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REPUBLIC OF SOUTH AFRICA.

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**EXPLANATORY MEMORANDUM**

ON THE

**INCOME TAX BILL,  
1965.**

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In terms of the principal Act (Act No. 58 of 1962) the rates of normal tax must be fixed annually. The Bill fixes rates—

- (a) for individuals in respect of the years of assessment ending on 28th February, 1966, and 30th June, 1966;
- (b) for companies (other than gold mining companies) in respect of years of assessment ending during the period of twenty-four months ending on 31st December, 1966; and
- (c) for gold mining companies in respect of their years of assessment ending during the twelve months ending on 31st December, 1965.

In addition to fixing the rates of normal tax the Bill amends the principal Act.

CLAUSE ONE.

This clause enacts the tax rates set forth in the Schedule of the Bill.

CLAUSE TWO.

In terms of this clause a portion of the normal tax payable by companies on taxable income derived otherwise than from mining operations in the Republic will, save where the tax accrues for the benefit of the Transkeian Revenue Fund under any law, accrue for the benefit of the respective provincial revenue funds in the proportions determined by proclamation. The portion so accruing to the provinces will be one-sixth of the normal tax payable before the addition of any surcharge or the loan portion of the normal tax.

CLAUSE THREE.

In terms of this clause the provincial income taxes payable by individuals in respect of the year of assessment ending on 28th February, 1966, or 30th June, 1966, whichever is applicable, will be calculated on the amount payable by way of normal tax under item (a) of paragraph 1 of the Schedule to the Bill before the deduction of the discount of 5 per cent provided for in that item. The provincial income taxes will not be payable on the loan portion of the normal tax imposed by item (g) of that paragraph.

CLAUSE FOUR.

This clause contains provisions in regard to the assessment and repayment of the portion (called the loan portion) of the normal tax payable by persons other than companies under item (g) of paragraph 1 of the Schedule to the Bill and by companies under item (h) of that paragraph.

*Sub-clause (2)* provides that liability for the unpaid amount of the loan portion is to cease when the person liable therefor dies or becomes insolvent or, in the case of a company, is placed under liquidation or when such person leaves the Republic permanently and ceases to carry on business in the Republic, or, in the case of a woman who marries, in respect of any period of assessment ending before her marriage. This sub-clause further provides that the estate of a deceased or insolvent person (but not a testamentary trust) will not be liable for the loan portion in respect of income accruing to such estate. Further exemptions are provided in the case of certain owners or charterers of ships or aircraft who are

assessed to tax under section *thirty-three* of the principal Act, in the case of persons (other than companies) who are not ordinarily resident nor carrying on business in the Republic, and in the case of companies which are not registered nor carry on business in the Republic.

In terms of *sub-clause* (3) the loan portion will not be payable on any amount payable by way of additional tax in terms of section *seventy-six* of the principal Act or paragraph 20 of the Fourth Schedule to that Act.

*Sub-clause* (4) provides for collections in respect of the loan portions of the normal tax to be paid into the loan account referred to in the General Loans Act, 1961 (Act No. 16 of 1961), for refunds (other than repayments under *sub-clause* (6)) to be paid by way of a drawback on amounts accruing to the loan account and for repayments under *sub-clause* (6) to be charged to the loan account.

*Sub-clause* (5) requires the Secretary to issue to every person who has paid the loan portion of the normal tax a statement of the amount of such loan portion paid by him. The statement, which will not as such be redeemable or transferable, is to be issued before the date for repayment determined by the Minister of Finance under *sub-clause* (6), but need not be issued if the loan portion is repaid before that date.

*Sub-clause* (6) requires the Minister of Finance to determine a date, not being later than 28th February, 1973, after which the loan portion of the normal tax is to be repaid to the person by whom it was paid. The loan portion may, however, be repaid before that date in the event of the death, insolvency or liquidation (in the case of a company) of the person concerned before the date so determined.

*Sub-clause* (7) provides for simple interest to be paid on the loan portion at the rate of five per cent per annum, but such interest will not be payable until the loan portion is repaid.

