
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 1973

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The Bill introduces amendments to—

The Companies Act, No. 46 of 1926;
The Transfer Duty Act, No. 40 of 1949; and
The Stamp Duties Act, No. 77 of 1968.

CLAUSE 1

Amendment of section 228 of the Companies Act, 1926: Company licence duty.

In terms of the amendment the minimum company licence duty is, where liability for a company licence commences on or after 1st April, 1973, increased from R10 to R50. In terms of the Companies Bill recently introduced the Companies Act, 1926, is to be repealed with effect from 1st January, 1974, and that being so the amendment to that Act introduced by this clause will apply only until the repeal of that Act becomes effective. The Companies Bill (clause 174) makes provision for the payment of an annual duty in place of the present company licence duty and the minimum rate proposed for the annual duty is also R50.

CLAUSE 2

Amendment of section 2 of the Transfer Duty Act, 1949: Reduction of duty payable in respect of acquisitions of certain residential property.

In terms of the amendment, where property is acquired by a natural person on or after 29th March, 1973, in order that such person or a person who is closely related to him (as indicated in the amendment) should mainly reside thereon, the duty is reduced by two-thirds if the amount or value on which the duty is payable does not exceed R15 000. If the property is improved property the duty is reduced—

- (a) by one-half, if the amount or value on which duty is payable exceeds R15 000 but not R20 000, or
- (b) by one-third, if the said amount or value exceeds R20 000 but not R25 000.

“Improved property” is defined to mean basically land on which there is a habitable dwelling-house or a habitable section of a building which constitutes a unit as defined in the Sectional Titles Act, No. 66 of 1971. Special provision is made for cases where the property acquired consists of land and also a dwelling-house still to be built thereon or to be completed: if the consideration given for the property includes consideration for the erection or completion of the house the property is regarded as improved property, transfer duty being payable on the total value of the property consisting of the land and a completed, habitable dwelling-house.

The effective rates of transfer duty in cases where a reduction of duty is given, are as follows:—

<i>Value or amount on which duty is payable</i>	<i>Effective rate of duty</i>	
R1 to R15 000	On first R10 000	1 per cent
	On excess over R10 000	$1\frac{1}{3}$ per cent
R15 001 to R20 000	On first R10 000	$1\frac{1}{2}$ per cent
	On excess over R10 000	2 per cent
R20 001 to R25 000	On first R10 000	2 per cent
	On excess over R10 000	$2\frac{2}{3}$ per cent

CLAUSE 3

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

Exemptions from transfer duty are provided in respect of acquisitions of property by a Regional Water Services Corporation constituted under section 7 of the Water Services Ordinance, No. 27 of 1963, of Natal, and in respect of the acquisition on or after 1st June, 1972, of property for abattoir purposes by the Abattoir Commission established by section 2 of the Abattoir Commission Act, No. 86 of 1967.

CLAUSE 4

Insertion of section 9A in the Transfer Duty Act, 1949: Acquisitions of sections of buildings before the coming into operation of the Sectional Titles Act, 1971.

In terms of the Sectional Titles Act, No. 66 of 1971, a section of a building and an undivided share of the common property apportioned to the section (called a unit) is for all purposes deemed to be land. Transfer duty is normally payable in respect of the acquisition of any such unit. In some cases persons acquired rights of occupancy, attaching to shares in a company, in respect of parts of buildings before the coming into operation of the said Act, and section 23 of that Act provides machinery for the conversion of such rights of occupancy into rights of ownership. In terms of the said section a limitation is placed on the amount of the consideration which the owner of the building is allowed to charge in respect of the unit transferred to the occupier, and the occupier is required to bear his share of the costs involved in connection with the procedures under the said Act which are necessary to effect the conversion of the right of occupancy into a right of ownership.

