
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 1988

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INTRODUCTION

The Taxation Laws Amendment Bill, 1988, introduces amendments to the Marketable Securities Tax Act, 1948, the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Stamp Duties Act, 1968, and the Sales Tax Act, 1978. Clause 48 of the Bill makes provision for certain stamp duty and transfer duty exemptions and for certain income tax assessment rules to be applicable in certain circumstances in respect of schemes devised not later than 30 June 1989 for the rationalisation of the activities of company groups.

CLAUSE 1

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

The proposed amendment is of a textual nature.

CLAUSE 2

Transfer Duty: Amendment to section 1 of the Transfer Duty Act, 1949

The definition of "Republic" was inserted during 1969 for purposes of including the territory of South West Africa within the jurisdiction of the Commissioner for Inland Revenue. As the imposition of transfer duty in that area is no longer administered by the Commissioner this definition is no longer required.

CLAUSE 3

Transfer Duty: Amendment to section 2 of the Transfer Duty Act, 1949

The proposed amendment is of a textual nature.

CLAUSE 4

Transfer Duty: Amendments to section 9 of the Transfer Duty Act, 1949

Clause 4 (1) (a): The proposed amendment is consequential upon the exclusion of the territory of South West Africa from the jurisdiction of the Commissioner for Inland Revenue.

Clause 4 (1) (b) and (c): The amendments are of a textual nature.

Clause 4 (1) (d): In terms of section 9 (4) (b) trust property transferred by the administrator of a trust to persons entitled thereto under the will or other written instrument is exempt from transfer duty. The proposed

amendment is intended to restrict this exemption to testamentary trusts and inter vivos trusts where the beneficiaries are relatives of the founder of the trust. Business trusts, unknown at the date of the original enactment, would otherwise be capable of qualifying for the exemption in certain circumstances which would be contrary to the purpose of the original enactment.

Clause 4 (1) (e): The amendment is of a textual nature.

Clause 4 (1) (f): The proposed Trust Property Control Act, 1988, requires trust property to be registered in such a manner as to make it clear from the registration that it is trust property. With regard to trust property being administered at the date of commencement of the said Act, the trustee is granted a period of 12 months in which to bring the registration of such property into conformity with the said requirement. Transfer duty is primarily an impost on the acquisition of property and as the requirement vis-à-vis property administered at the date of commencement of the Act is not purported to bring about or have as a consequence a change in ownership, the amendment makes it clear that transfer duty is not payable in such circumstances.

Clause 4 (1) (g), (h) and (i): See clause 4 (1) (a).

Clause 4 (j) and (k): The proposed amendments are of a textual nature.

CLAUSE 5

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

The proposed amendment is of a textual nature.

CLAUSE 6

Transfer Duty: Repeal of section 21A of the Transfer Duty Act, 1949

See clause 4 (1) (a).

CLAUSE 7

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

A difference in meaning has been held to exist between the two official languages in regard to the words "farming operation" and "boerdery" used in the text of the definition of "fair market value" and "billike markwaarde", respectively. The proposed amendment is intended to bring into conformity the language used in the two official texts and to make it clear that the valuation provisions relating to farming property apply not merely if operations described as "farming" are carried on but that a farming undertaking is carried on on such property.

CLAUSE 8

Estate Duty: Amendment to section 2 of the Estate Duty Act, 1955

The proposed amendment is of a textual nature.

CLAUSE 9

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

Clause 9 (1) (a): The proposed amendment will exclude certain donations made during the lifetime of the deceased from the property of his

estate. This, together with a single rate of duty as proposed by *clause 16*, would obviate the cumulative basis and the administrative problems associated therewith. It is moreover in line with the broad philosophy of a Capital Transfer Tax which was recommended by the Margo Commission and accepted by Government.

