

TAXATION LAWS AMENDMENT ACT

PRESIDENT'S OFFICE

No. 1102. 3 July 1996

NO. 37 OF 1996: TAXATION LAWS AMENDMENT ACT, 1996.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

No. 37 of 1996: Taxation Laws Amendment Act. 1996.

General Explanatory Note:

Words in ***bold italics*** indicate omissions from existing enactments.

Words in *italics* indicate insertions in existing enactments.

ACT

To amend the Marketable Securities Tax Act, 1948, so as to further define, to substitute or to delete certain expressions; to extend the base of the Marketable securities tax; to reduce the rate of tax payable in respect of the said tax; and to further regulate the manner of payment of the said tax; to amend the Transfer Duty Act, 1949, so as to further define certain expressions; to further regulate the imposition of transfer duty; and to substitute obsolete references; to amend the Estate Duty Act, 1955, so as to increase the rate of estate duty; to amend the Stamp Duties Act, 1968, so as to further regulate the manner of payment of stamp duty; to further define or to substitute certain expressions; to substitute or to delete obsolete provisions and references; to reduce the stamp duty tariffs in respect of the registration of transfer, the cancellation or redemption and' the acquisition of marketable securities; to increase the stamp duty on debit entries and instalment credit agreements; and to provide for an exemption in respect of the registration of transfer of marketable securities; to amend the Value-Added Tax Act, 1991, so as to further define or to substitute certain designations and expressions; to further regulate activities which constitute financial services; to extend the provisions relating to secrecy to the Chief Executive Officer and recipients or intended recipients of supplies; to further regulate the valuation of supplies made to connected persons or supplies which comprise the management of superannuation schemes; to further regulate the calculation of the tax payable in respect of fixed property or any real right therein; to effect certain consequential amendments; to provide that vendors on the invoice basis make an adjustment where an input tax deduction has been claimed, but any amount in respect of the supply in question has not been paid; to effect a textual adjustment in the Afrikaans text; to authorise refunds under the export incentive scheme; to

authorise the estimation of the amount on which tax is payable in certain circumstances; to further regulate the reporting of unprofessional conduct; to remove a restriction on the freedom to contract in respect of changes in the rate of value-added tax; to further regulate the imposition or withdrawal of the said tax in respect of any supply; to provide for exemptions in respect of the importation of certain goods; and to substitute an obsolete reference; to amend the Income Tax Act, 1993, so as to empower the Minister of Finance to determine from time to time a date in respect of certain interests; and to amend the Taxation Laws Amendment Act, 1994, so as to empower the said Minister to determine from time to time a date in respect of certain interests; to provide that no sales tax, penalty or interest is recoverable in respect of the importation of certain goods into the former Republic of Transkei; and to provide for matters connected therewith.

(Afrikaans text signed by the President.) (Assented to 27 June 1996.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows-

Substitution of section 1 of Act 32 of 1948, as amended by section 35 of Act 77 of 1968, section 1 of Act 92 of 1971, section 1 of Act 88 of 1974 and section 1 of Act 106 of 1980

1. (1) The following section is hereby substituted for section 1 of the Marketable Securities Tax Act, 1948:

"Definitions

1. In this Act, unless the context indicates otherwise-

'Commissioner' means the Commissioner for Inland Revenue: ***'joint account' means any partnership entered into solely between a member of a stock exchange in the Republic and a person in any other country whose ordinary business in such country consists of or includes the buying and selling of marketable securities*** 'marketable ***security securities***' means any ***security, stock, share, right of option or other interest sold or capable of being sold in a sharemarket or exchange or otherwise, and includes any scrip, certificate, warrant or other instrument representing such security, stock, share, right of option or other interest listed securities as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); 'member' means any person admitted as a member of a stock exchange; 'stockbroker' means any natural person who carries on the business of buying and selling marketable securities on behalf of other persons, and includes any merchant bank registered as such under the Banks Act, 1965 (Act No. 23 of 1965) and who is a practising member of the South African Institute of Stockbrokers; 'stock exchange' means any association licensed in terms of the Stock Exchanges Control Act, 1985, to carry on the business of a stock exchange.***"

(2) The provisions of subsection (1) shall come into operation on 1 August 1996.

Substitution of section 2 of Act 32 of 1948, as substituted by section 1 of Act

114 of 1977 and amended by section 1 of Act 102 of 1979, section 1 of Act 71 of 1986 and section 1 of Act 136 of 1991

2. (1) The following section is hereby substituted for section 2 of the Marketable Securities Tax Act, 1948:

"Imposition of marketable securities tax

2. There shall be paid for the benefit of the *State National* Revenue Fund in respect of every purchase of marketable securities ***by a stockbroker on behalf of any person through the agency of or from a member***, a tax to be called the Marketable Securities Tax (hereinafter referred to as 'the tax'), at the rate of ***1 per cent 0,5 per cent*** of the consideration for which ***such those*** securities are so purchased."

(2) The provisions of subsection (1)-

(a) in so far as those provisions relate to the reduction of the rate of tax, shall be deemed to have come into operation on 1 April 1996; and

(b) in so far as those provisions relate to any other amendment effected by the said subsection (1), shall come into operation on 1 August 1996.

