
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

SALES TAX AMENDMENT BILL, 1986

AND THE

REVENUE LAWS AMENDMENT BILL, 1986

REPUBLIC OF SOUTH AFRICA

**EXPLANATORY MEMORANDUM ON THE SALES
TAX AMENDMENT BILL, 1986
AND THE REVENUE LAWS AMENDMENT BILL, 1986**

(NOTE: PART A of the Memorandum relates to the Sales Tax Amendment Bill, 1986, and PART B to the Revenue Laws Amendment Bill, 1986)

PART A: SALES TAX AMENDMENT BILL, 1986

INTRODUCTION

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

CLAUSE 1

Definitions: Amendments to section 1 of the principal Act

Clause 1 (1) (a): Introduces a definition of "close corporation".

Clause 1 (1) (b): The amendment to the definition of "connected person" proposed by this clause is intended to make provision for a close corporation to be treated as a connected person in relation to any subsidiary company of that close corporation. A close corporation is already recognised as a "connected person" in relation to its members by virtue of the reference in paragraph (a) of the definition of "connected person" in section 1 of the principal Act to the definition of a private company in section 38 of the Income Tax Act, 1962, which definition includes a close corporation.

Clause 1 (1) (c): The amendment to the definition of "exported" in section 1 of the principal Act proposed by this clause—

- (a) in so far as it relates to the proposed paragraph (bA) (i) of the definition of "exported", is of a textual nature; and
- (b) in so far as it relates to the proposed paragraph (bA) (ii) of the definition of "exported" in section 1 of the principal Act, provides that articles of apparel and clothing accessories of furskin sold and delivered by a seller from certain special customs and excise warehouses licensed as such under the provisions of the Customs and Excise Act, 1964 (i.e. licensed manufacturing or storage warehouses) in respect of which the letters VS have been allocated will be treated as having been "exported" in terms of the said definition. The sale of such goods will consequently qualify for the exemption from sales tax contained in section 6 (1) (a) (i) of the principal Act. It is a condition that the seller must comply with the procedures and conditions prescribed by Customs and Excise regarding the clearance and removal of such goods

from those warehouses in order to ensure that the goods are in fact taken out of the Republic.

The provision is aimed at permitting foreign tourists to the Republic to purchase free of sales tax articles of apparel and clothing accessories of furskin so as to bring the Republic further into line with the internationally accepted treatment of sales of merchandise to foreign visitors and tourists and, by so doing, to increase foreign exchange earnings for the Republic.

Clause 1 (1) (d): In terms of paragraph (a) (vi) of the definition of "goods" in section 1 of the principal Act any livestock or poultry supplied for slaughter purposes in order to provide meat is excluded from the ambit of that definition and is therefore not subject to sales tax. This exemption should more appropriately appear in Schedule 7 to the principal Act (where provision is made for all other exempt foodstuffs) and the provision is therefore deleted and re-enacted in Schedule 7 to the principal Act (See clause 21 (1) (d)).

Clause 1 (1) (e): The sale of goods by any employer in any cafeteria, canteen or similar establishment which is operated and controlled directly by the employer and which is solely or mainly patronized by employees of that employer is excluded from the definition of "sale" and therefore exempt from sales tax. The amendment proposed by this clause is intended to widen this exclusion so as to exempt from tax sales of goods in canteens made available for employees within a group of companies.

CLAUSE 2

Exemptions: Amendment to section 6 of the principal Act

The amendment introduced into section 6 (1) (g) of the principal Act by this clause is of a consequential nature by virtue of the amendment proposed in clause 5 of the Bill. Whereas the Commissioner for Inland Revenue (hereinafter referred to as the Commissioner) is presently required to register a person as a vendor for sales tax purposes if the gross annual receipts or accruals of the enterprise from the sale of goods and from the rendering of taxable services exceed R10 000, the effect of the amendment introduced by clause 5 is to increase that limit to R50 000. The effect of non-registration for sales tax purposes is that the enterprise is not able to purchase any of its inputs tax-free. On the other hand, exemption in respect of sales concluded by the enterprise is, therefore, provided for in section 6 (1) (g) of the principal Act. Clause 2 amends that section so as to give effect to the increased turnover limit.

