

REPUBLIC OF SOUTH AFRICA

DEMUTUALISATION LEVY BILL

(As introduced in the National Assembly)

(MINISTER OF FINANCE)

[B 50—98]

REPUBLIEK VAN SUID-AFRIKA

DEMUTUALISERINGSHEFFINGS- WETSONTWERP

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN FINANSIES)

[W 50—98]

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BILL

To provide for the imposition of a levy on the value of the free reserves of any mutual insurer on demutualisation of the insurer; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

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Definitions

1. For the purposes of this Act any word or expression to which a meaning has been assigned in the Income Tax Act bears the meaning so assigned and, unless the context otherwise indicates— 20
- (i) “affected company” means any company which carries on long-term insurance business in the Republic consequent upon a demutualisation scheme effected by a mutual insurer; (iii) 25
 - (ii) “Commissioner” means the Commissioner for the South African Revenue Service; (vii)
 - (iii) “demutualisation scheme” means any transaction contemplated in section 25 of the Insurance Act, confirmed by the court in accordance with that section, which results in— 30
 - (a) the transfer of the business of a mutual insurer to a company with a share capital;
 - (b) the conversion of a mutual insurer into a company with a share capital; or
 - (c) any combination of paragraphs (a) and (b); (ii)
 - (iv) “free reserves” means those funds accumulated by any mutual insurer which represent the excess of assets over liabilities and as determined in accordance with section 4; (xii) 35
 - (v) “free shares” means shares allotted and issued in terms of a demutualisation scheme, other than shares issued for the purposes of raising capital; (iv)

- (vi) “holding company” means a holding company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973); (v)
- (vii) “Income Tax Act” means the Income Tax Act, 1962 (Act No. 58 of 1962); (vi)
- (viii) “Insurance Act” means the Insurance Act, 1943 (Act No. 27 of 1943); (xi)
- (ix) “members” means those persons— 5
 - (a) who, in the case of natural persons, are ordinarily resident in the Republic; or
 - (b) which, in the case of persons other than natural persons, are effectively managed in the Republic; or
 - (c) in the case where the Commissioner is satisfied that it is not possible for the affected company to determine the place where they are ordinarily resident or their place of effective management, whose only or last recorded address in the records of any mutual insurer is in the Republic, to whom free shares are allotted and issued in terms of a demutualisation scheme effected by any mutual insurer; (viii) 10 15
- (x) “mutual insurer” means any insurer registered in terms of the Insurance Act, which is not a company with a share capital; (ix)
- (xi) “share” means any security, stock, share, debenture or other interest capable of being sold in a share market or exchange or otherwise; (i)
- (xii) “Umsobomvu Fund” means the fund established in accordance with such terms and conditions as the Minister of Finance may determine to fund national projects for skills development and job creation. (x) 20

Administration of Act

- 2. The Commissioner must administer this Act.

Imposition of levy, and rate

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3. (1) There must be levied and paid to the Commissioner for the benefit of the Umsobomvu Fund, a levy to be known as the demutualisation levy at the rate of 2,5 per cent of the value of a portion of the free reserves of any mutual insurer which enters into a demutualisation scheme.

(2) The portion of the free reserves which is subject to the levy is an amount which bears to the free reserves of the mutual insurer, the same ratio as the number of free shares allotted to members bears to the total number of free shares allotted and issued in terms of the demutualisation scheme. 30

(3) The number of shares allotted to members contemplated in subsection (2) includes the shares that would, but for the levy, have been issued to members, but which shares are retained or utilised for the purposes of the payment or recovery of the levy. 35

Determination of free reserves

- 4. (1) Subject to subsection (2), the value of the free reserves is the free reserves—
 - (a) as determined at a specific date and recorded in the demutualisation scheme confirmed by the Registrar of Insurance, as contemplated in section 25 of the Insurance Act; 40
 - (b) reflected as such in the financial statements submitted with the application to the court for confirmation of the demutualisation scheme; and
 - (c) recorded in the demutualisation scheme as approved by the court on the confirmation thereof. 45

(2) The value of the free reserves as at the specific date must for the purposes of section 3 be increased at a rate of 12 per cent per annum reckoned from the specific date up to the date on which the liability for the levy arises.

Date of liability for levy

5. Liability for the payment of the levy arises on the date on which the free shares are issued to the members in terms of the demutualisation scheme.

Members liable for levy

6. (1) The members are liable for the levy, but it must be paid on their behalf by the affected company. 5

(2) Any amount payable by the affected company on behalf of the members may be recovered by the company by the retention or utilisation of an appropriate number of free shares that would, but for the levy, have been issued to those members.

