UNCERTIFICATED SECURITIES TAX BILL, 1998

EXPLANATORY MEMORANDUM

A new system, to be known as STRATE (Share TRAnsactions Totally Electronic) will be introduced by the Johannesburg Stock Exchange (JSE), which will provide for the dematerialisation of securities listed on the JSE in a Central Securities Depository (CSD). In terms thereof all share certificates that are deposited in the CSD will be cancelled and shareholding will be represented by entries in the accounts maintained by participants who act on behalf of the depositors (shareholders). These accounts maintained by the participants will statutorily be recognised as subregisters and would thus form part of the main register of the company in which the shares are held. Acquisition of membership and transfer of ownership of the dematerialised shares will be done electronically without the necessity of completing or filing any paper.

In order to implement the STRATE system, a number of legislative measures are proposed. At present, marketable securities tax (if the transaction is done through the agency of or from a member of the JSE) or stamp duty (if it is not done through a member) is levied in terms of the Marketable Securities Tax Act, 1948 (Act No. 32 of 1948), or the Stamp Duties Act, 1968 (Act No. 77 of 1968), respectively. In order to keep abreast of the developments on the JSE it is, from a tax point of view, therefore necessary that legislation be introduced in terms of which the duty on the transfer of uncertificated securities be levied, as the issue of securities and the transfer of beneficial and legal ownership of these securities will occur without the filing of any paper. The legislative measures contained in this Bill will ensure that tax is payable on the issue of uncertificated securities, as well as on the transfer of beneficial ownership of securities that have been dematerialised in the CSD.

Clause 1 provides for a number of definitions of words or expressions used in the Bill.

``*beneficial ownership*" in relation to a security includes the right -

* to receive dividends or interest payable in respect of the security;
* to exercise or cause to exercise any or all of the voting, conversion, redemption or other rights attaching to such security;

``*Commissioner*" means the Commissioner for the South African Revenue Service;

``*issuer*" means -

* any entity incorporated or established by or under any law of the Republic; and
* any entity incorporated or established by or under any law of a foreign country, which issues securities in the Republic;

``*lending arrangement*" means any arrangement or agreement in terms of which -

* a lender lends securities to a borrower to enable the borrower to effect delivery of the securities under a transaction entered into by the borrower to sell the securities; and
* the borrower undertakes to transfer securities of the same kind and equivalent quantity and quality to the lender within 12 months from the date of such loan;

``*member*" means any person admitted as a member of a stock exchange;

``*participant*" means a participant as defined in the Custody and Administration of Securities Act,

1992 (Act No. 85 of 1992);
``*prescribed rate*'' means the rate prescribed in paragraph *(b)* of the definition of ``prescribed rate'' in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);
``*ruling price*'' means the price determined by the stock exchange on which the securities are listed as the ruling price of the relevant securities on each day on which trade in such securities occurs on that stock exchange;
``*securities*'' means listed securities as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), which are transferable without a written instrument and are not evidenced by a certificate;
``*stockbroker*'' means a stockbroker as defined in section 1 of the Stock Exchanges Control Act, 1985;
``*stock exchange*'' means a stock exchange as defined in the Stock Exchanges Control Act, 1985;
``*tax*'' means the tax payable under this Bill.
Clause 2 provides that a tax, to be known as the uncertificated securities tax, shall be levied and paid for the benefit of the National Revenue Fund, in respect of -

* the issue of; and
* every change in beneficial ownership in,

any securities, at a rate of 0,25 per cent of the taxable amount of the securities.
In terms of *clause 3* of the Bill, the taxable amount in respect of the issue of shares shall be -

* the par value of the securities plus any premium payable therefor; or
* if the securities are of no par value, the greater of the actual consideration paid for the securities or the nominal value of the interest that such securities represent in the share capital of the issuer.

This clause furthermore provides that the issuer shall be liable for the tax.
Clause 4 provides that the taxable amount in respect of the change in beneficial ownership as a result of a purchase of securities through the agency of or from any member, shall be the consideration for which the securities are so purchased. The member shall be liable for the tax payable in respect of the change in beneficial ownership of securities contemplated in this clause.
Clause 5 provides that the taxable amount in respect of the change in beneficial ownership in securities effected by a participant, other than pursuant to a purchase from or through a member of the JSE, shall be -

* the amount declared by the person who acquires beneficial ownership as the consideration paid for the securities; or
* if no amount is declared or the amount so declared is less than the fair market value of the securities, the ruling price of the securities one day prior to the date on which the transfer of the securities is effected by the participant.

