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**REPUBLIC OF SOUTH AFRICA**

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**EXPLANATORY MEMORANDUM**

**ON THE**

**TAXATION LAWS AMENDMENT BILL, 1995**

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INTRODUCTION

The Taxation Laws Amendment Bill, 1995, introduces amendments to the Transfer Duty Act, 1949, the Estate Duty Act, 1955, the Regional Services Councils Act, 1985, the KwaZulu and Natal Joint Services Act, 1990, and the Taxation Laws Amendment Act, 1994.

CLAUSE 1

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

Section 2(7) was added by section 3(1)(c) of Act No. 88 of 1974 to provide for the application of a specific rule where a person acting in a fiduciary capacity (that is, a trustee in the ordinary sense of the word) acquires any property. Where the property is acquired under a will or other instrument *solely* for the benefit of a natural person, the trustee is deemed to be a natural person and the applicable lower rates of transfer duty will apply to natural persons. In other cases the trustee is deemed to be a person other than a natural person and the applicable rate of transfer duty will be the higher rate which is applicable to persons other than natural persons (eg companies).

However, it has come to light that the provisions of the aforementioned section are being abused in that many trust deeds which are submitted to the relevant Receivers of Revenue have in essence not been established *solely* for the benefit of a natural person. In order to enjoy the benefit of the rate applicable to a natural person, the trust deed is amended in such a way that the sole beneficiaries are natural persons at the time of the acquisition of the property and when the deed is submitted to the relevant Receiver of Revenue. However, once the lower rate has been enjoyed, the trust deed may be amended to its original form after registration of transfer of the property. Furthermore, it has become clear that trusts are being used more and more as a tool in estate planning to peg the value of the growth of the underlying assets of such a trust.

It is therefore proposed that section 2(7) of the Transfer Duty Act be deleted.

CLAUSE 2

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

*Subclause (1)(a):* The proposed amendment amends the provisions of section 9(1)(c) of the Act by linking that section to the provisions of section 10(1)(f) of the Income Tax Act, 1962. A religious, charitable or educational institution of a public character referred to in section 9(1)(c) of the Transfer Duty Act will therefore be an institution as contemplated in section 10(1)(f) of the Income Tax Act, 1962.

*Subclause (1)(b)*: Subsection (11) was added to section 5 in terms of the Taxation Laws Amendment Act, 1994 (Act No. 20 of 1994), to provide for relief in cases where both value-added tax (VAT) and transfer duty became payable in respect of the building contract portion of the so-called "package deal" transactions. The amendment provided for the reduction of the transfer duty value of the transaction as a whole by an amount equal to the value of the supply of the property on which VAT was levied at the standard or zero rate in respect of the building contract portion.

However, the said amendment has given rise to the possible misuse of the provisions of the exemption contained in section 9(12B) of the Transfer Duty Act. In terms of the said section an exemption from transfer duty applies where a natural person acquires property consisting of land and a dwelling-house thereon or a residential apartment held under sectional title and the value of such property does not exceed R60 000, or where such person acquires unimproved land for purposes of erecting a dwelling-house thereon and the value of such property does not exceed R24 000.

It has now come to light that where a person acquires unimproved land, the value of which is less than R24 000, in terms of a "package deal transaction" in order to erect a dwelling-house thereon and at the same time he enters, for example, into a building contract to the value of R100 000 to erect such a dwelling-house thereon, it is maintained that by reason of the reduction in the transfer duty value of the total property in terms of section 5(11), no transfer duty is payable on the value of the land as it is less than R24 000. In order to remove any uncertainty in this regard it is proposed that the provisions of section 9(12B) be amended to the effect that the reduction in the transfer duty value of the property in terms of section 5(11) does not apply to the application of the provisions of section 9(12B).

### CLAUSE 3

*Estate duty: Amendment to section 11 of the Estate Duty Act, 1955*

The amendment introduced by this clause to section 11(b)(ii) is consequential upon the deletion of section 3(3)(cB) which was deleted by section 7 of the Taxation Laws Amendment Act, 1993 (Act No. 97 of 1993).

The proposed amendment to section 11(b)(iii) has the effect that where any estate duty is payable in respect of any property deemed to be property in terms of section 3(3)(cA) of the Estate Duty Act, the person liable therefor will be the executor.