The new section 9A introduced into the Transfer Duty Act by this clause applies only where the right of occupancy was acquired before the date of commencement of the Sectional Titles Act, 1971, and the practical effect thereof may be summarised as follows:—

- (a) The value of the property (i.e. the unit) acquired by the occupier will be taken to be the value thereof as at the date on which the right of occupancy vested in him, and the rate of transfer duty will be the rate applicable as of that date.
- (b) The consideration given by the occupier for the property will (where the amount of the consideration is the amount on which transfer duty is payable) be taken as the gross consideration charged by the owner, plus the occupier's share of the costs involved in carrying out the procedures for the conversion of the right of occupancy into a right of ownership.
- (c) The period allowed for the payment of duty without penalty will be a period of 6 months reckoned from the date of the registration of the relevant sectional plan under section 8 of the Sectional Titles Act, 1971, or, if the sectional plan has not been so registered before the expiry of one year as from the date of commencement of that Act (as applicable to the building in question), a period of 6 months reckoned from the date immediately following upon the expiry of the said period of one year.

CLAUSE 5

Amendment of the definition of "public revenue" in section 1 of the Stamp Duties Act, 1968: Bonds given by irrigation boards.

In terms of the amendment amounts received by or accrued to the State from irrigation boards established by section 79 of the Water Act, No. 54 of 1956, are now included in "public revenue". The definition of "public revenue" is relevant for the purposes of certain stamp duty exemptions and

in consequence of the amendment bonds given by irrigation boards solely in security for payments due to the State in respect of loans made by the State, will qualify for the exemption from the stamp duty on bonds provided for in paragraph (a) of the Exemptions to Item 7 of Schedule 1 to the Stamp Duties Act, 1968. Certain other documents of security or pledge may also qualify for the exemption from the stamp duty on documents of security or pledge provided for in paragraph (a) of the Exemptions to Item 20 of the said Schedule.

CLAUSE 6

Amendment of section 4 of the Stamp Duties Act, 1968: General Exemptions.

Exemptions from stamp duties are provided in respect of instruments the duty whereon would be legally payable and borne by any Regional Water Services Corporation constituted under section 7 of the Water Services Ordinance, No. 27 of 1963, of Natal, or any water board established under Chapter VII of the Water Act, 1956 (Act No. 54 of 1956), or the Electricity Supply Commission.

CLAUSE 7

Amendment of section 5 of the Stamp Duties Act, 1968: Duty in respect of certain instruments registered under the Sectional Titles Act, 1971.

In terms of the Sectional Titles Act, No. 66 of 1971, ownership in any unit or land held under sectional title deed may be transferred by means of an endorsement by a registrar of deeds on the sectional title deed or, in certain circumstances, by means of the issue by the registrar of a certificate of registered sectional title. In terms of the amendment introduced by clause 20, such endorsement or certificate is regarded as being a transfer deed and is to be subject to the stamp duty in respect of transfer deeds imposed under Item 21 of Schedule 1 to the Stamp Duties Act, 1968. Such stamp duty will, in terms of the amendment introduced by this clause, be chargeable in respect of the endorsement made on the registrar's copy of the sectional title deed or in respect of the registrar's copy of the certificate of registered sectional title, as the case may be, and the duty will not be denoted by means of stamps but will be acknowledged by a receiver of revenue by means of the issue of a special receipt (see new subsection (4) (b) added by this clause to section 5 of the Stamp Duties Act, 1968). The receiver of revenue will also issue a certificate, as required by section 11 (4) (i) or 11 (7) of the Sectional Titles Act, 1971, to the effect that duty has been paid or is not payable, and such certificate must then be lodged with the registrar of deeds together with a conveyancer's certificate in regard to other matters.

Section 11 (7) of the Sectional Titles Act, 1971, requires a similar certificate to be issued by a receiver of revenue and to be lodged with a registrar of deeds in regard to the stamp duty on notarial leases, notarial sub-leases, sectional mortgage bonds and other deeds registered under that Act. Such duty will, in terms of the amendment introduced by this clause, be chargeable in respect of the copy of the instrument in question which is filed in the deeds office, and the duty will not be denoted by means of stamps but will be acknowledged by the receiver of revenue by means of the issue of a special receipt (see the new subsection (4) (a) added by this clause to section 5 of the Stamp Duties Act, 1968).