*Sub-clause* (8) deems the date of payment of the loan portion to be—

- (a) in the case of a person who has had employees' tax deducted or withheld from his remuneration during the year of assessment and is either not required to pay provisional tax in respect of such year or has made satisfactory arrangements for increased deductions by way of employees' tax to cover his liability for provisional tax in respect of such year, the first day of September, 1965; or
- (b) in the case of a person who has during the year of assessment paid directly by way of provisional tax the first amount due by him under the relevant provisions of the Fourth Schedule to the principal Act in respect of provisional tax for the year of assessment, the first day of the month during which he paid such amount; or
- (c) in any other case (e.g. a person who is not an employee nor a provisional taxpayer), the first day of the month during which he pays the full amount of the loan portion, but where the taxpayer owes arrear taxes an earlier date may in certain circumstances apply.

The date of payment, as so deemed, will be the date from which interest is calculated as provided by *sub-clause* (7).

*Sub-clause* (9) exempts from stamp duty any receipt given by any person for the repayment to him of the loan portion of the normal tax.

*Sub-clause* (10) empowers the State President to make regulations in order that the objects of this clause may be achieved.

*Sub-clause* (11) authorizes the State President to determine a date after which assessments for the loan portion of the normal tax shall not be issued.

*Sub-clause* (12) deems the provisions of this clause to have come into operation on the first day of March, 1965.

## CLAUSE FIVE.

*Paragraph (a)* introduces an amendment to section *one* of the principal Act, in terms of which the Far West Rand Dolomitic Water Association is included in the definition of "local authority". This amendment should be read with *paragraph (b)* of sub-section (1) of section *ten* of the principal Act, which exempts from tax the revenues of local authorities.

*Paragraph (b)* introduces an amendment to the definition of "married person" in section *one* of the principal Act.

This amendment should be read with the amendment to section *seven* of the principal Act introduced by clause *eight*, in terms of which the income of a woman who is living apart from her husband in circumstances indicating that the separation is likely to be permanent, will no longer be deemed to be the income of her husband but will be taxed in her hands. In terms of the amendment to the definition of "married person" introduced by this clause, spouses who are permanently living apart will normally be regarded as unmarried persons. Both spouses will, however, be entitled to the rebates for children of the marriage where such rebates are applicable in terms of the principal Act. The provisions of the definition of "married person" in regard to spouses who were separated by written agreement entered into not later than 21st March, 1962, or under an order of judicial separation granted in consequence of proceedings instituted not later than that date, remain unchanged.

## CLAUSE SIX.

This clause adds a number of new sub-sections to section *five* of the principal Act providing for the normal tax payable by any taxpayer whose taxable income consists partly of amounts derived by his wife to be reduced in certain circumstances.

In terms of the proposed *sub-section (3)* the proposed reduction in normal tax will be made in respect of any period of assessment commencing on or after 1st March, 1965. The reduction is applicable if each of the spouses' portions of the combined taxable income is not less than one hundred rand.

In terms of the proviso to the proposed new sub-section (3) the normal tax chargeable in the case of any taxpayer will not be less than that chargeable at the rate fixed by Parliament for the first rand of taxable income.

Any calculation of tax made under the proposed new sub-section (3) is, in terms of *paragraph (b)* of that sub-section, to be made without regard being had to the rebates provided for in sections *six* or *six bis* of the principal Act.

The method by which the reduced tax is to be calculated under the proposed sub-section (3) is indicated by the following formula:

$$\begin{array}{r} \text{Tax chargeable on} \\ \text{combined taxable} \\ \text{income} \end{array} = \frac{\begin{array}{r} \text{tax chargeable} \\ \text{on rating amount} \\ \text{rating amount} \end{array}}{\text{rating amount}} \times \text{joint taxable income}$$

The proposed *sub-section (4)* provides how the rating amount is to be determined. In a normal case, where the husband's portion of the combined taxable income exceeds the wife's portion, the rating amount will be an amount equal to the husband's portion plus one-half of the wife's portion plus twice the amount (if any) by which the combined taxable income exceeds R5,000.

