
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 1993

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INTRODUCTION

The Revenue Laws Amendment Bill, 1993, introduces amendments to the Insurance Act, 1943, the Estate Duty Act, 1955, the Income Tax Act, 1962, the Stamp Duties Act, 1968, the Value-Added Tax Act, 1991, and the Income Tax Act, 1993.

CLAUSE 1

Amendment of section 1 of the Insurance Act, 1943

The amendments introduced by this clause are of a textual nature to the Afrikaans text of section 1 of the Insurance Act.

CLAUSE 2

Estate Duty: Amendment of section 1 of the Estate Duty Act, 1955

The definition of "family company" was deleted by section 6(b) of the Taxation Laws Amendment Act, 1993. As this expression is still referred to in the Estate Duty Act, the definition is re-introduced with effect from 9 July 1993.

CLAUSE 3

Income Tax: Amounts deemed to have accrued from sources within the Republic: Amendment of section 9 of the Income Tax Act, 1962.

The Income Tax Act, 1993, introduced a proviso to section 9(1)(f) which granted a concession to the officers and a crew of a South African ship or aircraft who are absent from the Republic for a period exceeding 183 days during any year of assessment. As the scope of this proviso was too wide, it has been deleted and a more limited general exemption has been inserted into section 10 of the Income Tax Act, 1962, (the Act). See also *clause 4*.

CLAUSE 4

Income Tax: Exemptions: Amendment of section 10 of the Income Tax Act, 1962.

This clause introduces an exemption to replace the proviso which was added to section 9(1)(f) of the Act, by the Income Tax Act, 1993. This provides that an exemption will be granted in respect of remuneration derived by the officers and crew of a foreign-going passenger or cargo ship where such person is outside the Republic for a period or periods exceeding 183 days in the year of assessment.

CLAUSES 5, 6, 7, 8, 9 and 10

Income Tax: Amendment of sections 11, 12B, 12C, 14, 14bis and 23D of the Income Tax Act, 1962

Sections 11(e) and (gA), 12B, 12C, 14 and 14bis permit a deduction in respect of various assets which, as a general rule, is calculated on the cost of the asset to the taxpayer. Each of these sections, however, contains a provision to the effect that where an asset which has increased in value is

sold to a connected person, the deduction allowable to the connected person is limited to the lesser of the original cost to the seller or the market value at the time of sale to the connected person. Section 23D of the Act imposes a similar restriction in relation to the sale and leaseback of assets.

As they are worded at present, these provisions could possibly be interpreted in such a way that where an asset is sold to a connected person at a price which is *lower* than both original cost and market value, the purchaser is entitled to claim a deduction which exceeds his actual cost. Amendments to remove this doubt are proposed by these clauses.

Section 23D is further amended by *clause 10* to extend its scope to section 12C. The allowance granted under the latter section in respect of leased assets is available only where the asset in question is brought into use by the lessee for the first time, and it accordingly does not apply in the case of a simple sale and leaseback. However, section 23D is also intended to apply to the situation where an asset is sold by the original owner to a third party, and then leased by that party to a connected person in relation to the original owner. In this case, an allowance under section 12C would be available to the lessor, and the limitation imposed by section 23D is accordingly made applicable.

All of these clauses are deemed to have come into operation on 21 June 1993 with the exception of section 11(gA) which is deemed to have come into operation on 1 July 1993.

CLAUSE 11

Income Tax: Gains and losses on foreign exchange transactions: Amendment of section 24I of the Income Tax Act, 1962

Subclause (1)(a)—In terms of the proposed amendment, the definition of “realised” in section 24I(1) of the Act is extended with regard to foreign currency option contracts, to also include the disposal of such contracts.

Subclause (1)(b) and (c)—The proposed amendments are in consequence of the amendment introduced in terms of *subclause (1)(a)*. As the concept of realisation, as a result of the lastmentioned amendment, also includes the disposal of a foreign currency option contract, it is no longer necessary to make separate provision in paragraph (c) of the definition of “ruling exchange rate” for the disposal of a foreign currency option contract.

Subclause (1)(d) and (e)—In accordance with established tax principles, section 24I(7) of the Act provides that certain inclusions and deductions in terms of section 24I(2) and (4) are postponed for tax purposes until the time that certain assets, acquired as a result of the application of a loan, advance or debt, are brought into use for the purposes of the relevant person’s trade.

An exception is, however, made in the case of assets which qualify for the incentives in terms of section 37E of the Act. In terms of the proposed amendment contained in *subclause (1)(d)*, this exception is further extended to also include capital expenditure envisaged in section 36, as capital expenditure of that nature qualifies as a deduction for tax purposes when it is incurred and not when the relevant asset is brought into use.

