

REPUBLIC OF SOUTH AFRICA

UNCERTIFICATED SECURITIES TAX BILL

(As introduced in the National Assembly)

(MINISTER OF FINANCE)

[B 44-98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP BELASTING OP SERTIFIKAATLOSE AANDELE

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN FINANSIES)

[W 44-98]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To provide for the levying of an uncertificated securities tax in respect of the issue of, and change in beneficial ownership in, any securities which are transferable without a written instrument and are not evidenced by a certificate; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
 - (i) “beneficial ownership”, in relation to a security, includes any one or more of 5 the following:
 - (a) the right or entitlement to receive any dividend or interest payable in respect of that security; or
 - (b) the right to exercise or cause to be exercised in the ordinary course of events, any or all of the voting, conversion, redemption or other rights 10 attaching to such security; (xi)
 - (ii) “Comrnissioner” means the Commissioner for the South African Revenue Service; (vii)
 - (iii) “issuer” means—
 - (a) any entity which is incorporated or established by or under any law of the 15 Republic; or
 - (b) any other entity incorporated or established by or under the laws of any country other than the Republic, which issues securities in the Republic; (x)
 - (iv) “lending arrangement” means any arrangement or agreement in terms of 20 which—
 - (a) a person (hereinafter referred to as the lender) lends securities to another person (hereinafter referred to as the borrower) in order to enable the borrower to effect delivery of the securities under a transaction entered into by the borrower to sell the securities; and 25
 - (b) the borrower in return undertakes to transfer securities of the same kind and of the same or equivalent quantity and quality to the lender within a period of 12 months as from the date of such loan; (viii)

- (v) “member” means any person admitted as a member of a stock exchange; (ix)
- (vi) “participant” means a participant as defined in the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992); (v)
- (vii) “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); (xii)
- (viii) “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; (vi)
- (ix) “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 which are not evidenced by a certificate; (i)
- (x) “stockbroker” means a stockbroker as defined in section 1 of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985); (iii)
- (xi) “stock exchange” means a stock exchange as defined in section 1 of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985); (ii)
- (xii) “tax” means the tax payable in terms of this Act. (iv)

Imposition of tax

2. There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the uncertificated securities tax, in respect of the issue of, and every 20 change in beneficial ownership in, any securities, at the rate of 0,25 per cent of the taxable amount of such securities determined in terms of this Act.

Issue of securities

3. (1) The taxable amount in respect of the issue within the Republic of securities, which are shares or debentures as defined in the Companies Act, 1973 (Act No. 61 of 25 1973), shall be the value of such securities.

(2) For the purposes of subsection (1), the value of the securities shall be—

(a) the par value of such securities plus any premium payable therefor; or

(b) 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 30 represent in the share capital of the issuer.

(3) Subsections (1) and (2) shall also apply to securities issued outside the Republic by an entity contemplated in paragraph (a) of the definition of “issuer”.

(4) The issuer shall be liable for the tax payable in respect of the issue of securities 35 contemplated in this section.

Purchase of securities through or from member

4. (1) The taxable amount in respect of any change in beneficial ownership as a result of every purchase of securities through the agency of or from any member, shall be the consideration for which the securities are so purchased.

(2) The member shall be liable for the tax payable in respect of a change in beneficial 40 ownership of securities contemplated in this section.

Other transactions

5. (1) The taxable amount in respect of every change in beneficial ownership in securities effected by any participant, shall be the value of the securities: Provided that this section shall not apply in respect of any change in beneficial ownership in securities 45 in respect of which section 4 applies.

(2) For the purposes of subsection (1), the value of securities shall be—

(a) the amount declared by the person who acquires beneficial ownership of the securities as the consideration paid for such securities; or

(b) if no amount referred to in paragraph (a) is declared, or if the amount so 50 declared is less than the fair market value of the securities on the date of the relevant transaction or other manner of acquisition, the ruling price of those securities on the business day immediately preceding the day on which the transfer of such securities is effected by the participant.

(3) The participant shall be liable for the tax payable in respect of the change in beneficial ownership of securities contemplated in this section.

