any organisation desiring to collect contributions from the public had to be authorised thereto under that Act. In consequence of those two Acts, the position now is that—

- (a) no organisation may collect contributions unless an authority has been granted to it in terms of section 4 of the Fund-raising Act, 1978;
- (b) only a duly authorised fund-raising organisation may apply for registration as a welfare organisation under section 13 of the National Welfare Act, 1978; and
- (c) only a registered welfare organisation may receive grants out of moneys appropriated by Parliament for that purpose.

It has now been found that certain organisations which, although authorised as fund-raising organisations under the Fund-raising Act, 1978, do not wish to apply for state grants and consequently are not obliged to register as welfare organisations under the National Welfare Act, 1978, even though the organisations concerned do in fact carry on some of the charitable activities envisaged in the definition of "charitable institution" in section 1 of the principal Act. But because those organisations are not registered as welfare organisations under the National Welfare Act, 1978,

they cannot, as the law presently stands, be registered as charitable institutions under section 36 of the principal Act, and consequently are denied the exemptions from sales tax provided in section 6 (1) (w) of the principal Act.

Accordingly, to overcome the problems referred to above, as well as to obviate the necessity for any mandatory re-examination of any institution or organisation approved as a charitable institution for sales tax purposes prior to 1 September 1981, the amended definition of "*charitable institution*" proposed in this clause, which is to apply with effect from 1 September 1981, will enable the Commissioner for Inland Revenue to register for sales tax purposes any institution or organisation which satisfies him that—

- (a) it is an institution or organisation of a public character and of a permanent nature; and
- (b) it carries on charitable activities consisting of the provision of food, meals, board, lodging, clothing or other necessities, comforts or amenities to aged persons, children or physically or mentally handicapped persons.

Clause 1 (1) (b): The amendment is consequential upon the insertion of paragraph 2B (1) (a) of Schedule 4 to the principal Act by section 9 (a) of the Sales Tax Amendment Act, 1980, (Act No. 105 of 1980), in terms of which the delegation of the rights and obligations of a lessee under a financial lease is deemed to be an agreement whereby a new financial lease is concluded.

Clause 1 (1) (c): The definition of "*foreign-going aircraft*" is brought into line with the definition of "*foreign-going ship*" as amended by section 1 of the Sales Tax Amendment Act, 1980. The amended definition, besides providing for an aircraft transporting persons or goods between airports in the Republic and another country, goes further and, with effect from 1 December 1981, is to include as a foreign-going aircraft any aircraft in respect of which no rights to transport persons or goods on any intermediate flight between airports within the Republic have been granted where any such intermediate flight is undertaken solely for the purpose of refuelling or by reason of any emergency. For technical reasons it is necessary to refuel aircraft for take off at sea level on long-haul international flights and the proposed amendment to the definition in question serves to maintain the status of such aircraft (i.e. as being foreign-going) if any such intermediate flight between airports within the Republic is undertaken.

Clause 1 (1) (d): A new definition is substituted for the definition of "*process of manufacture*" so as to make it clear that the recognition of an activity similar to a manufacturing process as a "*process of manufacture*" for the purposes of the Sales Tax Act, 1978, does not necessarily mean the recognition thereof for the purpose of any other Act administered by the Commissioner, or *vice versa*, as different considerations may apply having regard to the objects of the legislation in question.

Clause 1 (1) (e): The reference to a hire-purchase agreement as defined in section 1 of the Hire-Purchase Act (Act No. 36 of 1942) in paragraph (a) of the definition of "*sale*" is deleted as that Act has been repealed by the Credit Agreements Act (Act No. 75 of 1980).

It is deemed unnecessary to couple the new paragraph to the Credit Agreements Act, 1980, as the reference to a sale subject to a suspensive condition is sufficiently wide to cover credit sales in general, including transactions not governed by the last-mentioned Act.

CLAUSE 2

Taxable Services: Repair and Maintenance Services

Clause 2 (1) (a): The proposed amendment to section 5 (1) (d) of the principal Act as proposed by this clause, should be read in conjunction with the amendment proposed by clause 8 (1) of the Bill. Both amendments come into operation on 1 December 1981.

Firstly, the amendment proposed by clause 2 (1) (a) expands the charge to sales tax so as to include any taxable service *to be rendered*.

Secondly, the amendment proposed by *clause 8 (1)* includes in the services mentioned in Schedule 1 to the principal Act which are deemed to be taxable services any service in the form of an undertaking given by any person to carry out any repair or maintenance service in respect of goods during any particular period as and when the carrying out of such service is necessary.