In addition thereto, section 24I(7)(b) currently provides that exchange differences in respect of cover instruments are only deferred if the cover instrument is taken out to serve as a hedge in respect of an existing loan, advance or debt. It is nevertheless so that cover instruments are at times taken out, for example, before an underlying transaction has arisen. In such cases it can therefore happen that unrealised gains on cover instruments are

made, which profits cannot be offset against the unrealised losses in respect of an underlying transaction. In terms of the proposed amendment, any exchange difference which arises from a cover instrument, as well as any premium or other consideration payable in respect of or in terms of a foreign exchange option contract entered into or acquired, in so far as the cover instrument is entered into or acquired (as the case may be) to serve as a hedge in respect of a loan, advance or debt to be obtained or incurred for the utilisation thereof as envisaged in section 241(7)(a), is also deferred for tax purposes.

The amendments introduced in terms of this clause come into effect from the commencement of years of assessment which end on or after 1 January 1994.

CLAUSE 12

Income Tax: Levy and recovery of Secondary Tax on Companies: Amendment of section 64B of the Income Tax Act, 1962

Subclause (1)(a) — Section 64B(5)(a) of the Act exempts from the payment of secondary tax on companies (STC) a company which is exempt from normal tax under section 10 of the Act. The intention was that the provision should apply to a company which enjoyed exemption by reason of the nature of its activities or objects, and not merely because it derived income of a class which is exempt. For example, a company which ceases trading operations and thereafter derives only dividend income, should not be exempt from STC. A proviso is accordingly added to withdraw the exemption in the case of a company which is exempt solely because it derives gross income of a particular nature.

The exemption from STC will, however, continue to apply to a company which is exempt from normal tax because it derives income referred to in section 10(1)(s) of the Act.

Subclause (1)(b) amends subsection (5)(c) so as to exempt a deregistration dividend which is declared from pre-17 March 1993 profits, as part of a rationalisation of a group of companies. Such rationalisation must, however, be a scheme for rationalisation in terms of section 48 of the Taxation Laws Amendment Act, 1988.

CLAUSE 13

Income Tax: Certain amounts distributed deemed to be dividends: Amendment of section 64C of the Income Tax Act, 1962

Subclause (1)(a) extends the exclusion granted by section 64C(4)(a) of the Act, to distributions referred to in paragraph (i) of the definition of "dividend" in section 1, made by a co-operative society.

Section 64C(4)(e) at present permits the exclusion as a deemed distribution for STC purposes, of a loan which is granted by a company in terms of a general loan scheme if the recipient is an employee of the company. *Subclause (1)(b)* extends this exclusion to loans granted by an associated institution in relation to the company.

Subclause (1)(c) extends the provisions of section 64C(4)(h) to distributions made by a company which has already commenced liquidation procedures or which commences liquidation procedures within six months after the distribution (or such further period as the Commissioner may allow).

CLAUSES 14 AND 15

Income Tax: Amendment of sections 88 and 89 of the Income Tax Act, 1962

The amendments introduced by these clauses are of an administrative nature to enable Inland Revenue to obtain funding for the payment of certain interest from the State Revenue Fund. The amendments are deemed to have come into operation on 1 April 1993.

CLAUSE 16

Income Tax: Definitions: Amendment of paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962

This amendment is of a textual nature.

CLAUSE 17

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

In terms of the proposed amendment, an exemption from stamp duty in respect of the issue of marketable securities, has been granted to the South African Housing Trust Limited with effect from 29 June 1993.

CLAUSES 18 AND 19

Value-Added Tax: Amendment of sections 36 and 45 of the Value-Added Tax Act, 1991

The amendments proposed by these clauses introduce the same principles into the Value-Added Tax Act, as those introduced into the Income Tax Act by *clauses 14 and 15*.

CLAUSE 20

Special provisions with regard to unbundling transactions: Amendment of section 60 of the Income Tax Act, 1993

Section 60 of the Income Tax Act, 1993, introduced certain special provisions with regard to the tax treatment of unbundling transactions. An aspect which was not provided for is the tax treatment of shares which are acquired by persons in terms of a share incentive scheme in a company which is contemplating unbundling.

In terms of section 8A of the Act, the taxation of certain profits made by a person on the exercise of a right to acquire shares, is deferred until the year of assessment in which he becomes entitled to dispose of them.

The proposed amendment now provides for the situation that, where a person makes a profit in respect of shares (hereinafter referred to as old shares) acquired in an unbundling company as a result of the exercise of a right, as contemplated in section 8A of the Act, and distributable shares (hereinafter referred to as new shares) are distributed to him in accordance with an unbundling transaction, the taxation of that profit will be deferred, on a proportional basis, until the time that he becomes entitled to dispose of the relevant old or new shares, as the case may be.

CLAUSE 21

This clause provides the short title of the Bill.