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THE PRESIDENCY

No. 944

30 September 2009

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

No. 17 of 2009: Taxation Laws Amendment Act, 2009.



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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.

(English text signed by the President.)
(Assented to 29 September 2009.)

ACT

To—

- amend the Transfer Duty Act, 1949, so as to amend a definition; to make a new provision; to provide for an exemption; to effect consequential amendments;
- amend the Estate Duty Act, 1955, so as to make further provision for a deduction;
- amend the Income Tax Act, 1962, so as to fix the rates of normal tax and amend monetary amounts; to amend and insert certain definitions; to effect technical corrections; to repeal certain provisions; to amend certain provisions; to make a new provision; to effect textual and consequential amendments;
- amend the Customs and Excise Act, 1964, so as to amend the air passenger tax; to amend rates of duty in Schedule No. 1; to provide for the continuation of certain amendments to the Schedule;
- amend the Banks Act, 1990, so as to effect a consequential amendment;
- amend the Value-Added Tax Act, 1991, so as to amend monetary amounts; to insert a new provision; to effect consequential amendments;
- amend the Taxation Laws Amendment Act, 2004, so as to change an effective date;
- amend the Revenue Laws Amendment Act, 2006, so as to change effective dates;
- amend the Diamond Export Levy Act, 2007, so as to insert a definition; to clarify a provision;
- amend the Securities Transfer Tax Act, 2007, so as to make a textual amendment;
- amend the Mineral and Petroleum Resources Royalty Act, 2008, so as to amend effective dates; to amend provisions; to update a Schedule;
- amend the Revenue Laws Amendment Act, 2008, so as to amend commencement provisions;
- introduce measures relating to sharing of general fuel levy revenue;
- provide for special measures relating to zero-rating of certain goods and services;

and to provide for matters connected therewith.

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

Amendment of section 1 of Act 40 of 1949, as amended by section 11 of Act 80 of 1959, section 1 of Act 77 of 1964, section 5 of Act 103 of 1969, section 4 of Act 106 of 1980, section 1 of Act 86 of 1987, section 2 of Act 87 of 1988, Proclamation R.11 of 1994, section 8 of Act 37 of 1996, section 34 of Act 34 of 1997, section 1 of Act 5 of 2001, section 2 of Act 74 of 2002 and section 1 of Act 45 of 2003

1. (1) Section 1 of the Transfer Duty Act, 1949, is hereby amended—
 - (a) by the deletion in the definition of “fair value” of the word “or” at the end of paragraph (b);
 - (b) by the addition in the definition of “fair value” of the word “or” at the end of paragraph (c);
 - (c) by the insertion in the definition of “fair value” of the following paragraph preceding the proviso:

“(d) in relation to a share in a company as contemplated in paragraph (g) of the definition of ‘property’, means so much of the fair market value, as at the date of acquisition of that share, of any property held by that company which constitutes property as contemplated in paragraphs (a), (b) and (c) of that definition (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property) as is attributable to that share”;
 - (d) by the substitution in the definition of “property” for paragraphs (d) and (e) of the following paragraphs:

“(d) a share (other than a share contemplated in paragraph (g)) or member’s interest in a residential property company; [or]

(e) a share (other than a share contemplated in paragraph (g)) or member’s interest in a company which is a holding company (as defined in the Companies Act, 1973 (Act No. 61 of 1973), or as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be), if that company and all of its subsidiary companies (as defined in the Companies Act, 1973, or Close Corporations Act, 1984), would be a residential property company if all such companies were regarded as a single entity;”; and
 - (e) by the addition to the definition of “property” of the following paragraph:

“(g) a share in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);”.

(2) Subsection (1) is deemed to have come into operation on 1 September 2009 and applies in respect of the acquisition of any share in a share block company on or after that date.

Amendment of section 3 of Act 40 of 1949, as amended by section 4 of Act 88 of 1974, section 1 of Act 99 of 1981, section 4 of Act 97 of 1993, section 10 of Act 37 of 1996, section 6 of Act 60 of 2001, section 3 of Act 74 of 2002 and section 1 of Act 35 of 2007

2. (1) Section 3 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1A) for the words preceding the proviso of the following words:

“Where a person who acquires any property contemplated in paragraph (d) [or], (e) or (g) of the definition of ‘property’ fails to pay the duty within the period contemplated in subsection (1), the public officer as defined in section 101 of the Income Tax Act, 1962 (Act No. 58 of 1962), of that company and the person from whom the shares or member’s interest are acquired shall be jointly and severally liable for such duty”.