Certain consequential amendments are introduced by clauses 8, 15 and 17.

CLAUSE 8

Amendment of section 7 of the Stamp Duties Act, 1968: Liability for stamp duty on transfer deeds.

In terms of the amendment introduced by this clause, the person who is liable for the stamp duty on a transfer deed and who is required to stamp it, will be the transferor. This provision is consequential upon the amendments

introduced by clauses 7 and 20. Certain endorsements and certificates of registered sectional title made or issued by a registrar of deeds under the Sectional Titles Act, No. 66 of 1971, are deemed to be transfer deeds and although not executed by the transferors concerned, the duty, as in the case of ordinary transfer deeds, is to be payable by the transferors.

CLAUSE 9

Repeal of section 20 of the Stamp Duties Act, 1968: Company Share Capital Duty.

The repealed section has reference to the company share capital duty at present payable under Item 10 of Schedule 1 to the Stamp Duties Act, 1968. That Item is repealed by clause 14. The provisions of this clause and clause 14 come into operation on 1st January, 1974, which is the date on which the proposed Companies Act, 1973, is to come into operation. A fee which includes an amount equivalent to the basic company share capital duty at present payable, is, as from the date mentioned, to be payable under section 63 (2) of the proposed Companies Act, 1973, in the manner prescribed in that Act. A further fee is to be payable under section 75 (3) of that Act which is similar to the company share capital duty at present payable in respect of increases of share capital.

CLAUSE 10

Amendment of section 23 of the Stamp Duties Act, 1968: Marketable securities.

The amendment introduced by *subclause* (1) (a) should be read with the amendment introduced by clause 16 (1) (b) to Item 15 (1) of Schedule 1 to the Stamp Duties Act, 1968. In terms of the said Item 15 (1), as amended, the stamp duty payable in respect of the original issue of shares, stock or debentures will be calculated on any premium payable, in addition to the nominal value of the shares, stock or debentures, and special provision is made for the determination of the nominal value, for stamp duty purposes, of shares having no par value. In terms of the amendment introduced by *subclause* (1) (a) of this clause, the amount of the share premium or, in the case of shares having no par value, the nominal value thereof (as determined for stamp duty purposes), will be required to be shown in or endorsed upon the relevant scrip, warrant, certificate or other instrument representing the shares, stock or debentures issued. It will be the duty of the company or corporate body issuing the shares, stock or debentures to comply with these provisions, and a penalty is provided if there is a failure to comply therewith. The aforementioned requirements will not apply where payment of the duty is effected in the manner contemplated in paragraph (iii) of the proviso to section 5 (1) of the Stamp Duties Act, 1968, i.e. where the duty is not denoted by means of stamps but payment thereof is acknowledged by means of the issue of a special receipt. The amendment comes into operation on 1st January, 1974, which is the date on which the proposed Companies Act, 1973, is to come into operation: it will then be possible for certain companies to issue shares having no par value and in consequence thereof the stamp duty amendments are introduced.

Section 23 (8) of the Stamp Duties Act, 1968, provides for the payment of a penalty not exceeding R50 where various requirements as to the registration of transfer of marketable securities are not observed. In terms of the amendment introduced by *subclause* (1) (b) of this clause the penalty provisions are extended to cover also the case where any person makes any endorsement on an instrument of transfer for the purposes of section 23 (4)

(b) (vii) of the said Act which is false or incorrect. The endorsement in question is that permitted to be made by brokers for the purpose of obtaining exemption from duty in respect of arbitrage transactions.

