

---

---

**REPUBLIC OF SOUTH AFRICA**

---

---

**EXPLANATORY MEMORANDUM**

**ON THE**

**INCOME TAX AMENDMENT BILL, 1984**

---

---

REPUBLIC OF SOUTH AFRICA

---

---

**EXPLANATORY MEMORANDUM ON THE INCOME  
TAX AMENDMENT BILL, 1984**

---

---

INTRODUCTION

Black persons are presently subject to a tax on income under the Black Taxation Act, 1969 (Act No. 92 of 1969) (the "Black Taxation Act"), and are, in terms of that Act, exempt from the payment of the normal tax levied under the Income Tax Act, 1962 (Act No. 58 of 1962) (the "Income Tax Act"). The Black Taxation Act differs materially from the Income Tax Act in that it has a different rates structure and does not make allowance for marital status or family circumstances. In accordance with a policy decision taken and announced some 4 years ago, this discrimination is to be eliminated on 1 March 1984, and all the population groups of the Republic are henceforth to be subject to a uniform tax on income.

Five of the six National States (Gazankulu, KwaNdebele, KwaZulu, Lebowa and QwaQwa) constituted under the National States Constitution Act, 1971 (Act No. 21 of 1971) (the "Constitution Act"), have the exclusive right under section 30 of that Act to impose a tax on the income of their citizens. The legislative assemblies of those States will shortly introduce legislation providing that the Income Tax Act, as in force in the Republic on 1 March 1984, will apply to their citizens. The sixth State, KaNgwane, has not attained full self-government and, although it too has the right (under section 3 of the Constitution Act) to impose a tax on its citizens, the Income Tax Act continues to apply to KaNgwane citizens by virtue of section 3 (3) of the Constitution Act.

It would clearly be impractical for each State to attempt to recover tax itself from its citizens who are employed in metropolitan areas. Agreements will accordingly be concluded in terms of the proviso to section 21 of the Constitution Act between the Government of the Republic and the Government of each National State in terms whereof the Commissioner for Inland Revenue will administer the Income Tax Act on behalf of each State. As it will, for the first few years at least, be impossible to determine what portion of the total income tax paid in the Republic (excluding the National States) was paid by a citizen of any particular State, those agreements will provide for the payment to each State of an amount determined in accordance with a formula, which amount will be in lieu of the actual tax paid by the citizens of that State. Taxes paid by a State's citizens within that State will, however, be retained by that State.

CLAUSES 1 AND 2

Under the Income Tax Act, the income of a married woman is taxed in the hands of her husband. "Married", for the purposes of that Act, includes joined together in a customary union. Thus, in the case of a polyga-

mous customary marriage, the incomes of all a man's wives would be taxable in his hands. It is proposed that only the income (if any) of the taxpayer's wife under his longest subsisting marriage should be taxed in his hands, and that his later wives should each be taxed separately at the rate applicable to single persons. Such a later wife will, however, under the existing provisions of the Income Tax Act, be entitled to assessment at the rate applicable to married persons if she is the sole or main supporter of a child for whom she is entitled to a rebate.

The amendments proposed by *clause 1* to the definition of "married person" and by *clause 2* to section 7 (2) of the Income Tax Act are designed to achieve this end.

### CLAUSE 3

Tax is levied under the Black Taxation Act on "taxable income", which (with two minor exceptions) is calculated in the same manner in which taxable income is determined for purposes of the Income Tax Act.

There are numerous circumstances in which, in the determination of taxable income for a particular year, regard must be had to previous years. For instance, there are ongoing allowances such as wear and tear allowances on machinery; there may be taxable recouplements of such allowances previously granted; the opening value of trading stock is equal to the closing value in the preceding year, etc.

The amendment introduced by this clause inserts a new section 37C in the Income Tax Act, in terms of which, in the assessment of any Black taxpayer under the Income Tax Act, regard will be had to all such allowances, etc., previously granted under the Black Taxation Act as though they had been granted under the Income Tax Act. In short, the intention is to provide complete continuity of taxation as though there had not been a transition from one taxing statute to another.

