

REPUBLIC OF SOUTH AFRICA

SECURITIES TRANSFER TAX BILL

(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B - 2007]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To provide for the levying of a securities transfer tax in respect of every change in beneficial ownership in any security and to provide for matters connected therewith and incidental thereto.

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

Definitions

1. In this Act, unless the context indicates otherwise—
“**change in beneficial ownership**” in relation to a security includes the cancellation or redemption of that security, but does not include—
 - (a) any issue of that security; or
 - (b) a cancellation or redemption of that security if the company which issued the security is being wound up, liquidated or deregistered or its corporate existence is being finally terminated;“**close corporation**” means a close corporation as referred to in the Close Corporation Act, 1984 (Act No. 69 of 1984);
“**closing price**” means the closing price, on the date of the transaction or other manner of acquisition of a listed security, at which that security was traded on the exchange on which it is listed, as determined by that exchange on each day on which trade in that security occurs on that exchange: Provided that where the security was not traded on the date of the transaction or other manner of acquisition, the closing price of that security will be deemed to be

the closing price on the last business day, preceding the date of the transaction or other manner of acquisition, on which that security was traded on that exchange;

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

“company” means any corporation, or company incorporated, established or formed by or under any law;

“exchange” means an ‘exchange’ as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004) and licensed under section 10 of that Act;

“Income Tax Act” means the Income Tax Act, 1962 (Act No. 58 of 1962);

“lending arrangement” means any arrangement in terms of which—

- (a) a person (hereinafter referred to as the lender) lends a listed security to another person (hereinafter referred to as the borrower) in order to enable that borrower to effect delivery (other than to any lender in relation to that borrower, unless the borrower can demonstrate that the arrangement was not entered into for purposes of the avoidance of tax and was not entered into for purposes of keeping any position open for more than 12 months) of that security within 10 business days after the date of transfer of that security from the lender to the borrower in terms of that arrangement;
- (b) that borrower in return contractually agrees in writing to deliver a listed security of the same kind and quality to that lender within a period of 12 months from the date of transfer of that security from the lender to the borrower in terms of that arrangement;
- (c) that borrower is contractually required to compensate that lender for any distributions in respect of the listed security which that lender would have been entitled to receive during that period had that arrangement not been entered into; and
- (d) that arrangement does not affect the lender’s benefits or risks arising from fluctuations in the market value of the listed security:

Provided that the arrangement is treated not to be a lending arrangement, where—

- (i) that borrower has not on-delivered the listed security within the period referred to in paragraph (a); or

- (ii) that borrower has not returned the listed security as referred to in paragraph (b) to the lender within the period referred to in that paragraph;

“listed security” means any security that is listed on an exchange;

“lowest price” means the lowest price, on the date of the transaction or other manner of acquisition of a listed security, at which that security was traded on the exchange on which it is listed, as determined by that exchange on each day on which trade in that security occurs on that exchange: Provided that where that security was not traded on the date of the transaction or other manner of acquisition, the lowest price of that security will be deemed to be the lowest price on the last business day, preceding the date of the transaction or other manner of acquisition, on which that security was traded on that exchange;

“member” means any person who is an “authorised user” as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), providing such security services as the rules of the exchange permit including services in respect of the buying and selling of a listed security;

“Minister” means the Minister of Finance;

“participant” means a person that holds in custody and administers a listed security or an interest in a listed security and that has been accepted in terms of section 34 of the Securities Services Act, 2004 (Act No. 36 of 2004), by a central securities depository as a participant in that central securities depository;

“person” includes—

- (a) any sphere of the Government of the Republic;
- (b) any body of persons (corporate or unincorporated);
- (c) the estate of any deceased or insolvent person;
- (d) any trust fund; and
- (e) any portfolio comprised in any collective investment scheme in securities contemplated in Part IV of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);

“prescribed rate”, in relation to any interest payable in terms of this Act, means the rate as 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): Provided that where the Minister fixes a new rate in terms of that Act, that new rate applies for purposes of this Act from the first day of the second month following the date on which that new rate came into operation;

“Republic” means the ‘Republic’ as defined in section 1 of the Income Tax Act;

“security” means—

- (a) any share in a company;
- (b) any member’s interest in a close corporation;
- (c) any depository receipt in a company; or
- (d) any right or entitlement —
 - (i) to receive any dividend payable in respect of a share or a member’s interest; or
 - (ii) to exercise or cause to be exercised in the ordinary course of events, any or all of the conversion, redemption or other rights attaching to a share or a member’s interest,

excluding—

- (aa) the right to vote; and
- (bb) the debt portion in respect of a share linked to a debenture;

“tax” means the tax payable in terms of this Act;

“unlisted security” means any security other than a listed security;

Imposition of tax

2. (1) There must be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the securities transfer tax in respect of every change in beneficial ownership in any security issued by a company—

- (a) incorporated, established or formed inside the Republic; or
- (b) incorporated, established or formed outside the Republic and listed on an exchange,

at the rate of 0,25 per cent of the taxable amount of that security determined in terms of this Act.

