
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 1984

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INTRODUCTION

The Revenue Laws Amendment Bill, 1984, introduces amendments to the Marketable Securities Tax, 1948, the Transfer Duty Act, 1949, and the Stamp Duties Act, 1968, and provides for refunds of stamp duty paid in respect of unused cheque forms and for an exemption from transfer duty and stamp duty in respect of the passing of the assets, rights, liabilities and obligations of certain corporations.

STAMP DUTY ON DEBIT ENTRIES

A stamp duty of 5 cents is presently payable on cheques. It is proposed that with effect from 1 July 1984, this duty be abolished and, in its place, a duty of 5 cents be imposed on each debit entry in a cheque account with a bank or a credit card account. The various clauses of the Bill designed to give effect to this proposal are explained hereunder.

Clauses 3, 5 and 6: The Amendments introduced by these clauses are of a purely textual nature, necessitated by the fact that the relevant debit entries, unlike the other matters in respect of which stamp duty is payable, are not formal documents.

Clause 7: Section 7 of the Stamp Duties Act prescribes who shall be liable for payment of the stamp duty chargeable on various instruments. The amendment to that section introduced by this clause provides that, in the case of a debit entry, the relevant bank or person operating a credit card scheme is liable for payment, but may recover the duty payable from the account holder.

Clause 8: This clause inserts a new section 19 in the Act, which provides that the new duty shall be paid within 21 days after the end of the month in which the debit entry which gives rise to the duty is made. However, where the bank or credit card scheme uses an accounting procedure which makes it inconvenient to pay the duty within this period, the Commissioner may extend the period.

It is further provided that if any duty has not been paid within the said period of 21 days or such further period as may be granted by the Commissioner, a penalty of 10 per cent per month is payable on the unpaid amount. The Commissioner has power, however, to remit the whole or any part of this penalty where he is of the opinion that circumstances warrant this.

Clause 9: The amendment to Item 5 of Schedule 1, introduced by *sub-clause (1)*, deletes the charge to duty in respect of cheques.

As the Act presently reads, the stamp duty payable in respect of cheques is only due when the cheque is drawn. However, to avoid the

necessity of every cheque account holder having to affix a revenue stamp to each cheque he issues, an agreement has been reached with the banks in terms of which the stamp duty is paid in advance at the time of issue of a cheque book to a customer. The bank thereupon recovers the duty so paid by it from the customer. The stamp duty on cheques is thus in all cases paid in advance, which means that in respect of unused cheques held by any cheque account holder on 1 July 1984, duty will in fact have been paid which is not chargeable after that date.

For the purpose of minimising such excess payments and concomitant claims for refund, *subclause (2)* introduces a substantive provision authorising the banks not to pay duty in respect of cheque books sold on or after 1 June.

Clause 10 inserts a new Item, Item 6, in Schedule 1 to the Act. In terms of this Item, a duty of 5 cents is levied on every debit entry in—

- (a) a bank account from which money is withdrawable by cheque; or
- (b) any person's account under a credit card scheme.

The duty on bank account debits applies only to cheque accounts. Savings accounts with banks or building societies are not subject to the charge. The debits in cheque accounts which are chargeable with the duty include debits caused by cheques drawn (whether for cash withdrawals or payments to third parties), stop orders and debit orders, transfers of funds and cash withdrawals through automatic teller machines. Duty is not chargeable in respect of debits for interest or service charges, stamp duty recovered from the account holder, bills of exchange (other than cheques) drawn by the account holder and reversals of unpaid entries such as dishonoured cheques or erroneous entries. It also does not apply to debits in local accounts held by overseas banks or debits in respect of the settling or clearing of accounts between bankers.

The duty on credit card account debits applies to all credit card transactions, including cash withdrawals. It, too, does not apply to debits caused by interest or service charges, reversals of erroneous entries and the recovery of stamp duty. In the case of transactions settled by means of monthly instalments, the duty will be levied once only on the initial debit, and will not be charged on each monthly payment. Credit cards issued by buying associations which are operated on co-operative principles are not subject to the duty.

Clause 12 introduces special provisions relating to refunds of stamp duty which has been paid in advance on unused cheque forms held on 1 July 1984. Provision is made for the following two types of cheques:

- (a) *Cheques sold to customers by banks:* In this case, the account holder must on or after 1 July 1984 (but not later than 1 year after that date) present his unused cheques to the bank for inspection, whereupon the bank may reimburse him in respect of the duty paid on those cheques and recover the amount so reimbursed by deducting it from any subsequent payments of stamp duty. To avoid large numbers of insignificant refund claims, it is provided that no refund will be made unless the amount refundable is at least R1.
- (b) *Cheques which have been privately printed on the customer's behalf:* In this case, the owner of the cheques must submit to the Commissioner for Inland Revenue a claim for refund on the pre-

scribed form, which must be accompanied by an auditor's certificate specifying the amount of duty refundable in respect of unused cheques held on the said date and certifying that no previous claim for a refund of that duty has been submitted.