CLAUSE 3

Determination of gross value and taxable value: Amendment to section 7 of the principal Act

The amendment to section 7 (1) (c) of the principal Act proposed by this clause is intended to make provision for sales tax on rental considerations in respect of ships' containers to be payable only on that portion of the rental consideration which the Commissioner is satisfied relates to the use of such containers within the Republic. At present the full amount of the rentals is subject to tax, notwithstanding the fact that the containers may be used mainly outside the Republic.

CLAUSE 4

Determination of tax payable by an enterprise: Amendments to section 11 of the principal Act

Clause 4 (a) The amendment is of a textual nature.

Clause 4 (b) Where liability for tax is incurred in connection with any enterprise, the vendor concerned is required to make periodic returns and to calculate the tax in accordance with section 11 of the principal Act. In determining the amount of tax which a vendor is required to pay, certain allowances and deductions may be taken into account.

This clause proposes two additions to the deductions provided for in section 11 (2) (i) of the principal Act, namely—

- (a) the addition of subparagraph (cc). The amount of any discount granted at the time of conclusion of a sale is excluded in the determination of the taxable value in respect of which sales tax is payable, but discounts granted at a later date as a result of early settlement, bulk purchase etc are ignored for sales tax purposes and sales tax is payable on the gross amount. The effect of the amendment proposed by this clause is that where a subsequent discount has been granted by a vendor to a purchaser, the amount of such discount will now be deductible from the taxable value of sales etc transacted by the enterprise for purposes of determining the amount of tax payable by the vendor. Thus, where a discount is granted by the vendor to a purchaser at a date subsequent to the date of conclusion of the sale, tax will in effect only be payable on the net amount, that is, the actual amount payable by the purchaser.

Vendors claiming a deduction in respect of such discounts will be required to retain a copy of any credit note issued, or some other documentary evidence, as proof so as to enable Inland Revenue to verify the deduction claimed.

- (b) the addition of subparagraph (dd). Where, as a result of an accounting or calculation error, a vendor reduces the amount payable by a purchaser or refunds the amount paid in error, any sales tax which has been paid in respect of that amount may be refunded to such purchaser. However, before the sales tax can be remitted, the vendor has at present to apply to Inland Revenue for a refund. The proposed addition of this subparagraph is intended to allow the vendor to refund the sales tax in the circumstances described above and then to deduct this amount when submitting his sales tax return, thereby relieving the vendor of the necessity of having to make a formal request to Inland Revenue for a refund of the sales tax refundable.

Clause 4 (c): The amendment proposed by this clause is consequential upon the amendment introduced by clause 5.

CLAUSE 5

Registration of vendors: Amendment to section 12 of the principal Act

The amendment introduced by this clause provides that the turnover limit above which the Commissioner is obliged to register any person for sales tax purposes is increased from R10 000 to R50 000.

CLAUSE 6

Surrender of registration certificates for revision: Introduction into the principal Act of a new section, numbered 12A

In terms of the proposed provision the Commissioner will be authorized to call upon a vendor in writing to surrender his certificate for revision and issue of a new certificate if it appears to the Commissioner that the particulars on any registration certificate issued in terms of section 12 (2) or 36 (1) of the principal Act need to be revised.

Any person who fails to surrender any registration certificate when called upon shall be guilty of an offence and liable on conviction to a fine not exceeding two hundred rand or three months imprisonment or both such fine and imprisonment.

CLAUSE 7

Validity of registration certificate: Amendment to section 13 of the principal Act

Section 13 of the principal Act provides for the cancellation of a vendor's sales tax registration certificate in certain circumstances.

This clause empowers the Commissioner to cancel a registration certificate issued to a vendor in the case where the vendor's gross turnover from the sale of goods and from the rendering of taxable services does not exceed R50 000 (R50 000 is the new turnover limit above which the Commissioner is obliged to register a vendor). However, where any vendor feels aggrieved by decision by the Commissioner to cancel his registration certificate, he may request that the matter be referred to a sales tax advisory committee for an opinion (see clause 8 (a), (d), (g) and (h)).