Amendment of section 3 of Act 32 of 1948, as amended by section 12 of Act 64 of 1960, section 36 of Act 77 of 1968, section 2 of Act 88 of 1974, section 2 of Act 114 of 1977, section 1 of Act 95 of 1978, section 2 of Act 106 of 1980, section 1 of Act 87 of 1982, section 1 of Act 92 of 1983, section 1 of Act 118 of 1984, section 1 of Act 81 of 1985, section 1 of Act 87 of 1988, section 1 of Act 136 of 1992 and section 1 of Act 97 of 1993

3. (1) Section 3 of the Marketable Securities Tax Act. 1948, is hereby amended

(a) by the substitution for paragraph (a) of the following paragraph:

"(a) in respect of the purchase ***by a stockbroker*** of marketable securities ***on behalf of a joint account or any other stockbroker who is liable for the tax by virtue of the fact that he is acting for a principal in connection with the purchase of those securities*** by a stockbroker or a member on the own account and for the benefit of the stockbroker or the member;"

(b) by the substitution for paragraph (d) of the following paragraph:

"(d) in respect of the purchase of any interest bearing debentures. including debenture stock. debenture bonds and any other securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, listed by ***any recognized*** a stock exchange ***in the Republic*** or ***listed*** by a financial exchange as defined in the Financial Markets Control Act, 1989 (Act No. 55 of' 1989);"; and

(c) by the addition of the following paragraph:

"(e) in respect of the purchase of marketable securities by a person who is not ordinarily resident in the Republic or in Lesotho, Namibia or Swaziland."

(2) The provisions of subsection (1) shall come into operation on 1 August 1996.

Substitution of section 4 of Act 32 of 1948, as substituted by section 2 of Act 103 of 1969 and amended by section 3 of Act 114 of 1977

4. (1) The following section is hereby substituted for section 4 of the Marketable Securities Tax Act, 1948:

"Persons liable for tax, time of payment thereof and declarations to be furnished in connection therewith

4. (1) Every **stockbroker member** shall, Subject to the provisions of section 3, in respect of every month, and not later than **fourteen 14** days after the last day of that month or within such further period as the Commissioner, having regard to the circumstances of the case, may allow, pay to the receiver of revenue for the area in which such **stockbroker member** carries on business, the amount representing the tax payable on all **purchases of** marketable securities **effected by him, or at his instance by another stockbroker on behalf of other persons purchased through the agency of or from such member** during that month. (2) Every Such payment shall be accompanied by a declaration in such form as may be prescribed by the Commissioner containing particulars of all **purchases of** marketable securities **by or at the instance of the stockbroker purchased through the agency of or from the member** concerned during the month in respect of which the payment is made, (3)
A **stockbroker member** who has not during any particular month effected **either directly or through another stockbroker any purchase transaction in respect of** marketable securities, shall within **fourteen 14** days after the last day of that month or within such further period as the Commissioner, having regard to the circumstances of the case, may allow, lodge a declaration to that effect with the receiver of revenue for the area in which **that stockbroker such member** carries on business."

(2) The provisions of subsection (1) shall come into operation on 1 August 1996.

Substitution of section 8 of Act 32 of 1948, as amended by section 5 of Act 114 of 1977

5. (1) The following section is hereby substituted for section 8 of the Marketable Securities Tax Act, 1948:

"Recovery of tax from purchasers

8. A **stockbroker member** may recover the amount of the tax (but not the amount of

any penalty that may become payable under section **five** 5) payable by **him** such member in respect of any purchase of marketable securities, from the **person on whose behalf that purchase has been effected** purchaser of those securities."

(2) The provisions of subsection (1) shall come into operation on 1 August 1996.

Substitution of long title of Act 32 of 1948, as substituted by section 6 of Act 114 of 1977

6. (1) The following long title is hereby substituted for the long title of the Marketable Securities Tax Act, 1948:

"ACT

To provide for the imposition of a tax on **purchases** the purchase of marketable securities *through the agency of or from a member of a stock exchange*."

(2) The provisions of subsection (1) shall come into operation on 1 August 1996.

Substitution of word "stockbroker" in Act 32 of 1948

7. (1) The Marketable Securities Tax Act, 1948, is hereby amended by the substitution for the word "stockbroker", wherever it appears in sections 6(1) and 10(2), of the word "member".

(2) The provisions of subsection (1) shall come into operation on 1 August 1996.

Amendment of section 1 of Act 40 of 1949, as amended by section 11 of Act 80 of 1959, section 1 of Act 77 of 1964, section 5 of Act 103 of 1969, section 4 of Act 106 of 1980, section 1 of Act 86 of 1987, section 2 of Act 87 of 1988 and section 9 of Proclamation R.11 of 1994

8. (1) Section 1 of the Transfer Duty Act, 1949, is hereby amended-

(a) by the insertion after the definition of "mining asset" of the following definition:

" 'person' includes the estate of a deceased or insolvent person and any trust;"; and

(b) by the addition of the following definition: " 'trust' means any trust consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person."

(2) The provisions of subsection (1) shall come into operation on 1 August 1996.

Amendment of section 2 of Act 40 of 1949, as substituted by section 2 of Act 77 of 1964 and amended by section 1 of Act 56 of 1966, section 2 of Act 66 of 1973, section 3 of Act 88 of 1974, section 5 of Act 106 of 1980, section 3 of Act

87 of 1988, section 2 of Act 136 of 1992, section 3 of Act 97 of 1993 and section 1 of Act 37 of 1995

9. (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended

(a) by the substitution in subsection (1) for the words "Consolidated Revenue Fund" of the words "National Revenue Fund"; and

(b) by the addition of the following subsection:

"(8) For the purposes of this section, any trustee or administrator of a trust or any other person acting in a fiduciary capacity shall, in respect of any property acquired by him or any property held by him of which the value is enhanced as contemplated in subsection (1), be deemed to be any person other than a natural person."

(2) The provisions of subsection (1)(b) shall come into operation on 1 August 1996 and shall apply in respect of

(a) the acquisition of any property: or

(b) the enhancement of the value of any property by the renunciation of an interest in or a restriction upon the use or disposal of that property, on or after that date.

Amendment of section 3 of Act 40 of 1949, as substituted by section 4 of Act 88 of 1974 and amended by section 1 of Act 99 of 1981 and section 4 of Act 97 of 1993

10. (1) Section 3 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (3) of the following subsection:

*"(3) The duty and any penalty payable under section 4 and any transfer duty and interest payable under any law repealed by this Act shall be paid to a receiver of revenue, on the establishment of the **Directorate: Inland Revenue, Department of Finance South African Revenue Service** (hereafter in this subsection referred to as the departmental receiver of revenue), for the area in which the property in question is situate or, if the property is situate in the area of more than one departmental receiver of revenue, to any one of those departmental receivers of revenue, or, in either case, to the departmental receiver of revenue in whose area *is situate* the deeds registry **for in which** the property is **situate** registered."*

(2) The provisions of subsection (1) shall be deemed to have come into operation on 1 April 1996.