### CLAUSE 4

*Furnishing of information: Substitution of section 15 of the Regional Services Councils Act, 1985*

The amendment introduced is consequential upon the repeal of the Sales Tax Act, 1978, and the subsequent introduction of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

### CLAUSE 5

*Furnishing of information: Substitution of section 21 of the KwaZulu and Natal Joint Services Act, 1990*

The amendment introduced is consequential upon the repeal of the Sales Tax Act, 1978, and the subsequent introduction of the Value-Added Tax Act, 1991 (Act No. 89 of 1991).

## CLAUSE 6

### *Special provisions in relation to unbundling transactions: Amendment of section 60 of the Income Tax Act, 1993*

The unbundling provisions require at present *inter alia* that shares qualify as "distributable shares" only where there was an existing situation on 4 November 1994 and the unbundling company has met the qualifying percentages as prescribed in terms of the definition of "distributable shares". In terms of the proposed amendment the date on which the existing situation had to be in existence, is extended to 19 June 1995.

## CLAUSE 7

### *Exemption from stamp duty or transfer duty relating to transfer of marketable securities or property or of rights or obligations under bonds under a scheme for the rationalisation of a group of companies and the assessment of companies in such a group for income tax purposes in certain circumstances*

Section 39 of the Taxation Laws Amendment Act, 1994, was introduced last year to soften the tax impact on rationalisation schemes of groups of companies which are done for commercial reasons. Limited exemption from transfer duty and stamp duty is granted and in addition the income tax effects of such rationalisations are regulated.

The amendment proposed in terms of this clause mainly attempts to achieve two objects.

Firstly the date of 4 November 1994 on which an existing situation had to be in existence (namely the date on which a controlling company had to hold the required percentage equity shares in its controlled companies), is extended to 19 June 1995.

Secondly, it is proposed that the definition of a "controlling company" be amended to also include certain unlisted companies. At present a controlling company of a group of companies is limited to a listed company. However, it has come to light that there is a need amongst groups of companies whose controlling companies are not necessarily listed companies, but who have interests in the former Republics of Transkei, Bophuthatswana, Venda and Ciskei, to restructure such interests and to rationalise such groups as in many cases companies were formed to incorporate branches of South African business undertakings solely because of the independence of such former states. To accommodate such a restructuring, it is proposed that the definition of "controlling company" be widened to include any company contemplating a scheme as envisaged in paragraph (a)(iii) of the definition of "rationalisation scheme".

The proposed paragraph (a)(iii) of the definition of "rationalisation scheme" is, however, limited to the situation where a company which has been incorporated in terms of the laws of a former state, wishes to dispose of its business undertaking or any part thereof to another company in the same group, which other company has been incorporated in terms of the laws of the Republic as it existed prior to the commencement of the Constitution.

Furthermore, the proposed subsection (7A) limits the relief measures provided for in subsections (2) and (6) to transactions necessarily entered into to give effect to the objective of a scheme contemplated in paragraph (a)(iii) of the definition of "rationalisation scheme".

In addition to the abovementioned proposals, the following amendments to the relevant provisions are proposed:

- (a) the insertion of a definition of "former state" which comprises the former Republics of Transkei, Bophuthatswana, Venda and Ciskei; and

- (b) the extension of the limited exemption of transfer duty, stamp duty, secondary tax on companies and non-resident shareholders' tax to a similar duty or tax levied by a former state.

#### CLAUSE 8

*Amendment of Part 2 of Schedule 2 to the Taxation Laws Amendment Act, 1994*

Part 2 of Schedule 2 to the Taxation Laws Amendment Act, 1994, sets out details of the Value-Added Tax Acts of the former Republics of Transkei, Bophuthatswana, Venda and Ciskei which were repealed in terms of section 41(6) of the said Amendment Act.

The third column of Part 2 sets out the extent of the repeal of the relevant Acts. The amendments now made thereto are as follows:

- (a) Republic of Transkei: Textual.
- (b) Republics of Ciskei and Venda: The insertion of the sections of the relevant Acts to provide that the provisions of the Sales Tax Acts of these former Republics relating to the levying, payment, assessment and recovery of sales tax remain in force.

These amendments are deemed to have come into operation on 25 November 1994.

#### CLAUSE 9

*Short title*

The short title of the amending Act is the Taxation Laws Amendment Act, 1995.