Clause 9 (1) (b) and (c): These proposed amendments are aimed at retaining the *status quo* in regard to a family company. In terms of the proposed amendments any consideration paid by the deceased in excess of the nominal value of shares allotted or issued to him by such company will continue to be includable in the property of his estate. The original provisions as regards family companies were introduced as anti-avoidance measures and in consequence of *clause 9 (1) (a)* it is deemed necessary to insert an additional paragraph to retain these measures in order to prevent reviving the avoidance schemes which the original provisions sought to terminate.

CLAUSE 10

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

Clause 10 (1) (a): The proposed amendment is intended to make a textual alteration and to include in the list of qualifying institutions and organisations, certain non-profitmaking establishments which offer residential accommodation to aged or retired persons and which are exempt from income tax.

Clause 10 (1) (b) and (c): In terms of the proposed amendments the deductions in respect of the proceeds of certain insurance policies, benefits payable by funds, public stock and bonds and debentures or stock issued by the Land and Agricultural Bank of South Africa will no longer be allowed. A single abatement is proposed in lieu of these two itemised deductions and the abatements under section 4A. (See *clause 11*).

Clause 10 (1) (d): The proposed amendment is of a textual nature.

Clause 10 (1) (e): The amendment proposed by this clause is consequential upon the amendment introduced by *clause 9 (1) (a)*.

Clause 10 (1) (f): In terms of section 4 (o) a deduction is permitted in respect of the value of any books, pictures, statuary or other objects of art which have been lent under a notarial deed to the State, any local authority and certain defined institutions for a period of not less than 50 years. The Margo Commission recommended a reduction in the qualifying loan period to 30 years and this proposal has been accepted by Government, hence the proposed amendment.

CLAUSE 11

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

In terms of the proposed amendment the existing abatements allowed in the determination of the dutiable amount of an estate and the deductions contemplated in *clause 10 (1) (b) and (c)* will be replaced by a single abatement of R1 million.

CLAUSE 12

Estate Duty: Amendments to section 5 of the Estate Duty Act, 1955

Clause 12 (1) (a): The amendment is consequential upon the amendments proposed in *clause 9*.

Clause 12 (1) (b): The amendment is consequential upon the amendments proposed in *clause 10 (1) (e)*.

CLAUSE 13

Estate Duty: Amendment to section 11 (b) of the Estate Duty Act, 1955

The amendment is consequential upon the amendment introduced by *clause 9 (1) (a)*.

CLAUSE 14

Estate Duty: Amendment to section 13 (3) of the Estate Duty Act, 1955

The proposed amendment is consequential upon the amendment introduced by *clause 10 (1) (b)*.

CLAUSE 15

Estate Duty: Amendment to section 16 (6) of the Estate Duty Act, 1955

The proposed amendment is consequential upon the amendment introduced by *clause 9 (1) (a)*.

CLAUSE 16

Estate Duty: Amendment of the First Schedule to the Estate Duty Act, 1955

In terms of the proposed amendment the existing table of progressive rates will be replaced by a single rate of duty of 15 per cent.

CLAUSE 17

Stamp Duties: Amendments to section 1 of the Stamp Duties Act, 1968

Clause 17 (a): The proposed amendment is of a textual nature.

Clause 17 (b), (c) and (d): The imposition of stamp duties in the territory of South West Africa is no longer administered by the Commissioner for Inland Revenue. The proposed amendments delete existing references in section 1 of the Act to "the administration of the territory" and to "the territory".

CLAUSE 18

Stamp Duties: Amendment to section 4 (1) (a) of the Stamp Duties Act, 1968

The proposed amendment is consequential upon the amendments introduced by *clause 17 (b), (c) and (d)*.

CLAUSE 19

Stamp Duties: Amendment to section 5 (4) of the Stamp Duties Act, 1968

Clause 19 (a): The proposed amendment is of a textual nature.

Clause 19 (b): It is proposed in *clause 36* to delete Item 21 of Schedule 1 to the Act. In consequence thereof section 5 (4) (b) will become obsolete and its deletion is accordingly proposed by this clause.