The object of the proposed amendments is to clarify the law relating to the levy of sales tax in respect of any consideration payable in respect of maintenance contracts, as also to preserve neutrality as between persons who pay sales tax on any consideration paid for any repair or maintenance service as and when rendered in respect of goods and other persons who, as it were, make payment of a consideration in advance for any such repair or maintenance service to be rendered at no further charge in order to ensure that goods are kept in working order during a specified period.

Goods Applied for Own Use

Clause 2 (1) (b): The amendment is of a textual nature.

CLAUSE 3

Exemptions: Goods Hired by Registered Vendors

Clause 3 (1) (a): In terms of the proposed amendment to paragraph (c) of section 6 (1) registered vendors falling within the category of enterprises mentioned in Schedule 2 to the principal Act will be able, in addition to the tax-free purchase of the goods listed therein, to hire the goods mentioned in that Schedule tax-free. Consumable goods will in the nature of things not fall within the ambit of the expanded exemption.

Rental Enterprises

Clause 3 (1) (b): A further requirement is provided for before rental enterprises will be able to avail themselves of the exemption contained in paragraph (f) (ii) of section 6 (1) of the principal Act. The exemption available to rental enterprises in respect of the tax-free purchase of goods intended to be let by such enterprise will only apply where the rental consideration payable by the hirer is payable regularly at intervals of at least twelve months and such consideration is determined at a rate of not less than 10 per cent per annum of the cost of such goods to such vendor. The new provision is designed to counteract avoidance of sales tax where rental enterprises purchase free of tax goods intended to be let at nominal rentals.

Clause 3 (1) (c): Whereas clause 3 (1) (b) above provides for sales to rental enterprises in the circumstances described, clause 3 (1) (c), which introduces an amendment to section 6 (1) (m), is designed to achieve the

same object in regard to certain *leased property* delivered to rental enterprises in similar circumstances.

Clause 3 (1) (d): Under section 6 (1) (v) (v) of the principal Act, where goods acquired by a vendor free of tax are withdrawn from one enterprise so as to be used in the ordinary course of another enterprise of the vendor, tax is not charged in respect of the withdrawal if the other enterprise is a rental enterprise. The amendment introduced by clause 3 (1) (d) lays down the same additional requirements as to frequency of rental payments and minimum rentals as are to apply in respect of sales and leases under the amendments introduced by clause 3 (1) (b) and (c) before the vendor may avail himself of the exemption.

Physically Handicapped Persons

Clause 3 (1) (e): The exemption applicable in respect of certain goods acquired by physically handicapped persons in terms of section 6 (1) (wA) of the principal Act is on a strict interpretation of that section available only if the physically handicapped person himself purchases the goods. In terms of the amendment the exemption will also apply where the goods are purchased on behalf of a physically handicapped person by another person. The exemption is also expanded to include the tax-free rendering of any taxable service mentioned in Schedule 6 carried out in connection with the goods set forth in that Schedule. The taxable service in question is provided for in *clause 12 (b)* and consists of any repair service in respect of the goods described in Schedule 6.

CLAUSE 4

Determination of Gross Value and Taxable Value: Goods Used for Purposes of Demonstration

Clause 4 (1) (a), (c), (d) and (e): The application or withdrawal of goods for use in an enterprise for purposes of demonstration has always been subject to sales tax in terms of section 5 (1) (h) of the principal Act. However, difficulties have been experienced in determining the gross value, and hence the taxable value, on which sales tax is payable on goods applied by any person for purposes of demonstration and the amendments introduced by these clauses lay down rules for the determination of the gross value and taxable value of goods applied for purposes of demonstration. In terms of clause 4 (1) (e) the taxable value and, therefore, the value on which sales tax will be payable, is to be determined as the excess of the price at which the goods would have been sold by such person at the time such goods were so applied over the price at which such goods are thereafter sold by such person. The amendments are to come into operation on 1 January 1982.

Credit Agreements

Clause 4 (1) (b): The amendment is consequential upon the repeal of the Hire-Purchase Act, 1942.

CLAUSE 5

Date on which Tax is deemed to become Payable: Goods Used for Purposes of Demonstration

The amendment to section 8 of the principal Act introduced by this clause is consequential upon the differentiation introduced by clause 4 (1) (a), (c) and (e) above between goods applied for own use or specified purposes and goods applied for purposes of demonstration in section 5 (1) (h).

CLAUSE 6

Misuse of Registration Certificate by Purchaser

This clause broadens the scope of section 15 of the principal Act by providing for the recovery of tax and penalty from persons who misuse their sales tax registration certificates in order to avoid payment of the tax on the taxable value of any leased property or rental consideration.

