
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 1987

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INTRODUCTION

The Taxation Law Amendment Bill, 1987, introduces amendments to the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Stamp Duties Act, 1968, and the Sales Tax Act, 1978.

CLAUSES 1 AND 2

Transfer Duty: Amendments to section 1 and 5 of the Transfer Duty Act, 1949

Section 57A (2) of the Black Communities Development Act, 1984, as amended by the Black Communities Development Amendment Act, 1986, provides that transfer duty shall be payable in respect of any conversion of any right of leasehold registered after 15 September 1986 into ownership. In terms of that section transfer duty is payable on the land together with any improvements thereon as at the date of such conversion.

The existing provisions give rise to a number of uncertainties regarding the payment of transfer duty where rights of leasehold are converted into ownership. Firstly, although section 57A (2) specifically provides that transfer duty is payable in respect of conversions of rights of leasehold registered after 15 September 1986, it is silent as regards the transfer duty implications of rights of leasehold registered before 15 September 1986. The second question which arises is on what date transfer duty becomes payable, that is, what is the "date of acquisition" of a conversion for transfer duty purposes? Finally, while section 57A (2) specifically provides that transfer duty is payable "on the value of the land together with any improvements thereon as at the date of such conversion", this would be inequitable as regards the holder of a right of leasehold who acquired unimproved land but thereafter at his own expense erected improvements thereon. In terms of section 57A (2) such a holder is liable for transfer duty on the full value of the land and improvements at the time of conversion, notwithstanding the fact that the holder of the right of leasehold had only acquired unimproved land at the time of acquiring the right of leasehold.

In terms of the amendments proposed by clauses 1 and 2—

- (a) transfer duty will be payable in respect of all conversions of leasehold into ownership;
- (b) the "date of acquisition" for transfer duty purposes will be deemed to be the date on which application for such conversion is made to the relevant authorities or the date on which the owner of the land consents to such conversion, whichever date is the later; and
- (c) the value on which transfer duty will be payable will be the aggregate of the amount of any consideration paid by the holder of

the right of leasehold in respect of the acquisition of such right and the amount of the conversion price, if any, payable to the owner by such leaseholder.

Section 57A (2) of the Black Communities Development Act, 1984, is deleted by clause 26 of the Bill.

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 any company, society or other association (other than a co-operative) formed with the sole or principal object of providing residential accommodation to aged persons (over 60 years of age) or persons who have retired by reason of ill-health or infirmity in a building, housing complex or village. In order to qualify for the exemption at least one meal per day and nursing services must be provided; the profits must be kept to a minimum and no distribution may be made out of any profits that may be made. The carrying on of any business not directly connected with the aforesaid sole or principal object is also not allowed.

CLAUSE 4

Transfer Duty: Amendment of section 12 of the Transfer Duty Act, 1949

The amendment is of a textual nature.

CLAUSE 5

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

The amendment is of a textual nature.

CLAUSE 6

Estate Duty: Amendments to section 4 of the Estate Duty Act, 1955

Section 4 (h) of the Estate Duty Act provides for a deduction in the determination of the net value of an estate of any amount or value of any property which accrues or accrued to—

- (a) any person under conditions requiring such amount or value to be devoted wholly to charitable, educational or ecclesiastical purposes of a public nature within the Republic; or
- (b) any public institution within the Republic for the advancement of science or art, or of a charitable, educational or ecclesiastical nature; or
- (c) the State or any local authority within the Republic.

The amendment effected by *subclause 1 (a)* to the said section 4 (h) will have the effect that a deduction will only be allowed under such section if—

- (a) the value of property to be deducted has not been allowed as a deduction under any other provision of the said section;
- (b) the bequest to the charitable, educational or ecclesiastical institution is made direct to such institution;

- (c) the said institution is one approved by the Commissioner for Inland Revenue (the Commissioner) under the provisions of the Income Tax Act, 1962; and
- (d) the institution for the advancement of science or art is one referred to in section 10 (1) (cB) (i) (aa), (bb), (cc) or (dd) of the Income Tax Act, namely, one whose sole or principal object is—
 - (i) to conduct or promote scientific, technical or industrial research; or
 - (ii) to provide medical, dental, blood transfusion, hospital or nursing services; or
 - (iii) to engage in or promote nature conservation or animal protection activities; or
 - (iv) to engage in or promote activities which the Commissioner is satisfied are of a cultural nature.