In both cases, the unused cheques need not be surrendered for purposes of the refund claim, but may continue to be used.

CLAUSE 1

Marketable Securities Tax: Amendment of section 3 of the Marketable Securities Tax Act, 1948

A new paragraph (d) was inserted in section 3 of the Act last year to provide for an exemption from the payment of marketable securities tax in respect of the purchase of interest bearing debentures of a company listed on the Stock Exchange. A doubt has since arisen regarding the position of debentures of bodies corporate which, although listed on the Stock Exchange, are not "companies" as defined in the Companies Act, 1973. This clause, which is of a textual nature, substitutes the expression "juristic person" for "company", thus making it clear that the debentures of such bodies do in fact qualify for the exemption.

CLAUSE 2 *

Transfer Duty: Amendment of section 9 of the Transfer Duty Act, 1949

Arising out of the Government's rationalisation programme, the interests of certain utility housing companies, which are non-profit organisations registered under section 21 of the Companies Act, 1973, have been amalgamated. This clause introduces, by way of a new subsection (13) of section 9 of the Act, an exemption from transfer duty in respect of fixed property passing as a result of such an amalgamation.

CLAUSE 3

This clause is dealt with above under the heading "Stamp Duty on Debit Entries".

CLAUSE 4

Stamp Duty: Amendment of section 4 of the Stamp Duties Act, 1968

Subclause (1) (a) introduces an amendment of a textual nature, following the renaming of the former railway administration to South African Transport Services.

The Southern African Development Bank, which was formed on 30 June 1983, is an international organisation which, following international convention, qualifies for certain exemptions from taxation. *Subclause (1) (b)* adds a new subparagraph (vii) to section 4 (1) (b) of the Act, which provides for an exemption from the payment of any stamp duty which would be borne by the Bank.

CLAUSES 5 TO 10 INCLUSIVE

These clauses are dealt with above under the heading "Stamp Duty on Debit Entries".

CLAUSE 11

Stamp Duty: Amendment of Item 15 of Schedule 1 to the Stamp Duties Act

The amendment introduced by this clause is designed to counter a recently-evolved scheme for the avoidance of stamp duty on the issue or transfer of marketable securities.

Many large South African companies are listed both on the Johannesburg Stock Exchange and on foreign stock exchanges, and these companies commonly maintain in such foreign countries separate share registers in respect of their shares which are traded on the foreign exchange. Item 15, which imposes duty on the transfer of marketable securities, provides (in paragraph (e) of the "Exemptions from duty under paragraph (3)") for an exemption from duty in respect of transfers of such securities which are registered in a foreign branch register. This exemption has recently been misused in the case of certain amalgamations of local companies, where temporary branch registers have been opened outside the Republic specifically to register the transfer of shares under the amalgamation and thus avoid liability for stamp duty.

Subclause (1) (a) introduces an amendment which makes it clear that shares, debentures etc. of a South African registered company are deemed to have been issued in the Republic notwithstanding the fact that they may be registered in a branch register kept outside the Republic. This counters another scheme for the avoidance of stamp duty in respect of the issue of marketable securities.

Subclause (1) (b) introduces an amendment in terms of which this exemption will not apply unless—

- (a) the overseas branch register has been maintained continuously for at least 5 years prior to the date of the relevant transfer, or
- (b) such branch register is kept in a country in which there is a recognised stock exchange, the shares in respect of which exemption is sought are of a type of share of the relevant company which is regularly traded on that stock exchange, and the branch register is maintained solely or mainly for the convenience of investors who are not residents of the Republic

CLAUSE 12

This clause is dealt with above under the heading "Stamp Duty on Debit Entries".

CLAUSE 13

Transfer Duty and Stamp Duty: Exemption in respect of the passing of certain assets

Arising further out of the Government's rationalisation programme, various undertakings of the Corporation for Economic Development Limited and the Mining Corporation Limited are being transferred to the newly-formed South African Development Trust Limited or the Development Corporations of the national states. This clause provides for an exemption from transfer duty and stamp duty in respect of such transfers.

CLAUSES 14 AND 15

Clause 14 provides that the various amendments to the Stamp Duties Act which relate to the levy of duty on debit entries and the abolition of the duty on cheques, shall be deemed to have come into force on 1 July 1984.

Clause 15 prescribes the short title of the Act.