CLAUSE 20

Stamp Duties: Amendment to section 6 (4) of the Stamp Duties Act, 1968

The Margo Commission found that the penalties for the late stamping of documents are entirely inadequate and recommended that they be substantially increased. This recommendation was accepted by Government and a higher maximum penalty in respect of late stamping is proposed in *clause 21*. For similar reasons penalties for other offences under the Stamp Duties Act have been considered and higher maximum penalties are therefore proposed in a number of subsequent clauses.

In terms of the amendment proposed by this clause the maximum penalty contained in the said section in respect of a failure to disclose full facts in an instrument will be increased from R50 to R1 000.

CLAUSE 21

Stamp Duties: Amendment to section 9 of the Stamp Duties Act, 1968

See *clause 20*.

The maximum amount that may be imposed as a validating penalty under paragraph (a) of subsection (1) of section 9 in respect of the late stamping of an instrument will in terms of the proposed amendment be increased from R100 to R2 000 and the minimum amount imposable from 50 cents to R1. In addition, the maximum further penalty that may be imposed under paragraph (b) of the said subsection in respect of the late stamping of an instrument will be increased from R200 to R4 000.

CLAUSE 22

Stamp Duties: Amendment to section 17 of the Stamp Duties Act, 1968

See *clause 20*.

The maximum penalty under section 17 (1) in respect of the issue, receipt, acceptance, endorsement or payment of a bill of exchange which is not duly stamped will in terms of the proposed amendment be increased from R50 to R1 000.

CLAUSE 23

Stamp Duties: Amendment to section 18 (2) (b) of the Stamp Duties Act, 1968

See *clause 20*.

In terms of the proposed amendment the maximum penalty in respect of the receipt of a promissory note which is not duly stamped and failure to stamp will be increased from R50 to R1 000.

CLAUSE 24

Stamp Duties: Amendment to section 22 (4) (a) of the Stamp Duties Act, 1968

The proposed amendment is consequential upon the amendment introduced by *clause 17 (b), (c) and (d)*.

CLAUSE 25

Stamp Duties: Amendments to section 23 of the Stamp Duties Act, 1968

Clause 25 (a): The amendment is consequential upon the amendment proposed in *clause 33 (1) (e)*.

Clause 25 (b): See *clause 20*.

In terms of the proposed amendment the maximum penalty in respect of the failure by a company, corporate body or officer thereof to ensure that certain details are reflected on a scrip, certificate, warrant or other instrument representing such shares, stock or debentures under section 23 (1B) (c) will be increased from R100 to R1 000.

Clause 25 (c): The proposed amendment is of a textual nature.

Clause 25 (d) and (e): See *clause 20*.

The maximum penalties under section 23 (8) and (9) will in terms of the proposed amendments be increased from R50 and R100 to R1 000 and R4 000, respectively. The penalties relate to the failure to date an instrument of transfer or to dating such instrument with an untrue date or to making a false or incorrect endorsement on any instrument of transfer or to the failure of a company, corporate body or officer thereof to comply with certain requirements of section 23.

Clause 25 (f): In terms of Item 15 (4) of Schedule 1, read with section 23 (10) of the Act, stamp duty is levied in respect of the cancellation or redemption of company shares under compromises, arrangements or reconstructions in terms of various provisions of the Companies Act, 1973, if the holder of the cancelled or redeemed shares receives shares in a different company or is to receive cash or any asset from anybody. The duty is payable on the market value of the cancelled or redeemed shares immediately prior to the cancellation or redemption. This provision has been circumvented by providing for preference shares to be redeemed at a premium.

In terms of the amendment to section 23 (10) the duty is to be payable on the greater of the market value or the amount payable in respect of the redemption, including any premium payable.

Clause 25 (g): The proposed amendment is consequential upon *clause 25 (f)*.

