
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 1983

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INTRODUCTION

The Revenue Laws Amendment Bill, 1983, introduces amendments to the Marketable Securities Act, 1948, the Estate Duty Act, 1955, the Diamond Export Duty Act, 1957, the Stamp Duties Act, 1968, and an exemption from transfer duty in respect of the transfer of certain property to the Small Business Development Corporation Limited.

CLAUSE 1

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

Marketable Securities Tax is payable in respect of every purchase of marketable securities by a stockbroker on behalf of any person at the rate of 1 per cent of the consideration for which the securities are purchased. Various exemptions from the tax are provided for in section 3 of the Act.

This clause adds to section 3 a further paragraph, numbered (d), which provides an exemption from the tax in respect of the purchase of any interest bearing debenture listed on the Johannesburg Stock Exchange.

The exemption comes into operation on 1 July 1983.

CLAUSE 2

Estate Duty: What constitutes an estate: Amendments to section 3 of the Estate Duty Act, 1955

For estate duty purposes the estate of any person consists not only of any right in or to property (whether movable or immovable, corporeal or incorporeal) but also certain other items which are deemed, in terms of section 3 of the Act, to be property.

One of such items is the proceeds of a domestic policy (as defined in the Insurance Act, 1943) upon the life of the deceased, irrespective of who may have taken out the policy. A proviso to section 3 (3) (a) of the Act does however provide a measure of relief for it stipulates that this deeming provision shall not apply if the policy was not effected by or at the instance of the deceased, that no premium on the policy was paid or borne by the deceased, that no amount due or recoverable under the policy has been or will be paid into the estate of the deceased and that no such amount has been or will be paid to, or utilised for the benefit of, any relative of the deceased or any person who was wholly or partly dependent for his maintenance upon the deceased or any company which was at any time a family company in relation to the deceased.

That limited relief does not, however, cover the case frequently met with, namely, where partner A, on his own initiative and at his own expense, takes out a policy on the life of his partner, B, so that should B die

he (A) will have the necessary funds with which to acquire B's interest in the partnership. Similar situations arise where private companies are involved and the shareholders, also on their own initiative and at their own expense, take out policies on the lives of one another so that, should one shareholder die, the remaining shareholder or shareholders will have funds with which to acquire the shares and loan account of the deceased shareholder.

Subclause (1) (a) inserts in the proviso to paragraph (a) of section 3 (3) of the Estate Duty Act a further paragraph, numbered (iA), the effect of which will be to exclude from deemed property the proceeds of policies taken out in the circumstances referred to above. It will be noted that the exclusion will not apply should the deceased have borne any of the premiums on the policy taken out by his partner or fellow shareholder.

Subclause (1) (b) effects a consequential amendment.

Another item which is deemed in terms of section 3 (3) of the Estate Duty Act to be property of the deceased is the benefit payable by any fund (including a pension or retirement annuity fund) on or as a result of the death of the deceased (see section 3 (3) (a)bis). Thus, if on the death of a member of a pension fund or retirement annuity fund, a lump sum benefit becomes payable the amount of such benefit is deemed to be property in his estate. A right to an annuity which becomes payable by any fund on or as a result of the death of someone can be valued in terms of section 5 of the Act, and such right is in terms of section 3 (3) (a)bis something which is deemed to be property of the deceased.

An amendment was, however, made to the said section 3 (3) (a)bis in 1980 the effect of which was to exclude from the scope of this deeming provision the capitalised value (determined under the rules laid down in section 5 of the Act) of any annuity which becomes payable by a pension fund or a retirement annuity fund (as defined in the Income Tax Act) on or as the result of the death of a taxpayer. The reason for making this concession was that in some estates the property, as defined, consists entirely, or almost entirely, of a right to an annuity from a pension fund or a retirement annuity fund and the beneficiary in the estate (usually the widow) is left with no cash, or property which could be converted into cash, out of which to pay the estate duty.

It is possible under the rules of certain pension and retirement annuity funds for the person who becomes entitled to the payment of an annuity on or as a result of the death of a member of such a fund to commute a portion of his or her annuity for a cash payment at some later stage. The view until recently has been that the law regards such cash payment as a benefit which is due and payable on or as a result of the death of the member of the fund and that it is property which is deemed to be property of the deceased. Recent developments suggest, however, that this interpretation of the law, and hence the practice based upon that interpretation, may not be supported by the Courts. The amendments made by *subclause (1) (c)* reconstruct the existing section 3 (3) (a)bis to some extent and add a further provision making it clear that where an annuity, which becomes payable by a pension or retirement annuity fund on or after the death of the deceased, is commuted the resultant cash benefit will be property which is deemed to be property of the deceased.