(2) The Minister of Finance may announce that, with effect from the date mentioned in that announcement—

- (a) the rate of securities transfer tax referred to in subsection (1) will be reduced to the extent mentioned in the announcement; or
- (b) there will be a change in the provisions of this Act that will have the effect that the change in beneficial ownership in any security will no longer be subject to securities transfer tax.

(3) If the Minister makes an announcement referred to in subsection (2), that reduction or change comes into effect on the date announced and continues to apply for a period of six months from that date, unless Parliament passes legislation giving effect to that announcement within that period of six months.

Purchase of listed securities through or from a member

3. (1) The taxable amount in respect of any change in beneficial ownership as a result of every purchase of a listed security through the agency of or from a member, is the consideration for which that security is so purchased.

(2) The member is liable for the tax payable in respect of a change in beneficial ownership of a listed security referred to in this section.

Change in beneficial ownership in listed securities effected by a participant

4. (1) Unless tax is payable on a transaction referred to in section 3, the taxable amount in respect of any change in beneficial ownership in a listed security effected by a participant, is—

- (a) where all the rights or entitlements in that security are acquired—
 - (i) the amount of the consideration for that security declared by the person who acquires beneficial ownership of that security; or
 - (ii) if no amount of consideration referred to in subparagraph (i) is declared, or if the amount so declared is less than the lowest price of that security, the closing price of that security; or
- (b) where not all the rights or entitlements in that security are acquired, the greater of—

- (i) the amount of the consideration declared by the person who acquires beneficial ownership of those rights or entitlements; or
 - (ii) the fair market value of those rights or entitlements on the date of acquisition.
- (2) The participant is liable for the tax payable in respect of the change in beneficial ownership in a security or part thereof referred to in this section.

Other transactions in listed securities

5. (1) Unless tax is payable on a transaction referred to in section 3 or 4 the taxable amount in respect of any change in beneficial ownership in a listed security or part thereof, is—

- (a) where all the rights or entitlements in that security are acquired—
 - (i) the amount of the consideration for that security declared by the person who acquires beneficial ownership of that security; or
 - (ii) if no amount of consideration referred to in subparagraph (i) is declared, or if the amount so declared is less than the lowest price of the security, the closing price of that security; or
- (b) where not all the rights or entitlements in that security are acquired, the greater of—
 - (i) the amount of the consideration declared by the person who acquires beneficial ownership of those rights or entitlements; or
 - (ii) the fair market value of those rights or entitlements on the date of acquisition.

(2) The person who acquires the beneficial ownership of the listed security is liable for the tax payable as referred to in this section.

(3) Tax payable in terms of subsection (2) must be paid through the member or participant holding the listed security in custody, in respect of which a person has acquired a security or which security has been cancelled or redeemed.

Change in beneficial ownership in unlisted securities

6. (1) The taxable amount in respect of every change in beneficial ownership in an unlisted security is—

- (a) the amount or market value of the consideration given or, where no consideration is given or the consideration given is less than the market value of that security, the market value of that security;
- (b) in the case of the cancellation or redemption of an unlisted security, the market value of that security immediately prior to the cancellation or redemption: Provided that the market value must be determined as if that security was never cancelled or redeemed.

(2) The company which issued the unlisted security is liable for the tax payable in respect of any change in beneficial ownership of that security referred to in this section.

Tax recoverable from person who acquires the security or rights or entitlements in security

7. (1) In the case of a listed security, a member or participant may recover the amount of the tax payable by that member or participant in terms of this Act from the person who—

- (a) acquires beneficial ownership in a listed security; or
- (b) cancels or redeems a listed security.

(2) In the case of an unlisted security, the company which issued that security and paid the tax to the Commissioner may recover that tax from the person who has acquired beneficial ownership in that security.

Exemptions

8. (1) The tax is not payable in respect of a change in beneficial ownership in a security—

- (a) if the beneficial ownership is acquired by a person—

- (i) in terms of an asset for share transaction referred to in section 42 of the Income Tax Act;
- (ii) in terms of an amalgamation transaction referred to in section 44 of that Act;
- (iii) in terms of an intra-group transfer referred to in section 45 of that Act;
- (iv) in terms of an unbundling transaction referred to in section 46 of that Act;
- (v) in terms of a liquidation distribution referred to in section 47 of that Act; or
- (vi) in terms of any transaction which would have constituted a transaction or distribution referred to—
 - (A) in subparagraphs (i) to (v) regardless of whether or not an election has been made for the provisions of that section to apply;
 - (B) in subparagraph (i) or (iii) regardless of the market value of the asset disposed of in exchange for that security; or
 - (C) in subparagraphs (i) to (v) regardless of whether or not that person acquired that security as capital assets or as trading stock,