CLAUSE 8

Matters referable to Sales Tax Advisory Committee: Amendments to section 20 of the principal Act

Section 20 of the principal Act provides an informal appeal procedure which may be followed in certain sales tax matters.

Clause 8 (a), (d), (g) and (h). These amendments provide that where the Commissioner has given a vendor written notice of his intention to cancel the vendor's registration certificate because his turnover does not exceed R50 000 (see clause 7), the vendor may request that the matter be referred to a Sales Tax Advisory Committee for an opinion. Any decision by a Sales Tax Advisory Committee as to whether the cancellation is warranted or not shall be final and conclusive against both the Commissioner and the person concerned.

Clause 8 (c), (f), (g) and (i). The amendments proposed by these clauses, which should be read in conjunction with the amendment introduced by clause 11, provide that any institution or organization which is dissatisfied with the Commissioner's refusal to register such institution or organisation as a charitable institution under section 36 (1) of the principal Act shall have the right to request that the matter be referred to a Sales Tax Advisory Committee for an opinion. Any opinion given by the Advisory Committee in regard to a refusal by the Commissioner to register an institution or organization as a charitable institution under this clause shall

be final and conclusive against both the Commissioner and the institution or organization concerned.

CLAUSE 9

Tax, interest or penalty not recoverable in respect of past transactions: Amendment to section 26A of the principal Act

The amendment proposed by this clause provides for a general prescription period. In terms of the amendment the Commissioner will be prevented from recovering tax, interest or penalty in respect of past transactions on which tax was properly chargeable after the expiration of a period of five years from the date of conclusion of the transaction, if the Commissioner is satisfied that—

- (a) there was no intention to avoid the payment of tax,
- (b) that the person responsible for the payment of the tax acted in good faith and on the assumption that an exemption was applicable in respect of that transaction, and
- (c) such assumption was made on reasonable grounds and not due to negligence on the part of the responsible person.

The prescription period will not, however, apply in respect of or in relation to any such past transaction or event giving rise to such amount having become payable, where information relating to such transaction or event was disclosed as a result of any investigation or inspection commenced, or request made, by the Commissioner prior to the date of promulgation of the Sales Tax Amendment Act, 1986.

CLAUSE 10

Refunds: Amendment to section 32 of the principal Act

Section 32 of the principal Act empowers the Commissioner to make refunds of tax, interest or penalty where the amount paid was in excess of the amount properly chargeable.

Clause 10 (a): In terms of the existing provisions refunds may be made only to the person by whom the tax, interest or penalty was paid. Where, however, any person who paid any amount of tax, interest or penalty which was in excess of the amount properly chargeable has ceased to carry on any enterprise, the Commissioner will be empowered to authorize a refund of such amount to the person by whom the amount was borne.

Clause 10 (b) and (c): In terms of the amendments proposed by these clauses any claim for a refund must be made within three years after the date upon which the amount claimed to be refundable was made (at present the period is two years). This three year period will apply generally to all refunds, except that where payment of the amount claimed to be refundable was made in accordance with the practice generally prevailing at the date on which the amount was paid, the claim for such refund must be made within six months after the date upon which payment of the amount claimed to be refundable was made (at present the period is 3 months).

CLAUSE 11

Registration of charitable institutions: Amendment to section 36 of the principal Act

Section 36 of the principal Act provides that the Commissioner may,

on written application by any institution or organisation which satisfies him that it is a charitable institution, register such institution as a "charitable institution" for sales tax purposes. Registered charitable institutions are generally entitled to an exemption from sales tax in respect of certain goods and services as set out in section 6 (1) (w) of the principal Act.

The amendment proposed by this clause provides that where he has refused to register any organization or institution as a charitable institution the Commissioner must give such organization or institution written notice of his refusal. Such notification is necessary so as to enable any person who feels aggrieved by such refusal to request that the matter be referred to a Sales Tax Advisory Committee for an opinion. See further the explanation of clauses 8 (c), (f), (g) and (i).

CLAUSE 12

Tax relief allowable to certain diplomats and diplomatic and consular missions: Amendment to section 38 of the principal Act

The amendment is of a textual nature.