CLAUSE 7

Returns, Declarations and Payment of Tax: Amendments to section 17 of the principal Act

Clause 7 (1) (a): The period of grace allowed for the payment of sales tax by persons other than registered vendors (who are required to calculate the tax in the manner prescribed by section 11 of the principal Act), i.e. mainly in respect of casual sales, is extended to 21 days, instead of the 10 days previously allowed.

Clause 7 (1) (b): Due to the recalcitrance on the part of certain vendors to render the necessary returns and effect the necessary payments timeously, which has a detrimental effect on the administration and collection of sales tax, it is deemed desirable to provide that a conviction for failure to render the required returns will constitute a criminal offence. In this regard it should be borne in mind that vendors who fail to pay over sales tax already collected are in fact enjoying the benefit of having such amounts available for their own use in the meantime.

CLAUSE 8

Taxable Services: Repair and Maintenance Contracts: Amendments to Schedule 1 to the principal Act

For an explanation of this clause see the explanation in regard to clause 2 (1) (a) of the Bill.

CLAUSE 9

Exemptions: Certain Sales of Goods and Taxable Services to Various Enterprises: Amendments to Schedule 2 to the principal Act

Manufacturing Enterprises

Clause 9 (1) (a): The existing exemption under paragraph 3 (a) of Division I in respect of the tax-free acquisition of repair or maintenance services rendered in connection with machinery or plant used directly in the manufacture, etc., of goods for sale is expanded to include the tax-free repair and maintenance of machinery used to make any goods used as aids in the manufacturing process.

Clause 9 (1) (b): This clause inserts a new subparagraph numbered (c), in paragraph 3 of Division I. In terms thereof an exemption is proposed in terms of which gas for the purposes of carrying out any repair or maintenance in respect of manufacturing machinery or plant will be able to be acquired tax-free by manufacturing enterprises. Similar exemptions are, in terms of clause 9 (1) (f), (l) and (n), proposed in respect of service, farming and fishing enterprises.

Clause 9 (1) (c): This clause confirms the amendment introduced by Government Notice No. R.2419 of 28 November 1980 in terms of which manufacturing enterprises are able to purchase tax-free containers and packaging and wrapping materials used in the marketing of goods manu-

factured by such enterprises. Manufacturing enterprises were previously only entitled to the tax-free purchase of containers or packaging or wrapping materials if such containers or materials were used for the purposes of the sale of manufactured goods to end consumers *in* such containers or materials.

The effect of now allowing containers or packaging or wrapping materials used in the *marketing* of goods by manufacturing enterprises to be purchased free of sales tax broadens the scope of the exemption.

Clause 9 (1) (d): The exclusion of welding and cutting gases from the list of items under the heading "*Non-qualifying Goods*" means that such goods may be purchased tax-free by manufacturing enterprises. (The amendment was effected by Government Notice R.2419 of 28 November 1980).

Service Enterprises

Clause 9 (1) (e): The amendment is necessary in order to prevent the tax-free acquisition of goods listed in Division IA by enterprises who are not engaged in commercial transactions.

Clause 9 (1) (f): It is proposed, as explained in regard to clause 9 (1) (b) above, to allow service enterprises to purchase tax-free gas necessary for rendering a taxable service.

Printing Enterprises

Clause 9 (1) (g): The amendment introduced by this clause will prevent printing enterprises which are not engaged in printing for reward from acquiring tax-free those items listed in Division II of Schedule 2 to the principal Act. Thus printing concerns which do not conclude sales for reward will not enjoy the benefit of acquiring some inputs tax-free. Printing concerns which are engaged in printing for own use or who dispose of their goods without any consideration will therefore now have to pay sales tax on all goods purchased by them, or taxable services rendered to them.

Mining Enterprises

Clause 9 (1) (h): The amendment is of a textual nature. In terms of this amendment the reference to specific types of asbestos mining is deleted and a general reference to asbestos mining is added. (It was effected by Government Notice No. R2419 of 28 November 1980).

Mining and Quarrying Service Enterprises

Clause 9 (1) (i): Tunnelling or shaft-sinking services rendered to a vendor for the purposes of the vendor's mining or quarrying enterprise are added to the category of Mining and Quarrying Service Enterprises in Division IIIA of Schedule 2 to the principal Act. The practical effect of the amendment is that persons engaged in rendering tunnelling or shaft-sinking services for mining or quarrying enterprises may now purchase tax-free the goods and services referred to in paragraph 1 of Division IIIA.

Clause 9 (1) (j): The amendment, in addition to being consequential upon the amendment introduced by clause 9 (1) (i), extends the exemption of goods which may be acquired tax-free by mining and quarrying service enterprises to include those goods listed under the heading "*Explosives and Explosives Requisites*" in Division III of Schedule 2 to the principal Act.

