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REPUBLIC OF SOUTH AFRICA

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**EXPLANATORY MEMORANDUM**

ON THE

**REVENUE LAWS AMENDMENT BILL, 1972.**

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The Bill introduces amendments to—

- The Financial Relations Consolidation and Amendment Act, No. 38 of 1945;
- The Transfer Duty Act, No. 40 of 1949;
- The Estate Duty Act, No. 45 of 1955;
- The Licences Act, No. 44 of 1962;
- The Banks Act, No. 23 of 1965;
- The Stamp Duties Act, No. 77 of 1968,

and repeals the Registration of Businesses Act, No. 36 of 1909, of the Transvaal.

**CLAUSE 1.**

*Legislative powers of provincial councils in relation to trades and occupations.*

(Amendment of section 14 of the Financial Relations Consolidation and Amendment Act, No. 38 of 1945).

In terms of section 14 (1) of the Financial Relations Consolidation and Amendment Act, 1945, provincial councils may make ordinances in relation to trades and occupations. In terms of Item 6A of the First Schedule to that Act, provincial councils may raise revenue from the licensing of trades and occupations in relation to which they are empowered to make ordinances under section 14 of that Act. Section 14 (2) excludes certain trades and occupations from those in relation to which ordinances may be made. The amendment adds the trades or occupations of an insurer, a building society, a banker or banking institution and a board of executors or trust company to the list of exclusions.

The trades or occupations so excluded are regulated under various Acts of Parliament. Insurers are required to take out licences under the Insurance Act, No. 27 of 1943, and building societies to take out licences under the Building Societies Act, No. 24 of 1965. As from 1st January, 1973, banks (including a number of boards of executors) will be required to take out licences under the Banks Act, No. 23 of 1965.

The amendment should be read with the amendments introduced by clauses 5, 6, 7 and 8.

**CLAUSE 2.**

*Transfer Duty.*

(Amendment of section 9 of the Transfer Duty Act, No. 40 of 1949).

An exemption from transfer duty is introduced in respect of the acquisition of property by the Electricity Supply Commission.

**CLAUSES 3 AND 4.**

*Estate Duty.*

(Amendment of sections 3 and 29 of the Estate Duty Act, No. 45 of 1955).

The amendments are of a textual nature.

## CLAUSE 5.

*Payment of Licence Duties into Provincial Revenue Funds.*

(Amendment of section 12 of the Licence Duties Act, No. 44 of 1962).

Licence duties and certain penalties collected under the said Act on or after 1st April, 1972, will be paid into provincial revenue funds. In terms of section 8 of the Financial Relations Further Amendment Act, No. 69 of 1968, a provincial council may repeal or amend the provisions of the Licences Act, No. 44 of 1962, so far as such provisions relate to trades and occupations in relation to which it is by section 14 of the Financial Relations Consolidation and Amendment Act, No. 38 of 1945 empowered to make ordinances. The amendment introduced by this clause is of a transitional nature, pending the exercise by the provinces of their powers under the 1968 Act.

See also clauses 1, 6, 7, 8 and 14.

## CLAUSES 6 AND 7.

*Licences: Banks and Boards of Executors and Trust Companies.*

(Deletion of Item 2 of the First Schedule and Item 6 of Part II of the Second Schedule to the Licences Act, No. 44 of 1962).

As from 1st January, 1973, banks and boards of executors and trust companies will not be required to take out the licences hitherto prescribed in Item 2 of the First Schedule and Item 6 of Part II of the Second Schedule to the Licences Act, 1962. As from that date banks and those boards of executors and trust companies which are registered as banking institutions under the Banks Act, No. 23 of 1965, will be required to take out bankers' licences under section 47A of the latter Act (see clause 8).

## CLAUSE 8.

*Banker's Licence.*

(Insertion of section 47A in the Banks Act, No. 23 of 1965).

As from 1st January, 1973, banking institutions registered or provisionally registered under the Banks Act, 1965, will be required to take out bankers' licences under the new section 47A of that Act. The licence fee is R40 per branch (or R20 for a branch opened after 1st July in the calendar year for which the licence is required). The duty is the same as that hitherto applicable under the Licences Act, No. 44 of 1962. Liability to take out a banker's licence under the latter Act will cease as from 1st January, 1973 (see clause 6).

The new duty will also be payable in respect of branches in South-West Africa and will replace the duty at present payable under the licensing ordinance of that territory. The duty collected in respect of such branches will be paid into the Revenue Fund of the territory.

## CLAUSE 9.

*Stamp Duties: Fixed Deposit Receipts.*

(Amendment of section 5 of the Stamp Duties Act, No. 77 of 1968).

Provision is made for the Secretary for Inland Revenue, on such conditions as he may impose, to accept stamp duty on fixed deposit receipts by means of the issue of a special receipt, instead of by means of stamps.

## CLAUSES 10, 11 AND 13.

*Stamp Duties: Marketable Securities.*

(Amendment of sections 7 and 23 and Item 15 of Schedule 1 to the Stamp Duties Act, No. 77 of 1968).