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the acquisition of that security complies with the provisions of this paragraph;

- (b) if the change in beneficial ownership is from a lender to a borrower, or *vice versa*, in terms of a lending arrangement and the person who has acquired such beneficial ownership has certified to the participant that the change is in terms of that lending arrangement;
- (c) if the change in beneficial ownership is from a pension fund to another pension fund both of which are registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), to another pension fund which is registered under that Act, and that change is made in pursuance of a scheme referred to in section 14(1) of that Act;
- (d) if the beneficial ownership is acquired by a public benefit organisation which is exempt from tax in terms of section 10(1)(cN) of the Income Tax Act, if the

duty thereon would be legally payable and borne by that public benefit organisation;

- (e) if the beneficial ownership is acquired by an institution, board or body, which is exempt from tax in terms of the provisions of section 10(1)(cA)(i) of the Income Tax Act, which has as its sole or principal object the carrying on of any public benefit activity referred to in section 30, if the duty thereon would be legally payable and borne by that institution, board or body;
- (f) to the extent that the security is a participatory interest in a collective investment scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002);
- (g) if the beneficial ownership is acquired by a beneficiary entitled thereto under a trust created in accordance with a will;
- (h) if the person who acquires beneficial ownership is an heir or a legatee who has acquired the security *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;
- (i) if the person who acquires beneficial ownership is a spouse in a marriage in community of property who acquires an undivided half-share in that security by operation of law by virtue of the contraction of such marriage, if that security was acquired by the other spouse prior to the date of that marriage;
- (j) if the person who acquires beneficial ownership is a surviving or divorced spouse who acquires a security from his or her deceased or divorced spouse where that security is transferred to that surviving or divorced spouse as a result of the death of his or her spouse or dissolution of their marriage or union;
- (k) acquired by any sphere of the Government of the Republic or by any sphere of the government of any other country;
- (l) acquired by any “water services provider” as defined in section 1 of the Income Tax Act;
- (m) acquired by any “regional electricity distributor” as defined in section 1 of the Income Tax Act, on or before 1 January 2014 or a later date that may be determined by the Minister by Notice in the *Gazette*;

- (n) if that security is an unlisted security which in terms of the Transfer Duty Act, 1949 (Act No. 40 of 1949), constitutes a transaction for the acquisition of property that is subject to transfer duty;
- (o) if that security is a share in a share block company as defined in section 1 of the Share Block Control Act, 1980 (Act No. 59 of 1980), which confers a right to or an interest in the use of immovable property;
- (p) acquired by any traditional council as referred to in the Communal Land Rights Act, 2004 (Act No. 11 of 2004), on or before a date that may be determined by the Minister by Notice in the *Gazette*; or
- (q) if the person who acquires beneficial ownership is a member who has purchased the security for the account and benefit of that person.

(2) The Commissioner may for the purposes of this section prescribe any declaration to be submitted by any person to the participant in respect of any security referred to in subsection (1).

(3) No exemption referred to in subsection (1) applies in respect of any change in beneficial ownership in any security referred to in that subsection, unless there is lodged with a participant a declaration referred to in subsection (2) in respect of that security.

Schemes for obtaining undue tax benefits

9. (1) Notwithstanding any other provision of this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

- (a) has been entered into or carried out which has the effect of any person obtaining a tax benefit;
- (b) having regard to the substance of the transaction, operation, scheme or understanding—
 - (i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes other than the obtaining of a tax benefit; or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and

- (c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner must determine the liability for tax, penalties and interest imposed by this Act and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in the manner that the Commissioner in the circumstances of the case deems appropriate for the prevention or diminution of that tax benefit.

(2) For the purpose of this section “**tax benefit**” means—

- (a) any reduction in the liability of any person to pay tax;
- (b) any increase in the entitlement of any person to the refund of tax; or
- (c) any other avoidance or postponement of liability for the payment of any tax imposed by this Act

(3) Any decision of the Commissioner under subsection (1) is subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it is presumed, until the contrary is proved, that that scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

Effect of certain exemptions from taxes

10. No provision contained in any other law providing for an exemption from any tax shall be construed as applying or referring, as the case may be, to the tax leviable under this Act.

Repeal of Act

11. (1) The Uncertificated Securities Tax Act, 1998 (Act No. 31 of 1998), is hereby repealed.

(2) The provisions of the Uncertificated Securities Tax Act, 1998, must continue to apply in respect of any change in beneficial ownership in any security before the date of the repeal of that Act as if that Act had not been so repealed.

Short title and commencement

12. This Act is called the Securities Transfer Tax Act, 2008, and comes into operation on 1 July 2008.