Amendment of First Schedule to Act 45 of 1955, as substituted by section 9 of Act 92 of 1971 and amended by section 13 of Act 106 of 1980, section 3 of Act 71 of 1986 and section 16 of Act 87 of 1988

11. (1) The First Schedule to the Estate Duty Act, 1955, is hereby amended by the substitution for the expression " 15 per cent", where it appears in the words preceding the proviso, of the expression "25 per cent".

(2) The provisions of subsection (1) shall be deemed to have come into operation on 14 March 1996 and shall apply in respect of the estate of any person who has died or dies on or after that date.

Amendment of section 5 of Act 77 of 1968, as amended by section 9 of Act 89 of 1972, section 7 of Act 66 of 1973, section 9 of Act 114 of 1977, section 5 of Act 118 of 1984, section 10 of Act 86 of 1987, section 19 of Act 87 of 1988, section 6 of Act 136 of 1991 and section 6 of Act 136 of 1992

12. Section 5 of the Stamp Duties Act, 1968, is hereby amended by the Substitution for paragraph (iii) of the proviso to subsection (1) of the following paragraph:

"(iii) where the Commissioner is satisfied that any person or class of persons cannot conveniently denote the duty in respect of fixed deposit receipts or instalment credit agreements, or *in respect of the original issue or the registration of any transfer of marketable securities*, by means of stamps affixed to such fixed deposit receipts *or to such instalment credit agreements or, in the case of the original issue of marketable securities, to such marketable securities* <or, in the case of the registration of any transfer of marketable securities, to the relevant instrument of transfer referred to in section 23, he may, subject to such conditions as he may impose and subject to the exercise of such control as he considers necessary, agree that payment of such duty may be acknowledged by means of the issue of a special receipt, and any such fixed deposit receipt, instalment credit agreement, **or** marketable security *or instrument of transfer* which bears on its face the words 'duty paid', shall for the purposes of this Act be deemed to be duty stamped."

Amendment of section 23 of Act 77 of 1968, as amended by section 20 of Act 103 of 1969, section 13 of Act 92 of 1971, section 11 of Act 89 of 1972, section 10 of Act 66 of 1973, section 10 of Act 88 of 1974, section 20 of Act 106 of 1980, section 6 of Act 87 of 1982, section 5 of Act 92 of 1983, section 25 of Act 87 of 1988, section 8 of Act 69 of 1989, section 81 of Act 89 of 1991 and section 7 of Act 136 of 1991

13. (1) Section 23 of the Stamp Duties Act. 1968, is hereby amended

(a) by the substitution in subsection (1) for the words "recognized stock exchange" in the definition of "arbitrate transaction" of the words "stock exchange";

(b) by the substitution in the said subsection (1) for the definition of "broker" of the following definition: 'broker' means a person who carries on the business of buying and selling marketable securities **on behalf of other persons** and who is a member of a **recognized** stock exchange in the Republic *or a practising member of the South African Institute of Stockbrokers*;"

(c) by the insertion in the said subsection (1) after the definition of "instrument of transfer" of the following definition: " *'lending arrangement' means any arrangement or agreement in terms of which–*

(a) a person (hereinafter referred to as the lender) lends a marketable security to another person (hereinafter referred to as the borrower) in order to enable the borrower to effect delivery of the marketable security under a transaction entered into by the borrower to sell the marketable security; and

(b) the borrower in return undertakes to transfer a marketable security of the same kind and of the same or equivalent quantity and quality to the lender within a period of six months as from the date of such loan;";

(d) by the substitution for subparagraph (ii) of paragraph (b) of subsection (4) of the following subparagraph:

"(ii) where exemption from duty is claimed under paragraph (f) of the Exemptions to Item 15(3) of Schedule 1, such instrument bears an endorsement made by the **buying broker or a bank acting on behalf of the transferee in connection with the relevant purchase member as defined in section 1 of the Marketable Securities Tax Act, 1948 (Act No. 32 of 1948)**, in such form as the Commissioner may approve, to the effect that the tax referred to in section 2 of the **Marketable Securities Tax Act, 1948 (Act No. 32 of 1948)** said Act has on or after the date of commencement of this Act become payable in respect of the purchase **by the transferee of such of the** marketable security *in question; or"* ;

(e) by the insertion after subparagraph (viiA) of paragraph (b) of the said subsection (4) of the following subparagraph:

"(viiB) *where exemption from duty is claimed under paragraph (nB) of the Exemptions to Item 15(3) of Schedule 1, such instrument bears an endorsement made by the borrower or his agent (if such agent is a bank or a broker), in such form as the Commissioner may approve, to the effect, that the registration of transfer is effected in consequence of the return to the lender in question of a marketable security previously lent to that borrower in terms of a lending arrangement; or"*;

(f) by the deletion of subsection (7A);,

(g) by the substitution for paragraph (b) of subsection (8) of the following paragraph:

"(b) makes any endorsement on any instrument of transfer for the purposes of subsection (4)(b)(ii), (v), (vi), (vii), **or (viiA) or (viiB)** which is false or incorrect, or fails to comply with the provisions Of Subsection (5); or": and

(h) by the substitution for paragraph (c) of the said subsection (8) of the following paragraph:

"(c) as the transferee in respect of any marketable Security, or as the agent of Such transferee, makes any note for the purposes of- subsection (7)(b) [or (7A)(b)] or Item 15(3)(a) of Schedule 1, which is false or incorrect."

(2) The provisions of subsection (1)(a), (h), (c), (d), (e) and (g) shall come into operation on 1 August 1996.