CLAUSE 13

Issue of diplomatic exemption certificates to certain diplomats and representatives of diplomatic and consular missions: Amendment to section 38A of the principal Act

The amendment is of a textual nature.

CLAUSE 14

Offences: Amendment to section 43 of the principal Act

Section 43 of the principal Act provides that certain acts or omissions constitute an offence.

In terms of the amendment proposed by this clause, failure to surrender any registration certificate for revision as proposed in clause 7 will also constitute an offence.

CLAUSE 15

Reporting of unprofessional conduct: Introduction into the principal Act of a new section, numbered 44A

At present the Commissioner is generally precluded by the secrecy provisions of section 4 of the principal Act from disclosing any information obtained by him in the exercise of his powers or the performance of his duties under the principal Act to anyone other than the person to whom the information relates. Cases have arisen in the past where professional persons acting on behalf of clients have committed unprofessional acts in relation to the taxation affairs of their clients which would have rendered such professional persons liable to disciplinary action by their controlling bodies (as defined in clause 44A (1) of the Bill), but they have escaped such disciplinary action because the Commissioner has been prevented by section 4 from making a report to the controlling body concerned.

In terms of the provisions introduced by this clause, the Commissioner will be empowered to report to a controlling body any unprofessional conduct of which any member thereof may appear to be guilty and may disclose such information relating to the affairs of the member's client as in the opinion of the Commissioner it is necessary to lay before the professional body to which the complaint is made. The Commissioner will, how-

ever, be required to furnish the client and member concerned with details of the intended complaint and such client or member has the right of objection to the complaint being made, prior to the Commissioner lodging such complaint.

The proposed section 44A of the principal Act is equivalent to the proposed section 105A of the Income Tax Act, 1962, which is introduced by clause 23 of the Income Tax Bill, 1986. For a more detailed discussion of the specific provisions of the proposed section 44A of the principal Act please refer to the explanation of the proposed section 105A contained in the Explanatory Memorandum on the Income Tax Bill, 1986.

CLAUSE 16

Regulations: Amendment to section 48 of the principal Act

In terms of the proposed amendment the Minister is empowered to make regulations in regard to the application of any exemption or to the payment or collection of any tax in a manner other than that provided for in the principal Act in order to counter or overcome any malpractices or difficulties which the Minister is satisfied have arisen or may arise in regard to the collection of sales tax.

This clause further provides that any regulation made by the Minister may provide that any exemption in respect of the sale of goods mentioned in such regulation shall not apply to any vendor or class of vendors. However, where the Minister suspends the operation of any exemption, the vendor who otherwise would have been entitled to the exemption shall be allowed relief in respect of the amount of tax paid, whether by way of a credit against the tax which becomes payable by that vendor or in such other manner as may be provided in such regulation.

CLAUSE 17

Taxable service: Amendments to Schedule 1 to the principal Act

Schedule 1 to the principal Act defines the services which are deemed to be taxable services for sales tax purposes.

The amendment proposed by this clause is intended to provide for an exemption from sales tax in respect of any finishing-off service rendered by a vendor in the Republic in respect of goods which are manufactured in any specified country (as defined in section 1 of the principal Act) and brought into the Republic for the finishing-off service to be rendered, provided the goods are returned to the manufacturer after that service has been rendered.

This clause provides for a further exemption in respect of a milling service rendered in respect of maize and wheat in order to produce meal.

CLAUSE 18

Exemptions: Certain sales of goods and taxable services rendered to various enterprises: Amendments to Schedule 2 to the principal Act

Manufacturing enterprises

Clause 18 (a): In terms of the amendment proposed by this clause to Division I of Schedule 2 to the principal Act an exemption is proposed in terms of which foundries will be allowed to acquire tax-free casting and moulding materials (including gas) used for the making of moulds and cores as aids in the manufacture or processing of goods.

Printing enterprises

Clause 18 (b): The amendment proposed by this clause will allow publishing enterprises to be placed on the same footing as printing enterprises and thereby enable them to acquire, amongst other inputs, origination work free of sales tax.