Farming Enterprises

Clause 9 (1) (k): The amendment is of a textual nature.

Clause 9 (1) (l): As with manufacturing, service and fishing enterprises it is proposed to allow farming enterprises to purchase tax-free gas necessary for carrying out any repair or maintenance service in respect of farming machinery, implements and tractors.

Clause 9 (1) (m): The amendment is of a textual nature, designed to remove doubts or difficulties that arise from time to time as to whether certain operations are farming operations, e.g. bee-keeping.

Fishing Enterprises

Clause 9 (1) (n): The proposed amendment will allow fishing enterprises to purchase tax-free gas for the purpose of effecting any repair or maintenance service in respect of fishing vessels and trawling gear.

Accommodation, Hotel and Catering Enterprises

Clause 9 (1) (o): The amendment introduced by this clause is intended to clarify the fact that enterprises falling within the category of enterprises listed in Division VI of Schedule 2 may not purchase tax-free containers or packaging or wrapping materials.

CLAUSE 10

Financial Leases

Paragraph 1 of Schedule 4 to the principal Act lays down rules for determining whether or not any agreement is deemed to be a financial lease. It was always the intention that the lessee should be entitled to the possession, use or enjoyment of the leased property under a financial lease for a period extending over the useful life of such property or a major portion thereof, which period should not in any case be less than twelve months; any agreement for a lesser period being regarded as a rental agreement. Leasing practices have, however, arisen where financial leases have been framed for periods falling far short of the useful life of the leased property which is leased thereunder, more particularly where the leased property consists of a motor vehicle. The amendment proposed by this clause is intended to clarify the law and to provide that for an agreement to qualify as a financial lease the lessee thereunder must, *inter alia*, be entitled to the possession, use or enjoyment of the leased property for a period of at least twelve months. Any consideration as to the useful life thereof falls away.

CLAUSE 11

Exemption: Certain Goods imported into the Republic

Clause 11 (a): All goods (apart from certain exceptions) mentioned under Item No. 407.06 of Schedule 5 to the principal Act may be imported free of sales tax by persons immigrating to the Republic (including returning residents of the Republic). The proposed amendment removes caravans, trailers and boats of all kinds from the goods previously excluded under this Item, which means that a natural person (including a returning resident of the Republic) and members of his family may on a change of residence to the Republic import those goods free of sales tax provided the importation is for own use. (This amendment was effected by Government Notice No. R.1725 of 15 August 1980).

Clause 11 (b): In terms of the proposed amendment introduced by this clause, a new item, No. 412.03, is added which provides for the tax-free importation of used personal or household effects bequeathed to persons residing in the Republic. (The amendment was effected by Government Notice No. R.2419 of 28 November 1980).

Clause 11 (c): The amendment is consequential upon the amendment introduced by clause 11 (b).

CLAUSE 12

Exemption: Sale of Certain Goods to Physically Handicapped Persons

At present physically handicapped persons may acquire free of tax certain goods listed in Schedule 6 to the principal Act. This clause provides for an additional exemption in respect of any repair service rendered in respect of goods described in Schedule 6, together with the tax-free purchase of parts required to effect such repair service.

CLAUSE 13

Repeal of Government Notices

Certain Schedules to the Act were amended by Government Notice No. R.1725 of 15 August 1980 and Government Notice No. R.2419 of 28 November 1980. In terms of section 49 of the Act such amendments will lapse 30 days after the present session of Parliament, unless Parliament otherwise provides. The provisions of such notices have been incorporated in the Bill—see clauses 9 (1) (c), (d), (h) and 11 (a), (b) and (c)—and this clause proposes the repeal thereof.

CLAUSE 14

In terms of this clause the Act resulting from the passing of the Bill is to be called the Sales Tax Amendment Act, 1981.

PART B: REVENUE LAWS AMENDMENT BILL, 1981

INTRODUCTION

The Revenue Laws Amendment Bill, 1981, introduces amendments to the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Diamond Export Duty Act, 1957, the Stamp Duties Act, 1968, and the Companies Act, 1973.

CLAUSE 1

Administration of the Transfer Duty Act, 1949: Amendment to section 3 of that Act

The deletion of the reference to the Department of Inland Revenue and the substitution therefor of a reference to the Directorate: Inland Revenue, Department of Finance is consequential upon the Department having become a Directorate.

CLAUSE 2

Exemptions from transfer duty: Amendment to section 9 of the Transfer Duty Act, 1949

The amendment introduces an exemption from transfer duty in respect of the acquisition of property by water boards and irrigation boards constituted under the Water Act, No. 54 of 1956.