Amendment of section 24 of Act 77 of 1968, as amended by section 21 of Act 103 of 1969, section 11 of Act 88 of 1974, section 4 of Act 70 of 1975, section 12 of Act 114 of 1977, section 6 of Act 92 of 1983, section 26 of Act 87 of 1988, section 9 of Act 69 of 1989, section 82 of Act 89 of 1991 and section 14 of Act 97 of 1993

14. (1) Section 24 of the Stamp Duties Act, 1968, is hereby amended by the Substitution for the words "fourteen days", wherever they appear in subsections (1)(a) and (13), of the expression "21 days".

(2) The provisions of subsection (1) shall come into operation on 1 August 1996 and shall apply to any payment of duty due on or after that date.

Amendment of Item 6 of Schedule 1 to Act 77 of 1968, as inserted by section 10 of Act 118 of 1984 and amended by section 4 of Act 71 of 1986, section 32 of Act 87 of 1988 and section 7 of Act 136 of 1992

15. (1) Item 6 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for the amount "015" in the column "Amount of Duty" of the amount "020".

(2) The provisions of subsection (1) shall be deemed to have come into operation on 1 June 1996.

Amendment of Item 13A of Schedule 1 to Act 77 of 1968, as substituted by section 8 of Act 136 of 1991 and amended by section 7 of Act 20 of 1994

16. (1) Item 13A of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for the tariff of stamp duty of the following tariff:

does not exceed R5 000: 200

exceeds R5 000 but does not exceed R10 000: 400

exceeds R10 000 but does not exceed R20 000: 800

exceeds R20 000 but does not exceed R40 000: 1 600

exceeds R40 000 but does not exceed R60 000: 2 400

exceeds R60 000 but does not exceed R80 000: 3 200

exceeds R80 000 but does not exceed R100 000: 4 000

exceeds R100 000 but does not exceed R130 000: 5 000

exceeds R130 000 but does not exceed R150 000: 6 000

exceeds R150 000 but does not exceed R180 000: 7 000

exceeds R180 000 but does not exceed R200 000: 8 000

exceeds R200 000: 10 000".

(2) The provisions of subsection (1) shall be deemed to have come into operation on 1 June 1996.

Amendment of Item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 83 of Act 89 of 1991, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993 and section 8 of Act 20 of 1994

17. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended

(a) by the substitution in subparagraph (f) of paragraph (3) for the words preceding subparagraph (i) of the following words:

"in any other case if the marketable security was sold or disposed of after 31 March 1991 but not later than 31 March 1996 and the date of the sale or disposal is noted on the relevant instrument of transfer referred to in section 23 of this Act by the transferee or his agent and such note is signed by the transferee or his agent:"

(b) by the addition to paragraph (3) of the following subparagraph:

"(g) in any other case–

(i) if transfer–

(aa) other than a transfer contemplated in subparagraph

(bb) is registered before the expiry of a period of six months or (bb) is registered in the name of a broker, or the nominee of a broker, on or after 1 August 1996 and is so registered before the expiry of a period of three months, from the date of execution of the relevant instrument of transfer referred to in section 23 of this Act: for every R10, or part thereof, of the amount or value of the consideration given or, where no consideration is given or the consideration given is less than the value of the marketable security transferred, of the value of the marketable security transferred..... 005

(ii) if transfer–

(aa) is registered after the expiry of the period of six months referred to in subparagraph (i)(aa); or

(bb) is registered in the name of a broker, or the nominee of a broker, after the expiry of the period of three months referred to in subparagraph (i)(bb)..... Three

times the duty which would have been payable under (g)(i) if transfer had been registered before the expiry of the said period of six or three months, as the case may be.";

(c) by the substitution for paragraph (f) of "Exemptions from the duty under paragraph (3)" of the following paragraph:

(f) Any registration of transfer of any marketable security purchased by any person on or after the date of commencement of this Act, if ***the purchase by such that*** person ***of has purchased*** such marketable security ***was negotiated by a stockbroker through the agency of or from a member*** as defined in ***the definition of stockbroker*** in section 1 of the Marketable Securities Tax Act, 1948 (Act No. 32 of 1948), and the tax referred to in section 2 of ***that the said*** Act has on or after ***the said*** that date become payable in respect of ***such the purchase of such marketable security***."

(d) by the substitution for subparagraph (i) of paragraph (nA) of the said "Exemptions from the duty under paragraph (3)" of the following subparagraph:

"(i) the purchaser is not *ordinarily* resident in the Republic ***South West Africa, Botswana, Lesotho, Swaziland or any country which formerly formed part of the Republic or in Lesotho, Namibia or Swaziland***; and",

(e) by the insertion after paragraph (nA) of the said "Exemptions from the duty under paragraph (3)" of the following paragraph:

"(nB) *Any registration of transfer of any marketable security in the name of the lender of a marketable security, if such registration of transfer is effected in consequence of the return to that lender of it marketable security previously lent to the borrower in question in terms of a lending, arrangement.*"

(f) by the substitution for the words "recognized stock exchange" in paragraph (p) of the said "Exemptions from the duty under paragraph (3)" of the words "stock exchange" ;

(g) by the Substitution in paragraph (4) for the amount "010" in the column "Amount of Duty" of the amount "005"; and

(h) by the substitution for subparagraphs (v) and (vi) of paragraph (5) of the following subparagraphs:

"(v) if the date of acquisition of such marketable security falls on or after 1 April 1991, *but not later than 31 March 1996*, and the relevant deed or declaration referred to in section 23(15) of this Act is duly stamped before the expiry of a period of six months from the date of such acquisition: for every R10, or part thereof, of the amount or value of the consideration given or, where no consideration is given or the

consideration given is less than the value of the marketable security transferred, of the value of the marketable security..... 10

(vi) if the date of acquisition of such marketable security falls on or after 1 April 1996 and the relevant deed or declaration referred to in section 23(15) of this Act is duly stamped before the expiry of a period of six months from the date of such acquisition: for every R10, or part thereof, of the amount or value of the consideration given or, where no consideration is given or the consideration given is less than the value of the marketable security transferred, of the value of the marketable security..... 0 05

(vi) (vii) if the relevant deed or declaration is not duly stamped within the period of six months referred to in subparagraph (i), (ii), (iii), (iv), or (v) or (vi), as the case may be.....Three times the duty which would have been payable under W. (ii), (iii), (iv), or (v) or (vi) (whichever is applicable), if the deed or declaration had been duly stamped within the period of six months referred to in subparagraph (i). or (v) or (vi), as the case may be.