(3) The shares contemplated in subsection (2) may, subject to subsection (4), include any shares issued to the affected company by its holding company solely for the purpose of the payment of the levy. 10

(4) The latter shares contemplated in subsection (3) may only be held by an affected company subject to section 19A of the Insurance Act.

(5) The shares contemplated in subsections (2) and (3) may be realised by the affected company in an appropriate way and any surplus or shortfall in the amount so realised, as compared with the amount of the levy payable, shall be for the account of the company. 15

Payment of levy

7. (1) The levy must be paid by the affected company to the Commissioner within three months from the date on which the liability for the levy arises in terms of section 5 and the payment must be accompanied by a return in such form as the Commissioner may require. 20

(2) The public officer of the affected company, appointed in terms of section 101 of the Income Tax Act, is responsible for carrying out the duties of the company prescribed by this Act. 25

Assessment by Commissioner

8. Where the Commissioner is satisfied that any amount of the levy has not been paid or has not been paid in full within the period contemplated in section 7, the Commissioner may make a reasonable estimate of the unpaid amount and issue to the affected company a notice of assessment of the unpaid amount. 30

Interest on late payment

9. Where an affected company fails to pay any levy in full before or on the last date for payment prescribed by section 7, interest must be paid by the company on the balance of the levy outstanding at the prescribed rate reckoned from the last date for payment up to the date on which payment is received by the Commissioner. 35

Penalties

10. If the affected company fails to pay the full amount of the levy before or on the last date for payment prescribed by section 7, a penalty of 10 per cent of any unpaid amount must be paid. The Commissioner may, however, having regard to the circumstances of the case, remit the penalty or any portion thereof. 40

Discretion of Commissioner

11. Any decision by the Commissioner in the exercise of a discretion under this Act is subject to objection and appeal.

Application of Income Tax Act

12. (1) The provisions of the Income Tax Act relating to—
- (a) the administration thereof as contained in Chapter I of that Act;
 - (b) the furnishing of information, documents or things by any person;
 - (c) the obtaining of information, documents or things at certain premises; 5
 - (d) the conducting of inquiries;
 - (e) the procedures for searches and seizures;
 - (f) penalty on default;
 - (g) assessments;
 - (h) objections and appeals; 10
 - (i) the recovery of tax;
 - (j) refunds;
 - (k) transactions, operations or schemes for the purposes of avoiding or postponing liability for or reducing the amount of tax;
 - (l) public officers of companies, 15
- apply with the necessary changes required by the context in—
- (m) the administration of this Act;
 - (n) the furnishing and obtaining of information, documents or things for the purposes of determining the levy;
 - (o) any refusal or failure by any company to— 20
 - (i) furnish any information or reply;
 - (ii) attend to or give evidence as and when required by the Commissioner or any officer duly authorised thereto;
 - (iii) answer truly and fully any questions; or
 - (iv) produce any information, documents or things required of it by the 25 Commissioner or any such officer;
 - (p) any—
 - (i) default by any company in rendering a return;
 - (ii) omission by any company from a return of any amount which ought to have been included therein; or 30
 - (iii) incorrect statement made by any company in a return;
 - (q) any assessment, objection and appeal and the recovery or refund of the levy;
 - (r) any transaction, operation or scheme entered into or carried out for the purposes of avoiding or postponing liability for the levy or reducing the amount of the levy; 35
 - (s) the appointment of a public officer.
- (2) In the application contemplated in subsection (1) “tax” must be construed as “levy”.

Overpayments of levy

13. The repayment of any amount of the levy overpaid to the Commissioner as a result 40 of an amount—
- (a) not being leviable under this Act; or
 - (b) levied and paid in excess of what is leviable under this Act,
- is a direct charge against the Umsobomvu Fund.

Short title 45

14. This Act shall be called the Demutualisation Levy Act, 1998.

DEMUTUALISATION LEVY BILL: EXPLANATORY MEMORANDUM

The Bill provides for the imposition of a levy, known as the demutualisation levy, on the value of the free reserves of a mutual insurer, allocated to members entitled to the free shares pursuant to a demutualisation scheme.

