
REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 1990

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INTRODUCTION

The Taxation Laws Amendment Bill, 1990, introduces amendments to the Sales Tax Act, 1978, the Regional Services Councils Act, 1985, and the Taxation Laws Amendment Act, 1988. Clause 9 of the Bill makes provision for certain transfer duty and stamp duty exemptions relating to the privatisation of The Deciduous Fruit Board.

CLAUSE 1

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

Subclause (1) (a), (b) and (c): In consequence of the abolition of the *ad valorem* customs and excise duty on certain items of jewellery, as announced by the Minister of Finance in his Budget Speech in Parliament on 14 March 1990, the licensing of VSJ special customs and excise warehouses in the jewellery trade and the procedures relating to the clearance and removal of goods therefrom no longer apply.

Since the exemption from sales tax in section 6 (1) (a) (i) of the Sales Tax Act, read with paragraph (bA) (i) of the definition of "exported" in section 1 of that Act, in respect of any sale of goods concluded from such VSJ warehouses was made subject to compliance with the procedures and conditions prescribed by the Commissioner for Customs and Excise, it is now necessary to provide for alternative procedures for regulating the continued exemption from sales tax relating to sales of specified articles of jewellery to foreign tourists/visitors to the Republic of South Africa from previously licensed VSJ special customs and excise warehouses.

The amendment proposed by *subclause (1) (c)* provides for a continuation of the previous exemption from sales tax in respect of such sales, subject to compliance with the procedures and conditions prescribed by the Commissioner for Inland Revenue regarding the production of proof that the goods in question have been exported from the Republic by the purchasers concerned.

The amendment is to be deemed to have come into operation on 17 April 1990, which is the date on which the aforesaid new procedures prescribed by the Commissioner for Inland Revenue became operative.

Subclause (1) (d) provides for an amendment to the definition of "goods" in section 1 of the Sales Tax Act so as to exclude from the concept of "goods" for sales tax purposes any stamp for the payment of postage which is sold or issued by the postal company contemplated in the projected restructuring of the Department of Posts and Telecommunications. The exclusion will not apply when, subsequent to its sale or issue, such a postage stamp is disposed of or imported as a collector's piece.

Subclause (1) (e) provides for an amendment to the definition of "specified country" in section 1 of the Sales Tax Act in consequence of the recognition as an independent state on 21 March 1990 of the Republic of Namibia (previously known as the territory of South West Africa).

CLAUSE 2

Exemptions: Amendments to section 6 of the Sales Tax Act, 1978

Subclause (1) (a): Section 6 (1) (f) (iii) of the Sales Tax Act provides for an exemption from sales tax in respect of the sale to a registered vendor of goods consisting of returnable containers intended to be let by the vendor in the course of a rental enterprise for use in any foreign-going ship or aircraft.

In view of the introduction of a definition of "returnable container" into section 1 of the Sales Tax Act by section 17 of the Taxation Laws Amendment Act, 1989 (Act No. 69 of 1989) with effect from 21 June 1989, the present reference to "returnable containers" in section 6 (1) (f) (iii) of the Sales Tax Act is inappropriate in the now defined sense when applied in relation to containers used in any foreign-going ship or aircraft and accordingly the amendment proposed by this subclause deletes the word "returnable" and provides for certain textual amendments.

Subclause (1) (b): Section 6 (1) (o) of the Sales Tax Act provides for an exemption from sales tax in respect of any rental consideration payable to the Department of Posts and Telecommunications for the hiring of telephones or telex equipment. Provision is now made for the same exemption to apply in the case of any rental consideration payable to the telecommunications company contemplated in the projected restructuring of the aforesaid Department.

Subclause (1) (c): Paragraph 1A of Schedule 1 to the Sales Tax Act deems certain combined transactions — e.g. the rendering of repair, maintenance, erection, construction, assembly or installation services coupled with the supply of materials etc. required for rendering such services in relation to, say, machinery or plant used directly in a process of manufacture — to be taxable services rather than sales, thus fixing the liability for sales tax as at the date when the consideration accrues to the vendor.