Subclause (2) provides that the amendments effected in terms of *subclause (1)* shall apply in respect of the estate of any person who dies on or after 1 July 1983.

CLAUSE 3

Estate Duty: Regulations: Amendment of section 29 of the Estate Duty Act, 1955

Section 29 of the Act empowers the State President to make regulations for—

- (1) the better carrying out of the objects and purposes of the Act;
- (2) the hearing of appeals under section 24 of the Act; and
- (3) the payment of fees to executors and other persons required to render returns under the Act in respect of property with regard to which no remuneration is payable under section 69 of the Administration of Estates Act, 1913, or section 51 of the Administration of Estates Act, 1965.

Although a provision similar to that mentioned in (3) above has been in the law since 1922—prior to 1955 it was contained in the Death Duties Act, 1922—it has never been necessary to make regulations in connections with the payment of fees, nor is such a regulation contemplated.

The amendment made by this clause to section 29 of the Act deletes the provision for the payment of fees.

CLAUSE 4

Diamond export duty: Amendment of the Diamond Export Duty Act, 1957

Section 3 of the Diamond Export Duty Act, 1957, levies a duty on the value of any rough or uncut diamond found in, and exported from, South Africa. In terms of section 4 of the Act the present rate of the duty is 15 per cent of the value of the diamond.

Clause 4 inserts in the Act a new section, numbered 11A, which empowers the Minister while Parliament is not in session to—

- (1) amend the provisions of section 3 of the Act so as to provide that no duty shall be levied on the value of any rough or uncut diamonds exported after a certain date, or
- (2) amend the provisions of section 4 of the Act so as to reduce the rate of duty in respect of any rough or uncut diamond after a certain date.

The new section 11A provides further for any amendment so made by the Minister to be confirmed, or otherwise dealt with, by Parliament during the first session commencing after the date on which such amendment was made.

CLAUSES 5 TO 18

Stamp Duty: Increases in rates of duty and certain transitional arrangements: Further measures to prevent the avoidance of duty: Amendments to the Stamp Duties Act, 1968

Under the provisions of the Stamp Duties Act, stamp duty at the rate of 1 per cent is payable on the value of—

- (1) marketable securities (which include company shares) transferred from one owner to another,

- (2) any consideration given for the cancellation of company shares, and
- (3) any marketable securities acquired by one person from another person.

Schemes for the avoidance of duty are constantly being evolved, especially where larger sums of money are at stake, as is often the case with company mergers and reconstructions. These schemes have almost invariably made use of one or more provisions in the Companies Act which have enabled the planners to find a way around the charging provisions of the Stamp Duties Act. The known loopholes involving the cancellation of shares, reductions of share capital, conversions of ordinary shares into redeemable preference shares followed by the redemption of those shares, have been closed by means of a series of enactments going back to 1969.

The Revenue Laws Amendment Act, 1982, made further amendments to the Stamp Duties Act, and particularly to section 23 (10) thereof, by bringing in a reference to the redemption of shares and by deleting a reference in the section which limited its application to schemes of arrangement sanctioned by an order of court. Developments since then indicate that yet another way around the charging provisions has been found, this time by making use of the provisions of section 75 of the Companies Act which permits a company to alter its share capital and shares in various ways. The further amendment effected by *clause 5 (1) (a)* to section 23 (10) of the Stamp Duties Act is designed to close the loophole.

Clause 5 (1) (b) deletes from paragraph (ii) of section 23 (10) of the Stamp Duties Act the words "other than the company" which were added in terms of the amendments made to that section by section 6 (1) (a) of the Revenue Laws Amendment Act, 1982.

Clause 6: In terms of Item 18 of Schedule 1 to the Stamp Duties Act (hereinafter referred to as the Schedule) the premiums on most types of insurance policies (other than policies life insurance) are dutiable at the rate of 1 per cent. Section 24 (4) (a) of the Act provides, however, that where the premiums on any policy exceed R10 000 the insurer, who is the person required to pay the duty, is not required to pay duty an amount in excess of that sum.

The amendment effected in terms of clause 6 (1) to the said section of the Act increases the amount on which the duty may be charged in respect of the premiums on any one policy of insurance from R10 000 to R25 000. The amendment comes into operation on 1 July 1983.

Clause 7 increases the duty on agreements in respect of which no other duty is specifically provided from R0,50 to R1,00 (Item 2 of the Schedule). The new rate of duty is deemed to have come into operation on 1 April 1983.

Clause 8 increases the duty on an antenuptial or postnuptial contract from R2,00 to R5,00 with effect from 1 April 1983 (Item 3 of the Schedule).