In terms of section 23 (10) of the Stamp Duties Act, 1968, where any scheme of arrangement or reconstruction of any company or its affairs has been sanctioned by an order of court and under that scheme any shares in any company are cancelled and shares in any other company are issued to the person who is the holder of the cancelled shares or such person is to receive any cash or asset from anybody, the said person is deemed to have disposed of the cancelled shares for a consideration equal to the market value thereof and, in terms of Item 15 (4) of Schedule 1 to the Act, stamp duty is payable in respect of the deemed disposal. In terms of the amendment introduced by *subclause* (1) (c), the provisions of section 23 (10) and Item 15 (4) are extended to cover cancellations of stock and debentures in addition to cancellations of shares. The amendment is deemed to have come into operation on 21st May, 1973.

CLAUSE 11

Amendment of Item 2 of Schedule 1 to the Stamp Duties Act, 1968: Agreements.

In terms of the amendment any agreement incorporated in a company's memorandum of association will be exempt from the stamp duty payable on agreements under Item 2 of Schedule 1 to the Stamp Duties Act, 1968. The amendment comes into operation on 1st January, 1974, the date on which the proposed Companies Act, 1973, is to come into operation. The amendment is of an administrative nature, as the fees payable to the Registrar of Companies under the proposed Companies Act, 1973, will include an amount equivalent to the present stamp duty (30 cents).

CLAUSE 12

Amendment of Item 7 of Schedule 1 to the Stamp Duties Act, 1968: Bonds.

The exemption in respect of the stamp duty on bonds given by companies registered in pursuance of licences granted under section 21 of the Companies Act, 1926, is, in consequence of the changes brought about by section 21 of the proposed Companies Act, 1973, withdrawn with effect from 1st January, 1974. Under the new Act associations not for gain, and with widely differing objects, may be freely formed under the new section 21 without obtaining licences. Exemptions of a general nature are at present provided for in deserving cases, e.g. charitable institutions of a public character, under section 4 of the Stamp Duties Act, 1968. The amendment comes into operation on 1st January, 1974.

CLAUSE 13

Amendment of Item 8 of Schedule 1 to the Stamp Duties Act, 1968: Brokers' Notes.

The amendment is of a textual nature.

CLAUSE 14

Deletion of Item 10 of Schedule 1 to the Stamp Duties Act, 1968: Company Share Capital Duty.

See the portion of this Memorandum dealing with clause 9.

CLAUSE 15

Amendment of Item 12 of Schedule 1 to the Stamp Duties Act, 1968: Stamp duty on duplicate originals of certain endorsements.

In terms of this clause an exemption from the stamp duty on duplicate originals payable under Item 12 of Schedule 1 to the Stamp Duties Act, 1968, is provided in respect of duplicate originals of endorsements referred to in section 5 (4) (b) of that Act. This clause should be read with clause 7, in terms of which the new section 5 (4) (b) is introduced. Ownership of any unit or land may, in terms of the Sectional Titles Act, No. 66 of 1971, be transferred by means of an endorsement made by a registrar of deeds on the relevant sectional title deed. In terms of the said section 5 (4) (b) the endorsement made by the registrar on the copy of the sectional title deed filed in his office is subject to the substantive duty payable in respect of a transfer deed under Item 21 of Schedule 1 to the Stamp Duties Act, 1968. In terms of the amendment introduced by this clause the further endorsement made by the registrar on the copy of the sectional title deed handed back to the conveyancer will be exempt from the duty of 10 cents imposed under Item 12. The exemption, which is introduced for practical reasons, does not apply in respect of duplicate originals of ordinary instruments such as notarial leases, notarial sub-leases, sectional mortgage bonds, certificates of registered sectional title or other deeds that may be handed back to conveyancers.

CLAUSE 16

Amendment of Item 15 of Schedule 1 to the Stamp Duties Act, 1968: Marketable Securities.