Section 6 (1) (s) (i) of the Sales Tax Act provides for an exemption in respect of any taxable service which is rendered wholly or mainly (i.e. more than 50 per cent) outside the Republic of South Africa.

The application of that exemption has given rise to difficulties, especially in the case of an agreement relating to combined transactions, referred to above, which is deemed to be an agreement for the rendering of a taxable service and where the service may have been rendered mainly outside the Republic in consequence whereof any portion of the service rendered in the Republic would not be subject to sales tax.

Since all taxable services rendered in the Republic are, within the framework of the Sales Tax Act, generally subject to sales tax, the amendment proposed by *subclause (1) (c)* excludes from the ambit of the exemption contained in section 6 (1) (s) (i) of the Sales Tax Act any taxable service which in terms of the provisions of paragraph 1A of Schedule 1 to that Act is deemed to be a taxable service, i.e. services rendered in terms of any agreement relating to combined transactions.

CLAUSE 3

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

In terms of section 7 (1) (a) of the Sales Tax Act, the gross value to be placed on any sale of goods is the sum of all the amounts of the consideration accruing to the seller in respect of the sale, plus any tax charged by the seller to the purchaser in respect of the sale, plus any amount charged by the seller to the purchaser in respect of the delivery of the goods. Where, however, the seller makes a separate delivery charge the gross value determined as aforesaid is reducible by so much of the delivery

charge as is sufficient to reduce the sum of the consideration for the goods and the delivery charge to an amount equal to the full price the seller would normally have charged for the goods if not delivered by the seller.

In the absence of any documentary proof that a seller has made such a separate delivery charge, especially in regard to over-the-counter sales for cash involving a sale of goods coupled with the delivery of the goods by the seller, some doubt invariably arises as to whether a separate delivery charge (and the amount thereof) has in fact been made by the seller in respect of the delivery of the goods and this leads to controversy when any inspection of a vendor's records by Inland Revenue inspectors takes place.

The amendment proposed by this clause is aimed at clarifying the law by stipulating that the gross value of any sale of goods may only be reduced by the amount of any delivery charge if such charge is shown as a separate item on any invoice, cash slip or other statement relating to the price charged for the goods under the relevant sale.

It is proposed that the amendment should come into operation on 1 July 1990.

CLAUSE 4

Matters referable to a sales tax advisory committee: Amendment to section 20 of the Sales Tax Act, 1978

Section 20 of the Sales Tax Act deals with matters which are referable to a sales tax advisory committee for an opinion concerning the correctness or otherwise of certain intended assessments or contemplated actions by the Commissioner for Inland Revenue.

In terms of section 20 (2) of that Act, every request for such a referral must be noted within a prescribed period and no provision is made for the condonation of any late request.

The amendment proposed by this clause provides that the Commissioner be given a discretionary power to condone such a late request if he is satisfied that reasonable grounds exist for any delay in lodging such request.

CLAUSE 5

Appeals: Amendments to section 22 of the Sales Tax Act, 1978

Any person entitled to make an objection, as provided for in section 21 of the Sales Tax Act, who is dissatisfied with any decision of the Commissioner for Inland Revenue regarding any disallowance of that objection, may appeal therefrom to a special court constituted under the provisions of section 83 of the Income Tax Act, 1962.

The amendments proposed by this clause provide for certain changes to the provisions of section 22 of the Sales Tax Act relating to such an appeal.

Subclause (1) (a): Section 22 (2) of the Sales Tax Act provides that an appeal must be noted within a period of 30 days and no provision is made for the condonation of any late appeal. In terms of the new paragraph (b) introduced by this subclause, the Commissioner is given power to condone a late appeal if he is satisfied that reasonable grounds exist for any delay in lodging the notice of appeal, and his decision not to condone such a delay is made subject to objection and appeal.