Section 4 (m) of the Estate Duty Act provides for a deduction in the determination of the net value of an estate of the value of any usufructuary or other like interest in property and of any right to an annuity charged upon property which has been included in the estate of the deceased, if such interest or right was created by the predeceased spouse of the deceased and the property over which the deceased enjoyed such interest or right *formed part of the estate of such predeceased spouse*. This provision ensures that such interest or right is subject to duty only once, but at least once. With the introduction of section 4 (q) in the Estate Duty Act in 1985, however, so much of the value of any property or deemed property included in the estate of the deceased as accrues to his surviving spouse is allowable as a deduction in the determination of the net value of his estate. It will be observed that any interest or right referred to in section 4 (m) could, as a result of the introduction of section 4 (q), escape liability for estate duty completely as such interest or right will be exempt in both the estate of the predeceased spouse (section 4 (q)) and the estate of the surviving spouse (section 4 (m)). The amendment effected by *subclause 1 (b)* provides that the deduction under section 4 (m) will only be allowed if the value of the interest or right enjoyed by the surviving spouse was not previously deducted in the determination of the net value of the predeceased spouse's estate under section 4 (q).

As mentioned above, section 4 (q) of the Estate Duty Act provides for a deduction in respect of so much of the value of any property as accrues to the surviving spouse of the deceased. The proviso introduced by *subclause 1 (c)* to section 4 (q) provides—

- (a) that such deduction will *not* be allowed to the extent that any amount is required in terms of the will of the deceased to be disposed of to any other person or trust by the surviving spouse;
- (b) no deduction shall be allowed in respect of any property which accrues to a trust established by the deceased for the benefit of the surviving spouse, if the trustee of such trust has a discretion to allocate such property or any income therefrom to any person other than the surviving spouse.”

The proposed amendment to section 4 (q) is intended to prevent estate duty avoidance. It is possible to provide in terms of a will that Rx is bequeathed to the surviving spouse but subject to the condition that she pays, for example, the son a bequest price of Ry, thereby avoiding estate duty on what is in effect a bequest to the son of Ry. Alternatively, the will

may provide that property is to be held in trust for the ostensible benefit of the surviving spouse, but the trustee has the discretion to dispose of the property or income from the trust as he deems best, that is, to persons other than the surviving spouse. Thus, as in the first-mentioned scenario, it is possible to escape estate duty by bequeathing property to the surviving spouse in circumstances where the surviving spouse does not have a vested right to the benefit.

CLAUSES 7 AND 8

Estate Duty: Insertion of section 9A in, and amendments to section 24 of, the Estate Duty Act, 1955

Unlike the Income Tax Act, 1962, and Sales Tax Act, 1978, the Estate Duty Act does not specifically provide for additional assessments or for finality where assessments have been raised and no appeal has been noted. There have been a number of conflicting court decisions regarding when and in what circumstances additional assessments may be raised. In one case the court held that no additional assessments could be raised if all the facts were known to the Commissioner, while in another case it was held that no assessments could be raised once the estate had been dealt with by the Master of the Supreme Court and the Master has issued a filing notice.

The insertion of a new section 9A in, and amendments to section 24 of, the Estate Duty Act proposed by *clauses 7 and 8* are intended to provide certainty as regards additional assessments and finality as regards assessments. In addition a prescription period of five years from the date of the assessment notice is proposed.

CLAUSE 9

Estate Duty: Amendment of section 25 of the Estate Duty Act, 1955

Section 25 of the Estate Duty Act provides for the recovery of duty where such duty has not been paid. The existing provisions are regarded as inadequate and the amendment proposed by clause 9 is intended to bring the provisions dealing with the recovery of duty in the Estate Duty Act more in line with those of the Income Tax Act and Sales Tax Act.

