REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM

ON THE

TAXATION LAWS AMENDMENT BILL, 1999

[W.P. 1—'99]

0 621 273716

REPUBLIC OF SOUTH AFRICA

EXPLANATORY MEMORANDUM ON THE TAXATION LAWS AMENDMENT BILL, 1999

The Taxation Laws Amendment Bill, 1999, introduces amendments to the Marketable Securities Tax Act, 1948, the Transfer Duty Act, 1949, the Income Tax Act, 1962, the Customs and Excise Act, 1964, the Stamp Duties Act, 1968, and the Uncertificated Securities Tax Act, 1998.

The amendments introduced in terms of this Bill are all in consequence of announcements made by the Minister of Finance in his Budget Review this year.

CLAUSE 1

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

Section 3*(b)* exempts from marketable securities tax the purchase of marketable securities on behalf of the Public Investment Commissioners (formerly known as the Public Debt Commissioners). In effect, this exemption reduces the cost of equity purchases on behalf of the Government Employees Pension Fund, thereby compromising the horizontal equity between public- and private-sector pension funds. It is, therefore, proposed that the exemption be withdrawn and this clause gives effect to this proposal.

CLAUSE 2

Amendment of section 2 of the Transfer Duty Act, 1949

In terms of the proposed amendment the rates of transfer duty are restructured on such a basis to provide that in the case of a natural person the upper limit of the bracket at which a rate of one per cent is payable, is increased from R60 000 to R70 000.

These amendments become operative from 1 April 1999 in respect of:

- the acquisition of property; and
- renunciations of interests in, or restrictions upon the use or disposal of, property,

on or after that date.

CLAUSE 3

Amendment of section 9 of the Tranfer Duty Act, 1949

At present an exemption from transfer duty is applicable under subsection (12B) of section 9 of the Transfer Duty Act, 1949, in respect of:

- the acquisition of land on which there is a dwelling house or a residential apartment held under sectional title, if the value of such property does not exceed R60 000; or

- unimproved land acquired for the purpose of erecting a dwelling house thereon if the value of the land does not exceed R24 000.

In terms of the provisions of the proposed subsection (12C) the limits of R60 000 and R24 000 will be increased to R70 000 and R30 000, respectively. The new subsection (12C) will apply from 1 April 1999.

CLAUSE 4 AND SCHEDULE 1

Income Tax: Rates of normal tax

Rates of normal tax payable by persons (other than companies) and companies are enacted by *clause 4* and Schedule 1 to the Bill.

Persons other than companies

The rates for persons (other than companies) apply in respect of the year of assessment ending on 29 February 2000 or 30 June 2000 and are provided for in paragraph 1 of Schedule 1.

The rates for persons (other than companies and trusts) and special trusts consist of a progressive rate structure ranging between 19 per cent on the lowest income segment (amounts up to R33 000) and 45 per cent which is reached on the income segment above R120 000.

The rates for trusts (other than special trusts) consist of a rate of 35 per cent on taxable income which does not exceed R100 000 and 45 per cent on the income exceeding R100 000.

The rates for:

- persons (other than companies) and special trusts are provided for in paragraph 1*(a)* of Schedule 1; and
- trusts (other than special trusts) are provided for in paragraph 1*(b)* of Schedule 1.

A "special trust" is defined as a trust created solely for the benefit of a person who suffers from:
(i) any "mental illness" as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973); or
(ii) any serious physical disability,
where such illness or disability incapacitates such person from earning sufficient income for the maintenance of such person. Where the person for whose benefit the trust was created dies before or on 29 February 2000, such trust will be deemed not to be a special trust and the rates provided for in paragraph 1*(b)* of Schedule 1 will apply in respect of such trust.

Companies

The rates for companies apply in respect of years of assessment, i.e. the financial year of the company concerned, ending during the 12-month period from 1 April 1999 to 31 March 2000, and are provided for in paragraphs 2*(a)* to *(f)* inclusive, of Schedule 1.

Those rates are as follows:

(a) Taxable income derived otherwise than from gold mining, long-term insurance business, or by a foreign company through a branch or agency in the Republic or a qualifying company enjoying tax holiday status: 30 cents per R1, but in the case of a company which mines for gold and which is exempt from secondary tax on companies in terms of an option exercised by it, 38 cents per R1 of its non-gold mining taxable income (paragraph 2*(a)* of Schedule 1),

(b) Taxable income derived by a company from gold mining: an amount determined in accordance with one of the following formulae:

(i) where such company is not exempt from secondary tax on companies:

$$y = 37 - \frac{185}{x}\ ;\ \text{or}$$

(ii) where such company is exempt from secondary tax on companies:

$$y = 46 - \frac{230}{x}\ ,$$

as provided for in paragraph 2*(b)* of Schedule 1.