Subclause (1) (b): In terms of section 22 (3) (a) of the Sales Tax Act, at the hearing of any appeal before a special court, the appellant is limited to the grounds stated in his notice of objection. The amendment proposed by this subclause provides that the Commissioner or the special court may permit the appellant to amend such grounds of objection.

Subclause (1) (c): Section 22 (5) of the Sales Tax Act provides, inter alia, that where any assessment is altered on appeal to a special court or to the Supreme Court, interest at the rate of 10 per cent per annum shall be payable on any refund of tax found to have been overpaid.

In the past the Commissioner for Inland Revenue has interpreted that provision as permitting such interest to be paid where the Commissioner has decided to concede an appeal before any hearing by a court. That interpretation has been held on judicial authority to have been erroneous and such interest is only payable if an appeal is actually heard and upheld by the court.

In terms of the amendment proposed by this subclause, provision is made for the payment of such interest in any case where the Commissioner decides to concede an appeal before the hearing thereof by any court. In addition, the rate at which such interest is payable is linked to the definition of "prescribed rate" in section 1 of the Income Tax Act, 1962.

It is proposed that the amendment should be deemed to have come into operation on 1 July 1989, since an amendment to section 88 of the Income Tax Act, 1962, covering the same subject was made by section 17 of the Income Tax Act, 1989 (Act No. 70 of 1989).

CLAUSE 6

Offences: Amendment to section 43 of the Sales Tax Act, 1978

Section 43 of the Sales Tax Act provides that certain acts or omissions constitute offences punishable at law.

In terms of the amendment proposed by this clause, a new offence is created, namely, where any person who is not a registered vendor includes in, or adds on to, the price or amount charged to any other person who is a party to any non-taxable transaction (e.g. a construction activity) any sales tax and fails to pay the tax to the Commissioner for Inland Revenue.

CLAUSE 7

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

Subclause (a): The effect of the amendment proposed by this subclause is to exclude from the services deemed to be taxable services any repair, maintenance, erection, construction, assembly or installation service rendered in respect of any asset consisting of plant or equipment used for the purposes of any communications system installed by the telecommunications company contemplated in the projected restructuring of the Department of Posts and Telecommunications. This amendment should be read with the amendment proposed by *clause 2 (1) (b)* which provides for an exemption in respect of any rental consideration payable to the aforesaid telecommunications company relating to telephones and telex equipment.

Subclause (b): The purpose of the amendment proposed by this subclause is to clarify the provisions of paragraph 1A of Schedule 1 to the Sales Tax Act arising out of disputes as to the interpretation of those provisions in so far as agreements relating to combined transactions are concerned (see the explanation relating to that paragraph set out under *clause 2 (1) (c)* above).

The amendment proposed by this subclause is designed to make it quite clear that any composite agreement for the supply of certain specified assets and the rendering of installation, repair, maintenance etc. services (including materials, components etc. required to carry out those services) is to be treated as an agreement for the rendering of a taxable service and any consideration payable under that agreement is deemed to be payable in respect of such taxable service.

CLAUSE 8

Delegation of power: Amendment to section 11A of the Regional Services Councils Act, 1985

A Regional Services Council has in certain circumstances the power to estimate the levy payable by a levypayer and to make an assessment in respect of the unpaid levy. Uncertainty has, however, arisen in relation to the delegation of these powers by a council to any of its officers, which may cause serious practical problems for such a council. This clause introduces certain amendments in order to remove any uncertainty in this regard.

CLAUSE 9

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 22 May 1989 to 11 June 1990, while the last day for the conclusion of an agreement governing the rationalisation and the lodging of an application for extension, is extended from 30 June 1990 to 30 June 1991.

CLAUSE 10

Special exemption in respect of the privatisation of The Deciduous Fruit Board

The proposed amendments provide for a once only exemption in respect of—

- (a) transfer duty and stamp duty in relation to the transfer of assets from The Deciduous Fruit Board to Unifruco Limited;
- (b) stamp duty in relation to the first issue of shares by Unifruco Limited.