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THE PRESIDENCY

No. 36

8 January 2008

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

No. 26 of 2007: Securities Transfer Tax Administration Act, 2007



AIDS HELPLINE: 0800-123-22 Prevention is the cure

(English text signed by the President.)
(Assented to 21 December 2007.)

ACT

To provide for the administration of a securities transfer tax; and to provide for matters connected therewith.

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

ARRANGEMENT OF ACT

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CHAPTER 1

ADMINISTRATION AND INTERPRETATION

Administration and interpretation of Act

1. (1) The Commissioner must administer this Act and the Securities Transfer Tax Act, 2007. 5
- (2) Unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Securities Transfer Tax Act, 2007, bears the meaning so assigned for the purposes of this Act.
- (3) The provisions of the Income Tax Act apply, with the changes required by the context, in respect of the administration of this Act and the Securities Transfer Tax Act, 2007, as regards the exercise of powers and performance of duties and the preservation of secrecy. 10

Notification requirement

2. Any person to whom an unlisted security is transferred must inform the company which issued that security of the transfer within a period of 30 days as from the date of that transfer. 15

Payments

3. (1) The tax referred to in—
- (a) section 3 or 4 of the Securities Transfer Tax Act, 2007, which becomes payable during any month in respect of any transfer, must be paid by the member or participant to the Commissioner by the 14th day of the following month; 20
- (b) section 5 of the Securities Transfer Tax Act, 2007, which becomes payable during a month in respect of any transfer, must be paid by the member or participant holding that security in custody to the Commissioner by the 14th day of the following month; and 25
- (c) section 6 of the Securities Transfer Tax Act, 2007, which becomes payable in respect of the transfer of an unlisted security, must be paid by the company which issued the unlisted security to the Commissioner within two months from the date of the transfer. 30
- (2) The member or participant must by the date referred to in subsection (1)(a) and (b) submit a declaration electronically, in the form and manner as the Commissioner may determine and containing the information prescribed by the Commissioner, stating the amount of tax (if any) payable by that member or participant.
- (3) The Commissioner may, if he or she deems it necessary, declare the person to whom a security was transferred liable for the tax payable in terms of section 3, 4, 5 or 6 of the Securities Transfer Tax Act, 2007. 35
- (4) Where in addition to any amount of tax which is payable by any person in terms of section 3, 4, 5 or 6 of the Securities Transfer Tax Act, 2007, an amount of penalty or interest is payable by that person in terms of this Act, any payment made by that person in respect of that tax, penalty or interest which is less than the total amount due by that person in respect of that tax, penalty and interest, must for the purposes of this Act be deemed to be made— 40
- (a) in respect of that penalty;
- (b) to the extent to which that payment exceeds the amount of that penalty, in respect of that interest; and 45
- (c) to the extent to which that payment exceeds a sum of the amounts of that penalty and interest, in respect of that tax.
- (5) The payment of any tax, interest or penalty in respect of the transfer of a security must be made by way of an electronic payment. 50

Refunds

4. (1) 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.

(2) A refund must not be made by the Commissioner where the amount of the refund claimed is less than the amount the Commissioner may determine by notice in the *Gazette*. 5

(3) The Commissioner must refund the amount of tax if the Commissioner is 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. 10

(4) 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 Act or any other law administered by the Commissioner.

Interest on overdue payments 15

5. If the tax is not paid in full within the period for payment prescribed by section 3, interest must be paid at the prescribed rate on the balance of such tax outstanding reckoned from the day following the last date for payment referred to in section 3 to the date of payment to the Commissioner.

Penalty on default 20

6. (1) If any tax remains unpaid after the relevant date for payment referred to in section 3, a penalty of 10 per cent of that unpaid tax must be paid.

(2) The Commissioner may, having regard to the circumstances of the case, remit the penalty or a portion thereof imposed under this section.

Penalty in case of evasion 25

7. (1) Where a person fails to perform any duty imposed by this Act, or does or omits to do anything (other than section 6), with intent—

(a) to evade the payment of any amount of tax payable by that person; or

(b) to cause a refund by the Commissioner to that person of any amount of tax which is in excess of the amount properly refundable to that person, 30

that person is liable for penalty not exceeding an amount equal to double the amount of tax referred to in paragraph (a) or the amount in excess as referred to in paragraph (b), as the case may be.