Clause 9 (1) increases the duty on cheques from 3 cents to 5 cents. (Item 5 of the Schedule) In terms of *clause 9 (6)* the new rate of duty comes into operation on 1 July 1983. Many cheques bearing the endorsement "Duty Paid 3 cents" will be in the hands of the banks, their customers and others on that date, and *clauses 9 (2) and (3)* prescribe the manner in which the additional 2 cents per cheque shall be collected. *Clause 9 (5)*

authorises the Commissioner to remit small amounts of duty where it would be uneconomic to attempt to recover them. Where a cheque bearing the endorsement "Duty paid 3 cents" is used on or after 1 December 1983 it shall be deemed not to be properly stamped (clause 9 (5)). These rules are similar to those enacted in 1977 when the duty on cheques was raised from 2 cents to 3 cents.

Clause 10 increases, with effect from 1 April 1983, the duty on customs documents from R0,20 to R0,40. (Item 11 of the Schedule).

Clause 11 increases, with effect from 1 April 1983, the duty on duplicate originals from R0,20 per instrument to R0,40 per instrument (Item 12 of the Schedule).

Clause 12 increases, with effect from 1 April 1983, the duty on fixed deposit receipts from R0,05 to R0,10 per R100 of the fixed deposit for every period of twelve months (or part thereof) for which the deposit is made (Item 13 of the Schedule).

Clause 13 expands the scope of Item 13A of the Schedule so as to include a "financial lease" which is defined as meaning a financial lease as contemplated in paragraph 1 of Schedule 4 to the Sale Tax Act, 1978. The clause also expands the charging provision so that duty is now payable according to the sliding scale mentioned in the Bill

Clause 14 (1) amends Item 15 to the Schedule, which Item provides for the levying of duty on various transactions involving marketable securities. The most common duty is the one levied at the rate of 10 cents—

" for every R10, or part thereof, of the amount or value of the consideration given or, where no consideration of is given, of the value of the marketable security transferred . . . "

Especially where inter-company transactions are involved, it is possible to reduce the duty payable to a nominal amount by the simple expedient of paying a nominal amount (say R1) for marketable securities worth perhaps millions of rand.

The amendment effected by this *subclause (1) (a)* seeks to close this loophole by providing that where the consideration given is less than the value of marketable security transferred, duty will now be payable on the value of such security and not on the consideration given.

Subclause (1) (b) deletes exemption (o) under paragraph 3 of Item 15 of the Schedule. That exemption was introduced in 1972 and provides that, in certain limited circumstances, the marketable securities held by a wholly owned subsidiary may be transferred free of stamp duty into the name of the subsidiary's parent company.

Subclause (1) (c) inserts a new exemption, numbered (p), in paragraph 3 of Item 15 of the Schedule. This exemption is the parallel of the exemption from Marketable Securities Tax introduced by clause 1.

In terms of *clause 14 (2)* the withdrawal of "exemption (o)" will be effective as from 1 January 1984, whereas the new "exemption (p)" will operate as from 1 July 1983.

Clause 15 increases, with effect from 1 April 1983, the duty on an agreement of partnership from R5,00 to R10,00 (Item 17 of the Schedule).

Clause 16 increases, with effect from 1 April 1983, the duty on a power of attorney from R0,50 to R1,00 (Item 19 of the Schedule).

Clause 17 increases, with effect from 1 April 1983, the maximum duty payable in respect of a security or suretyship from R10,00 to R20,00 (Item 20 of the Schedule).

Clause 18 enacts a transitional provision which is necessary because certain of the increased tariffs are effective as from 1 April 1983. Those instruments which during the period from the said date to the date of promulgation of the Revenue Laws Amendment Act, 1983, were or are stamped at the current rates of duty will be regarded as valid provided the additional duty now chargeable is duly paid in the prescribed manner within one month of the date of promulgation of that Act.

Similar provisions have been enacted in the past whenever tariffs have been increased with effect from a date prior to the relevant enabling legislation.

CLAUSE 19

Transfer Duty Exemption: Passing of certain property to the Small Business Development Corporation Limited

Clause 19 is a substantive provision which grants an exemption from transfer duty in respect of immovable property transferred to the Small Business Development Corporation Limited by companies which were formerly wholly-owned subsidiaries of—

- (1) The Development and Finance Corporation Limited,
- (2) The Indian Industrial Corporation Limited, and
- (3) The Industrial Development Corporation Limited.

A similar exemption was provided last year in respect of property transferred direct from the three companies referred to above to the Small Business Development Corporation Limited—see section 10 of the Revenue Laws Amendment Act, 1982.

CLAUSE 20

This clause prescribes the short title of the Act.