(2)(a) The provisions of subsection (1)(a), (b), in so far as it relates to Item 15(g)(i)(aa) or (g)(ii)(aa), (g) and (h) shall be deemed to have come into operation on 1 April 1996.

(b) The Provisions Of Subsection (1)(b), in so far as it relates to Item 15(g)(i)(bb) or (g)(ii)(bb), (c), (d), (e) and (f) shall come into operation on 1 August 1996.

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, section 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993 and section 9 of Act 20 of 1994

18. Section 1 of the Value Added Tax Act, 1991 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the insertion after the definition of "cash value" of the following definition:

"'Chief Executive Officer' means the Director-General: South African Revenue Service;"; and

(b) by the substitution for the definition of

*"'Republic' of the following definition: 'Republic', in the geographical sense, means the territory of the Republic Of South Africa and includes the territorial waters, the **fishing contiguous** Zone and the continental shelf referred to respectively in sections 2, 3 and 7 4, 5 and 8 of the **Territorial Waters Act, 1963 (Act No. 87 of 1963) Maritime Zones Act, 1994 (Act No. 15 of 1994);".***

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, section 2 of Government Notice 2695 of 8 November 1991, section 13 of Act 136 of 1992 and section 10 of Act 20 of 1994

19. (1) Section 2 of the principal Act is hereby amended-

(a) by the deletion of paragraph (e) of Subsection (1):

(b) by the substitution for paragraph (f) of the said Subsection (1) of the following paragraph:

"(f) the provision by any person of credit under an agreement (***in this subsection referred to as a credit agreement***) whereby by which money or money's worth is provided by that person to another person who agrees to pay in the future a SUM Or SUMS exceeding in the aggregate the amount of such money or money's worth:-

(c) by the deletion of paragraphs (g) and (h) of the said subsection(1);

(d) by the substitution for paragraph (i) of the said subsection (1) of the following paragraph:

(i) the provision, or transfer of ownership, of a ***life long-term*** insurance policy or the provision of reinsurance in respect of any such policy: *Provided that such an activity shall not be deemed to be a financial service to the extent that it includes the management of a superannuation scheme;*":

(e) by the substitution for paragraph (j) of the said subsection (1) of the following paragraph:

"(j) the provision, or transfer of ownership, of an interest in a superannuation scheme ***or the management of a superannuation scheme;***";

(f) by the deletion of paragraph (it) of the said subsection (1);

(g) by the addition of the following proviso to the said subsection (1):

" *:Provided that the activities contemplated in paragraphs (a), (b), (c), (d) and (f) shall not be deemed to be financial services to the extent that the consideration payable in respect thereof is any fee, commission or similar charge, excluding any discounting cost.*":

(h) by the substitution in subsection (2) for the definition of "life insurance policy" of the following definition:

"'long-term insurance policy' means any policy of insurance issued in the ordinary course of carrying on long-term insurance business as defined in section 1(1) of the Insurance Act. 1943 (Act No. 27 of 1943) 'life insurance policy' means a life policy

as defined in section 1 of the Insurance Act, 1943 (Act No. 27 of 1943), and includes a funeral policy, a home service policy and an industrial policy as respectively defined in the said section; and

(i) by the Substitution for paragraph (a) of subsection (3) of the following paragraph:

"(a) A ***life*** long-term insurance policy or any other policy of insurance:".

(2) The provisions Of Subsection (1) shall come into operation on 1 October 1996.

Amendment of section 6 of Act 89 of 1991

20. Section 6 of the principal Act is hereby amended

(a) by the substitution for subsection (1) of the following subsection:

"(1) **A** *The Chief Executive Officer or a person employed in carrying out the provisions of this Act shall not-*

(a) disclose to any person or his representative any matter in respect of any other person that may *in the case of the Chief Executive Officer, in the performance of his duties as Chief Executive Officer, or in any other case*, in the exercise of his powers or the performance of his duties under the said provisions, come to his knowledge; or

(b) permit any person to have access to any records in the possession or custody of the Commissioner, except *in the case of the Chief Executive Officer, in the performance of his duties as Chief Executive Officer, or in any other case*, in the exercise of his powers or the performance of his duties in terms of this Act, or by order of a competent court: Provided that the *Chief Executive Officer, in the performance of his duties as Chief Executive Officer, or the Auditor-General, shall* in the performance of his duties in terms of section 5 3 of the Auditor-General Act. **1989 (Act No. 52 of 1989), 1995 (Act No. 12 of 1995), shall** have access to all records and documents in the possession or custody of the Commissioner for the purposes of this Act."; and

(b) by the addition to subsection (2) of the following paragraph:

"(d) *confirming to the recipient or intended recipient of a supply whether the supplier is registered in terms of this Act or not.*".

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, section 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993 and section 12 of Act 20 of 1994

21. (1) Section 10 of the principal Act is hereby amended(a) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) a supply is made by a **vendor person** for no consideration or for a consideration in money which is less than the open market value of the supply; and": and

(b) by the insertion after subsection (22) of the following subsection: "(22A) *Where any supply is made which comprises the management of a superannuation scheme as contemplated in section 2(1)(i), the consideration in money for such supply shall be deemed to be the greater of the cost of making such supply or any consideration for such supply.*".

(2) The provisions of subsection (1)(b) shall come into operation on 1 October 1996.