The proposed *sub-section (5)* provides how the husband's and wife's portions of the combined taxable income are to be determined. The husband's portion will normally be the amount at which his taxable income would have been determined under the principal Act if his wife's income had not been included therein. Certain adjustments will, however, have to be made in cases where the income consists to a certain extent of dividends or where an assessed loss is brought forward from a previous period of assessment and in the cases provided for in sub-section (6). The wife's portion of the combined taxable income will be the balance of the combined taxable income remaining after the deduction therefrom of the husband's portion.

In terms of the proposed *sub-section* (6) any salary, emoluments, remuneration or other similar income received by or accrued to one of the spouses from the other spouse or from any partnership of which the other spouse was a member or from any private company of which the other spouse was a director or in which the other spouse was the main shareholder or one of the principal shareholders, is deemed for purposes of determining the spouses' portions of the combined taxable income to be income of the other spouse. Income received by or accrued to one of the spouses by reason or as a result of any donation, settlement or other disposition made by the other spouse or by reason or as a result of any arrangement for diverting income from one spouse to the other spouse, is similarly treated.

The proposed *sub-sections* (7) and (8) preserve the rating benefit at present enjoyed by certain plantation farmers under sub-paragraph (3) of paragraph 15 of the First Schedule to the principal Act, by certain sugar cane farmers under paragraph 17 of that Schedule and by persons deriving lump sum benefits from pension, provident and retirement annuity funds, under paragraph 7 of the Second Schedule to that Act.

#### CLAUSE SEVEN.

This clause inserts a new section, numbered *6bis*, in the principal Act. This section provides for a rebate on normal tax in respect of foreign income taxes paid on income accruing in respect of the use in a foreign country, or the grant of permission to use in such country, of patents, designs, trade marks, copyrights or similar property or any motion picture film, sound recording or advertising matter used or intended to be used in connection with such film. The rebate is to be limited to the amount of normal tax (as calculated after the deduction of the rebates provided for in sub-section (1) of section *six* of the principal Act but before the addition of the loan portion of the normal tax) payable by the taxpayer in respect of such income.

#### CLAUSE EIGHT.

This clause introduces an amendment to sub-section (2) of section *seven* of the principal Act. In terms of this amendment, which should be read with the amendments introduced by paragraph (b) of clause *five* and by clause *twenty-three*, the income of a married woman who is permanently living apart from her husband will be taxed in her hands and will not be regarded as forming part of her husband's income.

#### CLAUSE NINE.

This clause introduces amendments to section *eight* of the principal Act.

The amendment introduced by *paragraph* (a) of sub-clause (1) is consequential upon the amendment introduced by clause *fifteen*.

The amendment introduced by *paragraph* (b) of sub-clause (1), which should be read with the amendment introduced by clause *sixteen*, provides that recoupments of allowances made under the principal Act in respect of any aircraft which is replaced by a further aircraft, will in certain circumstances not be taxed. Such recoupments are, however, to be deducted from the cost of the further aircraft for the purpose of calculating the allowances under section *14bis* of the principal Act in respect of such further aircraft.

#### CLAUSE TEN.

This clause introduces amendments to section *ten* of the principal Act.

*Paragraph* (a) introduces an exemption from tax in respect of certain foreign workers who are temporarily employed in the Republic, if such exemption is provided for in an international agreement.

*Paragraph* (b) introduces an exemption from tax (limited to R1,000 in the case of any taxpayer) in respect of the interest on Five per cent Five Year (Second Series) Treasury Bonds.

*Paragraph* (c) introduces an amendment to paragraph (x) of sub-section (1) of section *ten* of the principal Act. This amendment is designed to make it clear that the exemption conferred by that paragraph applies in respect of lump sum payments.

#### CLAUSE ELEVEN.

This clause introduces amendments to section *eleven* of the principal Act. These amendments are consequential upon the amendments introduced by clauses *fifteen* and *sixteen*.

#### CLAUSE TWELVE.

This clause introduces amendments to sections *11ter*, *11quat* and *11quin* of the principal Act.

The references in those sections to Bantu areas or areas adjoining Bantu areas are replaced by references to economic development areas. The references to recommendations by the Secretary for Bantu Administration and Development and the Secretary for Commerce and Industries have been deleted.

In section *11ter* the word "electric" has been deleted in both places where it occurs.