(2) The amount of the penalty must be assessed by the Commissioner and must be paid by the person referred to in subsection (1) within the period that the Commissioner may allow. 35

(3) The power conferred upon the Commissioner by this section applies in addition to any other right conferred upon the Commissioner by this Act.

Interest on overdue payments and penalty on default recoverable from person to whom security is transferred 40

8. (1) In the case of a listed security, a member or participant may recover the amount of the interest referred to in section 5, penalty on default referred to in section 6 or the penalty in the case of evasion referred to in section 7 payable by that member or participant in terms of this Act from the person—

(a) to whom a listed security is transferred; or 45

(b) who cancels or redeems a listed security,

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

(2) In the case of an unlisted security, the company which issued that security may recover the amount of the interest referred to in section 5, penalty on default referred to in section 6 or the penalty in the case of evasion referred to in section 7 payable by that company in terms of this Act 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. 50

CHAPTER 2

RECOVERY OF TAX

Recoveries by Commissioner

9. (1) Any tax, penalty or interest payable in terms of this Act must, when that tax, penalty or interest becomes due or is payable, be treated as a debt due to the State and must be paid to the Commissioner in the prescribed manner and at the prescribed place. 5

(2) If any person fails to pay any tax, penalty or interest payable in terms of this Act when that tax, penalty or interest becomes due or is payable, the Commissioner may file with the clerk or registrar of any competent court a statement certified by the Commissioner as correct and setting forth the amount of the tax, penalty or interest so due or payable by that person, and that statement must thereupon have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement. 10

(3) The Commissioner may, by notice in writing addressed to the aforesaid clerk or registrar, withdraw the statement referred to in subsection (2) and that statement must thereupon cease to have any effect. 15

(4) The Commissioner may, in the circumstances referred to in subsection (2), institute proceedings afresh under that subsection in respect of any tax, penalty or interest referred to in the withdrawn statement. 20

(5) The Commissioner may institute proceedings for the sequestration of the estate of any person and must for the purposes of those proceedings be treated as the creditor in respect of any tax, penalty or interest due by the person concerned.

(6) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (2) with the clerk of the court of the magistrate having jurisdiction in respect of the person by whom that amount is payable in accordance with this Act. 25

Power to appoint agent

10. (1) The Commissioner may, if he or she deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent— 30

- (a) is for the purposes of this Act the agent of that other person in respect of the payment of any amount of tax, penalty or interest payable by that other person under this Act; and
- (b) may be required to make payment of that amount from any money which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be. 35

(2) A person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in that notice.

Remedies of Commissioner against agent or trustee 40

11. The Commissioner has the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any tax and in as full and ample a manner.