### CLAUSE 4

In terms of section 56 (1) (o) of the Income Tax Act, donations made by a Black person are exempt from donations tax. Donations tax is intended to discourage taxpayers from reducing their tax liability by donating assets which might otherwise generate income in their hands and, as Blacks are presently not liable for income tax, it follows that they should also be exempt from donations tax. Under the harmonization programme, this exemption has become inappropriate, and its deletion is accordingly proposed by this clause.

### CLAUSE 5

Paragraph 6 of the Second Schedule to the Income Tax Act provides for an exemption of the first R600 of a lump sum received on resignation or withdrawal from a pension, provident or retirement annuity fund. Where a taxpayer who would otherwise have fallen under the final deduction system, receives such a taxable lump sum, a considerable amount of extra administrative work is involved, in that the fund must apply for a tax deduction directive and the taxpayer must complete an income tax return and be assessed.

As the exemption of R600 has remained unchanged since 1961, it is considered that the time has come to increase it and thus reduce the number of taxable lump sums which will require attention. This clause accordingly proposes an increase in the exemption to R1 800.

#### CLAUSE 6

The earnings of a Black person do not constitute "remuneration" as technically defined for PAYE purposes and are thus not subject to the deduction of employees tax. The amendments introduced by *subclauses (a) and (c)* delete this exemption.

The earnings of a domestic or private servant or farm labourer similarly do not constitute "remuneration" if paid at a rate not exceeding R480 per annum. Many domestic servants earn more than this figure, but, as a result of rebates granted, will not become liable for tax unless they earn considerably more. It is proposed under *subclause (b)* to increase this amount to R2 400 per annum. The effect of the amendment is that the employer of domestic servants or farm labourers earning R2 400 per annum or less will not be required to register as an employer.

#### CLAUSE 7

All persons deriving income from a source within the Republic will as from 1 March 1984 be subject to tax at the same rates under the Income Tax Act. It will in most cases thus not be necessary for employers to register separately for PAYE purposes in respect of different classes of employees, as is presently required. An exception must, however, be made in the case of employers who in the course of their business employ workers both within a selfgoverning National State and elsewhere in the Republic. The reason for this is that those States will, as stated in the introduction, be entitled to retain all taxes paid within their borders by their citizens.

The amendment introduced by this clause provides that where an employer carries on business through a permanent establishment in a National State (i.e. temporary activities are not affected) and employs citizens of that State in such establishment, he must effect a separate registration as an employer in that State, in addition to his registration in respect of his other employees who are employed elsewhere in the Republic.

#### CLAUSE 8

It frequently happens that after an assessment has been issued to a taxpayer, that assessment must for one of a number of reasons be amended, as a result of which the taxpayer may become liable for additional tax. Assessments on Black taxpayers for years of assessment up to and including that ending on 29 February 1984 will be issued by the Department of Co-operation and Development, as will any revised assessments which may in future become necessary in respect of those years.

The amendment effected by this clause will authorize the Commissioner, notwithstanding the secrecy provisions of section 4 of the Income Tax Act, to furnish the Department of Co-operation and Development with whatever information the Commissioner may have in his possession which has a bearing on any such revised assessment.

#### CLAUSE 9

Section 6 of the Constitution Act creates a revenue fund for each State and provides which moneys shall be paid into that fund. The amendment proposed by *subclause (1) (b)* inserts a new subparagraph (iA) into

section 6 (2) (a), which provides that the amounts determined in terms of the agreements to be concluded with each State (see the introduction) shall be paid into the revenue fund of that State. The amendments proposed by *subclauses (1) (a) and (c)* are of a textual nature.

#### CLAUSE 10

This clause repeals the Black Taxation Act with effect from 1 March 1984. *Subclause (2)*, however, provides that any tax chargeable on income accrued before that date shall be recoverable, and any obligation which would have arisen in regard to any such income, such as the rendering of returns by both taxpayers and employers, must be performed notwithstanding the repeal.