Clause 1 of the Bill provides for definitions of the following words or phrases used in the Bill:

“affected company” means a company which carries on long-term insurance business in the Republic consequent upon a demutualisation scheme;

“Commissioner” means the Commissioner for the South African Revenue Service;

“demutualisation scheme” means any transaction in terms of which—

(a) the business of a mutual insurer is transferred to a company with a share capital;

(b) a mutual insurer is converted into a company with a share capital; or

(c) any combination of (a) and (b);

Such a transaction must be confirmed by the Court in terms of section 25 of the Insurance Act, 1943;

“free reserves” means the funds accumulated by a mutual insurer which represent the excess of assets over liabilities and as, furthermore, determined in accordance with section 4;

“free shares” means shares allotted and issued in accordance with a demutualisation scheme, excluding shares issued for purposes of raising share capital;

“holding company” means a holding company as defined in the Companies Act, 1973;

“Income Tax Act” means the Income Tax Act, 1962;

“Insurance Act” means the Insurance Act, 1943;

“members” means persons—

(a) in the case of natural persons, who are ordinarily resident in the Republic;

(b) in the case of persons other than natural persons, which are effectively managed in the Republic; or

(c) in the case where the Commissioner is satisfied that it is not possible for the affected company to determine the place where they are ordinarily resident or the place of effective management of such persons, whose only or last recorded address in the records of any mutual insurer is in the Republic,

to whom shares are allotted and issued free of charge in terms of a demutualisation scheme.

“mutual insurer” means an insurer registered in terms of the Insurance Act, which is not a company with a share capital;

“Umsobomvu Fund” means the fund to be established under such terms and conditions as the Minister of Finance may determine to fund national projects for skills development and job creation.

Clause 2 provides that the Commissioner for the South African Revenue Service must administer the Act.

In terms of *clause 3*, it is proposed that a once-off levy be imposed at the rate of 2,5 per cent on the free reserves of the mutual insurer which enters into a demutualisation scheme. The levy, known as the demutualisation levy, must be paid to the Commissioner for the benefit of the Umsobomvu Fund. Only that portion of the free reserves as relates to shares allocated to members, as defined, and shares which are utilised for purposes of the payment or recovery of the levy by the affected company on behalf of the members, will be subject to the levy.

Clause 4 provides the method of determining the value of the free reserves. The free reserves are as—

* determined at a specific date;

- * recorded in the demutualisation scheme confirmed by the Registrar of Insurance;
- * reflected as such in the financial statements of the mutual insurer forming part of the application to the court; and
- * recorded in the demutualisation scheme as approved by the court on the confirmation of the demutualisation scheme.

The value of the free reserves for the purposes of determining the levy payable will be increased at a rate of 12 per cent per annum from the specific date to the date that the liability for the levy arises.

Clause 5 provides that the liability for payment of the levy will arise when the free shares are issued to the members in accordance with the demutualisation scheme.

Clause 6 provides that the members will be liable for the levy. The levy will, however, be paid on behalf of the members by the new company, which is to carry on long-term insurance business consequent upon the demutualisation scheme. The Bill provides that the levy may be recovered by the company by retaining or utilising an appropriate number of free shares that would otherwise have been issued to members. A holding company may also for the sole purpose of the payment of the levy, issue shares, which otherwise would have been issued to members, to the affected company subject to such conditions as the Registrar of Companies may impose under the Insurance Act, 1943. Any surplus or shortfall on realisation of the shares, as compared with the levy payable, shall be for the account of the company.

Clause 7 provides that the levy must be paid by the affected company within 3 months from the date on which the liability for the levy arises. The payment must be accompanied by a return in the form as the Commissioner may require.

Clause 8 empowers the Commissioner to issue a notice of assessment in respect of any unpaid amount, if any amount of the levy has not been paid in full within the prescribed period.

Clause 9 makes provision for interest to be paid on the balance of the levy outstanding from the last date for payment, at the prescribed rate as defined in the Income Tax Act, 1962.

Clause 10 provides for the imposition of a penalty of 10 per cent of any unpaid amount. The Commissioner may, however, having regard to the circumstances of the matter, remit the penalty or a portion thereof.

In terms of *clause 11* the exercise of any discretion by the Commissioner is subject to objection and appeal.

Clause 12 provides that certain provisions contained in the Income Tax Act, 1962, will apply in respect of the levy, as if those provisions were also enacted in the Bill.

In the event of an overpayment of the levy to the Commissioner, the amount so overpaid shall be a direct charge against the Umsobomvu Fund, as is provided in *clause 13*.

Clause 14 provides the short title of the Bill.

Old Mutual and Sanlam were consulted on the Bill.

Section 77(2) of the Constitution requires that all money Bills (imposing taxes, levies or duties) must be considered in accordance with the procedure established by section 75 of the Constitution.