Section *11quin* has been re-worded to make it clear that the allowance under that section may be granted to certain housing companies.

#### CLAUSE THIRTEEN.

This clause introduces amendments to section *twelve* of the principal Act.

The references to Bantu areas or areas adjoining Bantu areas are replaced by references to economic development areas. The references to recommendations by the Secretary for Bantu Administration and Development and the Secretary for Commerce and Industries have been deleted.

Further amendments provide for the continuation of the machinery investment allowance in respect of factory machinery or plant brought into use in an economic development area, and for the continuation of the machinery investment allowance in respect of new machinery, implements, utensils or articles brought into use in an establishment registered during the year of assessment in question as an hotel under the Hotels Act, 1965.

#### CLAUSE FOURTEEN.

This clause introduces amendments to section *thirteen* of the principal Act.

*Paragraph (a)* inserts a new sub-section numbered (4)*bis*, providing that the building depreciation allowance under sub-section (4) in respect of hotel buildings and improvements thereto shall not be made under the latter sub-section in respect of years of assessment ending on or after 1st January, 1964. This allowance may, however, be made for such years under the new section *13bis* introduced by clause *fifteen*.

*Paragraph (b)* introduces amendments to sub-sections (5) and (6), in terms of which the references to Bantu areas and areas adjoining Bantu areas are replaced by references to economic development areas and which provide for the continuance of the building investment allowance in respect of factory buildings and improvements brought into use in economic development areas.

*Paragraph (c)* adds a new sub-section (7), providing that the building investment allowance under sub-sections (5) and (6) in respect of hotel buildings and improvements thereto shall not be made under the latter sub-sections. This allowance may, however, be made under the new section *13bis* introduced by clause *fifteen*.

#### CLAUSE FIFTEEN.

This clause introduces a new section, numbered *13bis*, into the principal Act.

*Sub-section (1)* of the proposed new section provides for a basic depreciation allowance equal to two per cent of the cost (or portion thereof) of certain hotel buildings or improvements (other than repairs) to such buildings. This allowance replaces the allowance previously granted under sub-section (4) of section *thirteen* of the principal Act.

*Sub-sections (2), (3) and (4)* provide for an additional depreciation allowance in respect of the cost (or portion thereof) of certain hotel buildings or improvements (other than repairs) to such buildings, commenced on or after 1st January,

1964. To qualify for the additional depreciation allowance the hotel must during the year of assessment be registered as an hotel under the Hotels Act, 1965, and must on the last day of the year of assessment be graded by the hotel board established under that Act. The rates of the additional allowances (which may vary according to the grade of hotel or the year of assessment for which the allowance is granted) will be prescribed by the State President by regulation, but the rate for any grade of hotel applicable in respect of any year of assessment will not exceed 8 per cent of the relevant cost. Where, however, the initial grading of an hotel has been delayed, the allowance for the first year of assessment during which the hotel is graded may in certain circumstances be increased in the manner provided in the proviso to sub-section (3).

*Sub-section (5)* provides that the various depreciation allowances in respect of the cost of any hotel building or portion thereof or any improvements (or portion thereof) to an hotel building, shall not, in the aggregate, exceed such cost.

*Sub-section (6)* provides that where any of the various depreciation allowances in respect of any hotel building or portion thereof or any improvements (or portion thereof) to an hotel building is recovered or recouped, the amount recovered or recouped, or a portion thereof, may, in certain circumstances, be set off against the cost of a new hotel building erected by the taxpayer and in such case the recoupment or recovery so set off will not be required to be included in the taxpayer's income under paragraph (a) of sub-section (4) of section *eight* of the principal Act.

*Sub-sections (7) and (8)* provide for an hotel building investment allowance in respect of the cost (or portion thereof) of certain hotel buildings or improvements (other than repairs) to such buildings. This allowance replaces the allowance previously granted under sub-sections (5) and (6) of section *thirteen* of the principal Act. The allowance is calculated at the rate of 10 per cent of the relevant cost, but where the building is in an economic development area, the Minister of Finance may direct that the allowance be increased to a maximum of 20 per cent of such cost if the building was, or the improvements were, commenced on or before 1st May, 1964, or to a maximum of 25 per cent of such cost if the building was, or the improvements were, commenced after that date. The hotel building investment allowance in respect of the cost of a building (or portion thereof) is to be granted in the year of assessment during which the building is first used as an hotel or, where the allowance is based on the cost of improvements (or portion thereof), in the year of assessment during which the improvements are completed.