The amendments are, broadly speaking, designed—

- (1) so far as the stamp duty payable in respect of the registration of the transfer of marketable securities is concerned—
  - (a) to exempt certain arbitrage transactions;
  - (b) to restrict the existing exemption (g) which is applicable in respect of the registration of transfer of a marketable security from a principal to a nominee or vice versa or from one nominee to another nominee;
  - (c) to introduce new exemptions in respect of certain registrations of transfer of marketable securities to and from nominee companies controlled by brokers and banks; and
  - (d) to introduce an exemption in respect of certain registrations of transfer of marketable securities from subsidiary to parent companies; and
- (2) to impose stamp duty in respect of acquisitions of marketable securities where the securities are held or are to be held by nominees.

*Arbitrage transactions.*

“Arbitrage transaction” is defined in *clause 11 (1) (a)*. It must be effected by a stockbroker who is a member of a recognized stock exchange in the Republic. It is effected to take advantage of the difference in prices on stock exchanges in South Africa and some other country and the ownership of the marketable security passes from a person in either country to a person in the other country. The exemption in respect of such transactions is provided for in paragraph (n) of the Exemptions to Item 15 (3) of Schedule 1 to the Act (see *clause 13*). The transaction must be concluded on or after 30th March, 1972, and the registration of transfer must be effected in order to facilitate the delivery of the marketable security to a purchaser in the Republic (who is not normally a party to the arbitrage transaction) or to a person outside the Republic who is concerned in the transaction. The broker concerned will in terms of section 23 (4) (b) (vii) of the Act (see *clause 11 (1) (f)*) be required to make an endorsement on the transfer instrument as to the facts.

*Exemption (g).*

This exemption (from the duty in respect of the registration of transfer of a marketable security) at present applies in respect of transfers between principals and nominees or when there is a change of nominees. It is provided, as regards a transfer between a principal and a nominee, that the principal must be the beneficial owner of the marketable security. For the exemption to be applicable, there must not have been a change of principal during the period that the nominee has held the security or if there has been any such change, duty must have been paid in respect of every such change. (See the Exemptions to Item 15 (3) of Schedule 1 to the Act, as amended by *clause 13*). In terms of section 23 (4) (b) (iiA)—see *clause 11 (1) (f)*—the parties to the transaction will be required to make a written statement as to the facts in order to obtain the exemption, such statement to be incorporated in or annexed to the transfer instrument.

Exemption (g) will no longer apply where there is a change of nominees. A new exemption is, however, provided in paragraph (m) of the Exemptions to Item 15 (3) of Schedule 1 to the Act (see *clause 13*). It applies where there is a change of nominees, without any change of beneficial interest of any person in the marketable security, provided the transferor has, throughout the period the security has been registered in his name, held it as a nominee for the same person: if there has been a change of principal during that period, exemption (m) will not apply. In terms of section 23 (4) (b) (vi)—see *clause 11 (1) (f)*—the instrument of transfer will have to bear an endorsement as to the facts by the transferor or if the transferor is a nominee company, by the broker or bank controlling that company. (“Nominee” and “nominee company” are defined—see *clause 11 (1) (c)*).

*Transactions Involving Nominee Companies Controlled by Brokers or Banks.*

In terms of *clause 13*, exemptions numbered (j), (k) and (l) are introduced to Item 15 (3) of Schedule 1 to the Act. These are exemptions from the stamp duty payable in respect of the registration of transfer of marketable securities. They are designed to supplement exemption (g) in cases where nominee companies controlled by brokers or banks are used for the registration of marketable securities belonging to clients. The procedure for obtaining exemptions (j), (k) and (l) is simpler than that which applies in the case of exemption (g). This procedure is set out in section 23 (4) (b) (v) of the Act—see *clause 11 (1) (f)*—and requires an endorsement of the instrument of transfer by the broker or bank concerned. *Exemption (j)* applies in respect of the registration of transfer of a marketable security from the registered holder thereof to a broker (as nominee) or to a nominee company (as nominee), if the registration is effected in consequence of a purchase or sale of the security by a broker and marketable securities tax has become payable in respect of the purchase or sale. This exemption contemplates a change of ownership. *Exemption (k)* applies in respect of the registration of transfer of a marketable security from the registered holder thereof to a broker (as nominee) or to a nominee company (as nominee) if the transferor retains his interest in the security, no change of ownership having taken place. *Exemption (l)* applies in respect of the registration of transfer of a marketable security from a broker (as nominee) or a nominee company (as nominee) to a client on whose behalf the broker or nominee company held the security. The exemption does not apply if during the period the broker or nominee company held the security there was a change of beneficial ownership in the security.

What is said above should be read in conjunction with the definitions introduced by *clause 11 (1) (b) and (c)*. The term “broker” is confined to persons who are members of a recognized stock exchange in the Republic. The terms “nominee” and “nominee company” are also defined. A company which is not controlled by a broker or bank is not a nominee company for the purposes of the definition.