(c) Taxable income in the form of "recoupments" of capital expenditure accruing to companies which are or have been gold mining companies: the average rate of tax, determined as provided, or 30 cents per R1, whichever is the higher (paragraph 2*(c)* of Schedule 1).

(d) Taxable income derived from long-term insurance business: 30 cents per R1 in respect of the insurer's individual policyholder fund, company policyholder fund and corporate fund (paragraph 2*(d)* of Schedule 1).

(e) Taxable income (excluding from gold mining, long-term insurance business or a qualifying project enjoying tax holiday status) derived by a company which has its place of effective management outside the Republic and which carries on trade through a branch or an agency within the Republic: 35 cents per R1 (paragraph 2*(e)* of Schedule 1).

(f) Taxable income derived by a qualifying company which has been granted tax holiday status in terms of section 37H of the Income Tax Act, 1962: zero cents per R1 (paragraph 2*(f)* of Schedule 1).

CLAUSE 5

Amendment of section 6 of the Income Tax Act, 1962

This clause increases the primary rebate from R3 515 to R3 710, and the rebate in respect of persons over 65 years from R2 660 to R2 775.

CLAUSE 6

Amendment of section 105 of the Customs and Excise Act, 1964

This clause brings interest charged on outstanding amounts in terms of the Customs and Excise Act, 1964, in line with the interest provisions contained in the Income Tax Act, 1962, and the Value-added Tax Act, 1991.

CLAUSE 7

Amendment of Schedule No. 1 to the Customs and Excise Act, 1964

This clause provides for the amendment of Schedule No. 1 to the Customs and Excise Act, 1964, and the date of commencement thereof. Such amendments are reflected in Schedule 2 to this Bill and arise from the taxation proposals which were tabled by the Minister of Finance during his Budget Speech.

CLAUSE 8

Amendment of section 6 of the Stamp Duties Act, 1968

This amendment is consequential upon the deletion of Item 19 of Schedule 1 to the Stamp Duties Act, 1968.

CLAUSE 9

Amendment of section 32 of the Stamp Duties Act, 1968

This clause introduces a provision which limits refunds of stamp duty by the Commissioner to amounts of R2,00 or more. This amendment comes into operation on the date of promulgation of the Act.

CLAUSE 10

Deletion of Item 3 of Schedule 1 to the Stamp Duties Act, 1968

This clause abolishes the stamp duty payable in respect of antenuptial and postnuptial contracts. This amendment comes into operation on 1 April 1999.

CLAUSE 11

Amendment of Item 11 of Schedule 1 to the Stamp Duties Act, 1968

This item provides for the levying of stamp duty on customs and excise documents of 40 cents per original bill or document of entry or document in lieu thereof. This clause provides that the amount of stamp duty be increased to R1,00 per bill or document with effect from 1 April 1999.

CLAUSE 12

Deletion of Item 12 of Schedule 1 to the Stamp Duties Act, 1968

This clause abolishes the stamp duty payable in respect of duplicate originals of any instrument the original whereof is chargeable with stamp duty. This amendment comes into operation on 1 April 1999.

CLAUSE 13

Deletion of Item 17 of Schedule 1 to the Stamp Duties Act, 1968

This clause abolishes the stamp duty payable in respect of partnership agreements. This amendment comes into operation on 1 April 1999.

CLAUSE 14

Deletion of Item 19 of Schedule 1 to the Stamp Duties Act, 1968

This clause abolishes the stamp duty payable in respect of a power of attorney or instrument of a like kind. This amendment comes into operation on 1 April 1999.

CLAUSE 15

Amendment of section 6 of the Uncertificated Securities Tax Act, 1998

Section 6 exempts from the payment of uncertificated securities tax any change in beneficial ownership of securities if the person who acquires the beneficial ownership is the Public Investment Commissioner (formerly known as the Public Debt Commissioner). In effect, this exemption reduces the cost of equity purchases on behalf of the Government Employees Pension Fund, thereby compromising the horizontal equity between public- and private-section pension funds. It is, therefore, proposed that the exemption be withdrawn and this clause gives effect to this proposal.

CLAUSE 16

Continuation of certain amendments of Schedule 1 to the Customs and Excise Act, 1964

This clause provides for the continuation of the amendments to Parts 2B and 5 of Schedule 1 to the Customs and Excise Act, 1964, effected by the Minister of Finance as a consequence of his 1999 Budget proposals.

CLAUSE 17

Short title and commencement

This clause provides the short title and commencement date of the Bill.