Clause 25 (h): Section 23 (12A) of the Act amplifies the provisions of section 23 (10) concerning the duty payable under Item 15 (4) of Schedule 1, as outlined above in the section of this Memorandum dealing with the amendment introduced by *clause 25 (f)*. As explained the duty is payable in respect of the cancellation or redemption of company shares. This provision was circumvented by altering the rights attaching to shares, thus reducing their value, the shareholder being compensated. Section 23 (12A) provides

for this situation. This provision, too, has been circumvented by other schemes for reducing the value of shares without directly affecting the rights attaching to the shares. The amendment is designed to curb this.

Clause 25 (i): The proposed amendment is consequential upon *clause 25 (f)*.

Clause 25 (j): See *clause 20*.

The maximum penalty under section 23 (19) will in terms of the proposed amendment be increased from R100 to R1 000. The penalty relates to failure to comply with various technical requirements of section 23 in connection with the stamp duty imposed under Item 15 (5) of Schedule 1 to the Act in cases involving nominees.

CLAUSE 26

Stamp Duties: Amendment to section 24 (2) of the Stamp Duties Act, 1968

See *clause 20*.

In terms of the proposed amendment the maximum penalty under section 24 (2) will be increased from R100 to R1 000. This relates to the stamp duty on insurance policies. The said provision requires an insurer to issue a policy of insurance within one month after receiving or taking credit for a premium. Failure to do so results in a penalty being incurred, as does the payment under a policy which is not duly stamped.

CLAUSE 27

Stamp Duties: Amendment to section 26 of the Stamp Duties Act, 1968

See *clause 20*.

In terms of the proposed amendment the maximum penalty under section 26 will be increased from R100 to R2 000. The penalty is imposable on a conviction for entering or attesting any date which is not a true date in relation to stamping of an instrument or the defacement of a stamp thereon or for misstating a fact relative to the character of an instrument or the duty chargeable thereon or to acts or omissions whereby duty is evaded or attempted.

CLAUSE 28

Stamp Duties: Amendments to section 27 of the Stamp Duties Act, 1968

See *clause 20*.

The maximum pecuniary penalties under section 27 (1) and (2) will in terms of the proposed amendment be increased from R1 000 and R200 to R10 000 and R4 000, respectively. This section provides for such penalties to be imposable on conviction for various offences involving forgery or fraud or for the imposition of a prison sentence of up to 2 years under section 27 (1) or 6 months under section 27 (2).

CLAUSE 29

Stamp Duties: Amendments to section 28A of the Stamp Duties Act, 1968

See clause 20.

In terms of the proposed amendment the maximum pecuniary penalty under section 28A will be increased from R200 to R4 000. This section provides for such penalty to be imposed in respect of the illegal dealing in revenue stamps or being in possession of a revenue stamp which the person concerned knows has been removed from an instrument and which he intends to use, sell or dispose of improperly or for the imposition of a prison sentence of up to 6 months.

CLAUSE 30

Stamp Duties: Amendment to section 33 (2) of the Stamp Duties Act, 1968

See clause 20.

In terms of the proposed amendment the maximum penalty which may be provided for in respect of a contravention or failure to comply with a regulation made by the Minister of Finance under section 33 (1) will be increased from R100 to R2 000.

CLAUSE 31

Stamp Duties: Amendment to section 37A of the Stamp Duties Act, 1968

The proposed amendment is consequential upon the exclusion of South West Africa from the jurisdiction of the Commissioner for Inland Revenue.

CLAUSE 32

Stamp Duties: Amendments to Item 6 of Schedule 1 to the Stamp Duties Act, 1968

Clause 32 (1) (a) and (b): These proposed amendments are of a textual nature.

Clause 32 (1) (c): The duty under this item will in terms of the proposed amendment be extended to debit entries posted to a transmission account at a bank or building society or a telebank account at the Post Office Savings Bank.

CLAUSE 33

Stamp Duties: Amendments to Item 15 of Schedule 1 to the Stamp Duties Act, 1968

Clause 33 (1) (a): The proposed amendment is of a textual nature.

Clause 33 (1) (b): See clause 31.

Clause 33 (1) (c): The proposed amendment is of a textual nature.