CLAUSE 10

Stamp Duties: Amendment of section 5 of the Stamp Duties Act, 1968

In terms of section 5 of the Stamp Duties Act, the payment of stamp duty must be denoted by means of adhesive revenue stamps for the amount of such duty. However, the section also provides that the Commissioner may at his discretion, where he is satisfied that any person cannot conveniently denote the duty paid in respect of certain instruments, agree that payment of such duty may be acknowledged by means of the issue of a special receipt. The amendment effected to section 5 (1) (iii) by this clause empowers the Commissioner to allow any bank registered under the Banks Act, 1965, to similarly pay duty by means of the issue of a special receipt.

CLAUSE 11

Stamp Duties: Amendment of Item 15 of the Stamp Duties Act, 1968

The amendment is of a textual nature.

**AMENDMENTS TO THE SALES TAX ACT, 1978 (HEREINAFTER
REFERRED TO AS THE PRINCIPAL ACT)**

CLAUSE 12

Definitions: Amendment to section 1 of the principal Act

The amendment to the definition of "charitable institution" proposed by this clause should be read in conjunction with the amendment to section 36 of the principal Act proposed by *clause 19*. At present the Commissioner may only register an institution or organisation as a charitable institution if the institution satisfies him that it is *already* carrying on charitable activities such as, for example, care of the aged or children. Thus, any institution or organisation which is formed for the purpose of providing such care could only be registered as a charitable institution, and hence be entitled to acquire goods intended to be used solely for the carrying out of its charitable activities free of sales tax, once it had commenced to carry out such activities. In terms of the amendments proposed by clauses 12 and 19, the Commissioner will be empowered to register, as a charitable institution for sales tax purposes, any organisation or institution which has not yet commenced carrying on the stipulated charitable activities, provided such institution or organisation satisfies him that it will in fact carry on such activities.

CLAUSE 13

Secrecy: Amendments to section 4 of the principal Act

The Commissioner is prohibited in terms of section 4 of the principal Act from disclosing to any person any information in respect of any other person that may in the exercise of his powers or the performance of his duties under the principal Act come to his knowledge. The only exceptions to this prohibition relate to disclosure in terms of an order of a competent court or in the performance of the duties of the Auditor-General. In terms of the amendment proposed by this clause, the Commissioner would be permitted to disclose such information to the Commissioner for Customs and Excise for the purpose of preventing or combating evasion of any tax, duty or levy imposed under any fiscal law administered by the last-mentioned Commissioner. The Commissioner for Customs and Excise must, however, in terms of the amendment preserve secrecy as respects the information so furnished to him by the Commissioner. Provision is also made for a fine or imprisonment, or both, on conviction for a contravention of the secrecy provisions of section 4 of the principal Act.

CLAUSE 14

Exemption: Amendments to section 6 of the principal Act

A registered vendor may, in terms of section 6 (1) (b) (i), 6 (1) (t) (i) and 6 (1) (v) (i) of the principal Act, purchase, import or apply goods free of tax where such goods are intended for resale *as such*.

However, the exemptions contained in those sections do not apply—

- (a) in respect of goods in the form of containers or packaging or wrapping materials intended for use in connection with the sale by such vendor of other goods in carrying on such enterprise; or
- (b) in the case of a vendor who is registered in respect of any accommodation, hotel or catering enterprise, in respect of goods in the form of eating, drinking or carrying utensils or articles or serviettes intended for resale as adjuncts to the supply of any prepared food or beverage.

The effect of the amendments proposed by this clause is that registered vendors affected by the deletion of the provisos to the sections mentioned above will be permitted to acquire, free of tax, the goods referred to in (a). In addition, in terms of the amendment proposed by *clause 21 (1) (g)*, provision is made for an exemption relating to goods mentioned in both (a) and (b) above which are acquired by any accommodation, hotel or catering enterprise.

CLAUSE 15

Determination of gross value and taxable value: Amendments to section 7 of the principal Act

Clause 15 (1) (a): The application or withdrawal of goods for private or domestic purposes or for use in an enterprise is subject to sales tax in terms of section 5 (1) (h) of the principal Act. Where the goods are applied—

- (a) for the purposes of demonstration; or
- (b) for a period shorter than the remaining useful life of the goods in question,

the value on which sales tax is payable, as contemplated in section 7 (5) (f) and (g) of the principal Act, is calculated at the rate of 10 per cent per annum of the cost of the goods for the period during which such goods are applied. In addition, the date on which sales tax is deemed to have become payable in the case of goods applied for demonstration purposes is the date on which the sale of such goods is concluded by the vendor concerned, while in the case of goods applied for a period shorter than their remaining useful life, sales tax is payable on the date such goods are applied (*vide* section 8 (f) of the principal Act), but in practice this has given rise to certain difficulties in the calculation of the vendor's tax liability.