Amendment of section 12 of Act 89 of 1991, as amended by section 28 of Act 136 of 1991, section 7 of Government Notice 2695 of 8 November 1991, section 18 of Act 136 of 1992, section 28 of Act 97 of 1993 and section 14 of Act 20 of 1994

22. (1) Section 12 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(a) The supply of any financial services, ***including the incidental supply of any other goods or services supplied by the supplier of those financial services where the supply of such other goods or services is necessary for the supply of those financial services*** but excluding ***a the supply of financial services or such incidental supply of other goods or services*** which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11;"

(2) The provisions of subsection (1) shall come into operation on 1 October 1996.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993 and section 16 of Act 20 of 1994

23. (1) Section 16 of the principal Act is hereby amended(a) by the substitution for subparagraph (i) of paragraph

(a) of subsection (3) of the following subparagraph:

"(i) in respect of supplies of goods and services (not being supplies of second-hand goods to which paragraph (b) of the definition of 'input tax' in section 1 applies ***and supplies referred to in subparagraph (iiA)***) made to the vendor during that tax period;"

(b) by the substitution in subparagraph (ii) of paragraph (a) of the said subsection (3) for the words preceding the proviso of the following words: "in respect of supplies of second-hand goods to which paragraph (b) of the definition of 'input tax' in section 1 applies, to the extent that payment of *any* consideration which [reduces or discharges] ***has the effect of reducing or discharging*** any obligation (whether an existing obligation or an obligation which will arise in the future) ***in respect of or***

consequent upon, whether directly or indirectly relating to the purchase price in respect of for those supplies has been made during that tax period;"

(c) by the insertion after subparagraph (ii) of paragraph (a) of the said subsection (3) of the following subparagraph:

"(iiA) in respect of supplies made to the vendor under sales concluded on or after 6 June 1996 in respect of which the provisions of section 9(3)(d) apply, to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for those supplies has been made during that tax period;"

(d) by the substitution for subparagraph (v) of paragraph (a) of the said subsection (3) of the following subparagraph: (v) calculated in accordance with section 21(2)(b) or 21(7) or section 22(1) or 22(4), as applicable to the vendor;"

(e) by the substitution in subparagraph (i) of paragraph (b) of the said subsection (3) for the words preceding the proviso of the following words: "in respect of supplies of goods and services made to the vendor in respect of which the provisions of section 9(1), **9(3)(a), 9(3)(b) or 9(3)(d)** or 9(4) apply, to the extent that payments of any consideration which **reduce or discharge** has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) **in respect of or consequent upon, whether directly or indirectly relating to the purchase price in respect of such** for those supplies have been made during **the that** tax period";

(f) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) in the case of a vendor who is in terms of section 15 required to account for tax payable on an invoice basis-

*(i) subject to the provisions of subparagraph (ii), where a supply is made or is deemed to be made by him during **the that** tax period:*

(ii) where a supply is made under a sale concluded on or after 6 June 1996 in respect of which the provisions of section 9(3)(d) apply, to the extent that payment of any consideration which has the effect of reducing or discharging any obligation (whether an existing obligation or an obligation which will arise in the future) relating to the purchase price for that supply has been made during that tax period; or" ; and

(g) by the substitution for subparagraph (i) of paragraph (b) of the said subsection (4) of the following subparagraph:

"(i) to the extent that payment of any consideration which **reduces or discharges** has the effect of reducing or discharging any obligation (whether an existing obligation or

an obligation which will arise in the future) ***in respect of or consequent upon, whether directly or indirectly relating to*** the purchase price has been received by the vendor during ***the that*** tax period ***in respect of a for any*** supply of goods or services in respect of which the provisions of section 9(1), 9(3)(a), 9(3)(b) or 9(3)(d) or 9(4) or 21(2)(a) or 21(6) apply;"

(2) The provisions of subsection (1)(a), (c) and (f) shall be deemed to have come into operation on 6 June 1996.

Amendment of section 18A of Act 89 of 1991, as inserted by section 24 of Act 136 of 1992 and amended by section 19 of Act 20 of 1994

24. Section 18A of the principal Act is hereby amended by the Substitution for the proviso to subsection (2) of the following proviso:

"Provided that-

(i) the cost to such vendor of acquiring such enterprise, part, goods or services may be reduced by any amount which represents an appropriate allocation of such full cost to the acquisition of any goods or services which form part of such enterprise or part of an enterprise and in respect of the acquisition of which by the vendor a deduction of input tax would be denied ***by in terms of*** section 17(2); or

(ii) where such enterprise, part, goods or services were acquired(aa)

(aa) by means of a supply made by a vendor for no consideration or for a consideration in money which is less than the open market value of the supply; and

(bb) in circumstances where the supplier and the recipient are connected persons, the cost of such enterprise, part, goods or services shall be deemed to be the open market value of the Supply of such enterprise, part, goods or services."

Amendment of section 22 of Act 89 of 1991, as amended by section 33 of Act 136 of 1991, section 13 of Government Notice 2695 of 8 November 1991 and section 27 of Act 136 of 1992

25. Section 22 of the principal Act is hereby amended by the addition of the following subsections:

"(3) Where a vendor who is required to account for tax payable on an invoice basis in terms of section 15-

(a) has made a deduction of input tax in terms of section 16(3) in respect of a taxable supply of goods or services made to him; and

(b) has, within a period of 36 months after the expiry of the tax period within which such deduction was made, not paid the full consideration in respect of Such Supply, an amount equal to the tax fraction, as applicable at the time of such deduction, of

that portion of the consideration which has not been paid shall be deemed to be tax charged in respect of a taxable supply made in the next following tax period after the expiry of the period of 36 months: Provided that the period of 36 months shall, if any contract in writing in terms of which such supply was made provides for the payment of consideration or any portion thereof to take place after the expiry of the tax period within which such deduction was made, in respect of such consideration or portion be calculated as from the end of the month within which such consideration or portion was payable in terms of that contract.