Mining and quarrying enterprises

Clause 18 (c) and (d): The proposed amendments will allow mining and quarrying enterprises as well as mining and quarrying service enterprises to purchase detachable casing bits and shoes, reaming shells, core barrel assemblies, drill rods, couplings for drill rods, clamps hoisting plugs and ropes free of sales tax.

Clause 18 (e): The proposed amendment will allow mining and quarrying enterprises as well as mining and quarrying service enterprises to purchase diamond mesh wire used for safety purposes free of sales tax.

Farming Enterprises

Clause 18 (f): The amendment proposed by this clause will allow farming enterprises as well as farming service enterprises to purchase free of tax aviation fuel, aviation kerosine, and illuminating paraffin for use in an aircraft designed, adapted or modified exclusively for aerial operations directly concerned with the production of farming or forestry products.

CLAUSE 19

Financial leases and rental agreements: Amendment to Schedule 4 to the principal Act

Any rental consideration payable in respect of the use of any goods for the purposes of any sport, games or amusement activity (e.g. rental of ice-skating boots, amusement rides) is exempt from tax in terms of paragraph 4 (b) (vi) of Schedule 4 to the principal Act if the consideration does not exceed R2. The amendment proposed by this clause will increase the threshold from R2 to R5.

CLAUSE 20

Exemption: Certain goods imported into the Republic: Amendments to schedule 5 of the principal Act

Clause 20 (1) (a): The amendment is of a textual nature.

Clause 20 (1) (b): In terms of Item No 407.02 (3) of the Customs and Excise Act, 1964, a flat rate scheme applies in respect of goods imported as accompanied passengers' baggage, the total value of which does not exceed R500 per person. If a person avails himself of this flat rate scheme a duty of 20 per cent is imposed, notwithstanding that the goods may in terms of other provisions of the Customs and Excise Act, 1964, carry a higher duty. The amendment proposed by this clause provides an exemption from sales tax where the flat rate scheme applies.

Clause 20 (1) (c): The amendment proposed by this clause brings Item No. 412.03 of paragraph 1 of Part A of schedule 5 to the principal Act into line with the textual amendment of that Item effected under the Customs and Excise Act, 1964, by Government Notice No. R1571 of 19 July 1985.

Clause 20 (1) (b): An exemption in respect of the importation of certain ships, boats and other vessels is provided for by this amendment. However, before the exemption will apply the Minister of Trade and In-

dustry, on the recommendation of the Board of Trade and Industries, has to issue a permit covering the specific importation. The importation of "foreign-going ships" is already exempt from tax under section 6 (1) (y) of the principal Act.

CLAUSE 21

Exemptions: Certain goods in the form of foodstuffs: Amendments to Schedule 7 to the principal Act

Section 6 (1) (zA), read with Schedule 7 to the principal Act provides for an exemption from sales tax in respect of the sale or application for own use of certain foodstuffs.

In terms of the amendments introduced by this clause the requirement that in order to qualify for exemption the foodstuffs must be "supplied for human consumption" is deleted. As most of the foodstuffs listed in Schedule 7 to the principal Act are capable of being used to feed animals, the present provision restricting the exemption to supply "for human consumption" could be easily circumvented, but at all events, is almost impossible to control effectually.

The proposed amendment to paragraph 8 of Schedule 7 to the principal Act introduced by clause 21 (1) (d) is intended—

- (a) to delete the exclusion of game and game birds from the definition of "meat", thereby exempting such foodstuffs from tax; and
- (b) to re-enact the exemption in respect of live animals or poultry supplied for slaughter purposes in order to provide meat. Such animals and poultry were previously exempt in terms of paragraph (a) (vi) of the definition of "goods" in section 1 of the principal Act, which provision it is proposed by clause 1 (1) (d) to delete.

The amendments effected to paragraph 10 of Schedule 7 to the principal Act by Government Notice No. R1642 of 19 July 1985 (which provided for an exemption in respect of green mielies and rice) are confirmed in terms of clause 21 (1) (e), except that it is also proposed to exempt dry beans and lentils with effect from 1 September 1986.