The method adopted for determining the value on which sales tax is payable and the uncertainty surrounding the date on which liability for the tax arises, has led to uncertainty and abuse. Hence, a new regime is proposed. In terms of the amendments proposed by this clause and *clause 16*, sales tax will be deemed to be payable in respect of goods applied in the circumstances contemplated in paragraphs (a) and (b) above on the last day of *each month* during which the goods are applied in respect of a taxable value equal to one-twelfth of an amount calculated at the rate of 10 per cent per annum of the cost contemplated under the provisions of the principal Act. For example, if goods costing R1 200 are applied for demonstration purposes for four months, then sales tax will be deemed to have become payable on the last day of each month in respect of a taxable value of R10, that is, one-twelfth of 10 per cent of R1 200.

Clause 15 (1) (b): The amendment proposed by this clause is of a textual nature.

Clause 15 (1) (c): The amendment proposed by this clause is intended to provide a rule for the determination of the cost (and hence taxable value) relating to the taxable ingredients which go into cooked or prepared food, as well as that relating to any non-alcoholic drink, which is applied by any hotel or catering enterprise for supply free of charge to any employee of that enterprise. The rule provides that such cost shall be an amount equal to 10 per cent of the list of menu selling price charged by such enterprise for the supply of such food or drink to its patrons.

CLAUSE 16

Date on which tax is deemed to have become payable: Amendment to section 8 of the principal Act

See Clause 15.

CLAUSE 17

Validity of registration certificates: Amendment to section 13 of the principal Act

Section 13 of the principal Act provides for the cancellation of a vendor's sales tax registration certificate in certain circumstances.

The addition of the proviso to section 13 (9) of the principal Act proposed by this clause is intended to give the Commissioner a discretion not to deregister any vendor whose gross annual turnover from the sale of goods or from the rendering of taxable services is less than R50 000, especially in regard to cases where deregistration might have serious repercussions for such a vendor *vis-à-vis* his trading competitors, eg small manufacturers who are primarily concerned with export trade.

The amendment is made retrospective to 4 July 1986 in order to cover all cases of that nature.

CLAUSE 18

Refunds: Amendments to section 32 of the principal Act

Section 32 of the principal Act empowers the Commissioner to make refunds of tax, interest or penalty where the amount paid was in excess of the amount properly chargeable.

By reason of regulations made under section 48 of the principal Act relating to the sale or importation of liquor by certain liquor traders, a position could arise that the tax borne by a liquor trader on the acquisition of his liquor stocks (input tax) exceeds the tax payable by him in respect of the sale of such liquor (output tax), eg where a liquor trader is mainly engaged in selling liquor for export which qualifies for exemption from the tax.

The amendments proposed by this clause make provision for a refund of any amount of tax borne by a registered vendor which is in excess of the tax payable by him for any tax period in consequence of the application of the provisions of the aforementioned regulations.

CLAUSE 19

Registration of charitable institutions: Amendment to section 36 of the principal Act

The amendment proposed by this clause is consequential upon the amendment introduced by *clause 12*.

CLAUSE 20

Taxable services: Amendments of Schedule 1 to the principal Act

The amendment proposed by this clause provides for the inclusion of a provider of coin-operated laundry services as being a person who renders a taxable service in the same way as does a launderer.

As the principal Act now stands, any enterprise providing coin-operated laundry services has to be registered as a rental enterprise for sales tax purposes by virtue of the provisions of paragraph 4 of Schedule 4 to the principal Act which provide that any consideration payable by any person in respect of the use of or the right to use movable goods or the grant of permission to use such goods shall be deemed to be a rental consideration.

Since services rendered in a coin-operated laundry are not very different from those rendered by a laundry, it is proposed that both enterprises should be regarded as rendering taxable services.

