REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

REVENUE LAWS AMENDMENT BILL, 1985

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INTRODUCTION

The Revenue Laws Amendment Bill, 1985, introduces amendments to the Marketable Securities Tax Act, 1948, the Transfer Duty Act, 1949, the Estate Duty Act, 1955, and the Stamp Duties Act, 1968. It also provides for the raising of additional revenue in the form of levies on long-term insurers and on banking institutions.

Many of the amendments are a direct result of the coming into force on 1 November 1984 of the Matrimonial Property Act, 1984 (Act No. 88 of 1984). In order to take into account the principles embodied in that Act and at the same time to avoid defeating its objects, it has become necessary to make some important changes in the Estate Duty Act. Broadly, what the amendments seek to achieve is to include in the estate of a deceased spouse the amount of any accrual, in terms of the Matrimonial Property Act, from the surviving spouse and to allow as deductions in determining the net value of an estate—

(a) the amount of any accrual acquired by a surviving spouse from the estate of the deceased in terms of the Matrimonial Property Act; and

(b) the value of any bequests made by the deceased to the surviving spouse.

The various clauses of the Bill will now be discussed seriatim.

CLAUSE 1

Marketable Securities Tax: Amendment of section 3 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. Section 3 provides, however, for the exemption from the tax of the securities issued by certain bodies, including local authorities. *Subclause (1)* adds to the list of those bodies the name of the Local Authorities Loans Fund Board, a juristic person created in terms of section 2 of the Local Authorities Loans Fund Act, 1984. The function of the Board is to arrange loans for various local authorities and it is, for practical purposes, a type of local authority.

CLAUSE 2

Transfer Duty: Amendment of section 8 of the Transfer Duty Act, 1949

Section 8 of the Transfer Duty Act provides rules for the valuation of any consideration, other than a cash consideration, given in respect of the acquisition of immovable property. *Subclause (1)* adds a further paragraph, numbered *(d),* to section 8 which provides that where the consideration given consists of a member's interest in a close corporation the Commissioner must place a fair value on it.

CLAUSE 3

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

The amendment introduced by this clause provides for the exemption from transfer duty of the acquisition of immovable property by the Local Authorities Loans Fund Board. In this connection see the explanation under *clause 1*.

CLAUSE 4

Estate Duty: Amendments to section 3 of the Estate Duty Act, 1955

The amendment effected by *subclause (1) (a)* is of a textual nature and relates to a member's interest in a close corporation.

In terms of section 3 (3) *(c)* of the Estate Duty Act property which is deemed to be property in an estate includes also donations made by a deceased during his lifetime. Once again there are important exceptions, *inter alia* donations under a duly registered ante-nuptial or post-nuptial contract.

The amendment effected by *subclause (1) (b)* to the said section 3 (3) *(c)* will have the effect of excluding from property deemed to be property of the deceased—

(a) donations made during his lifetime to his spouse (hitherto such donations were exempt from donations tax but not from estate duty); and

(b) property donated by him under a notarial contract entered into in terms of section 21 of the Matrimonial Property Act, 1984.

Subclause (1) (c) adds a new paragraph (*c*A) to section 3 (3) of the Estate Duty Act. The effect of that new paragraph is to include in the property deemed to be property of a deceased the amount of any accrual acquired by him in terms of section 3 of the Matrimonial Property Act, 1984, from his spouse.

CLAUSE 5

Estate Duty: Amendment of section 4 of the Estate Duty Act, 1955

The new paragraph (*l*A) which *subclause (1) (a)* adds to section 4 of the Estate Duty Act is the counterpart of the new paragraph (*c*A) added to section 3 (3) by *clause 4 (1) (c)*. In terms of the new paragraph (*l*A) the amount of any accrual acquired by a surviving spouse under section 3 of the Matrimonial Property Act, 1984, will be allowed as a deduction in determining the net value of the estate of a person who died or dies on or after 1 November 1984.

Subclause (1) (b) adds to section 4 of the Estate Duty Act a new paragraph, numbered *(q)*, which is of great importance. The new paragraph provides that, except to the extent that a deduction has been allowed under some other portion of section 4, so much of the amount of any property or deemed property included in the estate of a deceased person as accrues to his surviving spouse, is allowable as a deduction in the determination of the net value of the estate. The accruals in mind include bequests and amounts passing to the surviving spouse according to the law of intestate succession.

This amendment also applies in respect of the estate of any person who died or dies on or after 1 November 1984.

CLAUSE 6

Estate Duty: Amendment of section 4A of the Estate Duty Act, 1955

In order to arrive at the dutiable value of an estate (i.e. the amount on which the duty payable is calculated) further deductions are, in terms of section 4A of the Estate Duty Act, made from the net value of an estate. These deductions include a primary amount of R50 000 in respect of the estate, an amount of R40 000 in respect of each child of the deceased and an amount of R50 000 in respect of the surviving spouse of the deceased.

The amendment effected by *subclause (1)* to section 4A *(d)* of the Act reduces the last-mentioned deduction by the amount of any deduction made in terms of the new section 4 *(q)* which is dealt with in the notes under *clause 5*.

This amendment also applies in respect of the estate of any person who died or dies on or after 1 November 1984.