CHAPTER 3

GENERAL PROVISIONS

General provisions with regard to information, documents or things

12. (1) For the purposes of this section and sections 14, 15, 16 and 17—
- “**administration of this Act**” means the— 5
- (a) obtaining of full information in relation every transfer of any security;
 - (b) ascertaining of the correctness of any return, financial statement, document, declaration of facts or valuation;
 - (c) determination of the liability of any person for any tax and any interest or penalty in relation thereto imposed under this Act; 10
 - (d) collection of any such liability;
 - (e) ascertaining whether an offence in terms of this Act has been committed;
 - (f) ascertaining whether a person has, other than in relation to a matter referred to in paragraph (a), (b), (c), (d) or (e), complied with the provisions of this Act;
 - (g) enforcement of any of the Commissioner’s remedies under this Act to ensure that any obligation imposed upon any person by or under this Act is complied with; and 15
 - (h) performance of any other administrative function which is necessary for the carrying out of this Act;
- “**authorisation letter**” means a written authorisation granted by the Commissioner, or by any person designated by the Commissioner for this purpose or occupying a post designated by the Commissioner, to an officer to inspect, audit, examine or obtain any information, document or thing in the manner contemplated in section 15; 20
- “**document**” includes any book, security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map and drawing, and any printout of information generated, sent, received, stored, displayed or processed by electronic means; 25
- “**information**” includes any electronic representations of information in any form;
- “**judge**” means a judge of the High Court and includes a judge in chambers; 30
- “**officer**” means an officer referred to in section 3(1) of the Income Tax Act;
- “**premises**” includes any building, aircraft, vehicle, vessel or place;
- “**thing**” includes any corporeal or incorporeal thing and any document relating thereto; and
- “**warrant**” means a written authorisation issued by a judge to search for and seize any information, document or thing in terms of section 17. 35
- (2) For the purposes of sections 14, 15, 16 and 17, where any information, document or thing is not in one of the official languages, the Commissioner or any officer may by notice in writing require the person liable for the tax or, on that person’s default, any other person, to produce, within a reasonable period, a translation thereof in one of the official languages determined by the Commissioner or that officer. 40
- (3) Any translation referred to in subsection (2) must be—
- (a) produced at such time and premises as may be specified by the Commissioner or any officer; and
 - (b) prepared and certified by a sworn translator or another person approved by the Commissioner or that officer. 45
- (4) For the purposes of sections 16 and 17, the Commissioner may delegate the powers vested in him or her by those sections, to any other officer.

Records

13. (1) Any member, participant or person to whom a listed security is transferred must keep, for a period of five years, such record of every transfer which has been effected by the member, participant or person to whom the security has been transferred as may be required to enable the member, participant or person to whom the security has been transferred, as the case may be, to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed. 5

(2) The company referred to in section 3(1)(c) must keep, for a period of five years, such records of every transfer of an unlisted security issued by it as may be required to enable the company to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed. 10

Furnishing of information, documents or things by any person

14. The Commissioner or any officer may, for the purposes of the administration of this Act in relation to any person liable for the tax, require that person or any other person to furnish such information (whether orally or in writing), document or thing as the Commissioner or that officer may require. 15

Obtaining of information, documents or things at certain premises

15. (1) The Commissioner, or an officer named in an authorisation letter, may, for the purposes of the administration of this Act in relation to any person liable for the tax, require that person or any other person, with reasonable prior notice, to furnish, produce or make available such information, document or thing as the Commissioner or that officer may require to inspect, audit, examine or obtain. 20

(2) For the purposes of the inspection, audit, examination or obtaining of that information, document or thing, the Commissioner or an officer referred to in subsection (1) may call on any person— 25

(a) at any premises; and

(b) at any time during that person's normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer referred to in subsection (1), may not enter any dwelling-house or domestic premises (except any part thereof as may be occupied or used for the purposes of trade) without the consent of the occupant. 30

(4) Any officer exercising any power under this section must on demand produce the authorisation letter issued to him or her.

Inquiry

16. (1) The Commissioner or an officer referred to in section 12(4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act. 35

(2) Where the Commissioner, or any officer referred to in section 12(4), authorises a person to conduct an inquiry, the Commissioner or that officer must apply to a judge for an order designating a presiding officer before whom the inquiry is to be held.

(3) A judge may, on application by the Commissioner or any officer referred to in section 12(4), grant an order in terms of which a person referred to in subsection (2) is designated to act as presiding officer at the inquiry referred to in this section. 40

(4) An application under subsection (2) must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based. 45

(5) A judge may grant the order referred to in subsection (3) if he or she is satisfied that there are reasonable grounds to believe that—

(a) (i) any person has not complied with his or her obligations in terms of this Act; or

(ii) any person has committed an offence in terms of this Act; 50

(b) any information, document or thing is likely to be revealed which may afford proof of—

(i) that non-compliance; or

(ii) the commission of that offence; and

(c) the inquiry referred to in the application is likely to reveal that information, document or thing.