(2) Subsection (1) is deemed to have come into operation on 1 September 2009 and applies in respect of the acquisition of any share in a share block company on or after that date.

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005, section 16 of Act 9 of 2006, section 1 of Act 20 of 2006, section 2 of Act 35 of 2007 and section 1 of Act 60 of 2008

3. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended— 15

(a) by the substitution in subsection (1)(l)(iv) for item (aa) of the following item:

“(aa) whether or not any election has been made [**that the provisions**] in terms of the relevant section [**apply**]; or”; and

(b) by the addition of the following subsection:

“(20) No duty shall be payable in respect of any acquisition of any interest in a residence as contemplated in paragraph 51 of the Eighth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), where that acquisition takes place as a result of a transfer contemplated in that paragraph.”. 20

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of a transaction entered into on or after that date. 25

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 11 February 2009 and applies in respect of distributions made on or after that date and before 1 January 2012.

Repeal of section 9A of Act 40 of 1949 30

4. The Transfer Duty Act, 1949, is hereby amended by the repeal of section 9A.

Substitution of section 4A of Act 45 of 1955

5. (1) The Estate Duty Act, 1955, is hereby amended by the substitution for section 4A of the following section:

“Dutiable amount of an estate 35

4A. (1) Subject to subsections (2) and (3), the dutiable amount of the estate of any person shall be determined by deducting from the net value of that estate, as determined in accordance with section 4, an amount of R3,5 million.

(2) Where a person was the spouse at the time of death of one or more previously deceased persons, the dutiable amount of the estate of that person shall be determined by deducting from the net value of that estate, as determined in accordance with section 4, an amount equal to the amount specified in subsection (1)— 40

(a) multiplied by two; and 45

(b) reduced by the amount deducted from the net value of the estate of any one of the previously deceased persons in accordance with this section.

(3) Where a person was one of the spouses at the time of death of a previously deceased person, the dutiable amount of the estate of that person shall be determined by deducting from the net value of that estate, as determined in accordance with section 4, an amount equal to the sum of—

- (a) the amount specified in subsection (1); and
- (b) the amount specified in subsection (1) divided by the number of spouses, reduced by an amount which is determined by dividing the amount deducted, in accordance with subsection (1), from the net value of the estate of the previously deceased person by the number of spouses of that previously deceased person.

(4) The amount contemplated in subsection (2)(b) or (3)(b) shall not exceed the amount specified in subsection (1).

(5) Subsections (2) and (3) shall not apply unless the executor of the estate of that person submits, at the time and in the manner and form prescribed by the Commissioner, to the Commissioner a copy of a return submitted to the Commissioner in terms of section 7 in respect of the estate of the previously deceased person.”.

(2) Subsection (1) comes into operation on 1 January 2010 and applies in respect of the estate of a person who dies on or after that date.

Fixing of rates of normal tax and amendment of certain amounts for purposes of Act 58 of 1962

6. (1) The rates of tax fixed by Parliament in terms of section 5(2) of the Income Tax Act, 1962, are set out in paragraphs 1, 3, 4, 5, 6, 7, 8 and 10 of Appendix I to this Act.

(2) The rate of tax fixed by Parliament in terms of section 48B(1) of the Income Tax Act, 1962, is set out in paragraph 9 of Appendix I to this Act.

(3) The Income Tax Act, 1962, is hereby amended by the substitution for the amounts in section 6(2)(a) and (b) respectively of the amounts in the third column opposite the relevant section in the table in paragraph 2 of Appendix I to this Act.

(4) For the purposes of Appendix I to this Act any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned unless the context otherwise indicates.

(5) Subject to subsection (6), the rates of tax referred to in subsection (1) and the amounts referred to in subsection (3) apply in respect of—

- (a) any person (other than a company or a trust other than a special trust) for the year of assessment commencing on or after 1 March 2009;
- (b) any company (other than an employment company as defined in section 12E of the Income Tax Act, 1962, or a personal service provider as defined in paragraph 1 of the Fourth Schedule to that Act) for any year of assessment ending during the period of 12 months ending on 31 March 2010;
- (c) any trust (other than a special trust or a personal service provider as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, that constitutes a trust) for any year of assessment ending on 28 February 2010;
- (d) any employment company as defined in section 12E of the Income Tax Act, 1962, for any year of assessment commencing before 1 March 2009 and ending during the period of 12 months ending on 31 March 2010; and
- (e) any personal service provider as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, for any year of assessment commencing on or after 1 March 2009.

(6) The rate of tax referred to in subsection (2) applies in respect of the taxable turnover of a person that was a registered micro business as defined in paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, in respect of any year of assessment commencing on or after 1 March 2009.