REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 1989

[W.P. 1—'89]

ISBN 0 621 11970 9

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM ON THE TAXATION LAWS AMENDMENT BILL, 1989

INTRODUCTION

The Taxation Laws Amendment Bill, 1989, introduces amendments to the Transfer Duty Act, 1949, the Stamp Duties Act, 1968, the Companies Act, 1973, the Regional Services Councils Act, 1985, the Sales Tax Act, 1978, and the Taxation Laws Amendment Act, 1988.

CLAUSE 1

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

Clause 1 (1) (a): Section 9 (1) *(e)* grants *inter alia* an exemption from transfer duty in respect of property acquired by an heir or legatee by way of testamentary succession. It sometimes happens that property of a person other than the deceased is alienated in this manner, for example in the case of massing where an heir or legatee acquires property from the survivor in terms of a mutual will.

The proposed amendment is aimed at the restriction of the exemption to property of the deceased.

Clause 1 (1) (b): In terms of a marriage concluded in community of property, each spouse owns an undivided half share in the joint estate. Where one person therefore concludes a marriage in community of property with another and one of them was, before the date of contraction of their marriage, already the owner of property, the other party acquires an undivided half share in that property on the date of their marriage by operation of law.

In the past it has been the practice of Inland Revenue not to levy transfer duty in such instances. It was argued that as the property was already registered in the name of the relevant spouse, no further registration of transfer was therefore necessary.

As transfer duty is levied on the acquisition of property and not in respect of the registration of transfer thereof, it is the purpose of the proposed amendment to remove any uncertainty in this regard and to provide for a specific exemption where property is acquired in such a manner. The provisions of the Matrimonial Property Act, 1984, with regard to marriages in community of property, as well as the consequential amendments to section 17 and the definition of "owner" in section 102 of the Deeds Registries Act, 1937, also greatly contributed to this amendment.

Clause 1 (1) (c): The Melamet Commission recommended that composite insurance companies should be requested to conduct each business as a separate company. The purpose of the proposed amendment is to grant an exemption in respect of the acquisition of property by a registered insurer as a result of the transfer of insurance business as contemplated in section 25A of the Insurance Act, 1943.

CLAUSE 2

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

The proposed amendment is of a textual nature.

CLAUSE 3

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

The proposed amendment is of a textual nature.

CLAUSE 4

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

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

Clause 4 (1) (c): The proposed amendment amends the provisions of section 4 (1) *(f)* of the Act by—

(a) linking such section to the provisions of section 10 (1) *(f)* of the Income Tax Act, 1962; and

(b) extending the exemption to institutions, companies, societies or associations as contemplated in section 10 (1) *(c*B*)* (i) *(aa)*, *(bb)*, *(cc)* and *(dd)* as well as 10 (1) *(c*F*)* of the Income Tax Act, 1962.

CLAUSE 5

Stamp Duties: Amendment to section 7 of the Stamp Duties Act, 1968

Clause 5 (a): The amendment proposed by this clause is consequential upon the deletion of Item 21 of Schedule 1 to the Act by section 36 of the Taxation Laws Amendment Act, 1988.

Clause 5 (b): The amendment proposed by this clause is consequential upon the extension of Item 6 of Schedule 1 to the Act to debit entries posted to a transmission account at a bank or building society or a telebank account at the Post Office Savings Bank, by section 32 (1) *(c)* of the Taxation Laws Amendment Act, 1988.

CLAUSE 6

Stamp Duties: Amendment to section 19 of the Stamp Duties Act, 1968

See the explanation in respect of clause 5 *(b)* above.

CLAUSE 7

Stamp Duties: Amendment of section 22 of the Stamp Duties Act, 1968

The proposed amendment is of a textual nature.

CLAUSE 8

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

The proposed amendments are consequential upon the deletion of section 23 (1A) of the Act by section 25 *(a)* of the Taxation Laws Amendment Act, 1988.

CLAUSE 9

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

The proposed amendment is consequential upon the deletion of Item 18 (3) of Schedule 1 to the Act by section 34 *(b)* of the Taxation Laws Amendment Act, 1988.

CLAUSES 10, 11 AND 12

Stamp Duties: Amendment to Items 2, 3 and 13A of Schedule 1 to the Stamp Duties Act, 1968

Clause 10 increases the duty on an agreement in respect of which no other duty is specifically provided (Item 2 of the Schedule) from R1,00 to R2,00. The new rate of duty is deemed to have come into operation on 1 April 1989.

Clause 11 increases the duty on an antenuptial or post-nuptial contract (Item 3 of the Schedule) from R5,00 to R10,00 with effect from 1 April 1989.

Clause 12 extends the present scale for the charging of stamp duty on a hire-purchase agreement or contract or financial lease (Item 13A of the Schedule) with effect from 1 April 1989.