(6) An order under subsection (3) must, *inter alia*—

- (a) name the presiding officer;
- (b) refer to the alleged non-compliance or offence to be inquired into; 5
- (c) identify the person alleged to have failed to comply with the provisions of this Act or to have committed the offence; and
- (d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer is a person appointed by the Minister of Finance in terms of section 83A(4) of the Income Tax Act. 10

(8) For the purposes of an inquiry referred to in this section, a presiding officer designated under subsection (3) must—

- (a) determine the proceedings as he or she may think fit;
- (b) have the same powers—
 - (i) to enforce the attendance of witnesses and to compel them to give 15 evidence or to produce evidential material; and
 - (ii) relating to contempt committed during the proceedings, as are vested in a President of the Special Court referred to in section 83 of the Income Tax Act, and for those purposes sections 84 and 85 of that Act apply with the changes required by the context; and 20
- (c) record the proceedings and evidence at an inquiry in such manner as he or she may think fit.

(9) Any person may, by written notice issued by the presiding officer, be required to appear before him or her in order to be questioned under oath or solemn declaration for the purposes of an inquiry referred to in this section. 25

(10) The notice referred to in subsection (9) must specify the—

- (a) place where that inquiry will be conducted;
- (b) date and time of that inquiry; and
- (c) reasons for that inquiry.

(11) Any person whose affairs are investigated in the course of an inquiry referred to in this section is entitled to be present at the inquiry during the course of that investigation, unless on application by the person referred to in subsection (1) the presiding officer directs otherwise on the ground that the presence of the person and that person's representative, or either of them, would be prejudicial to the effective conduct of the inquiry. 30 35

(12) Any person referred to in subsection (9) has the right to have a legal representative present during the time that that person appears before the presiding officer.

(13) An inquiry referred to in this section must be private and confidential and the presiding officer must at any time, on application by the person whose affairs are investigated or any other person giving evidence or the person referred to in subsection (1), exclude any person whose attendance is not necessary for the inquiry from that inquiry or require that person to withdraw therefrom. 40

(14) Any person may, at the discretion of the presiding officer, be compensated for his or her reasonable expenditure related to the attendance of an inquiry, by way of witness fees in accordance with the tariffs prescribed in terms of section 51*bis* of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944). 45

(15) Subject to subsection (16), the evidence given under oath or solemn declaration at an inquiry may be used by the Commissioner in any subsequent proceedings to which the person whose affairs are investigated is a party or to which a person who had dealings with that person is a party. 50

(16) (a) A person may not refuse to answer any question during an inquiry on the grounds that it may incriminate that person.

(b) Incriminating evidence so obtained is not admissible in any criminal proceedings against the person giving that evidence, other than in proceedings where that person stands trial on a charge relating to the administering or taking of an oath, the administering or making of an affirmation, the giving of false evidence, the making of a false statement in connection with that question, or a failure to answer fully and satisfactorily questions lawfully put to that person. 55

(17) An inquiry in terms of this section must proceed notwithstanding the fact that any civil or criminal proceedings are pending or contemplated against or involving any person referred to in subsection (6)(c) or any witness or potential witness or any person whose affairs may be investigated in the course of that inquiry.

Search and seizure

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17. (1) For the purposes of the administration of this Act, a judge may, on application by the Commissioner or any officer referred to in section 12(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—

- (a) (i) enter and search any premises; and
- (ii) search any person present on the premises, provided that that search is conducted by an officer of the same gender as the person being searched, for any information, document or thing that may afford evidence as to the non-compliance by any person with his or her obligations in terms of this Act; 10
- (b) seize any such information, document or thing; and 15
- (c) in carrying out any such search, open or cause to be opened or removed and opened anything in which that officer suspects any information, document or thing to be contained.

(2) An application under subsection (1) must be supported by information supplied under oath or solemn declaration, establishing the facts on which the application is based. 20

(3) A judge may issue the warrant referred to in subsection (1) if he or she is satisfied that there are reasonable grounds to believe that—

- (a) (i) there has been non-compliance by any person with his or her obligations in terms of this Act; or 25
- (ii) an offence in terms of this Act has been committed by any person;
- (b) any information, document or thing is likely to be found which may afford evidence of—
- (i) such non-compliance; or
- (ii) the commission of that offence; and 30
- (c) the premises specified in the application are likely to contain that information, document or thing.

(4) A warrant issued under subsection (1) must—

- (a) refer to the alleged non-compliance or offence in relation to which it is issued;
- (b) identify the premises to be searched; 35
- (c) identify the person alleged to have failed to comply with the provisions of this Act or to have committed the offence; and
- (d) be reasonably specific as to any information, document or thing to be searched for and seized.