Clause 33 (1) (d): See clause 4 (1) (f) in which a similar exemption from transfer duty is provided in respect of the registration of property in the name of a trustee in his capacity as such.

Clause 33 (1) (e): Section 9 (1) (e) of the Transfer Duty Act, 1949, provides for an exemption in respect of property acquired by an heir or legatee *ab intestato* or by testamentary succession or as a result of a

redistribution of the assets of a deceased estate in the process of liquidation. The Margo Commission recommended that a similar exemption be inserted in the Stamp Duties Act, 1968, and Government has accepted this proposal. In terms of the proposed amendment the registration of transfer of marketable securities into the name of an heir or legatee will therefore be exempt from duty in the circumstances contemplated.

CLAUSE 34

Stamp Duties: Amendments to Item 18 of Schedule 1 to the Stamp Duties Act, 1968

Clause 34 (a): The proposed amendment is of a textual nature.

Clause 34 (b): The provisions relating to the imposition of duty on insurance policies issued under the Motor Vehicles Insurance Act, 1972 (Act No. 56 of 1972), will in terms of the proposed amendment be repealed as they have become obsolete.

Clause 34 (c) and (d): The proposed amendments are of a textual nature.

CLAUSE 35

Stamp Duties: Amendments to Item 20 of Schedule 1 to the Stamp Duties Act, 1968

Clause 35 (a) and (b): See clause 31.

CLAUSE 36

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

In terms of the proposed amendment Item 21 which provides for the imposition of duty on transfer deeds will be repealed. The item has by reason of the exemption under paragraph 3 virtually become obsolete.

CLAUSE 37

Definitions: Amendments to section 1 of the Sales Tax Act, 1978

Clause 37 (a): This amendment is of a textual nature.

Clause 37 (b): The amendment to the definition of "exported" in section 1 of the Sales Tax Act proposed by this clause provides that goods, consisting of liquor which form the subject of a sale for exportation to any place outside the common customs area (ie to countries other than Transkei, Bophuthatswana, Venda, Ciskei, Botswana, Lesotho, Swaziland or South West Africa) from any licensed customs and excise warehouse in respect of which the letters OS have been allocated, will be treated as having been "exported" in terms of that definition and consequently no sales tax will be leviable in respect of such a sale by virtue of the exemption contained in section 6 (1) (a) (i) of the Sales Tax Act. However, the seller of such goods is required to comply with the procedures and conditions prescribed by the Commissioner for Customs and Excise regarding the clearance and removal of the goods from such a warehouse, so as to ensure that the goods are in fact taken out of the Republic.

CLAUSE 38

Determination of tax payable in respect of an enterprise: Amendment to section 11 of the Sales Tax Act, 1978

In terms of the provisions of section 11 (2) (iii) of the Sales Tax Act, any vendor is entitled to claim a debtors allowance in relation to any enterprise carried on by him where credit has been granted to purchasers in respect of any consideration taken into account in the determination of any taxable value. The allowance is calculated on the total amount owing to the vendor by purchasers at the end of any tax period in respect of such consideration and finance charges or interest relating thereto, but may not exceed 50 per cent of that total amount.

Inasmuch as the granting of such an allowance is unique in any sales tax system and certainly is not provided for in the usual value-added tax (VAT) system which the Government has proposed should be introduced to replace the present sales tax system, the amendment proposed by this clause provides for a gradual phasing out of the debtors allowance over the tax periods mentioned in the amending provision.

This procedure should to some degree avoid the cash-flow problems for vendors that would have been the case had the allowance been summarily discontinued on the introduction of VAT.

CLAUSE 39

Use of registration certificate for exemption purposes: Amendments to section 14 of the Sales Tax Act, 1978

The amendments introduced by this clause is to remove any doubt which could arise as a result of the exercise which Inland Revenue embarked on by the issue of revised sales tax registration certificates to registered vendors. By Government Notice No. R.2209 of 2 October 1987 all sales tax registration certificates issued in a form prescribed prior to 1 June 1987 were declared to be no longer valid with effect from 1 December 1987.

