

REPUBLIC OF SOUTH AFRICA

SECURITIES TRANSFER TAX ADMINISTRATION BILL

*(As introduced in the National Assembly (proposed section 75))
(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.

BILL

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

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

CHAPTER 1 ADMINISTRATION

Administration of Act

1. (1) The Commissioner must administer this Act and the Securities Transfer Tax Act, 2008 (Act No. of 2007).

 (2) Any word or expression to which a meaning has been defined in the Securities Transfer Tax Act, 2008, bears the meaning so defined.

Notification requirement

2. Any person who acquires a security pursuant to a change in the beneficial ownership in an unlisted security must inform the company which issued that security, of the change in beneficial ownership within a period of 30 days as from the date of that change of beneficial ownership.

Payments

3. (1) The tax referred to in—
- (a) section 3 or 4 of the Securities Transfer Tax Act, 2008, which becomes payable during any month in respect of any change in beneficial ownership, must be paid by the member or participant to the Commissioner by the 14th day of the following month;
 - (b) section 5 of the Securities Transfer Tax Act, No. of 2008, which becomes payable, during a month in respect of any change in beneficial ownership, 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
 - (c) section 6 of the Securities Transfer Tax Act, No. of 2008, which becomes payable in respect of—
 - (i) the acquisition of the beneficial ownership in an unlisted security;
 - or
 - (ii) the redemption or cancellation 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 change in beneficial ownership.
- (2) The member or participant must by the date referred to in subsection (1)(a) and (1)(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 who acquired the beneficial ownership in a security liable for the tax payable in terms of section 3, 4, 5 or 6 of the Securities Transfer Tax Act, 2008.

(4) Where in addition to any amount of tax which is payable by any person in terms of this Act, an amount of penalty or interest is payable by that person in terms of section 5, 6 or 7 of the Securities Transfer Tax Act, 2008, any payment made by that person in respect of that tax, penalty or interest which is less than the total amount due by him in respect of that tax, penalty and interest, must for the purposes of this Act be deemed to be made—

- (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
- (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 a security must be made by way of an electronic payment.

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 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*.

(3) The Commissioner must refund the amount of tax if the Commissioner is satisfied that the transaction or other event in respect of which

that tax became payable has been cancelled, or has been set aside or declared void by any court of law.

(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

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

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

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

(a) to evade the payment of any amount of tax payable by him or her; or

(b) to cause a refund by the Commissioner to him or her of any amount of tax which is in excess of the amount properly refundable to him or her, 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.

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

CHAPTER 2 RECOVERY OF TAX

Recoveries by Commissioner

8. (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 deemed to be a debt due to the State and must be paid to the Commissioner in the manner and at the place prescribed.

(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.

(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.

(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.

(5) The Commissioner may institute proceedings for the sequestration of the estate of any person and must for the purposes of those proceedings be deemed to be the creditor in respect of 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.

Power to appoint agent

9. (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—

- (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 moneys 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.

(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

10. 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

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

“administration of this Act” means the—

- (a) obtaining of full information in relation every change in beneficial ownership in 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 leviable under this Act;
- (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 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 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 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, as referred to in 14, any information, documents or things;

“documents” include any document, book, security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any printout of information generated, sent, received, stored, displayed or processed by electronic means;

“information” includes any electronic representations of information in any form;

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

“officer” means an officer referred to in section 3(1) of the Income Tax Act;

“premises” includes any building, premises, 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, documents or thing under section 16.

(2) For the purposes of sections 13, 14, 15 and 16, 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 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.

- (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.
- (4) For the purposes of sections 15 and 16, the Commissioner may delegate the powers vested in him or her by those sections, to any other officer.

Records

12. (1) Any member, participant or person who acquires the beneficial ownership in a listed security must keep, for a period of five years, such records of every change in beneficial ownership which has been effected by the member, or by the participant, or by the person that has acquired the beneficial ownership in the security as may be required to enable the member, participant or the person that has acquired the beneficial ownership in the security, 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.

(2) The company referred to in section 3(c) must keep, for a period of five years, such records of every change in beneficial ownership in 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.

Furnishing of information, documents or things by any person

13. 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 that information (whether orally or in writing), documents or things as the Commissioner or that officer may require.

Obtaining of information, documents or things at certain premises

14. (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 that information, documents or things as the Commissioner or that officer may require to inspect, audit, examine or obtain.

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

(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.

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

Inquiry

15. (1) The Commissioner or an officer referred to in section 11(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 referred to in section 11(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 11(4), grant an order in terms of which a person referred to in subsection (7) is designated to act as presiding officer at the inquiry referred to in this section.

(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.

(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;
- (b) information, documents or things are 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, documents or things.

(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;
- (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 is a person appointed by the Minister of Finance in terms of section 83A(4) of the Income Tax Act.

(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 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 *mutatis mutandis*; and
- (c) record the proceedings and evidence at an inquiry in the manner that 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.

(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 his representative, or either of them, would be prejudicial to the effective conduct of the inquiry.

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

(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).

(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.

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

(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 or the administering or making of an affirmation or the giving of false evidence or the making of a false statement in connection with that questions and answers or a failure to answer questions lawfully put to him, fully and satisfactorily.

(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

16. (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

11(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, documents or things, that may afford evidence as to the non-compliance 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 that officer suspects any information, documents or things 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.

(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
- (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 non-compliance; or
 - (ii) the commission of that offence; and
- (c) the premises specified in the application are likely to contain that information, documents or things.

(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;

- (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) that information, documents or things are—
 - (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 that premises and further exercise all the other powers granted by this section, as if that 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 that officer believes on reasonable grounds afford evidence of the non-compliance with the relevant obligations or the commission of an offence in terms of this Act.

(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, documents or things are preserved and may retain them until the conclusion of any investigation into the non-compliance 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 that application may, on good cause shown, make the order 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.

Objection and Appeal Procedures

17. (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.

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

- (a) objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder; and
- (b) settlement of disputes, as provided for in Part IIIA of Chapter III of that Act, shall *mutatis mutandis* apply in respect of any objection lodged or appeal noted or any dispute settled in terms of this Act.

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

Advance Tax Rulings

18. (1) The provisions relating to advance tax rulings contained in Part IA of Chapter III of the Income Tax Act, apply *mutatis mutandis* for purposes of this Act.

(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 *mutatis mutandis* for purposes of this Act.

Offences

19. 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; or
- (b) without just cause shown, refuses or neglects to furnish any information, documents or thing referred to in section 11; or
- (c) fails to disclose any material fact in the declaration referred to in sections 2 and 3; or
- (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; or
- (f) acquires the beneficial ownership in an unlisted security and fails to inform the company of the change in beneficial ownership as referred to in section 2,

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

Publication of names of offenders

20. (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 19.

(2) The name of a person may be published as described in 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) the particulars of the offence that the Commissioner thinks fit;
 - (c) the particulars of the fine or sentence imposed.

Short title and commencement

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