(4) If a vendor who has accounted for tax payable in accordance with subsection (3) at any time thereafter pays any portion of the consideration in respect of the supply in question, he may in terms of section 16(3) make a deduction of input tax of an amount equal to the tax fraction, as applicable at the time of the deduction contemplated in paragraph (a) of the said subsection (3), of that portion of the consideration so paid.

(5) For the purposes of this section 'month' means any one of the 12 months of any year."

Amendment of section 33 of Act 89 of 1991

26. Section 33 of the principal Act is hereby amended by the substitution in the Afrikaans text for the first proviso to subsection (2) of the following proviso:

"Met dien verstande dat die Kommissaris, by **bewys aanvoering** van gegronde **rede redes**, 'n verdragting by die indiening van 'n bedoelde kennisgewing van **beswaar** appel binne bedoelde tydperk kan kondoneer".

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993

27. (1) Section 44 of the principal Act is hereby amended by the addition of the following subsection:

"(9) The Commissioner may make or authorise a refund of any amount of tax which has become refundable to any person under the provisions of an export incentive scheme referred to in paragraph (d) of the definition of 'exported' in section 1."

(2) The provisions of subsection (1) shall be deemed to have come into operation on 30 September 1991.

Amendment of section 61 of Act 89 of 1991

28. Section 61 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

*"(1) Where in respect Of any supply made by a vendor, the vendor has, in consequence of any fraudulent action or any misrepresentation by the recipient of **such** the supply,*

incorrectly applied a rate of zero per cent or treated such supply as being exempt from tax, the Commissioner may, notwithstanding anything *in this Act* to the contrary *contained in this Act*, raise an assessment upon the recipient for the amount of tax payable, together with any penalty *and or* interest that has become payable in terms of section 39 in respect of such amount, *and, in raising such assessment, the Commissioner may estimate the amount on which the tax is payable.*".

Amendment of section 63 of Act 89 of 1991

29. Section 63 of' the principal Act is hereby amended by the substitution for paragraph (a) of'subsection (2) of the following paragraph:

(a) was intended to enable or assist the client to avoid or unduly postpone the performance of any duty or obligation imposed on such client by or under this Act *or to obtain any refund of tax under this Act to which such client is not entitled*, or by reason of' negligence on the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation *or the obtaining of any such refund*; and".

Amendment of section 67 of Act 89 of 1991, as amended by section 43 of Act 136 of 1991, section 21 of Government Notice 2695 of 8 November 1991 and section 38 of Act 136 of 1992

30. Section 67 of the principal Act is hereby amended

(a) by the substitution for subsection (1) of the following subsection:

"(1) Whenever the value-added tax is imposed or increased in respect of *the any* supply of goods or services in relation to which any agreement was entered into by the acceptance of an offer made before the tax was imposed or increased, as the case may be, the vendor may, *unless agreed to the contrary in any agreement in writing and* notwithstanding anything to the contrary *contained in any agreement or* law, recover from the recipient, as an addition to the amounts payable by the recipient to the vendor, a sum equal to any amount payable by the vendor by way of the said tax or increase, as the case may be, and any amount so recoverable by the vendor shall, whether *or not* it is recovered *or not*, be accounted for by the vendor under the provisions of this Act as part of the consideration in respect of the said supply."; and

(b) by the substitution for subsection (2) of the following subsection: "(2) Whenever the value-added tax is withdrawn or decreased in respect of any supply of goods or services in relation to which any agreement was entered into by the acceptance of an offer made before the tax was withdrawn or decreased, as the case may be, the vendor shall, *unless agreed to the contrary in any agreement in writing and* notwithstanding anything to the contrary *contained in any agreement or* law, reduce the amount payable to him by the recipient by way of any consideration in which the amount Of Such tax was included, by a sum equal to the amount of the tax withdrawn or the amount by which the tax *is* was decreased, as the case may be.".

Amendment of section 67A of Act 89 of 1991, as inserted by section 6 of Act 61 of 1993 and amended by section 41 of Act 97 of 1993

31. Section 67A of the principal Act is hereby amended-

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) goods are provided before the date on which an increase or decrease in the rate of tax leviable under section 7(1)(a) becomes effective *in respect of the supply of such goods or the date on which the tax is imposed or withdrawn in respect of the supply of such goods*; or";

(b) by the substitution for paragraph (c) of the said subsection (1) of the following paragraph:

"(c) services are performed during a period beginning before and ending before, on or after the **said** date *on which an increase or decrease in the rate of tax leviable under section 7(1)(a) becomes effective in respect of the supply of such services or the date on which the tax is imposed or withdrawn in respect of the supply of such services*,";

(c) by the substitution for paragraph (i) of the said subsection (1) of the following paragraph:

"(i) *in the case of the increase or decrease in the rate of the tax on the said date*, the tax payable in respect of the supply of the goods referred to in paragraph (a) or the supply of the goods referred to in paragraph (b) which are provided during a period referred to in that paragraph which **ends** *expires* before the said date or the supply of services referred to in paragraph (c) which are performed during a period referred to in that paragraph which **ends** *expires* before the said date, shall be determined at the rate applicable on the day before the said date *or, in the case of the imposition of the tax on the said date, any such supply of goods or services, as the case may be, shall be deemed not to be subject to such tax or, in the case of the withdrawal of the tax on the said date, any such supply of goods or services, as the case may be, shall be deemed to be subject to such tax as if such tax had not been withdrawn*; and" ; and

(d) by the substitution for paragraph (ii) of the said subsection (1) of the following paragraph:

"(ii) where the period referred to in paragraph (b) or the period referred to in paragraph (c) **ends** *expires* on or after the said date, the value of the supply in respect of the period in question shall, on the basis of a fair and reasonable apportionment, be deemed to consist of a part (hereinafter **called** *referred to as* the first part) relating to the provision of the goods or the performance of the services, as the case may be, before the said date and a part (hereinafter referred to as the second part) relating to the provision of the goods or the performance of the services, as the case may be, on

or after the said date, and, *in the case of the increase or decrease in the rate of the tax on the said date*, the tax payable in respect of each part shall be separately determined, the tax in respect of the first part being determined at the rate applicable on the day before the said date and the tax in respect of the second part at the rate applicable on the said date *or, in the case of the imposition of the tax on the said date, the first part shall be deemed not to be subject to such tax or, in the case of the withdrawal of the tax on the said date, the first part shall be deemed to be subject to such tax as if such tax had not been withdrawn*".