CLAUSE 22

Withdrawal of Government Notice

In terms of Government Notice No. R1642 of 19 July 1985 the Minister of Finance made certain amendments to Schedule 7 to the principal Act. Those amendments have now been confirmed by the amendment proposed in clause 21 and this clause proposes that the relevant Government Notice be withdrawn.

CLAUSE 23

Short title

In terms of this clause, the Act resulting from the passing of this Bill is to be called the Sales Tax Amendment Act, 1986.

PART B: REVENUE LAWS AMENDMENT BILL, 1986

INTRODUCTION

The Revenue Laws Amendment Bill, 1986, introduces amendments to the Marketable Securities Tax Act, 1948, the Estate Duty Act, 1955, and the Stamp Duties Act, 1968.

CLAUSE 1

Marketable Securities Tax: Amendment to section 2 of the Marketable Securities Tax Act, 1948

Marketable securities tax is payable on the purchase consideration paid in respect of marketable securities purchased on the Johannesburg Stock Exchange. During the course of his Budget Speech the Minister of Finance proposed that the rate of tax be increased, with effect from 1 April 1986, from 1 per cent to 1,5 per cent. The amendment introduced by this clause gives effect to that proposal.

CLAUSE 2

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—

- (a) the basic abatement allowable to all estates is increased from R50 000 to R100 000;
- (b) the abatement in respect of each child of the deceased who survives the deceased is increased from R40 000 to R80 000. The similar abatement allowable in respect of descendants by blood of a predeceased child of the deceased is also increased from R40 000 to R80 000; and
- (c) the abatement allowable in respect of a surviving spouse of the deceased is increased from R50 000 to R100 000.

The amendments apply to the estates of persons dying on or after 1 April 1986.

CLAUSE 3

Rates of Estate Duty: Amendment to the First Schedule to the Estate Duty Act, 1955

The amendment introduced by this clause is intended to give effect to the proposal by the Minister of Finance in his Budget Speech that the rates of estate duty chargeable under the First Schedule to the Estate Duty Act, 1955, be reduced. The proposed new rates are as set out in clause 3 of the Bill.

CLAUSE 4

Stamp Duty: Amendment to Item 6 of Schedule 1 to the Stamp Duties Act, 1968

In terms of Item 6 of Schedule 1 to the Stamp Duties Act, 1968, duty 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 duty on credit card account debits applies to all credit card transactions, including cash withdrawals.

The amendment proposed by this clause increases the duty on such debit entries from R0,05 to R0,10. The new rate of duty will come into operation on 1 July 1986.

CLAUSE 5

Stamp Duty: Amendment to Item 15 of Schedule 1 to the Stamp Duties Act, 1968

Clause 5 (1) (a): Item 15 of Schedule 1 to the Stamp duties Act, 1968, (hereinafter referred to as the Schedule) levies stamp duty in respect of the original issue, transfer and, in some instances, the cancellation or redemption of marketable securities (other than marketable securities purchased through a stockbroker as defined in section 1 of the Marketable Securities Tax Act, 1948). The Corporation for Economic Development Limited (CED) is presently exempt from such duty in terms of paragraph (x) of Item 15 of the Schedule. The South African Development Trust Corporation Limited is the successor in title of the CED and this clause therefore provides an exemption in respect of the South African Development Trust Corporation Limited.

Clause 5 (1) (b): This clause adds to Item 15 of the Schedule a further paragraph, numbered (xv), which provides an exemption from the duty in respect of the South African Abattoir Corporation.

Clause 5 (1) (c), (d), (e) and (f): Stamp duty of 1 per cent (i.e. 10 cents for every R10 of the consideration, or part thereof) is payable under Item 15 (3) of the Schedule in respect of the registration of transfer of any marketable security. It is proposed to increase this duty to 1,5 per cent (i.e. 15 cents for every R10 of the consideration, or part thereof) with effect from 1 April 1986. The stamp duty payable under Item 15 (cancellations and redemptions) and Item 15 (5) (acquisitions involving nominees) of the Schedule is similarly increased.

CLAUSE 6

Short title

This clause prescribes the short title of the Act.