

NATIONAL ASSEMBLY

QUESTION FOR WRITTEN REPLY

QUESTION NUMBER 1089 [NW1211E]

DATE OF PUBLICATION: 01 APRIL 2011

Mr M Swart (DA) to ask the Minister of Finance:

What is the (a) nature and (b) quantum of the tax liability that (i) would have been, and (ii) is now exempt in terms of section 8 of the South African Postbank Limited Act 2010 (Act 9 of 2010)?

NW1211E

REPLY:

- (a) The tax liability of any entity is determined by the normal taxation laws like the Income Tax Act No 58 of 1962, It cannot be determined by the South African Postbank Act 9 of 2010, given that it was not introduced as a money bill in terms of section 73(2) and 77 of the Constitution of the Republic of South Africa Act 108 of 1996. The South African Postbank Act provides for the incorporation of the Postbank Division of the South African Post Office and for the transfer of the enterprise of that Division to the Postbank company.
- (b) The actual tax liability of any taxpayer is determined by the South African Revenue Service, based on the tax return filed by that taxpayer. Even if this information is available to SARS, I am not in a position to disclose the income tax affairs of any taxpayer in terms of section 4 of the Income Tax Act.

More generally, it should be noted that in terms of section 42 of the Income Tax Act 58 of 1962, the formation of any new entity is free from income tax under current law. Also, the formation of a new entity can also qualify to be free from indirect taxes, such as from the transfer duty in terms of section 9 of the Transfer Duty Act 40 of 1949 and from the Securities Transfer Tax Act 25 of 2007. These sections could be utilised when incorporating an entity like the Postbank Division of the South African Post Office.

(i) and (ii) There is therefore no change in the tax liability of any entity in terms of section 8 of South African Postbank Act 9 of 2010. In the view of the National Treasury, this Act cannot determine the tax liability of the Postbank nor of the Post Office. Section 8 of the Act should therefore be regarded as a desired objective for the incorporation of the Postbank, with the actual tax liability determined by the normal tax laws of the country.