CLAUSE 13

Stamp Duties

Clause 13 enacts a transitional provision which is necessary because certain of the increased tariffs are effective as from 1 April 1989. Those instruments which during the period from the said date to the date of promulgation of the Taxation Laws Amendment Act, 1989, 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 14

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

Clause 14 (1) (a): Last year paragraph *(r)* under the heading "*Exemptions from the duty under paragraph (3)*" was added as a result of a recommendation by the Margo Commission for the introduction of an exemption in respect of the registration of transfer of marketable securities, similar to that contained in section 9 (1) *(e)* of the Transfer Duty Act, 1949, in respect of the acquisition of property by an heir or legatee. Difficulties however arose in the application of paragraph *(r)* in cases where a testamentary trust was created and a second registration of transfer of the relevant marketable securities had to be effected from the trustee to the beneficiary. The proposed amendment, namely the insertion of paragraph *(s)* under the heading "*Exemptions from the duty under paragraph (3)*", is intended to remove any uncertainty in this regard and to bring it more in line with the exemption contained in section 9 (4) *(b)* (i) of the Transfer Duty Act. A registration of transfer of any marketable security from a deceased estate to a trustee under a testamentary trust created by the deceased, as well as the further registration of transfer of such marketable security from the trustee to a beneficiary entitled to such marketable security in terms of the will, at the happening of a certain event, will now be exempt.

In terms of *clause 14 (1) (a)* a further paragraph *(t)* is also inserted under the heading "*Exemptions from the duty under paragraph (3)*". One of the methods by which the Minister of Finance may raise loans is by the issue of public stock and bonds and by the issuing of treasury bills in terms of section 19 (1) *(b)* of the Exchequer and Audit Act, 1975. That section furthermore provides that the Minister may make such issues on such terms and conditions as he may deem fit. One of the general conditions listed in the prospectus governing the aforementioned issues of marketable securities, is that such marketable securities will be transferred free of stamp duty.

The proposed amendment is aimed at placing the exemption in respect of the registration of transfer of marketable securities of this nature on a more sound footing, namely by way of a specific exemption enacted in an Act of Parliament.

Clause 14 (1) (b): See the explanation in respect of clause 1 (1) *(c)* above. The proposed amendment is designed to grant an exemption in respect of the registration of transfer of marketable securities to a registered insurer as a result of the transfer of insurance business in terms of section 25A of the Insurance Act, 1943.

Clause 14 (1) (c): The proposed amendment is of a textual nature.

Clause 14 (1) (d): Just as paragraph *(r)* under the heading "*Exemptions from the duty under paragraph (3)*" grants an exemption from stamp duty in respect of the registration of marketable securities to an heir or legatee under certain circumstances, the proposed amendment is intended to grant a similar exemption in respect of the acquisition of marketable securities as envisaged in Item 15 (5) of the Schedule. The basis for the charging of stamp duty in terms of Item 15 (5), however, differs from Item 15 (3) in that it is based on the acquisition of marketable securities and not on the registration of transfer thereof. In addition it is restricted to cases where nominees are involved and there is a change in beneficial ownership without a registration of transfer being effected.

CLAUSE 15

Amendment to section 98 (2) of the Companies Act, 1973

The Margo Commission has recommended that the proviso to section 98 (2) of the Act be deleted as the stamp duty on the transfer of shares is effectively avoided in practice by devices entailing the conversion of the shares to be disposed of into redeemable preference shares and the subscription for new shares, the proceeds of which are used to redeem such redeemable preference shares. The issue of any new shares are then made free from stamp duty. Although Inland Revenue does not recognize such exemption for purposes of stamp duty chargeable in terms of Item 15 (1) of Schedule 1 to the Stamp Duties Act, 1968, on the issue of such new shares, the Margo Commission's recommendation was accepted in order to remove any uncertainty in this regard. This matter was also taken up with the Registrar of Companies and the proposed amendment meets with his approval as well as that of the Permanent Advisory Committee on Company Law.

CLAUSE 16

Regional services levy and regional establishment levy: Amendment to section 12 of the Regional Services Councils Act, 1985

The proposed amendment amends the provisions of section 12 (1A) *(dC)* of the Act in order to provide for shorter periods in which payment of the regional services levy and regional establishment levy may be made. The approval of the Action Committee of the Council for the Co-ordination of Local Government Affairs has been obtained to include the amendment in the Taxation Laws Amendment Act, 1989.

CLAUSE 17

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

This clause introduces a definition of a "returnable container" into the Sales Tax Act.

The introduction of such a definition is deemed necessary in order to remove any doubts as to what constitutes a "returnable container" in the context of certain provisions in the aforesaid Act.

In terms of the definition introduced by this clause, a container will be regarded as being a "returnable container" if the ownership thereof is not transferred at the time of the sale of the contents thereof to any purchaser and a specified amount is usually charged as a deposit by the seller upon the express undertaking of the vendor that the deposit will be refunded or allowed as a credit to the purchaser against the return of that container, i.e. a true deposit system must apply with regard to such a container. See also the explanation relating to clause 21.