(5) Where the officer named in the warrant has reasonable grounds to believe that— 40

- (a) that information, document or thing is—
- (i) at any premises not identified in that warrant; and
- (ii) about to be removed or destroyed; and

(b) a warrant cannot be obtained timeously to prevent that removal or destruction, that officer may search those premises and further exercise all the other powers granted by this section, as if those premises had been identified in a warrant. 45

(6) Any officer who executes a warrant may seize, in addition to the information, document or thing referred to in the warrant, any other information, document or thing that that officer believes on reasonable grounds affords evidence of the non-compliance with the relevant obligations or the commission of an offence in terms of this Act. 50

(7) The officer exercising any power under this section must on demand produce the relevant warrant (if any).

(8) The Commissioner must take reasonable care to ensure that the information, document or thing is preserved and may retain it until the conclusion of any investigation into the non-compliance or offence in relation to which the information, document or thing was seized or until it is required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last. 55

Act No. 26, 2007 SECURITIES TRANSFER TAX ADMINISTRATION ACT, 2007

(9) (a) Any person may apply to the relevant division of the High Court for the return of any information, document or thing seized under this section.

(b) The court hearing that application may, on good cause shown, make the order it deems fit.

(10) The person to whose affairs any information, document or thing seized under this section relates may examine and make extracts therefrom and obtain one copy thereof at the expense of the State during normal business hours under such supervision as the Commissioner may determine. 5

Objection and appeal procedures

18. (1) Any person aggrieved by a decision of the Commissioner in terms of this Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder. 10

(2) The provisions of the Income Tax Act, relating to—

(a) objections and appeals, as provided for in Part III of Chapter III of that Act and the rules promulgated thereunder; and 15

(b) settlement of disputes, as provided for in Part IIIA of Chapter III of that Act, apply, with the changes required by the context, in respect of any objection lodged or appeal noted or any dispute settled in terms of this Act.

(3) Any decision of the Commissioner contemplated in subsection (1) must be treated as an assessment for the purposes of the application of the provisions of the Income Tax Act referred to in subsection (2). 20

Advance tax rulings, assessments and representative taxpayers

19. (1) The provisions relating to advance tax rulings contained in Part IA of Chapter III of the Income Tax Act apply, with the changes required by the context, for the purposes of this Act. 25

(2) Any procedures and guidelines issued by the Commissioner in terms of section 76S of the Income Tax Act for implementation and operation of the advance tax ruling system apply, with the changes required by the context, for the purposes of this Act.

(3) The provisions of the Income Tax Act apply, with the changes required by the context, in respect of assessments and representative taxpayers. 30

Offences and penalties

20. Any person who—

(a) fails or neglects to furnish, file or submit any declaration or document as and when required by or under this Act; 35

(b) without just cause shown, refuses or neglects to furnish any information, document or thing referred to in section 12;

(c) fails to disclose any material fact in the declaration referred to in section 2 or 3;

(d) obstructs or hinders any person in the performance of his or her functions under or in terms of this Act; 40

(e) submits or furnishes a false certificate or statement; or

(f) acquires an unlisted security and fails to inform the company of the transfer within the period referred to in section 2,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months. 45

Publication of names of offenders

21. (1) The Commissioner may from time to time publish by notice in the *Gazette* a list of persons who have been convicted of any offence in terms of the common law, where the criminal conduct corresponds materially with an offence referred to in section 20. 50

Act No. 26, 2007 SECURITIES TRANSFER TAX ADMINISTRATION ACT, 2007

(2) The name of a person may be published in terms of subsection (1) only after any appeal or review proceedings in relation to that person's conviction have been completed or not been instituted within the period allowed therefor.

(3) The published list of persons may specify—

- (a) the name and address of the offender;
- (b) such particulars of the offence as the Commissioner thinks fit;
- (c) the particulars of the fine or sentence imposed.

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Short title and commencement

22. This Act is called the Securities Transfer Tax Administration Act, 2007, and comes into operation on 1 July 2008.

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