The purpose of these amendments is to provide that only *valid* registration certificates (ie certificates issued to vendors on or after 1 June 1987 in the revised form) may be utilized by registered vendors when claiming exemption from sales tax.

CLAUSE 40

Agreements for granting relief to certain vendors in specified countries arising out of certain regulations made by the Minister of Finance: Introduction into the Sales Tax Act, 1978 of a new section, numbered 48A

The provision introduced into the Sales Tax Act as proposed by this clause is designed to empower the Government of the Republic to enter into an agreement with the Government of any *specified country* (namely, Botswana, Lesotho, Swaziland, South West Africa or any other country which formerly formed part of the Republic) which levies a sales tax or a substantially similar tax, with the view to granting relief to any class of

vendors trading in such a country where such vendors have been placed at a disadvantage in consequence of any regulation made by the Minister of Finance under the provisions of section 48 (2) of the Sales Tax Act.

This provision also provides for payments to be made by the Government of the Republic to the Government of any country with which such an agreement has been concluded of any tax borne in the Republic by the vendors concerned who may have been placed at a disadvantage by reason of any regulation made by the Minister of Finance in terms of section 48 (2) of the Sales Tax Act.

Provision may also be made in such an agreement for the establishment and constitution of a committee comprised of representatives of the contracting Governments to perform functions relating to the implementation and monitoring of matters arising out of such an agreement.

CLAUSE 41

Act binding on State and effect of certain exemptions from taxes: Amendment to section 52 of the Sales Tax Act, 1978

The amendment proposed by this clause is designed to clarify the original intention when section 52 of the Sales Tax Act was enacted, namely, that no exemption from any taxes provided in any other law promulgated on or before 31 July 1978 would be applicable to sales tax.

However, it has been found that other laws promulgated after that date have provided for an exemption from what is described as "any duty", thus giving rise to an argument that the term "duty" includes a tax.

To remove any doubt in that regard, this clause provides that no provision in any other law promulgated before on or after the date of commencement of the Sales Tax Act (ie 3 July 1978) providing for an exemption from "any tax or duty" shall be construed as being applicable to sales tax, unless that tax is specifically mentioned in such a provision.

CLAUSE 42

Taxable services: Amendments to Schedule 1 to the Sales Tax Act, 1978

Schedule 1 to the Sales Tax Act defines the services which are deemed to be taxable services for sales tax purposes. The amendments proposed by this clause are of a textual nature and were effected by Government Notice No. R.2884 of 31 December 1987, the withdrawal of which is now proposed by *clause 47* of this Bill.

The amendments were designed to clarify the law relating to taxable services rendered in respect of machinery or plant used for the purposes of the operations of any power station, as also in regard to the treatment for sales tax purposes of composite agreements providing for the rendering of services and the supply of materials required for the rendering of those services.

CLAUSE 43

Exemption: Certain goods imported into the Republic: Amendments to Schedule 5 to the Sales Tax Act, 1978

Clause 43 (1) (a): The amendment is of a textual nature.

Clause 43 (1) (b): The amendment proposed by this clause brings paragraph 2 (v) of Part A of Schedule 5 to the Sales Tax Act into line with the amendment to section 38 (1) (a) (v) of the Customs and Excise Act, 1964, effected by section 9 (9) of the Customs and Excise Amendment Act, 1987. The effect of this amendment is to increase the existing sales tax exemption limit from R100 to R200.

Clause 43 (1) (c): The amendment proposed by this clause provides for an exemption from sales tax in respect of the importation from any *specified country* (namely, Botswana, Lesotho, Swaziland, South West Africa or any other country which formerly formed part of the Republic) of any motor vehicle, constituting an asset of any *bona fide* enterprise, business concern or professional practice actively carried on in such a country, which is temporarily admitted into the Republic in the course of his employment by an employee of such enterprise, concern or practice who is ordinarily resident in the Republic. It is a requirement that the employee does not have any direct or indirect financial interest or share in such enterprise, concern or practice.