*Transfer of a Marketable Security from a Subsidiary Company to a Parent Company.*

*Paragraph (o)* of the exemptions to Item 15 (3) of Schedule 1 to the Act (see *clause 13*) exempts from stamp duty any registration of transfer of a marketable security from a subsidiary company to a parent company, provided certain conditions are met. The subsidiary company must have been the wholly-owned subsidiary of the parent company during the twelve months ending on the date of the transaction, a consideration of not less than the market value of the security must accrue from the parent company to the subsidiary in respect of the transaction, and the transaction must be effected in the course of or in anticipation of the liquidation of the subsidiary or by

reason of a major re-organization of the affairs of either company. In order to obtain the exemption a certificate from the Secretary for Inland Revenue, to the effect that the exemption is applicable, will have to be produced to the transfer secretary.

*New Stamp Duty Payable in Respect of Acquisition of Marketable Securities.*

*Clause 13* adds a new paragraph, numbered (5), to Item 15 of Schedule 1 to the Act. In terms thereof stamp duty is imposed in respect of the acquisition of any marketable security on or after 1st August, 1972, if immediately before the acquisition the security is held by a third party or by the transferee as nominee for the transferor or if the transferor becomes or is to become the nominee for the transferee. Section 23 (14) (a) of the Act (see *clause 11 (1) (k)*) in effect defines "acquisition": basically, a person is deemed to have acquired a marketable security if he has become entitled to the ownership thereof.

The duty is 10 cents for every R10 or part thereof of the amount or value of the consideration given, or where no consideration is given, of the value of the marketable security. The duty must be denoted on a deed or declaration which must be executed by the parties to the transaction. If the deed or declaration is not stamped within a period of six months from the date of acquisition the duty is three times the abovementioned duty. In terms of section 23 (14) (b) of the Act (see *clause 11 (1) (k)*) the value of a marketable security acquired under the will of a deceased person or by intestate succession or by virtue of a redistribution of the assets of the estate of a deceased person is deemed to be the value thereof upon the date of death of the deceased person.

The new duty is not payable where the acquisition is by way of a purchase in respect of which marketable securities tax has become payable (usually a stock exchange transaction). An exemption from the new duty (see *clause 13*) is provided if the registration of transfer of the marketable security from the transferor to the transferee has been effected (which will normally attract duty under Item 15 (3) of Schedule 1 to the Act) and the provisions of section 23 (17) or (18) have not been contravened.

*Clause 11 (1) (k)* adds to section 23 of the Act new subsections, numbered (14) to (19), which have reference to the new Item 15 (5) duty. *Subsection (14)* has been dealt with above. *Subsection (15)* provides for the execution of a deed or declaration (the existing definition thereof applies) in respect of each acquisition subject to the new duty, the stamping thereof and the lodging thereof with the nominee concerned. *Subsection (16)* provides for the retention of such a deed or declaration for a period of three years. In terms of *subsection (17)* where any marketable security has been acquired as contemplated in Item 15 (5) of Schedule 1 to the Act, the nominee is required to refrain from making any payments to the transferee in respect of dividends, interest etc. or from acting as a nominee or agent of the transferee until the necessary deed or declaration has been executed, duly stamped and lodged as required by *subsection (15)*. If the transferee is the nominee he is required to refrain from utilising dividends, interest, etc. or from exercising his rights in respect of the marketable security until the necessary deed or declaration has been executed, duly stamped and lodged as required by *subsection (15)*. In terms of *subsection (18)* the requirements of *subsection (17)* will, where the nominee is a nominee company, apply also to the broker or bank by whom the nominee company is controlled. In terms of *subsection (19)*, if the provisions of *subsections (15) to (18)* are not complied with or are contravened, a penalty not exceeding double the duty payable under Item 15 (5) of Schedule 1 or R100, whichever is higher, will be incurred by the person concerned.

In terms of the amendment introduced by *clause 10* the person liable for the duty under Item 15 (5) of Schedule 1 to the Act will be the person acquiring the marketable security.

*Commencement of amendments.*

The amendments relating to arbitrage transactions are deemed to have taken effect on 30th March, 1972. The other amendments will take effect on 1st August, 1972 (see *clauses 11 (2) and 13 (2)*).

CLAUSE 12.

*Stamp Duties: Customs and Excise Documents.*

(Amendment of Item 11 of Schedule 1 to the Stamp Duties Act, No. 77 of 1968).

An exemption is provided in respect of a document of entry relating to any goods imported under the provisions of Item 407.03 of Schedule 4 to the Customs and Excise Act, No. 91 of 1964. These are documents which are required to be completed by travellers or tourists who bring goods into the Republic for temporary purposes.

CLAUSE 14.

This clause repeals the Registration of Businesses Act, No. 36 of 1909, of the Transvaal, and the provisions of subsequent Acts amending that Act. The Act repealed is administered in conjunction with the Licences Act, No. 44 of 1962. The latter Act will in due course be repealed by the provincial council of the Transvaal, in so far as it applies in that province, and the repeal of the first-mentioned Act will take effect at the same time.

CLAUSE 15.

This clause prescribes the short title.