CLAUSE 18

Rate of sales tax: Amendment to section 5 of the Sales Tax Act, 1978

As announced by the Minister of Finance in his Budget Speech delivered on 15 March 1989, the rate of sales tax was increased from 12 to 13 per cent with effect from 20 March 1989.

The amendment to section 5 of the Sales Tax Act proposed by this clause serves to confirm the new rate.

CLAUSE 19

Determination of gross value and taxable value: Amendment to section 7 of the Sales Tax Act, 1978

Section 7 (3) *(a)* of the Sales Tax Act provides that where under any agreement or transaction treated as a *sale* of goods for the purposes of that Act, goods are disposed of or the ownership therein passes or is to pass without the payment of any consideration to the seller, or for a consideration which is less than the cost of those goods to the seller, a consideration in respect of that sale shall be deemed to have accrued to the seller equal in value to such cost or the *market value* of the goods at the time of the sale, whichever is the lower.

In normal circumstances goods in the form of catalogues or samples of goods offered for sale by vendors carrying on an enterprise are usually brought to account for sales tax purposes under the provisions of section 5 (1) *(h)* of the Sales Tax Act, i.e. that such goods are applied for use in the enterprise itself and are not intended for sale.

By the simple expedient of giving such goods away, i.e. donating them, and passing ownership in the goods to customers or potential customers, enterprises have contrived that a sale of such goods has taken place (a donation being regarded as a sale within the definition of "sale" in section 1 of the Sales Tax Act), and consequently since those goods, being catalogues or samples, have really no market value, no sales tax is payable.

It should be borne in mind that the goods in question would have been acquired free of sales tax, but because there has been a "sale" of such goods, the provisions of the aforesaid section 5 (1) *(h)* would consequently not be applicable. Accordingly, the amendment proposed by this clause provides that a consideration in respect of such a sale be deemed to have accrued to the seller equal in value to the cost of the goods to the seller. The proposed amendment would have the effect of maintaining neutrality as to the sales tax consequences relating to the two situations regarding catalogues and samples, i.e. whether the goods in question are disposed of under a sale or applied for use in an enterprise the tax consequences will be the same.

CLAUSE 20

Persons liable for the payment of sales tax: Amendment to section 9 of the Sales Tax Act, 1978

Section 9 *(d)* of the Sales Tax Act provides for a general rule that where goods are imported into the Republic of South Africa, the importer is responsible for payment of sales tax in respect of such imported goods. Where, however, goods are not required to be cleared under the Customs and Excise Act, 1964, that section provides that if the tax has not been paid by the importer of the goods, the purchaser in relation to any *subsequent sale* of the imported goods must pay the tax.

Since goods imported into the Republic are not always imported for the purposes of any sale here (e.g. the goods may be imported for the purpose of being leased under a financial lease or rental agreement), the amendment proposed by this clause makes provision for all such contingencies concerning such imported goods.

CLAUSE 21

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

The amendment proposed by this clause is of a textual nature designed to bring the provisions of section 11 (2) (ii) of the Sales Tax Act into line with the practical application of those provisions as provided on the sales tax return required to be furnished for each tax period by any registered vendor. See also the explanation relating to clause 17.

CLAUSE 22

Returns, declarations and payment of tax: Amendment to section 17 of the Sales Tax Act, 1978

The amendment proposed by this clause is of a textual nature and is designed to remove any doubt that the failure to furnish any return or declaration *and* to pay any sales tax constitutes an offence.

CLAUSE 23

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

The amendments proposed by this clause are of a textual nature and are designed merely to clarify the existing provisions of paragraph 1 of Schedule 1 to the Sales Tax Act.

CLAUSE 24

Financial leases and rental agreements: Amendment to Schedule 4 to the Sales Tax Act, 1978

The amendment proposed by this clause is of a textual nature and is consequential upon the amendment proposed by *clause 23.*

CLAUSE 25

Withdrawal of Government Notice

In terms of Government Notice No. 506 of 15 March 1989, the Minister of Finance announced an increase in the rate of sales tax from 12 to 13 per cent with effect from 20 March 1989.

Confirmation of the increased rate is proposed in *clause 18* of the Bill and this clause proposes that the aforesaid Government Notice be withdrawn.

CLAUSE 26

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

The proposed amendment is aimed at extending the temporary exemption from stamp duties and transfer duty in order to facilitate a scheme for the rationalisation of a group of companies. The cut-off date on which the relevant group of companies must have been in existence is extended from 17 June 1988 to 22 May 1989, while the last day for the conclusion of an agreement governing the rationalisation and the lodging of an application for exemption, is extended from 30 June 1989 to 30 June 1990.

CLAUSE 27

Short title

In terms of this clause the Act resulting from the passing of the Bill is to be called the Taxation Laws Amendment Act, 1989.