CLAUSE 7

Estate Duty: Amendment of section 5 of the Estate Duty Act, 1955

Section 5 of the Estate Duty Act lays down rules for valuing property included in the estate of any person. Where the shares in a company not quoted on a stock exchange are involved the special rules found in subsection (1) *(f) bis* apply, notwithstanding the fact that the shares may have been sold in the course of the liquidation of the estate or that, if not so sold, the company owns immovable property on which *bona fide* farming operations are being carried on.

The new subsection (1A), which is inserted in section 5 by *subclause (1)*, introduces an important concession the effect of which is that, at the option of the executor, the agricultural or pastoral value, and not the commercial value, of the farm property owned by the unquoted company (which includes a close corporation) may be taken into account in determining the value of the shares for estate duty purposes.

Subclause (2) provides that the new valuation rule will apply in respect of the estates of persons who died or die on or after 1 April 1982.

CLAUSE 8

Estate Duty: Repeal of sections 21 and 22 of the Estate Duty Act, 1955

In terms of section 21 of the Estate Duty Act a company may not permit the transfer of stocks or shares belonging to a deceased person until proof has been lodged that the estate duty payable in respect of such stocks or shares has been duly paid or, alternatively, the Commissioner, acting through the Master of the Supreme Court, consents to the transfer. Section 22 of the Act contains somewhat similar provisions restricting the transfer of immovable property held by a deceased estate.

These provisions have long been a considerable burden both to the

Master of the Supreme Court and to executors and unnecessarily delay the winding up of estates and the disposal of stocks, shares and immovable property without being of any worthwhile benefit to the State in the safeguarding of revenue. Section 19 of the Act places an obligation on executors to ensure that they do not part with any property in the estate without first paying over any duty that may be due and, in addition, makes them personally liable for any duty due in respect of assets they may have handed over.

In the circumstances the provisions of sections 21 and 22 are being repealed by this clause.

CLAUSE 9

Estate Duty: Amendment of section 28 of the Estate Duty Act, 1955

The amendment effected by this clause is consequent on the repeal of section 21 of the Act.

CLAUSES 10 AND 11

Stamp Duties: Amendment of section 4 and Item 15 of Schedule 1 to the Stamp Duties Act, 1968

The amendments effected by *clauses 10 and 11* are the stamp duties equivalent of the amendment made to the Marketable Securities Tax Act, 1948, in terms of *clause 1*.

CLAUSE 12

Levy on long-term insurers

The provisions of this clause establish the legal machinery for levying and collecting the special levy on long-term insurers announced by the Minister of Finance in his Budget Speech on 18 March 1985.

Subclause (1) defines certain essential terms while *subclause (2)* is the actual charging provision. The levy will be equal to 7,5 per cent of the sum of the gross amounts derived by a long-term insurer, as contemplated in section 28 (1) of the Income Tax Act, 1962, during the insurer's year of assessment which ends during the period of 12 months ending on 31 March 1986. Amounts derived from the carrying on of what is known as home service business are excluded from the charge.

Subclause (3) has been included so as to ensure that should a long-term insurer change his financial year he will still be taxed on an amount equal to a year's trading.

Subclause (4) fixes the date for payment of the levy but permits the Commissioner to grant an extension of time should the circumstances warrant it.

In terms of *subclause (5)* interest at the rate of 15 per cent per annum will be chargeable should any long-term insurer fail to pay the levy within the prescribed period.

Finally, *subclause (6)* provides that the levy and interest shall be a debt due to the State which may be recovered in the manner prescribed in section 91 of the Income Tax Act.

CLAUSE 13

Levy on banking institutions

This clause relates to the second of the levies announced by the Minister of Finance on 18 March 1985, namely that on banking institutions.

Subclause (1) defines certain terms of which "deposit" and "average deposits" are the most important. It will be noted that the term "banking institution" is so defined as to exclude a discount house, as defined in section 1 of the Banks Act, 1965, from liability for the levy.

Subclause (2) provides that the levy shall be charged at the rate of 0,25 per cent of the average deposits held in the Republic by a banking institution during the calendar year 1984.

Subclauses (3) and *(4)* require a banking institution which is liable for the duty to submit a return, in the prescribed form, to the Commissioner not later than 13 December 1985 and to pay one-half of the levy not later than that date and the balance by 14 March 1986. Provision is made for the granting, by the Commissioner, of an extension of time for the payment of the levy.

If the levy is not paid by the dates mentioned above then in terms of *subclause (5)* interest at the rate of 15 per cent per annum will accrue, unless the Commissioner otherwise directs.

Subclause (6) provides a simple rule for dealing with the situation where two or more banking institutions which were carrying on business during the 1984 calendar year amalgamate.

In terms of *subclause (7)* the amount of any levy paid by a banking institution will be allowed as a deduction in the determination of its taxable income for the year of assessment in which the levy became payable. This relief may not, however, be claimed by a banking institution in computing its liability for provisional tax due by it on or before 31 March 1986.

Finally, *subclause (8)* provides that the amount of any levy, or interest due to late payment, payable by a banking institution shall be a debt due to the State and be recoverable in the manner prescribed in section 91 of the Income Tax Act.

CLAUSE 14

Short title

This clause prescribes the short title of the Act.