The time limits for the building investment allowance hitherto granted under sub-sections (5) and (6) of section *thirteen* of the principal Act are, in so far as hotels registered under the Hotels Act, 1965, are concerned, not applicable under sub-section (7) of the proposed section *13bis*, but remain applicable in the case of unregistered hotels.

#### CLAUSE SIXTEEN.

This clause introduces a new section, numbered *14bis*, into the principal Act. The new section provides for depreciation allowances for aircraft acquired on or after 1st April, 1965.

*Paragraph (a) of sub-section (1)* of the proposed new section provides for an annual allowance equal to 25 per cent of the adjustable cost of the aircraft in question. This allowance is not applicable in any year of assessment in which a higher allowance has been made under paragraph (b) of sub-section (1).

In terms of *paragraph (b) of sub-section (1)* a higher initial allowance, equal to 40 per cent of the adjustable cost of the aircraft, may be made in the circumstances described in that paragraph. The higher allowance will not be available to a person who is not ordinarily resident in the Republic or to any company which is not registered, managed and controlled in the Republic. To qualify for the higher allowance the aircraft must be registered in the Republic and must be used by the taxpayer in his business of transporting by air and for reward persons,

livestock, goods or mail. Where the cost price of the aircraft is not paid in full within a period of two or, in certain circumstances, three years, the allowance is reduced. Where the taxpayer fails to comply with certain requirements the higher allowance, or a portion thereof, may be reversed.

The aggregate of the allowances under the proposed new section is not to exceed the cost of the aircraft, or where the cost has been reduced as provided in sub-section (2) of that section, the adjusted cost. The allowances under the proposed new section replace the wear and tear allowances previously made under paragraph (c) of section *eleven* of the principal Act.

#### CLAUSE SEVENTEEN.

This clause introduces an amendment to sub-section (3) of section *nineteen* of the principal Act. The purpose of the amendment is to make it clear that dividends distributed by a fixed property company as defined in section *one* of the Unit Trusts Control Act, 1947 (Act No. 18 of 1947) on shares held by a company which is registered under that Act as a management company in property shares, are not subject to the deduction provided for in sub-section (3) of section *nineteen* of the principal Act. Such dividends are in terms of paragraph (s) of section *eleven* of the principal Act allowed as a deduction from income in the determination of the taxable income of the fixed property company concerned and in this respect are for income tax purposes unlike the dividends declared by an ordinary industrial, mining or commercial company.

#### CLAUSE EIGHTEEN.

This clause deletes sub-section (1)*bis* of section *twenty* of the principal Act. The deleted provision permitted, for normal tax purposes, an assessed loss incurred by a foreign parent company to be transferred to its South African subsidiary in certain circumstances. The amendment introduced by clause *nineteen* provides more generally for assessments on transfer of business undertakings by foreign companies to South African subsidiaries, and any deduction or adjustment which could have been made under the repealed sub-section will be permissible under the new section *28bis* introduced by clause *nineteen*.

#### CLAUSE NINETEEN.

This clause introduces a new section, numbered *28bis*, into the principal Act, in terms of this section where a South African subsidiary of a foreign company takes over as a going concern a South African business undertaking from the foreign company (or from any other foreign company which controls or is controlled by the first-mentioned foreign company) the Secretary for Inland Revenue may, if he is satisfied that the circumstances of the case warrant a concession, determine the taxable income or any assessed loss of the foreign company concerned and of the subsidiary as though there had been no change in ownership of the business undertaking. This will *inter alia* permit of the transfer, for income tax purposes, from the foreign company to the subsidiary of any assessed loss incurred by the foreign company or of any reserves, e.g. reserves for doubtful debts or the reserves allowed to short-term insurers.

This amendment should be read with the amendment introduced by clause *eighteen*.