The participant who effects the transfer on behalf of the beneficial owner is liable for the tax payable in respect of the change in beneficial ownership of securities in terms of this clause.
Clause 6: Many of the existing exemptions from the tax or duty provided for in the Marketable Securities Tax Act, 1948, and the Stamp Duties Act, 1968, in respect of the purchase of marketable securities and the registration of transfer of ownership or other acquisition of such securities, will apply in relation to uncertificated securities to ensure uniformity between the tax treatment of the securities dealt with in terms of the different Acts. This clause has furthermore been subdivided into two broad categories. *Clause 6(1)(a)* contains the exemptions applicable to the issue of securities, while *clause 6(1)(b)* contains the exemptions applicable to changes in beneficial ownership.

Clause 6(1)(a) includes the following exemptions in respect of the issue of securities -

* the issue of securities in the case of the splitting of securities, where securities of the same nature or like or equivalent value are issued to the original holder of the securities;
* where securities are issued by an insurer pursuant to the transfer of insurance business in terms of section 25A of the Insurance Act, 1943 (Act No. 27 of 1943); and
* securities issued by the Reserve Bank;

Clause 6(1)(b) includes the following exemptions in respect of a change in beneficial ownership in securities -

* where the person who acquires beneficial ownership is -
  - a stockbroker or member who has purchased the securities on the own account and for the benefit of such stockbroker or member;
  - a Public Debt Commissioner;
  - an heir or legatee who has acquired the securities *ab intestatio* or by way of testamentary succession or as a result of a redistribution of the assets of a deceased estate in the process of liquidation; or
  - a person who is exempt from the payment of stamp duty in terms of section 4 of the Stamp Duties Act, 1968, and the change was not effected through the agency of or from any member;
* where the securities were issued by the Reserve Bank;
* where the securities are interest bearing debentures listed by any stock exchange;
* where the change in beneficial ownership is from a lender to a borrower, or *vice versa*, in terms of a lending arrangement and the lender or borrower, who has acquired beneficial ownership has certified to the participant that the change is in terms of such a lending arrangement;
* where the beneficial ownership is acquired by a beneficiary entitled thereto under a trust created in accordance with a will;
* where the change in beneficial ownership is from a pension fund which is registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), to another pension fund so registered, if the transfer is made in pursuance of a scheme referred to in section 14(1) of that Act;
* where the change in beneficial ownership is from an insurer which is registered under the Insurance Act, 1943, to another insurer which is so registered, if the change is made in accordance with the transfer of insurance business as contemplated in section 25A of that Act; or
* where a subsidiary company acquires beneficial ownership of the securities as contemplated in item 15(3)*(i)* of the Stamp Duties Act, 1968.

This clause furthermore provides that the Commissioner may prescribe any declaration to be submitted as proof that the exemption is applicable.

Clause 7 of the Bill provides that the tax in respect of the issue of securities is payable within 21 days from the date of issue of the securities. The tax in respect of the change in beneficial ownership in securities is payable by the 14th day of every month in respect of changes in ownership which took place during the previous month. The issuer, member and participant must also submit a declaration stating the amount of tax owing by them.

Clause 8 makes provision for the levying of a penalty of 10 per cent of the unpaid amount, where payment is not received on the relevant due date for payment. The Commissioner, however, has a

discretion to remit or reduce the penalty thereof after taking into account the circumstances of the case.
Clause 9 provides that certain acts, as well as the noncompliance with certain provisions of the Act, constitute an offence which is punishable with a fine or imprisonment for a period not exceeding 12 months.
Clause 10 provides for the payment of interest on any outstanding amount at the rate contemplated in paragraph *(b)* of the definition of ``prescribed rate" in section 1 of the Income Tax Act, **1962.**
Clause 11 prescribes the procedures to be followed by the Commissioner to recover any outstanding tax, penalties or interest. This clause contains provisions similar to those contained in section 91 of the Income Tax Act, 1962. The Commissioner may therefore file a statement with the registrar or clerk of any competent court, whereupon such statement shall have all effects of a civil judgment.
Clause 12 provides that the amount of tax paid by the member or the participant in terms of this Act may subsequently be recovered from the person who acquired the securities.
Clauses 13 to 17 prescribe the procedures for -

- the furnishing of information, documents or things by any person;
- obtaining information, documents or things at certain premises;
- the conducting of inquiries; and
- searches and seizures.

These procedures are similar to the procedures contained in all the other Acts administered by the Commissioner.
Clause 18 and the Schedule provides for the amendment of the Stamp Duties Act, 1968, and the Marketable Securities Tax (MST) Act, 1948. As the issue of or transactions in uncertificated securities, which are taxable in terms of this Bill, could also be taxable in terms of the provisions of either the MST Act or the Stamp Duties Act, it is proposed that appropriate exemptions be introduced in the lastmentioned two Acts to avoid double taxation.
Clause 19 provides the short title of the Bill and also provides that the Bill will come into operation on a date fixed by the President by proclamation in the *Gazette.*
The State Law Advisers and Department of Finance are of the opinion that this Bill is a money Bill as contemplated in section 77 of the Constitution.