The purpose of this amendment is to grant an exemption from sales tax in respect of the importation into the Republic from any specified country of motor vehicles constituting assets of any enterprise, business concern or professional practice actively carried on in such a country, where such vehicles are required by an employee of such enterprise, concern or practice who is ordinarily resident in the Republic in order to carry out his duties (eg employees resident in the Republic who require the use of a motor vehicle owned by their employers in such country in case of being called out for duty after working hours).

CLAUSE 44

Exemption: Certain goods in the form of foodstuffs: Amendment to Schedule 7 to the Sales Tax Act, 1978

The amendment proposed by this clause brings the classification of milk powder in paragraph 9 (b) of Schedule 7 to the Sales Tax Act into line with revised classifications of milk powder determined by the Minister of Agriculture in terms of regulations under the Marketing Act, 1968.

CLAUSE 45

Repeal of amendments

This clause proposes the repeal of an amendment effected by section 4 of the Sales Tax Amendment Act, 1985, in so far as it relates to section 14 (2) of the Sales Tax Act.

The purpose of that amendment was to introduce a form of declaration which would have to be completed by a registered vendor when utilizing his sales tax registration certificate to claim permissible exemptions from sales tax. That amendment was to have come into operation on a date to be fixed by the Minister of Finance by notice in the *Government Gazette*, to afford time for consultations with organised commerce and industry before the

measure was introduced. Due to practical problems which were identified during those discussions and taking into account the proposed transition to a value-added tax, the intended introduction of such a procedure has since been considered to be inappropriate at this stage.

CLAUSE 46

Register of persons carrying on business as suppliers of goods and services

The substantive provisions in this Bill proposed by this clause are designed to empower the Commissioner for Inland Revenue to take preliminary steps towards compiling and maintaining a register of persons carrying on business as suppliers of goods or services and the allocation of registered numbers in view of the announcement made by the State President in Parliament on 5 February 1988 to the effect that the system of sales tax imposed under the Sales Tax Act is to be replaced by a value-added tax.

Provision is also made for the manner in which the required information for the purposes of such a register may be called for by the Commissioner, as also for penalties on conviction for failure on the part of any person to comply with any notice calling for such information to be furnished.

CLAUSE 47

Withdrawal of Government Notice

In terms of Government Notice No. R.2884 of 31 December 1987 the Minister of Finance made certain amendments to Schedule 1 to the Sales Tax Act. Those amendments have now been confirmed by the amendment proposed by *clause 42* of this Bill and this clause proposes that the relevant Government Notice be withdrawn.

CLAUSE 48

Temporary exemptions from stamp duties and transfer duty in order to facilitate a scheme for the rationalisation of a group of companies and assessments for income tax purposes on the implementation of such a scheme

At present a group of companies may be deterred by tax considerations from entering into a scheme for the rationalisation of the activities of the companies in the group, particularly where a transfer of shares or property from one company to another company in the group is involved, resulting in either stamp duty or transfer duty becoming payable. This clause provides for exemptions from these duties for a limited period in the circumstances set out in the clause.

Subclause (1) contains a number of definitions, most of which are self-explanatory. In terms of the definition of "*controlling company*" a company is regarded as a controlling company if it holds shares in another company (whether directly or indirectly through one or more companies in a group of which all the companies concerned are members) representing at least 75 per cent of the voting rights of all the shareholders in the other company. (The shares held by a trustee under a share incentive scheme for employees referred to in section 38 (2) (b) of the Companies Act, 1973, are added to the shares of the "parent" company for the purpose of determining whether the 75-per-cent condition is met or not). A "*group of companies*" consists of a controlling company and one or more other companies which are controlled by the controlling company. The group must have been in existence on 17 June 1988 and also at the time of the agreement referred to in subclause (2).