In consequence of the amendment proposed by this clause, a consequential amendment to paragraph 4 (vi) of Schedule 4 to the principal Act is introduced by *clause 22*, so as to exclude under normal circumstances the consideration payable for the use of equipment in a coin-operated laundry from being regarded as a rental consideration.

CLAUSE 21

Exemptions: Certain sales of goods and taxable services: Amendments to Schedule 2 to the principal Act

Clause 21 (1) (a): The amendment proposed by this clause is of a textual nature.

Clause 21 (1) (b): The amendment proposed by this clause provides for the tax-free purchase by any Service Enterprise of containers and packaging or wrapping materials (including labels and hangers) intended to be disposed of to customers of that enterprise.

Clause 21 (1) (c): The amendment proposed by this clause confirms the amendment effected to Division IB of Schedule 2 to the principal Act by Government Notice No. 143 of 23 January 1987.

Clause 21 (1) (d): The amendment proposed by this clause is of a textual nature.

Clause 21 (1) (e): The amendment proposed by this clause is of a textual nature and is intended to identify more clearly certain types of machinery or plant in respect of which parts and materials may be purchased free of tax by any Mining or Quarrying Enterprise for the purposes of the repair or maintenance thereof.

Clause 21 (1) (f): The amendment proposed by this clause provides for an exemption in respect of containers and packaging or wrapping materials (including labels) for use in the marketing of all products of any mining or quarrying operation. The existing exemption only relates to packaging materials for use in the packing of asbestos fibre and mined salt.

Clause 21 (1) (g): The amendment proposed by this clause is consequential upon the amendment introduced by *clause 14*, and in addition this clause provides for an exemption in respect of packaging or wrapping materials (including labels) intended to be disposed of to customers of any accommodation, hotel or catering enterprise so as to bring such an enterprise into line with other enterprises in respect of which a similar exemption applies (eg Commercial Enterprises).

CLAUSE 22

Financial leases and rental agreements: Amendment to Schedule 4 to the principal Act

The amendment proposed by this clause is consequential upon the amendment introduced by *clause 20*.

CLAUSE 23

Exemption: Certain goods imported into the Republic: Amendments to Schedule 5 to the principal Act

The amendments proposed by this clause bring the provisions of Item No. 412.10 of paragraph 1 of Part A of Schedule 5, as well as the provisions of paragraph 3 of the same Part, into line with the increased limits introduced into the Customs and Excise Act, 1964, by Government Notices Nos. R.2537 of 8 November 1985 and R.2786 of 13 December 1985.

The amendment to the said Item No. 412.10 has the effect of increasing from R40 to R100 the value per parcel of unsolicited gifts imported into the Republic. The amendment to the said paragraph 3 has the effect of increasing from R10 to R40 the customs value per parcel of printed books, newspapers, journals and magazines imported into the Republic by post. The effect of the amendments is that in both cases the goods in question may be imported into the Republic, free of sales tax, within the limits of the increased values per parcel mentioned above.

CLAUSE 24

Payment of tax in respect of certain goods applied as contemplated in section 5 (1) (h) of the principal Act

This clause introduces a substantive provision relating to the payment of sales tax in respect of any goods, property or asset applied prior to 1 November 1987 as contemplated in section 5 (1) (h) of the principal Act.

In terms of this clause the tax payable in respect of any such application is deemed to have become payable on 1 November 1987 in cases where the provisions of the amendment proposed by *clause 15 (1) (a)* will become operative.

CLAUSE 25

Amendment of section 4 of the Sales Tax Amendment Act, 1986

The amendment proposed by this clause is of a textual nature.

CLAUSE 26

Deletion of section 57A (2) of the Black Communities Development Act, 1984

See clauses 1 and 2.

CLAUSE 27

Withdrawal of Government Notice

In terms of Government Notice No. 143 of 23 January 1987 the Minister of Finance made an amendment to Division IB of Schedule 2 to the principal Act.

That amendment is now confirmed by the amendment proposed by *clause 21 (1) (d)* and this clause proposes that the abovementioned Government Notice be withdrawn.

CLAUSE 28

Short title

In terms of this clause the Act resulting from the passing of this Bill is to be called the Taxation Laws Amendment Act, 1987.