Exemptions

6. (1) The tax shall not be payable—
- (a) in respect of the issue of securities— 5
 - (i) where the securities are issued solely in substitution for securities of the same nature of like or equivalent value, and were owned by the person to whom the issue in substitution is made: Provided that this exemption shall only apply if a director, secretary or responsible officer certifies to the Commissioner that it is a *bona fide* substitution without any change in 10 beneficial ownership; or
 - (ii) where the securities are issued by an insurer registered under the Insurance Act, 1943 (Act No. 27 of 1943), and such issue is made in accordance with the transfer of insurance business as contemplated in section 25A of that Act; or 15
 - (iii) by the Reserve Bank of South Africa;
 - (b) in respect of a change in beneficial ownership in securities—
 - (i) if the person who acquires beneficial ownership is—
 - (aa) a stockbroker or member who has purchased the securities for his, her or its own account and benefit; 20
 - (bb) a Public Debt Commissioner;
 - (cc) an heir or a 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
 - (old) a person who is exempt from the payment of stamp duty in terms of section 4 of the Stamp Duties Act, 1968 (Act No. 77 of 1968), and the change was not effected pursuant to a purchase contemplated in section 4 of this Act;
 - (ii) if the securities were issued by the Reserve Bank of South Africa;
 - (iii) if the securities are interest bearing debentures (including debenture 30 stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not) listed by any stock exchange;
 - (iv) if 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, 35 as the case may be, who has acquired beneficial ownership has certified to the participant that the change is in terms of such a lending arrangement;
 - (v) if the beneficial ownership is acquired by a beneficiary entitled thereto under a trust created in accordance with a will; 40
 - (vi) if the change in beneficial ownership is from a pension fund which is registered under the Pension Fund Act, 1956 (Act No. 24 of 1956), to another pension fund which is registered under that Act. and such change is made in pursuance of a scheme referred to in section 14(1) of the said Act; 45
 - (vii) if the change in beneficial ownership is from an insurer which is registered under the Insurance Act, 1943 (Act No. 27 of 1943), to another insurer which is registered under that Act, and such change is made in accordance with the transfer of insurance business as contemplated in section 25A of the said Act; or 50
 - (viii) if a subsidiary company, as contemplated in item 15(3)(i) of Schedule 1 to the Stamp Duties Act, 1968 (Act No. 77 of 1968), acquires beneficial ownership of the securities in the circumstances contemplated in that item.
- (2) The Commissioner may for the purposes of this section prescribe any declaration 55 to be submitted by any person to the participant in respect of any security contemplated in subsection (1)(b).

(3) No exemption contemplated in subsection (1) shall apply in respect of any change in beneficial ownership in any security contemplated in subsection (1)(b), unless there is lodged with a participant a declaration contemplated in subsection (2) in respect of such security.

Payment and refund

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7. (1) The tax—

(a) referred to in section 3 is payable by the issuer to the Commissioner within 21 days reckoned from the date of issue of the securities and the issuer shall by the same day submit a declaration, in the form and containing the information prescribed by the Commissioner, stating the amount of tax payable by such issuer; and

(b) referred to in section 4 or 5 is payable by the member or participant to the Commissioner by the 14th day of every month in respect of changes in beneficial ownership in securities during the previous month, and such member or participant shall by the same date submit a declaration, in the form 15 and containing the information prescribed by the Commissioner, stating the amount of tax (if any) payable by such member or participant.

(2) Tax shall be refundable if the Commissioner is satisfied that the transaction or other event as a result of which such tax became payable has been cancelled, or has been set aside or declared void by any court of law: Provided that the refund may be set-off 20 against any amount of tax, additional 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.

Penalties on default

8. If any tax remains unpaid after the relevant date for payment as contemplated in 25 section 7, a penalty of 10 per cent of such unpaid amount shall be payable: Provided that the Commissioner may, having regard to the circumstances of the case, remit the penalty or any portion thereof imposed under this section.

Offences

9. Any person who-

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

(b) without just cause shown, refuses or neglects to furnish any information, documents or thing contemplated in section 14; or

(c) fails to disclose any material fact in the declaration contemplated in sections 35 6 and 7:

(d) obstructs or hinders any person in the discharge of his or her duties under or in terms of this Act; or

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

shall be guilty of an offence and liable on conviction to a fine or imprisonment for a 40 period not exceeding 12 months.

Interest on overdue payments

10. If any tax is not paid in full within the period for payment prescribed by section 7, interest shall be paid at the prescribed rate on the balance of such tax outstanding reckoned from the date for payment contemplated in section 7 to the date of payment to 45 the Commissioner.