Subclause (2) provides exemptions from stamp duty and transfer duty where one company in the group sells or disposes of any marketable security or immovable property to another company in the group or cedes to the other company a mortgage bond hypothecating immovable property or the other company is substituted for the first-mentioned company as the debtor under such a bond, if various conditions are met, which in brief are as follows:

- (a) A written agreement between the two companies must have been concluded on or after 17 June 1988 and on or before 30 June 1989, providing for the relevant sale, disposal, cession or substitution of debtor.
- (b) The agreement must have been concluded under a scheme for the rationalisation of the activities of the group.
- (c) The sole or main object of the scheme must be the achievement of substantial and enduring savings of operational expenditure or substantial and enduring operational or administrative advantages.
- (d) A consideration must be payable by the transferee company to the transferor company in respect of the transferee company's acquisition of the marketable security, property or bond in question and such consideration should be equal to the market value of the security, property or bond, unless the controlling company and the Commissioner have agreed upon another value. Alternatively, the security, property or bond may be disposed of by the transferor company to the transferee company by way of a dividend *in specie*.
- (e) The agreement, a written statement giving details of the scheme and certain other documents must be submitted by or on behalf of the controlling company of the group to the Commissioner on or before 30 June 1989.
- (f) An exemption certificate has to be issued by the Commissioner in the appropriate circumstances. (A certificate of this nature will be required by the Deeds Office or share registrar).

In terms of *subclause (3)* the relevant exemption will lapse if the registration of transfer of the marketable security or property or the cession of the bond or the substitution of a debtor under a bond is not effected within six months after the date of the Commissioner's certificate or within such further period as the Commissioner may allow.

Subclause (4) provides for the withdrawal of the Commissioner's certificate where it was obtained by fraud or in consequence of any misrepresentation or failure to disclose any material fact. The exemption is deemed to have been withdrawn from the date of issue of the certificate.

Subclause (5). Rationalisation schemes often have income tax as well as stamp duty or transfer duty implications and this subclause provides certain rules which should facilitate the implementation of such schemes. The proposed rules are shortly as follows:

- (a) If the marketable security, property or bond was held by the transferor company as trading stock it will be deemed to be trading stock in the hands of the transferee company unless a consideration was given equal in value to not less than the fair market value of the security, property or bond. If no consideration was given the security, property or bond will not have any value as trading stock in the hands of the transferee company. The proceeds of such security, property or bond, when disposed of by the transferee company, are deemed to be income of that company derived by it in the course of a trade carried on by it separately from any other trade carried on by it. Any special taxation rules applicable to such other trade, eg in the case of a long-term insurance company, will not be applicable to such income. The provisions of the Income Tax Act allowing the set off against income of one trade of an assessed loss incurred in carrying on another trade are not affected.
- (b) Where property sold or disposed of under an agreement contemplated in subclause (2) includes a building in respect of which any allowance has been granted under the Income Tax Act the transferor company and the transferee company are for the purpose of calculating any allowance granted to the transferee company in respect of the building or any recoupment of the allowances granted to the two companies, deemed to be one and the same company. The main effects of this provision are that the consideration passing between the two companies in respect of the sale or disposal will be ignored, the cost of the building, as determined in the hands of the transferor company, remains unchanged, any recoupment of the allowances in respect of the building will be based on such cost and any allowances granted to the transferor company in respect of the building will be recoupable in the hands of the transferee company. Any such recoupment will be treated as being derived from a separate trade, as in the case of an amount derived from the sale of trading stock as explained in paragraph (a) above.
- (c) The provisions outlined in paragraphs (a) and (b) will frequently not be adequate, eg where no marketable security, property or bond is sold or disposed of but the rationalisation scheme involves the termination of certain allowances. *Subclause 5 (c)* enables the controlling company and the Commissioner to agree, possibly subject to conditions, that the two companies be treated for income tax purposes as one company. The transfer of an assessed loss incurred by the selling company to the purchasing company is, however, prohibited. In terms of *subclause (6)* any such agreement will be binding on the selling company, the purchasing company and the Commissioner.

CLAUSE 49

Short title

This clause prescribes the short title of the Act.