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

Subclause (1) (b): In terms of the proposed Companies Act, 1973, it will be possible for a company to issue shares having no par value. The stamp duty payable in respect of the original issue of shares is in terms of Item 15 (1) of Schedule 1 to the Stamp Duties Act, 1968, calculated on the nominal value. In terms of the amendments shares having no par value are deemed for the purposes of such duty to have a nominal value equal to the issue price or other consideration for the shares or, where no issue price or other consideration is payable, the nominal value of the interest represented by the shares in the share capital of the company. In the last-mentioned case the nominal value will be determined by reference to the amount standing to the credit of the stated capital account of the company immediately after the issue of the shares and not to the value of the company's assets.

In order to ensure that there is no substantial difference in the duty payable in respect of the issue of shares having a par value and the duty payable in respect of the issue of shares having no par value, a further amendment provides that duty is to be payable on any premium as well as on the nominal value.

The amendments introduced by subclause (1) (b) should be read with the amendment introduced by clause 10 (1) (a) to section 23 of the Stamp Duties Act, 1968.

The amendments introduced by subclause (1) (b) come into operation on 1st January, 1974, the date on which the proposed Companies Act, 1973, is to come into operation.

CLAUSE 17

Amendment of Item 16 of Schedule 1 to the Stamp Duties Act, 1968: Notarial instruments.

The amendments introduced by this clause to Item 16 of Schedule 1 to the Stamp Duties Act, 1968, are consequential upon the amendments introduced to section 5 of that Act by clause 7.

The general rule laid down by section 5 (3) (a) of the Act is that the duty on any instrument which is notarially executed and is required to be filed in any public office, must be denoted on the notarial grosse, duplicate original or copy so filed.

Item 16 (2) of Schedule 1 to the Act imposes a duty of 20 cents on any notarial grosse, duplicate original or copy of any instrument chargeable with duty under Schedule 1, but in order to ensure that not more than one duty is paid in respect of the notarial grosse, duplicate original or copy filed in a public office, an exemption from the Item 16 (2) duty is provided in respect of the instrument so filed. In terms of section 5 (4) (a) of the Act, as introduced by clause 7, certain notarial instruments filed with a registrar of deeds will not require to be stamped and the duty thereon will be acknowledged by means of a special receipt issued by a receiver of revenue: the amendment introduced by *subclause* (1) (a) extends the exemption from the Item 16 (2) duty to such instruments.

Item 16 (3) of Schedule 1 to the Act imposes a duty of 20 cents on the notarial minute or original of any instrument chargeable with duty under any other Item of Schedule 1, if the last-mentioned duty is denoted on the notarial grosse, duplicate original or copy of the instrument. In terms of *subclause* (1) (b) the Item 16 (3) duty will also be payable in respect of the notarial minute or original of an instrument if the duty thereon payable under some other Item of the Schedule is chargeable in respect of the notarial grosse, duplicate original or copy filed with a registrar of deeds and is acknowledged as provided in section 5 (4).

CLAUSE 18

Amendment of Item 18 of Schedule 1 to the Stamp Duties Act, 1968: Policies of Insurance.

The amendment is of a textual nature.

CLAUSE 19

Amendment of Item 20 of Schedule 1 to the Stamp Duties Act, 1968: Security or Suretyship.

An exemption from the stamp duty payable under Item 20 of Schedule 1 to the Stamp Duties Act, 1968, in respect of documents of security, pledge, suretyship, indemnity or guarantee is provided in respect of indemnities given to the Government in respect of loss or damage caused by or suffered in consequence of any act or omission of any officer or employee of the Government in carrying out his duties. Such indemnities are *inter alia* given in relation to the activities of officers of the Department of Agricultural Technical Services in connection with soil erosion works and the spraying of noxious weeds.

CLAUSE 20

Amendment of Item 21 of Schedule 1 to the Stamp Duties Act, 1968: Transfer deeds.

The provisions of this clause are explained in the portion of this Memorandum dealing with clause 7.

CLAUSE 21

This clause prescribes the short title.