Amendment of Schedule 1 to Act 89 of 1991, as amended by section 48 of Act 136 of 1991, section 24 of Government Notice 2695 of 8 November 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993 and section 32 of Act 20 of 1994

32. (1) Paragraph 1 of PART A of Schedule 1 to the principal Act is hereby amended

(a) by the substitution for Item No. 405.04/00.00/03.00 of the following Item:

"405.04/00.00/03.00 Goods approved by the Commissioner for Customs and Excise, *entered before or on 8 February 1997 and forwarded free to an organisation or body approved by the said Commissioner which cares for the welfare of children, subject to the conditions imposed by that Commissioner in each case and to a permit issued by him on or before 8 February 1996*.";

(b) by the addition to Item No. 407.06 of the following proviso:

"*: Provided that the said goods are not disposed of within a period of six months as from the date of entry*.";

(c) by the deletion of Item No. 412.02;

(d) by the substitution for Item No. 460.11/63.09/01.04 of the following Item:

"460.11/63.09/01.04 Worn clothing, entered *before or on 8 February 1997* in terms of a specific permit issued *on or before 8 February 1996* by the Director-General: Trade and Industry on the recommendation of the Board of Tariffs and Trade, purchased by or forwarded unsolicited and free to any church or any welfare organisation registered in terms of the National Welfare Act, 1978 (Act No. 100 of 1978), for free distribution to indigent persons by such church or organisation";

(e) by the substitution for Heading No. 38.11.11.20 of the following Heading:

"38.11/3811.11 *Anti-knock preparations: based on lead compounds*.

38.11.11.20 *Anti-knock preparations (other, for mineral oils)*"; and

(f) by the substitution for Heading No. 49.07/4907.00.30 of the following Heading:

"49.07/4907.00.30 Travellers cheques *and bills of exchange*, denominated in a foreign currency."

(2) The provisions of subsection (1)(a) and (d) shall be deemed to have come into operation on 8 February 1996.

Substitution of words "State Revenue Fund" in Act 89 of 1991

33. The principal Act is hereby amended by the substitution for the words Fund".

Amendment of section 60 of Act 113 of 1993, as amended by section 20 of Act 140 of 1993, section 4 of Act 168 of 1993, section 34 of Act 20 of 1994 and section 6 of Act 37 of 1995

34. Section 60(1) of the Income Tax Act, 1993, is hereby amended

(a) by the substitution in paragraph (a) of the definition of "distributable shares" for the words preceding subparagraph (i) of the following words: "any shares in one or more listed companies held on 19 June 1995 or *such other date as may be determined from time to time by the Minister of Finance by notice in the Gazette* by an unbundling company (hereinafter referred to as the holder) for its own benefit, whether directly or indirectly through one or more intermediate companies, if"; and

(b) by the substitution in paragraph (c) of the said definition of "distributable shares" for the words preceding subparagraph (i) of the following words:

"any shares in an unlisted company held on 19 June 1995 *or such other date as may be determined from time to time by the Minister of Finance by notice in the Gazette* by an unbundling company for its own benefit if-".

Amendment of section 39 of Act 20 of 1994, as amended by section 7 of Act 37 of 1995

35. Section 39 of the Taxation Laws Amendment Act, 1994, is hereby amended-

(a) in subsection (1)-

(i) by the substitution for paragraph (a) of the definition of "controlling company" of the following paragraph:

(a) on 19 June 1995 *or such other date as may be determined from time to time by the Minister of Finance by notice in the Gazette* or, where such other company is incorporated after such date, *or after such other date*, and the Commissioner is satisfied that such other company was incorporated to give effect to a rationalisation scheme, the date of incorporation of such other company; and" ; and

(ii) by the substitution in the definition of "rationalisation scheme" for the words preceding paragraph (a) of the following words:

"means any scheme effected in terms of **a written** an agreement *in writing* concluded on or after 19 June 1995 *or such other date as may be determined from time to time by the Minister of Finance by notice in the Gazette* for the words preceding paragraph 9a) of group of companies where-": and

(b) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

"For the purposes of **the** taxation levied under the Income Tax Act and notwithstanding anything to the contrary *contained* in that Act, where on or after 19 June 1995 *or such other date as may be determined from time to time by the Minister of Finance by notice in the Gazette*, the whole or a part of any business undertaking is disposed of (whether by way of sale, donation, session, dividend or in any other form) in terms of rationalisation scheme by a company (hereinafter referred to as the transferor company) to any other company (hereinafter referred to as the transferee company) and both such companies are at the time of such disposal members of' one and the same group of companies, the controlling company involved in such scheme and the Commissioner may agree that-".

Sales tax, penalty or interest not recoverable in respect of certain goods imported into the former Republic of Transkei

36. No amount of any sales tax, penalty or interest otherwise duly claimable under any law of the former Republic of Transkei by virtue of which a sales tax was leviable in respect of machinery or plant imported into the said Republic for use in the carrying on of any manufacturing enterprise thereat shall be recoverable if it is shown to the satisfaction of the Commissioner for Inland Revenue referred to in section 37 of the Income Tax Act, 1994 (Act No. 21 of 1994), that such goods were imported in pursuance of representations addressed to the government of the said Republic resulting in an undertaking in writing having been given on behalf of that government to the effect that legislation would be enacted to exempt such imported goods from sales tax, but that the enactment of the said legislation was left in abeyance.

Short title

37. This Act shall be called the *Taxation Laws Amendment Act, 1996* .