

**MEMORANDUM ON THE OBJECTS OF THE SECURITIES
TRANSFER TAX ADMINISTRATION BILL, 2007**

1. PURPOSE OF BILL

The purpose of this Bill is to provide for the administration of a securities transfer tax, which will be imposed in terms of the accompanying Securities Transfer Tax Bill, 2007 (the Tax Bill), if it is enacted.

2. OBJECTS OF BILL

2.1 Administration and Interpretation of Act

Clause 1 provides that the Commissioner must administer this Bill as well as the Tax Bill. The provisions of the Income Tax Act, 1962 (Act No. 58 of 1962), relating to the administration regarding the exercise of powers, performance of duties and the preservation of secrecy apply to the administration of this Bill and the Tax Bill.

2.2 Notification requirement

Clause 2 provides that any person to whom an unlisted security is transferred must inform the company which issued that security of the transfer within 30 days from the date of transfer.

2.3 Payments

Clause 3 provides that the tax in respect of any transfer of listed securities during a month is payable by the member or participant by the 14th day of the following month. The member and participant must also submit an electronic declaration stating the amount of tax (if any) payable by that member or participant.

It further provides that the tax in respect of any transfer of unlisted securities must be paid by the company which issued the unlisted security within two months from the date of the transfer.

It further provides that the Commissioner may, if he or she deems it necessary, declare the person to whom a security is transferred liable for the tax payable in terms of the relevant sections of the Tax Bill. Where in addition to the tax payable by any person in terms of the relevant sections of the Tax Bill an amount of penalty or interest is payable by that person in terms of this Bill, the payment of the tax, interest or penalty in respect of a security must be made by way of an electronic payment.

2.4 Refunds

Clause 4 provides that the Commissioner must refund the amount of any overpayment of tax or of any interest or penalty properly chargeable in respect of the transfer of any security, if application for the refund is made within two years after the date of that overpayment and exceeds a *de minimis* amount to be determined by the Commissioner. It further provides that the Commissioner must refund the amount of tax if satisfied that the transfer in respect of which that tax became payable has been cancelled, or has been set aside or declared void by any court of law. A refund may be set-off against any amount of tax, duty, levy, charge, interest or penalty which has not been paid by the person concerned within the relevant period for payment prescribed by or under this Bill or any other law administered by the Commissioner.

2.5 Interest on overdue payments

Clause 5 provides for the payment of interest on any outstanding amount of tax at the prescribed rate (as defined in the Tax Bill), which is a rate determined with reference to the rate that the Minister may from time to time fix by notice in the *Gazette* in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No 1 of 1999).

2.6 Penalty on default

Clause 6 provides for the levying of a penalty of 10 per cent of the unpaid tax, where payment is not received by the relevant due date for payment. The Commissioner,

however, has a discretion to remit or reduce the penalty after taking into account the circumstances of the case.

2.7 Penalty in case of evasion

Clause 7 provides for the levying of a penalty in the case of evasion, not exceeding an amount equal to double the amount of any tax payable under this Bill or any undue refund of tax. The amount of penalty must be assessed by the Commissioner and must be paid by the person concerned within the period allowed by the Commissioner. Any other right conferred upon the Commissioner applies in addition to the power conferred upon him or her by this Bill.

2.8 Interest on overdue payments and penalty on default recoverable from person to whom security is transferred

Clause 8 provides that in the case of a listed security, a member or participant may recover the amount of interest, penalty on default or the penalty in case of evasion referred to in clauses 5, 6 and 7, respectively, payable by that member or participant from the person—

- to whom a listed security is transferred or
- who cancels or redeems a listed security,

to the extent that the action or inaction of that person resulted in the interest or penalty.

This clause also provides that in the case of an unlisted security, the company which issued that security may recover the amount of the interest, penalty on default or penalty in the case of evasion referred to in clauses 5, 6 and 7, respectively, payable by that company from the person to whom that security was transferred, to the extent that the action or inaction of that person resulted in the interest or penalty.

2.9 Recovery of tax

Clauses 9 to 11 prescribe the procedures to be followed by the Commissioner to recover any outstanding tax, penalty or interest. These clauses contain 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. Furthermore, he or she may declare any person to be the agent of any other person for the collection of tax, penalty or interest. The Commissioner has certain remedies against the property of an agent or trustee.

2.10 General provisions

Clauses 12 to 17 prescribe the procedures for—

- records;
- 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 laws administered by the Commissioner.

2.11 Objection and appeal procedures

Clause 18 regulates objections and appeals against decisions of the Commissioner. The provisions of the Income Tax Act, 1962, relating to objections and appeals and settlement of disputes apply with the changes required by the context to objections, appeals and disputes under this Bill.

2.12 Advance tax rulings, assessments and representative taxpayers

Clause 19 provides that the provisions of the Income Tax Act, 1962, relating to advance tax rulings, assessments and representative taxpayers apply with the changes required by the context for the purposes of this Bill.

2.13 Offences and penalties

Clause 20 provides that certain acts, as well as the non-compliance with certain provisions of this Bill, constitute an offence which is punishable with a fine or imprisonment for a period not exceeding 12 months.

2.14 Publication of names of offenders

Clause 21 provides that the Commissioner may from time to time publish (in a specified manner) a list of names of persons convicted of any offence in terms of the common law, where the criminal conduct corresponds materially with an offence referred to in clause 20.

2.15 Short title and commencement

Clause 22 provides the short title of the Bill and also provides that this Bill will come into operation on 1 July 2008.

3. CONSULTATION

A draft of this Bill was published on the National Treasury and SARS websites for public comment. Comments by interested parties were considered. Accordingly, the general public and institutions were consulted in preparing this Bill.

4. FINANCIAL IMPLICATIONS FOR STATE

As the Securities Transfer Tax is proposed to replace Uncertificated Securities Tax on listed securities and Stamp Duties on unlisted marketable securities, the implementation of this Bill should be revenue neutral.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains no provision pertaining to customary law or customs of traditional communities.

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