CLAUSE 3

Estate duty: Net value of an estate: Amendments to section 4 of the Estate Duty Act, 1955

Subclause (1) (b): The amendment to section 4 (h) of the Estate Duty Act, 1955, provides for a deduction from the total value of an estate, for purposes of determining the net value thereof, of bequests to political parties registered under section 36 of the Electoral Act, No. 45 of 1979. The amendment is to apply to estates of persons dying on or after 1 April 1981.

Subclause (1) (c): The amendment to paragraph (l) (ii) of section 4 of the Estate Duty Act, 1955, includes in the amounts qualifying for deduction from the total value of an estate, for purposes of determining the net value thereof, of the value or proceeds of stock issued by the Land and Agricultural Bank of South Africa. The amendment is to apply to the estates of persons dying on or after 1 April 1980.

CLAUSE 4

Estate duty abatements: Amendments to section 4A of the Estate Duty Act, 1955

In terms of the amendments the abatements allowable under section 4A of the Estate Duty Act, 1955, for the purposes of determining the dutiable value of an estate, are increased as follows:

The basic abatement allowable to all estates is increased from R37 500 to R50 000.

The abatement in respect of each child of the deceased who survives the deceased is increased from R37 500 to R40 000. The similar abatement allowable in respect of descendants by blood of a predeceased child of the deceased is also increased from R37 500 to R40 000.

The abatement allowable in respect of a surviving spouse of the deceased is increased from R37 500 to R50 000.

The amendments apply to the estates of persons dying on or after 1 April 1981.

CLAUSE 5

The amendment to section 26 of the Estate Duty Act, 1955, is of a textual nature flowing from the fact that there are no longer two Houses of Parliament.

CLAUSE 6

Diamond export duty: Manner of export of diamonds: Amendments to section 8 of the Diamond Export Duty Act, 1957

Section 8 of the Diamond Export Duty Act, 1957, prescribes that diamonds may not be exported except by registered post, unless the Commissioner of Police has authorised the export to be effected in some other manner. In terms of the amendments the export of diamonds by insured post will also be permissible and the power of the Commissioner of Police to make an authorisation under section 8 may be exercised by a person designated by the Commissioner.

- (b) to the initial duty payable by an external company which establishes a place of business in the Republic on or after that date; or
- (c) to the annual duty payable after the end of a company's first financial year and each subsequent financial year where such duty is payable in respect of any such financial year ending on or after that date.

CLAUSE 13

This clause prescribes the short title.

CLAUSE 7

General exemptions from stamp duty: Amendment to section 4 of the Stamp Duties Act, 1968

In terms of this clause an exemption is to be provided from the stamp duties which would otherwise be legally payable and borne by the Natal Parks, Game and Fish Preservation Board constituted under the Nature Conservation Ordinance, No. 15 of 1974, of Natal.

CLAUSE 8

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

In consequence of the repeal of the Hire-Purchase Act, No. 36 of 1942, by the Credit Agreements Act, No. 75 of 1980, it has become necessary to introduce a definition of "hire-purchase agreement or contract" for stamp duty purposes, as is proposed by this clause. The Credit Agreements Act applies to certain leasing transactions as well as sales subject to suspensive conditions.

Item 13A of Schedule 1 to the Stamp Duties Act, 1968, does not apply to leases of movables, such leases being subject to duty under Item 2 of the said Schedule; and for this reason as well as the fact that the Credit Agreements Act does not apply to certain transactions in respect of which stamp duty has hitherto been chargeable, it is not possible to equate "credit agreement", as used in that Act, with "hire-purchase agreement", as used in the Stamp Duties Act.

CLAUSE 9

Stamp duty on registrations of transfer of marketable securities: Amendment to Item 15 of Schedule 1 to the Stamp Duties Act, 1968

An exemption from the stamp duty payable in respect of the transfer of a marketable security held by an administrator or trustee under a trust created by a notarial deed is at present applicable where the transfer is necessitated by a change of administrators or trustees. In terms of the amendment introduced by this clause (i.e. to paragraph (b) of the "Exemptions from the duty under paragraph (3)" of Item 15 of Schedule 1 to the Stamp Duties Act, 1968) the exemption is also to apply in the case of a trust created by a written instrument not notarially executed.

CLAUSES 10, 11 and 12

Companies annual duty: Amendments to sections 174 and 175 of the Companies Act, 1973

In terms of the amendments the companies annual duty is, with effect from 1 April 1982, to be a fixed amount of R80, instead of an amount determined according to the amount of a company's share capital. The new rate of duty will apply—

- (a) to the initial duty payable by a company incorporated on or after that date; or