Recoveries by Commissioner

11. (1) Any tax, penalty or interest payable in terms of this Act shall, when such tax, penalty or interest become due or is payable, be deemed to be a debt due to the State and shall be payable to the Commissioner in the manner and at the place prescribed.

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(2) If any person fails to pay any tax, penalty or interest payable in terms of this Act when such 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 such statement shall thereupon have all the effects of, 5 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.

(3) The Commissioner may by notice in writing addressed to the aforesaid clerk or registrar, withdraw the statement referred to in subsection (2) and such statement shall 10 thereupon cease to have any effect: Provided that, in the circumstances contemplated in the said subsection, the Commissioner may institute proceedings afresh under that subsection in respect of any tax, penalty or interest referred to in the withdrawn statement.

(4) The Commissioner may institute proceedings for the sequestration of the estate of 15 any person and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax, penalty or interest due by the person concerned.

(5) 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 20 person by whom such amount is payable in accordance with this Act.

Tax recoverable from person to whom securities were transferred

12. A member or participant, as the case may be, may recover the amount of the tax payable by such member or participant in terms of this Act, from the person to whom the relevant securities were transferred. 25

General provisions with regard to information, documents or things

13. (1) For the purposes of this section and sections 14, 15, 16 and 17—

“administration of this Act” means the—

- (a) obtaining of full information in relation to the issue of, or change in beneficial ownership in, any security; 30
- (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 leviable under this Act;
- (d) collecting of any such liability; 35
- (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 contemplated in paragraphs (a), (b), (c), (d) and (e) of this definition, complied with the provisions of this Act;
- (g) enforcement of any of the Commissioner's remedies under this Act to 40 ensure that any obligation imposed upon any person by or under this Act, is complied with; and
- (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 45 Commissioner, or any chief director, receiver of revenue or chief revenue inspector under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 15, any information, documents or things;

“**documents.**” includes any document, book, security, record, account, deed, 50 plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any ‘computer print-out’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983);

“**information**” includes any data stored by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983); 55

“**judge**” means a judge of the High Court and includes a judge in chambers;

“**of ficer.**” means an officer contemplated in section 3(1) of the Income Tax Act, 1962 (Act No. 58 of 1962);

“premises” includes any building, premises, aircraft, vehicle, vessel or place;
 “thing” includes any corporeal or incorporeal thing and any document relating thereto;

“warrant” means a written authorisation issued by a judge to search for and seize any information, documents or thing under section 17.

(2) For the purposes of sections 14, 15, 16 and 17, where any information, documents or things are 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 such 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 such officer.

(3) Any translation referred to in subsection (2) shall 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 such officer.

(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.

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 such person or any other person to furnish such information (whether orally or in writing), documents or things as the Commissioner or such officer may require.

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 such person or any other person, with reasonable prior notice, to furnish, produce or make available any such information, documents or things as the Commissioner or such officer may require to inspect, audit, examine or obtain.

(2) For the purposes of the inspection, audit, examination or obtaining of any such information, documents or things, the Commissioner or an officer contemplated in subsection (1), may call on any person—

(a) at any premises; and

(b) at any time during such person’s normal business hours.

(3) For the purposes of subsection (2), the Commissioner or any officer contemplated in subsection (1), shall 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.

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

Inquiry

16. (1) The Commissioner or an officer contemplated in section 13(4) may authorise any person to conduct an inquiry for the purposes of the administration of this Act.

(2) Where the Commissioner, or any officer contemplated in section 13(4), authorises a person to conduct an inquiry, the Commissioner or such officer shall 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 contemplated in section 13(4), grant an order in terms of which a person contemplated in subsection (2) is designated to act as presiding officer at the inquiry contemplated in this section.

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

(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) there has been non-compliance by any person with his or her obligations in terms of this Act; or

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

(b) information, documents or things are likely to be revealed which may afford proof of—

(i) such non-compliance; or

(ii) the committing of such offence; and

(c) the inquiry referred to in the application is likely to reveal such information, documents or things.

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

(a) name the presiding officer;

(b) refer to the alleged noncompliance or offence to be inquired into;

(c) identify the person alleged to have failed to comply with the provisions of the Act or to have committed the offence; and

(d) be reasonably specific as to the ambit of the inquiry.

(7) Any presiding officer shall be a person appointed by the Minister of Finance in terms of section 83A(4) of the Income Tax Act, 1962 (Act No. 58 of 1962).