#### CLAUSE TWENTY.

This clause introduces a textual amendment to section *thirty-six* of the principal Act.

#### CLAUSE TWENTY-ONE.

This clause introduces an amendment to section *forty-two* of the principal Act in terms of which dividends accruing to ecclesiastical, charitable and educational institutions of a public character are exempted from non-resident shareholders' tax.

#### CLAUSE TWENTY-TWO.

This clause introduces an amendment to section *fifty-seven* of the principal Act. In terms of that section donations made by a married woman are for donations



tax purposes deemed to be donations of her husband. This amendment is consequential upon the amendment introduced by paragraph (b) of clause *five*, in terms of which a woman permanently living apart from her husband is no longer to be regarded as a married person.

#### CLAUSE TWENTY-THREE.

The amendment introduced by this clause to section *sixty-eight* of the principal Act is consequential upon the amendment introduced to section *seven* of the principal Act by clause *eight*.

#### CLAUSE TWENTY-FOUR.

This clause introduces an amendment to section *seventy-four* of the principal Act. In terms of paragraph (b) of sub-section (3) of that section an officer of the Department of Inland Revenue who is under proper authority carrying out a search on any premises may cause any article in which he suspects moneys, books, records, accounts or documents to be contained to be removed and opened, but he may not, strictly speaking, cause the article (which may, for example, be a heavy safe) to be opened without first removing it. The amendment remedies this.

#### CLAUSES TWENTY-FIVE, TWENTY-SIX AND TWENTY-SEVEN.

The amendments introduced by these clauses to the First and Second Schedules to the principal Act are consequential upon the amendment to section *five* of the principal Act introduced by clause *six*.

#### CLAUSE TWENTY-EIGHT.

This clause introduces an amendment to paragraph 19 of the Fourth Schedule to the principal Act. A provisional taxpayer whose income is not normally derived wholly or mainly from farming, fishing or diamond digging, and a company which is a provisional taxpayer, is required at present to submit a preliminary estimate of taxable income for each year of assessment, but the amount so estimated is normally required to be not less than the amount of the provisional taxpayer's taxable income for the year of assessment which immediately precedes the year of assessment in question. In terms of the amendment introduced by this clause the minimum estimate will in future be required to be not less than the provisional taxpayer's taxable income for the latest year of assessment preceding the year of assessment in question in respect of which an assessment has been issued by the Secretary for Inland Revenue at least fourteen days before the date on which the preliminary estimate is submitted by the provisional taxpayer.

#### CLAUSE TWENTY-NINE.

This clause introduces amendments to paragraph 20 of the Fourth Schedule to the principal Act.

At present additional tax is payable in terms of that paragraph if a provisional taxpayer's final or last estimate of his taxable income is less than 90 per cent of his taxable income for the year of assessment in question and also less than his taxable income for the immediately preceding year of assessment. The reference to the immediately preceding year of assessment is changed by this clause to a reference to the latest year of assessment preceding the year of assessment in question in respect of which an assessment has been issued by the Secretary for Inland Revenue at least fourteen days before the date on which the final or last estimate is submitted by the provisional taxpayer.

#### CLAUSE THIRTY.

This clause introduces amendments to paragraphs 21 to 24, inclusive, of the Fourth Schedule to the principal Act.

At present provisional taxpayers (except persons (other than companies) whose income is normally wholly or mainly derived from farming, fishing or diamond digging) are normally required to make three provisional tax payments during each year of assessment. The number of payments is now reduced to two, the first of which is to be made within six months of the commencement of the relevant year of assessment and the second by the end of the year of assessment.

## CLAUSE THIRTY-ONE.

This clause provides for the commencement of certain amendments.

## CLAUSE THIRTY-TWO.

This clause prescribes the short title.

## THE SCHEDULE.

The Schedule lays down the rates of normal tax referred to in clause *one*.

The *rates for persons other than companies* are set forth in items (a) and (g) of paragraph 1, the tax payable in terms of item (g) being the loan portion of the normal tax referred to in clause *four*.

The *rates for companies* are set forth in items (b) to (e), inclusive, and item (h) of paragraph 1, the tax payable in terms of item (h) being the loan portion referred to in clause *four*.