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

(a) determine the proceedings as he or she may think fit;

(b) have the same powers to enforce the attendance of witnesses and to compel them to give evidence or to produce evidential material as are vested in a President of the Special Court contemplated in section 83 of the Income Tax Act, 1962 (Act No. 58 of 1962); and

(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 contemplated in this section.

(10) The notice contemplated in subsection (9) shall specify the—

(a) place where such inquiry will be conducted;

(b) date and time of such inquiry; and

(c) reasons for such inquiry.

(11) Any person whose affairs are investigated in the course of an inquiry contemplated in this section, shall be entitled to be present throughout the inquiry, unless on application by the person contemplated in subsection (1), the presiding officer directs otherwise on the ground that the presence of the person and his or her representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

(12) Any person contemplated in subsection (9) has the right to a representative of his or her choice.

(13) An inquiry contemplated in this section shall not be public and the presiding officer shall at any time on application of the person whose affairs are investigated or any other person giving evidence, exclude from such inquiry or require to withdraw therefrom, all or any persons whose attendance is not necessary for the inquiry.

(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).

Search and seizure

17. (1) For the purposes of the administration of this Act, a judge may, on application

by the Commissioner or any officer contemplated in section 13(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 such search is conducted by an officer of the same gender as the person being searched, for any information, documents or things, that may afford evidence as to the noncompliance by any person with his or her obligations in terms of this Act;
- (b) seize any such information, documents or things; and
- (c) in carrying out any such search, open or cause to be opened or removed and opened, anything in which such officer suspects any information, documents or things to be contained.

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

(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 noncompliance by any person with his or her obligations in terms of this Act; or
- (ii) an offence in terms of this Act has been committed by any person;
- (b) information, documents or things are likely to be found which may afford evidence of—
 - (i) such noncompliance; or
 - (ii) the committing of such offence; and
- (c) the premises specified in the application are likely to contain such information, documents or things.

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

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

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

- (a) such information, documents or things are—
 - (i) at any premises not identified in such warrant; and
 - (ii) about to be removed or destroyed; and
- (b) a warrant cannot be obtained timeously to prevent such removal or destruction,

such officer may search such premises and further exercise all the other powers granted by this section, as if such premises had been identified in a warrant.

(6) Any officer who executes a warrant may seize, in addition to the information, documents or things referred to in the warrant, any other information, documents or things that such officer believes on reasonable grounds afford evidence of the noncompliance with the relevant obligations or the committing of an offence in terms of this Act.

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

(8) The Commissioner, who shall take reasonable care to ensure that the information, documents or things are preserved, may retain them until the conclusion of any investigation into the noncompliance or offence in relation to which the information, documents or things were seized or until they are required to be used for the purposes of any legal proceedings under this Act, whichever event occurs last.

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

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

(10) The person to whose affairs any information, documents or things seized under this section relate, 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.

Amendment of laws

18. The laws referred to in the Schedule are hereby amended to the extent set out in the third column thereof. 5

Short title and commencement

19. This Act shall be called the Uncertificated Securities Tax Act, 1998. and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule

LAWS AMENDED

(Section 18)

No. and year of law	Short title	Extent of amendment
Act No. 32 of 1948	Marketable Securities Act, 1948	The amendment of section 3 by the addition of the following paragraph: (e) in respect of the purchase of marketable securities to which the provisions of the <u>Uncertificated Securities Tax Act, 1998, apply.</u> ”
Act No. 77 of 1968	Stamp Duties Act, 1968	The amendment of item 15 of Schedule 1— (a) by the addition to “Exemptions from duty under paragraph (1) or (2)” of the following subparagraph: (f) <u>The issue of marketable securities in respect of which the provisions of the Uncertificated Securities Tax Act, 1998, apply.</u> ”; b) by the addition to “Exemptions from duty under paragraph (3)” of the following subparagraph: “(w) <u>Any registration of transfer of any marketable security in respect of which the provisions of the Uncertificated Securities Tax Act, 1998, apply.</u> ”; and (c) by the addition to “Exemptions from duty under paragraph (5)” of the following subparagraph: “(c) <u>The acquisition of any marketable security in respect of which the provisions of the Uncertificated Securities Tax Act, 1998, apply.</u> ”

UNCERTIFICATED SECURITIES TAX BILL, 1998

EXPLANATORY MEMORANDUM

A new system, to be known as **STRATE** (**S**hare **T**ransactions **T**otally **E**lectronic) 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 taxes 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.